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FEDERAL REGISTER

Vol. 77 Friday,
No. 72 April 13, 2012

Pages 22185–22462

OFFICE OF THE FEDERAL REGISTER

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

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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. APHIS–2011–0036]

Golden Nematode; Removal of Regulated Areas

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Affirmation of interim rule as final rule.

SUMMARY: We are adopting as a final rule, without change, an interim rule that amended the golden nematode regulations by removing the townships of Elba and Byron in Genesee County, NY, from the list of generally infested areas. Surveys have shown that the fields in these two townships are free of golden nematode, and we determined that regulation of these areas was no longer necessary. As a result of that action, all the areas in Genesee County, NY, that were listed as generally infested were removed from the list of areas regulated for golden nematode.

DATES: Effective on April 13, 2012, we are adopting as a final rule the interim rule published at 76 FR 60357–60358 on September 29, 2011.

FOR FURTHER INFORMATION CONTACT: Mr. Jonathan M. Jones, National Program Manager, Emergency and Domestic Programs, Plant Protection and Quarantine, APHIS, 4700 River Road, Unit 137, Riverdale, MD 20737; (301) 851–2128.

SUPPLEMENTARY INFORMATION:

Background

In an interim rule [1] effective and published in the **Federal Register** on September 29, 2011 (76 FR 60357–60358, Docket No. APHIS–2011–0036), we amended the golden nematode regulations in 7 CFR part 301 by removing the townships of Elba and Byron in Genesee County, NY, from the list of generally infested areas.

Comments on the interim rule were required to be received on or before November 28, 2011. We received one comment from a State agriculture department opposing the removal of the townships of Byron and Elba in Genesee County from the list of areas generally infested with golden nematode. The commenter stated that APHIS did not provide sufficient biological information to support the action.

As discussed in the September 2011 interim rule, the townships of Elba and Byron were regulated for nematode on the basis of their proximity to and association with three fields in Orleans County, NY, in which golden nematode was detected. Golden nematode had not been detected in these townships prior to them being regulated. Surveys conducted in the townships of Elba and Byron from 1977 to 2010 had negative laboratory results for the detection of golden nematode. Because golden nematode was not detected in these townships during the 33 years surveys were conducted and had not been detected prior to the surveys, we have concluded that this pest was not and is not present in these areas.

Therefore, for the reasons given in the interim rule and in this document, we are adopting the interim rule as a final rule without change.

This action also affirms the information contained in the interim rule concerning Executive Order 12866 and the Regulatory Flexibility Act, Executive Orders 12372 and 12988, and the Paperwork Reduction Act.

Further, for this action, the Office of Management and Budget has waived its review under Executive Order 12866.

List of Subjects in 7 CFR Part 301

Agricultural commodities, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

PART 301—DOMESTIC QUARANTINE NOTICES

Accordingly, we are adopting as final, without change, the interim rule that amended 7 CFR part 301 and that was published at 76 FR 60357 on September 29, 2011.

Done in Washington, DC, this 9th day of April 2012.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2012–8915 Filed 4–12–12; 8:45 am]

BILLING CODE 3410–34–P

[1] To view the interim rule and the comment we received, go to *http://www.regulations.gov/#!docketDetail;D=APHIS-2011-0036.*

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. APHIS–2011–0074]

Karnal Bunt; Regulated Areas in California

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Affirmation of interim rule as final rule.

SUMMARY: We are adopting as a final rule, without change, an interim rule that amended the Karnal bunt regulations to make changes to the list of areas or fields regulated because of Karnal bunt, a fungal disease of wheat. Specifically, we removed areas and fields in Riverside County, CA, from the list of regulated areas based on our determination that those fields or areas meet our criteria for release from regulation. The interim rule was necessary to relieve restrictions on certain areas that were no longer necessary.

DATES: Effective on April 13, 2012, we are adopting as a final rule the interim rule published at 76 FR 72081–72082 on November 22, 2011.

FOR FURTHER INFORMATION CONTACT: Ms. Lynn Evans-Goldner, Karnal Bunt Program Manager, Forest Pest and Plant Pathogen Programs, EDP, PPQ, APHIS, 4700 River Road, Unit 26, Riverdale, MD 20737–1236; (301) 851–2286.

SUPPLEMENTARY INFORMATION:

Background

In an interim rule [1] effective and published on November 22, 2011, in the

[1] To view the interim rule and the comment we received, go to *http://www.regulations.gov/#!docketDetail;D=APHIS-2011-0074.*

Federal Register (76 FR 72081–72082, Docket No. APHIS–2011–0074), we amended the Karnal bunt regulations in 7 CFR part 301 by removing areas and fields in Riverside County, CA, from the list of regulated areas in § 301.89–3(f). That action relieved restrictions that were no longer necessary on the interstate movement of regulated articles from this area.

Comments on the interim rule were required to be received on or before January 23, 2012. We received one comment by that date. The comment, from a private citizen, supported the interim rule. Therefore, for the reasons given in the interim rule, we are adopting the interim rule as a final rule without change.

This action also affirms the information contained in the interim rule concerning Executive Order 12866 and the Regulatory Flexibility Act, Executive Orders 12372 and 12988, and the Paperwork Reduction Act.

Further, for this action, the Office of Management and Budget has waived its review under Executive Order 12866.

List of Subjects in 7 CFR Part 301

Agricultural commodities, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

PART 301—DOMESTIC QUARANTINE NOTICES

Accordingly, we are adopting as final, without change, the interim rule that amended 7 CFR part 301 and that was published at 76 FR 72081 on November 22, 2011.

Done in Washington, DC, this 9th day of April 2012.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2012–8914 Filed 4–12–12; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 1

[Docket No. FAA–2012–0019; Amdt. No. 1–67]

RIN 2120–AK03

Removal of Category IIIa, IIIb, and IIIc Definitions; Delay of Effective Date and Reopening of Comment Period

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; delay of effective date and reopening of comment period.

SUMMARY: This action delays the effective date and reopens the comment period for a Direct Final Rule that was published on February 16, 2012 (77 FR 9163). In that document, the FAA published amendments to remove the definitions of Category IIIa, IIIb, and IIIc operations because the definitions are outdated and no longer used for aircraft certification or operational authorization. The International Aviation Civil Organization (ICAO) has requested additional time to adequately analyze the Direct Final Rule and prepare comments.

DATES: The effective date of the Direct Final Rule published on February 16, 2012 (77 FR 9163) is delayed from April 16, 2012, to June 12, 2012. If an adverse comment is received, the FAA will publish a timely withdrawal in the **Federal Register**.

The comment period of the Direct Final Rule published on February 16, 2012 (77 FR 9163) is reopened until May 14, 2012.

ADDRESSES: You may send comments identified by docket number (FAA–2012–0019) using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and follow the online instructions for sending your comments electronically.
- *Mail:* Send comments to Docket Operations, M–30; U.S. Department of Transportation (DOT), 1200 New Jersey Avenue SE., Room W12–140, West Building Ground Floor, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* Take comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* Fax comments to Docket Operations at 202–493–2251.

FOR FURTHER INFORMATION CONTACT: Thuy H. Cooper, ARM–106, Office of Rulemaking, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591, telephone (202) 493–4415; email *thuy.cooper@faa.gov.*

SUPPLEMENTARY INFORMATION: See the ''Additional Information'' section for information on how to comment on this rule and how the FAA will handle comments received. The ''Additional Information'' section also contains related information about privacy and the docket. In addition, there is information on obtaining copies of related rulemaking documents.

Background

On February 7, 2012, the FAA issued Amendment No. 1–67, entitled ''Removal of Category IIIa, IIIb, and IIIc Definitions'' (77 FR 9163). The FAA requested that comments on that rule be received on or before March 19, 2012.

By letter dated March 16, 2012, ICAO requested that the FAA consider postponing the effective date of the rule until the rule is reviewed through an international process. ICAO stated that due to the short time frame, it was not in the position to understand the full implications of removing the Category IIIa, IIIb, and IIIc definitions. ICAO stated that additional time is necessary to adequately assess the impact of the Direct Final Rule and prepare comments.

Reopening of Comment Period

In accordance with § 11.47(c) of title 14, Code of Federal Regulations, the FAA has reviewed the request made by ICAO. The petitioner has shown a substantive interest in the rule and good cause for the reopening. The FAA has determined that reopening of the comment period is consistent with the public interest, and that good cause exists for taking this action.

Accordingly, the comment period for Amendment No. 1–67 is reopened until May 14, 2012.

Additional Information

A. Comments Invited

The FAA invites interested persons to participate in this rulemaking by submitting written comments, data, or views. The agency also invites comments relating to the economic, environmental, energy, or federalism impacts that might result from implementing the rule. The most helpful comments reference a specific portion of the Direct Final Rule, explain the reason for any recommended change, and include supporting data. To ensure the docket does not contain duplicate comments, commenters should send only one copy of written comments, or if comments are filed electronically, commenters should submit only one time.

The FAA will file in the docket all comments it receives, as well as a report summarizing each substantive public contact with FAA personnel concerning this rulemaking. Before acting on this rule, the FAA will consider all comments it receives on or before the closing date for comments. The FAA will consider comments filed after the

comment period has closed if it is possible to do so without incurring expense or delay. The agency may change this rule in light of the comments it receives.

B. Availability of Rulemaking Documents

An electronic copy of rulemaking documents may be obtained from 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.fdys.gov.*

Copies may also be obtained 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. Commenters must identify the docket or notice number of this rulemaking.

All documents the FAA considered in developing this rule may be accessed from the Internet through the Federal eRulemaking Portal referenced in item (1) above.

C. Privacy

The FAA will post all comments it receives, without change, to *http://www.regulations.gov,* including any personal information the commenter provides. Using the search function of the docket web site, anyone can find and read the electronic form of all comments received into any FAA docket, including the name of the individual sending the comment (or signing the comment for an association, business, labor union, etc.). DOT's complete Privacy Act Statement can be found in the **Federal Register** published on April 11, 2000 (65 FR 19477–19478), as well as at *http://DocketsInfo.dot.gov.*

D. Docket

Background documents or comments received may be read at *http://www.regulations.gov* at any time. Follow the online instructions for accessing the docket or Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, on April 5, 2012.

Pamela Hamilton-Powell,

Director, Office of Rulemaking.

[FR Doc. 2012–8678 Filed 4–12–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 33

[Amendment No. 33–32]

Technical Amendment; Airworthiness Standards—Aircraft Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; technical amendment.

SUMMARY: This amendment corrects a number of errors in the airworthiness standards for aircraft engine endurance tests. None of the changes are substantive in nature, and none will impose any additional burden on any person.

DATE: *Effective Date:* This amendment becomes effective April 13, 2012.

FOR FURTHER INFORMATION CONTACT: For technical questions concerning this action, contact Dorina Mihail, Federal Aviation Administration, Engine and Propeller Directorate, Standards Staff, ANE–110, 12 New England Executive Park, Burlington, Massachusetts 01803–5229; (781) 238–7153; facsimile: (781) 238–7199; email: *dorina.mihail@faa.gov*.

For legal questions concerning this action, contact Vincent Bennett, Federal Aviation Administration, Office of Regional Counsel, ANE–7, 12 New England Executive Park, Burlington, Massachusetts 01803–5299; telephone (781) 238–7044; fax (781) 238–7055; email *vincent.bennett@faa.gov*.

SUPPLEMENTARY INFORMATION:

Background

A number of inadvertent editing errors in the airworthiness standards of § 33.87 have been identified by the FAA. Some errors apply to the standards for one engine inoperative (OEI) ratings for rotorcraft turbine engines. Others are simply plain language errors. This technical amendment corrects those errors in § 33.87. None of the corrections are substantive in nature, and none will impose any additional burden on any person.

List of Subjects 14 CFR Part 33

Air transportation, Aircraft, Aviation safety, Safety.

The Amendment

In consideration of the following, the Federal Aviation Administration amends part 33 of Title 14, Code of Federal Regulations, as follows:

PART 33—AIRWORTHINESS STANDARDS: AIRCRAFT ENGINES

■ 1. The authority citation for part 33 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701–44702, 44704.

§ 33.87 [Amended]

■ 2. Amend § 33.87 as follows:

■ a. Remove the word ''Administrator'' from paragraphs (a)(1) and (b)(1) and add the word ''FAA'' in its place.

■ b. Remove the word ''manufacturer'' from paragraphs (b)(1), (c)(1), (d)(1), and (e)(1) wherever it appears and add the word ''applicant'' in its place.

■ c. Remove the phrase ''power and thrust'' from paragraphs (b)(1), (b)(2) heading, (b)(2)(i), (b)(2)(ii), (b)(3), (b)(4) and (b)(5) wherever it appears and add the phrase ''power or thrust'' in its place.

■ d. Remove the phrase ''rotor speed, power, and thrust'' from paragraph (b)(1) and add the phrase ''rotor speed and power or thrust'' in its place.

■ e. Remove the word ''poition'' from paragraph (b)(5) and add the word ''position'' in its place.

■ f. Remove the phrase ''(c)(5)'' from paragraph (c)(1) and add the phrase ''(c)(6)'' in its place.

■ g. Remove the phrase ''(c)(5)'' from paragraph (d)(1) and add the phrase ''(d)(6)'' in its place.

■ h. Remove the phrase ''(d)(6) of this section'' from paragraph (e)(1) and add the phrase ''(b)(5), (c)(6), or (d)(6) of this section, as applicable'' in its place.

■ i. Remove the phrase ''(c)(2) through (c)(6)'' from paragraph (e)(2) and add the phrase ''(c)(2) through (c)(7)'' in its place.

■ j. Remove the phrase ''paragraph (c)(2)'' from paragraph (e)(2) and add the phrase ''paragraph (c)(4)'' in its place.

Issued in Washington, DC, on April 9, 2012.

Pamela Hamilton-Powell,

Director, Office of Rulemaking.

[FR Doc. 2012–8984 Filed 4–12–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2012–0296; Directorate Identifier 2010–NM–106–AD; Amendment 39–17000; AD 2012–06–19]

RIN 2120–AA64

Airworthiness Directives; Airbus Airplanes

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

ACTION: Final rule; request for comments.

SUMMARY: We are adopting a new airworthiness directive (AD) for certain Airbus Model A330–201, –202, –203, –223, –243, –301, –302, –303, –321, –322, –323, –341, –342, and –343 airplanes; and Model A340–200 and –300 series airplanes. This AD requires repetitive inspections of the main fitting and sliding tube of the nose landing gear (NLG) for defects, damage, and cracks, and corrective actions if necessary. This AD was prompted by reports of a cracked main fitting and sliding tube during overhaul of NLGs. We are issuing this AD to detect and correct cracks, defects, or damage of the main fitting and sliding tube of the NLG, which could result in failure of the main fitting or sliding tube, and consequent NLG collapse.

DATES: This AD becomes effective April 30, 2012.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the AD as of April 30, 2012.

We must receive comments on this AD by May 29, 2012.

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

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

Examining the AD Docket

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

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

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA Airworthiness Directive 2010–0034, dated March 5, 2010, corrected March 8, 2010 (referred to after this as ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

> During the overhaul of two different Nose Landing Gears (NLG), cracks were found on the main fitting of one and the sliding tube of the other. Investigations concluded that the cracks initiated as a result of residual stress in the parts following damage due to impact during towing incidents.
>
> A subsequent review of the reported incidents has led to conclude that an inspection of the main fitting and sliding tube is required on those NLG that have sustained impacts as result of towing incidents.
>
> The failure of the main fitting or sliding tube could lead to NLG collapse.
>
> To prevent the above unsafe condition, this [EASA] AD requires a one-time [detailed] inspection followed by repetitive inspections of the main fitting and sliding tube of the NLG serial numbers listed in the Applicability section of this [EASA] AD:
>
> —One time Magnetic Particle Inspection (MPI) of the affected areas to detect any crack,
>
> —Repetitive Detailed Visual Inspections (DVI) of the affected areas to detect any damage of the surface protections or corrosion.
>
> This [EASA] AD also requires the accomplishment of the associated corrective actions, as necessary.
>
> * * * * *

Required corrective actions include removing the labels if there is evidence of sealant damage or moisture ingress behind the labels. If surface treatment damage is found, the required actions are removing the paint and cadmium prior to the MPI, removing any surface defects, flap peening and replacing protective coatings, and replacing cracked parts with serviceable parts. You may obtain further information by examining the MCAI in the AD docket.

Relevant Service Information

Airbus has issued Mandatory Service Bulletin A330–32–3233, dated October 22, 2009 (for Model A330 airplanes); and Mandatory Service Bulletin A340–32–4275, dated October 22, 2009 (for Model A340 airplanes). 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 AD

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

There are no products of this type currently registered in the United States. However, this rule is necessary to ensure that the described unsafe condition is addressed if any of these products are placed on the U.S. Register in the future.

FAA's Determination of the Effective Date

Since there are currently no domestic operators of this product, notice and opportunity for public comment before issuing this AD are unnecessary.

Comments Invited

This AD is a final rule that involves requirements affecting flight safety, and we did not precede it by notice and opportunity for public comment. We invite you to send any written relevant data, views, or arguments about this AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2012–0296; Directorate Identifier 2010–NM–106–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this AD. We will consider all comments received by the closing date and may amend this AD because of those comments.

We will post all comments we receive, without change, to *http://*

www.regulations.gov, including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this AD.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify 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);
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 AD and placed it in the AD docket.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2012–06–19 Airbus: Amendment 39–17000. Docket No. FAA–2012–0296; Directorate Identifier 2010–NM–106–AD.

(a) Effective Date

This airworthiness directive (AD) becomes effective April 30, 2012.

(b) Affected ADs

None.

(c) Applicability

This AD applies to the airplanes identified in paragraphs (c)(1) and (c)(2) of this AD, certificated in any category, all serial numbers, if fitted with the nose landing gear (NLG) identified in table 1 of this AD.

(1) Airbus Model A330–201, –202, –203, –223, –243, –301, –302, –303, –321, –322, –323, –341, –342, and –343 airplanes.

(2) Airbus Model A340–211, –212, –213, –311, –312, and –313 airplanes.

TABLE 1—APPLICABLE NLG AND SERIAL NUMBERS

Part No.	Serial No.
D23285200	B2
D23285101–7	B58
D23285101–10	B75
D23581100–1	B124
D23581100–1	B159
D23581100–7	B386
D23581100–7	B398
D23581100–7	B400
D23581100–7	B403

(d) Subject

Air Transport Association (ATA) of America Code 32: Landing Gear.

(e) Reason

This AD was prompted by reports of a cracked main fitting and sliding tube during overhaul of NLGs. We are issuing this AD to detect and correct cracks, defects, or damage of the main fitting and sliding tube of the NLG, which could result in failure of the main fitting or sliding tube, and consequent NLG collapse.

(f) Compliance

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

(g) Detailed Inspection and Corrective Actions

Within 900 flight hours after the effective date of this AD: Do a detailed inspection of the NLG main fitting and sliding tube for any cracks, defects, and damage of the paint or surface protection, including paint removal and cracking of the surface treatment. Before further flight after doing the detailed inspection of the NLG, remove the labels, paint, surface protection coatings, and cadmium from the NLG main fitting; do a detailed inspection for any damage to the surface that will impair the magnetic particle inspection (MPI); and, if any defects are found, before further flight remove any defects by polishing. Do all actions specified in paragraph (g) of this AD in accordance with the Accomplishment Instructions of Airbus Mandatory Service Bulletin A330–32–3233, dated October 22, 2009 (for Model A330 airplanes); or Airbus Mandatory Service Bulletin A340–32–4275, dated October 22, 2009 (for Model A340 airplanes).

(h) Magnetic Particle Inspection

Before further flight after doing the actions required in paragraph (g) of this AD: Do an MPI for cracking of the NLG main fitting and sliding tube, in accordance with the Accomplishment Instructions of Airbus Mandatory Service Bulletin A330–32–3233, dated October 22, 2009 (for Model A330 airplanes); or Airbus Mandatory Service Bulletin A340–32–4275, dated October 22, 2009 (for Model A340 airplanes).

(1) If no crack is detected during the MPI required by paragraph (h) of this AD: Before further flight, flap peen the inspected area where the paint and cadmium has been removed, and replace the protective coatings, in accordance with the Accomplishment Instructions of Airbus Mandatory Service Bulletin A330–32–3233, dated October 22, 2009 (for Model A330 airplanes); or Airbus Mandatory Service Bulletin A340–32–4275, dated October 22, 2009 (for Model A340 airplanes).

(2) If any crack is detected during the MPI required by paragraph (h) of this AD: Before further flight, replace the damaged part with a new or serviceable part, in accordance with the Accomplishment Instructions of Airbus Mandatory Service Bulletin A330–32–3233, dated October 22, 2009 (for Model A330 airplanes); or Airbus Mandatory Service Bulletin A340–32–4275, dated October 22, 2009 (for Model A340 airplanes).

(i) Repetitive Inspections

Within 900 flight hours after accomplishing the actions in paragraphs (g) and (h) of this AD: Do a detailed inspection of the surface treatment of the NLG main fitting and sliding tube for any cracks, defects, and damage of the paint or surface protection, including paint removal and cracking, in accordance with the Accomplishment Instructions of Airbus Mandatory Service Bulletin A330–32–3233, dated October 22, 2009 (for Model A330 airplanes); or Airbus Mandatory Service Bulletin A340–32–4275, dated October 22, 2009 (for Model A340 airplanes).

(1) If no crack, defect, or damage is detected during the detailed inspection required by paragraph (i) of this AD: Repeat the inspection thereafter at intervals not to exceed 900 flight hours.

(2) If any crack, defect, or damage is detected during the detailed inspection

required by paragraph (i) of this AD: Before further flight, inspect for damage to the label surface and around the labels for signs of sealant damage and moisture ingress behind labels; do a detailed inspection for any damage to the surface that will impair the MPI; and, if any defects are found, remove any defects by polishing, and do an MPI for cracking of the NLG main fitting and sliding tube. Do all actions specified in paragraph (i)(2) of this AD in accordance with the Accomplishment Instructions of Airbus Mandatory Service Bulletin A330–32–3233, dated October 22, 2009 (for Model A330 airplanes); or Airbus Mandatory Service Bulletin A340–32–4275, dated October 22, 2009 (for Model A340 airplanes).

(i) If no crack is detected during the MPI required by paragraph (i)(2) of this AD: Before further flight, flap peen the inspected area where the paint and cadmium has been removed, and replace the protective coatings, in accordance with the Accomplishment Instructions of Airbus Mandatory Service Bulletin A330–32–3233, dated October 22, 2009 (for Model A330 airplanes); or Airbus Mandatory Service Bulletin A340–32–4275, dated October 22, 2009 (for Model A340 airplanes).

(ii) If any crack is detected during the MPI required by paragraph (i)(2) of this AD: Before further flight, replace the damaged part with a new or serviceable part, in accordance with the Accomplishment Instructions of Airbus Mandatory Service Bulletin A330–32–3233, dated October 22, 2009 (for Model A330 airplanes); or Airbus Mandatory Service Bulletin A340–32–4275, dated October 22, 2009 (for Model A340 airplanes). Repeat the inspection required by paragraph (i) of this AD thereafter at intervals not to exceed 900 flight hours.

(j) Other FAA AD Provisions

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 emailed 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.

(k) Related Information

Refer to Mandatory Continuing Airworthiness Information (MCAI) European Aviation Safety Agency (EASA) Airworthiness Directive 2010–0034, dated March 5, 2010, corrected March 8, 2010, and the following service information, for related information.

(1) Airbus Mandatory Service Bulletin A330–32–3233, dated October 22, 2009.

(2) Airbus Mandatory Service Bulletin A340–32–4275, dated October 22, 2009.

(l) Material Incorporated by Reference

(1) You must use the following service information to do the actions required by this AD, unless the AD specifies otherwise. The Director of the Federal Register approved the incorporation by reference (IBR) of the following service information under 5 U.S.C. 552(a) and 1 CFR part 51:

(i) Airbus Mandatory Service Bulletin A330–32–3233, dated October 22, 2009.

(ii) Airbus Mandatory Service Bulletin A340–32–4275, dated October 22, 2009.

(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; email *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.*

Issued in Renton, Washington, on March 15, 2012.

John P. Piccola,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2012–7183 Filed 4–12–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2011–1196; Airspace Docket No. 11–ASO–38]

Amendment of Class E Airspace; Columbia, SC, and Establishment of Class E Airspace; Pelion, SC

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends Class E Airspace at Columbia, SC, by removing Corporate Airport from the airspace designation, and establishes Class E Airspace at Pelion, SC, using the new airport name, as new Standard Instrument Approach Procedures have been developed at Lexington County Airport at Pelion. This action enhances the safety and airspace management of Instrument Flight Rules (IFR) operations within the National Airspace System. This action also updates the geographic coordinates of the airport.

DATES: Effective 0901 UTC, May 31, 2012. 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 December 14, 2011, the FAA published in the **Federal Register** a notice of proposed rulemaking to amend Class E airspace at Columbia, SC, and establish Class E airspace at Pelion, SC, Docket No. FAA–2011–1196 (76 FR 77727). 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 7400.9V dated August 9, 2011, and effective September 15, 2011, which is incorporated by reference in 14 CFR Part 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order.

The Rule

This amendment to Title 14, Code of Federal Regulations (14 CFR) part 71 amends Class E airspace extending upward from 700 feet above the surface at Columbia, SC, by removing Corporate Airport from the airspace designation and establishes Class E airspace at Pelion, SC, to support new Standard Instrument Approach Procedures at Lexington County Airport at Pelion, Pelion, SC, formerly Corporate Airport. Airspace reconfiguration is necessary due to the design of new arrival procedures, and for continued safety

and management of IFR operations at the airport. The geographic coordinates also are adjusted to coincide with the FAAs aeronautical database.

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

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

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

Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9V, Airspace Designations and Reporting Points, dated August 9, 2011, effective September 15, 2011, 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 Columbia, SC [Amended]

Columbia Metropolitan Airport, SC
(Lat. 33°56′20″ N., long. 81°07′10″ W.)
Columbia Owens Downtown Airport
(Lat. 33°58′14″ N., long. 80°59′43″ W.)

That airspace extending upward from 700 feet above the surface within a 10-mile radius of Columbia Metropolitan Airport and within a 6.5-mile radius of Columbia Owens Downtown Airport.

* * * * *

ASO SC E5 Pelion, SC [New]

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 March 30, 2012.

Barry A. Knight,

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

[FR Doc. 2012–8566 Filed 4–12–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Parts 732, 734, 738, 740, 742 and 774

[Docket No. 110310188–2058–03]

RIN 0694–AF17

Revisions to the Export Administration Regulations (EAR): Export Control Classification Number 0Y521 Series, Items Not Elsewhere Listed on the Commerce Control List (CCL)

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Final rule.

SUMMARY: The Bureau of Industry and Security (BIS) publishes this final rule, which amends the Export Administration Regulations (EAR) by establishing a new Export Control Classification Number (ECCN) series, 0Y521, on the Commerce Control List (CCL) and makes corresponding changes to the EAR. The ECCN 0Y521 series will be used for items that warrant control on the CCL but are not yet identified in an existing ECCN. As BIS explained in the proposed rule issued on July 15, 2011 (76 FR 41958), this new temporary holding classification is equivalent to United States Munitions List (USML) Category XXI (Miscellaneous Articles), but with a limitation that while an item is temporarily classified under ECCN 0Y521, the U.S. Government works to adopt a control through the relevant multilateral regime(s); to determine an appropriate longer-term control over the item; or determines that the item does not warrant control on the CCL. Items will be added to the 0Y521 ECCNs by the Department of Commerce, with the concurrence of the Departments of Defense and State, when it identifies an item that should be controlled because it provides a significant military or intelligence advantage to the United States or because foreign policy reasons justify such control.

The 0Y521 series was described in the July 15, 2011 proposed rule that identified a framework for how articles, which the President determines, as part of the Administration's Export Control Reform Initiative, no longer warrant control on the USML would be controlled under the CCL. In this rule, however, the 0Y521 provisions are being published in final form, with necessary corresponding changes, separate from the other July 15 rule proposals. Public comments on the other July 15 proposals remain under BIS review.

DATES: This rule is effective April 13, 2012.

FOR FURTHER INFORMATION CONTACT: Eileen Albanese, Director, Office of National Security and Technology Transfer Controls, by phone at (202) 482–0092 or by email at *Eileen.Albanese@bis.doc.gov.*

SUPPLEMENTARY INFORMATION:

Background

On July 15, 2011, as part of the Administration's ongoing Export Control Reform Initiative, the Bureau of Industry and Security (BIS) published a proposed rule (76 FR 41958) (herein ''the July 15 proposed rule'') that set forth a framework for how articles the President determines, in accordance with section 38(f) of the Arms Export Control Act (AECA) (22 U.S.C. 2778(f)), no longer warrant control on the United States Munitions List (USML) instead would be controlled under the Commerce Control List (CCL) in Supplement No. 1 to part 774 of the

Export Administration Regulations (EAR). With that proposed rule, BIS also proposed establishing a new Export Control Classification Number (ECCN) series, 0Y521, on the CCL, which would be equivalent to United States Munitions List (USML) Category XXI (Miscellaneous Articles), but with some limitations, and requested public comments thereon. The 0Y521 ECCN series will provide a mechanism for identifying and controlling items that warrant export controls, but that are not yet categorized on the CCL or USML, such as emerging technologies. It will provide a temporary control category for such items, while the U.S. Government works to adopt a control through the relevant multilateral regime(s); to determine an appropriate longer-term control over the item; or determines that the item does not warrant control on the CCL. With this final rule, BIS adopts this proposal, with some modifications described below, and makes corresponding necessary changes to the EAR.

Consistent with the July 15 proposed rule, BIS is amending the EAR to establish new ECCNs 0A521, 0B521, 0C521, 0D521 and 0E521 and to make corresponding changes. As proposed in the July 15 proposed rule, ECCN 0Y521 items will be subject to a nearly worldwide license requirement (i.e., for every country except Canada) with a case-by-case license review policy, through regional stability (RS Column 1) controls. The U.S. Government will review the sensitivity of each potential ECCN 0Y521 item on a case-by-case basis and make a positive determination regarding the sensitivity of each item.

Items classified under ECCN 0Y521 will stay so-classified from the date a final rule identifying the item is published in the **Federal Register** amending the EAR for one year following the date of **Federal Register** publication, unless the item is re-classified under a different ECCN or the 0Y521 classification is extended. During this time, the U.S. Government will determine whether it is appropriate to submit a proposed control to the applicable export control regime (e.g., the Wassenaar Arrangement) for potential multilateral control, with the understanding that multilateral controls are preferable when practical. An item's ECCN 0Y521 classification may be extended for two one-year periods to provide time for the U.S. Government and multilateral regime(s) to reach agreement on controls for the item. As discussed in the July 15 preamble, the July 15 proposed rule allowed for no more than two one-year extensions provided that the Departments of Commerce, State and Defense made a consensus determination to seek multilateral controls for the ECCN 0Y521 item and the U.S. Government submitted a proposal to obtain multilateral controls over the item. As described below under ''Changes from Proposed Rule,'' this final rule clarifies that agencies will determine whether a multilateral control is appropriate at the time that the items are classified under ECCN 0Y521. In addition, this final rule allows for further extension beyond three years if the Under Secretary for Industry and Security makes a determination that such extension is in the national security or foreign policy interests of the United States. An extension or re-extension, including a determination by the Under Secretary for Industry and Security, will be published in the **Federal Register**.

The U.S. Government's decision to identify an item as included in ECCN 0Y521 is a classification based on a determination of whether the item has significant military or intelligence advantage to the United States or for foreign policy reasons, not a classification of the item's technical characteristics. ECCN 0Y521 classifications are excluded from the part 756 appeals process. Parties would nonetheless be encouraged to provide to BIS information and comments about the item and the ECCN 0Y521 controls on it.

As proposed in the July 15 proposed rule, BIS is also adding a new paragraph (a)(7) to § 742.6 to describe the regional stability reason for control that applies to items in the 0Y521 series, and is adding a reference to ECCN 0Y521 items in the licensing policy paragraph (b)(1) of the same section. The license review policy will be used to evaluate on a case-by-case basis whether the export or reexport could contribute directly or indirectly to any country's military capabilities in a manner that would destabilize a region's military balance contrary to the foreign policy interests of the United States.

In the July 15 proposed rule, BIS proposed that no license exceptions would be available for any item classified under the 0Y521 ECCN series other than License Exception GOV, if the item is within the scope of § 740.11(b)(2)(ii) (Items for official use by personnel and agencies of the U.S. Government). A new § 740.2(a)(14) is being added to reflect this. As described below under ''Changes from Proposed Rule,'' BIS will have the authority to apply additional license exceptions on an item-specific basis at any time if the Departments of Defense and State concur with such application.

Comments and Responses

BIS received 43 public comments on the July 15 proposed rule, 19 of which pertained to the ECCN 0Y521 series proposal. Summaries of those comments and BIS *Response*s appear below. Similar comments are consolidated. As noted above, the ECCN 0Y521 series proposal was separated from the rest of the July 15 proposed rule for purposes of this final rule; public comments received on issues other than the 0Y521 provisions remain under review separate from this final rule.

Purpose of Creating the 0Y521 ECCN Series

Comment 1: Commenters generally were receptive to, or positive toward, the proposed creation of the ECCN 0Y521 series. One commenter expressed that the addition of the ECCN 0Y521 series is a feature of the EAR long overdue and is consistent with the statutory requirements of the Export Administration Act (EAA) to update the control list as warranted.

Response: BIS agrees the addition of the ECCN 0Y521 series will play an important role on the CCL, along with helping to move forward the Export Control Reform Initiative's goal of structurally aligning the CCL and USML. The CCL is reviewed and updated on a continuous basis, and the new ECCN 0Y521 series will aid in this process by identifying those items where a temporary control is appropriate while the U.S. Government identifies a permanent classification.

Comment 2: Some commenters expressed concern that the proposed three-year maximum that an item could be classified under ECCN 0Y521 was too long.

Response: The July 15 proposed rule stated that items may be classified under ECCN 0Y521 for a one-year period, which may be extended for two one-year periods. This three-year period was intended to provide sufficient time for the U.S. Government and its multilateral regime partners to assess a particular item and determine its appropriate classification. Shortening the maximum period would not provide an adequate opportunity to consider, develop and implement multilateral regime control for such items.

In reviewing the timing associated with proposing multilateral regime controls, BIS determined that, in fact, three years may, on rare occasions, be insufficient to accomplish necessary multilateral negotiations. To expedite that process, this final rule clarifies that the United States will attempt to submit any proposals for 0Y521 items to the

relevant multilateral regime for consideration of multilateral controls during the initial one-year 0Y521 classification period or will determine whether a different ECCN or EAR99 designation might be more appropriate. In addition, consistent with the July 15 proposed rule, this final rule generally limits extension to two additional one-year periods, and such extensions may only be made provided that the U.S. Government submitted a proposal to obtain multilateral controls over the item. However, recognizing, *inter alia,* that there may be a need for additional time for the U.S. Government and its multilateral regime partners to review and discuss appropriate controls, this final rule allows for additional extensions. The Under Secretary for Industry and Security may further extend an ECCN 0Y521 control upon a determination that such extension is in the national security or foreign policy interests of the United States. This change is in keeping with the July 15 proposed rule's anticipation that time extensions may be necessary to achieve multilateral controls. All extension and re-extensions, including the determination by the Under Secretary for Industry and Security, will be published in the **Federal Register**.

In addition, the case-by-case license review policy for ECCN 0Y521 items will provide discretion to the U.S. Government to approve many exports and reexports potentially affected by ECCN 0Y521 classification.

Comment 3: Commenters cautioned that: classification should not be overused; when used, the classification process should not be hindered or protracted; and the classification process should only be used in exceptional circumstances. Commenters further expressed concern that because they believed that USML Category XXI, which the ECCN 0Y521 entries are designed to parallel, is ''vague and worrisome,'' the ECCN 0Y521 process will suffer from the same problems.

Response: Although BIS cannot predict how often items will be classified in ECCN 0Y521 entries, BIS will use this classification only when the item has significant military or intelligence advantage to the United States or foreign policy considerations warrant its use. Given the breadth and scope of the USML and the CCL, BIS does not anticipate that a large number of now EAR99 items will be listed on the CCL under ECCN 0Y521. The ECCN 0Y521 series is a mechanism to impose license requirements when needed within a transparent process and with stated parameters of when an item would transition out of temporary ECCN 0Y521 classification. Each item's ECCN 0Y521 classification will expire one year from the date of its initial ECCN 0Y521 classification, unless specifically extended. As noted in response to the previous comment, for items whose ECCN 0Y521 status is extended, such extension is limited to two one-year periods, unless the Under Secretary for Industry and Security makes a determination that it is in the national security or foreign policy interests of the United States to further extend the temporary ECCN 0Y521 controls. For additional discussion on how ECCN 0Y521 items will be identified and the classification process initiated, see BIS's response to Comment 4.

With respect to concerns that the USML Category XXI process is, and the ECCN 0Y521 process will be, ''vague and worrisome,'' the ECCN 0Y521-related provisions have been drafted to create as much transparency for the public as possible. This final rule clarifies that the U.S. Government will attempt to submit any proposals for items classified under ECCN 0Y521 during the one-year classification period or will determine whether a different ECCN or EAR99 designation might be more appropriate. In addition, with this final rule, BIS has made efforts to clarify that an extension of 0Y521 classification may only occur for a second or third year, provided that the U.S. Government has already submitted a proposal to obtain multilateral controls over the item. Moreover, just as the State Department continues to improve the substance and processes of export controls under the ITAR, BIS intends to continue making the EAR increasingly effective, and welcomes public comments on an ongoing basis.

Comment 4: A commenter noted that BIS did not clearly explain whether exporters have an affirmative requirement to seek a formal determination regarding whether an item not listed on the CCL should be subject to ECCN 0Y521 control. Related to that point, some commenters seemed unsure about how the ECCN 0Y521 items would be identified and the classification process initiated. One commenter recommended that BIS add a new ECCN entry for the item if enough information about the item is known, instead of classifying the item under an ECCN 0Y521 entry.

Response: Neither the July 15 proposed rule nor this final rule require exporters or reexporters to seek a determination from the U.S. Government as to whether an item that is not identified on the CCL should be classified as an ECCN 0Y521 item. If an item that is subject to the EAR is not described in an ECCN on the CCL, including in an existing ECCN 0Y521 entry, the item is an EAR99 item. As noted in the July 15 rule, ECCN 0Y521 controls only become applicable once a final rule is published in the **Federal Register** adding a description of such an item to Supplement No. 5 to part 774.

With regard to identifying new items to classify under ECCN 0Y521 entries, the U.S. Government is responsible for identifying such items. Specifically, BIS, with the concurrence of the Departments of Defense and State, will identify and classify items that warrant control under 0Y521 ECCNs. BIS also relies on input received from its Technical Advisory Committees (TACs). As BIS drafts final rules to add additional items to an ECCN 0Y521 classification, such rules will be reviewed by the TACs, which will provide BIS an opportunity to receive industry input on whether the items in question, including emerging technologies, warrant control as an ECCN 0Y521 item.

Finally, in response to the comment that a new ECCN entry specific to an item at issue be added to the CCL if sufficient information is known about the item, rather than temporarily classifying it as ECCN 0Y521, BIS believes for several reasons that use of ECCN 0Y521 will better serve the purpose of identifying and ultimately classifying emerging technologies and other items that may warrant control. ECCN 0Y521 advances the effort to streamline the CCL and simplify export and reexport provisions, which are primary goals of the Administration's ongoing Export Control Reform Initiative. Adding new ECCNs for each new item would mean expanding the number of distinct ECCN entries on the CCL, contrary to the goals of Export Control Reform Initiative. The standard heading on the CCL for each ECCN 0Y521 entry, listed by product group, immediately provides temporary classifications for items that warrant control. Supplement No. 5 to part 774 describes the actual items under the ECCN 0Y521 series and allows the public to more easily access information about the 0Y521 items, i.e., the date of initial classification or subsequent BIS classification of the item. Finally, because the information is concentrated in Supplement No. 5, there are no unnecessary amendments to the CCL.

Comment 5: A commenter suggested that the phrase ''or for foreign policy reasons'' be removed from the 0Y521 entry headings.

Response: BIS believes the commenter's point was that items should not be added to the 0Y521 ECCN

series for solely ''foreign policy'' reasons. BIS disagrees. An ECCN 0Y521 item that has significant military or intelligence advantage may warrant worldwide or widespread controls. By including controls for foreign policy reasons from the outset, BIS facilitates a broader basis for control of ECCN 0Y521 items because such controls include both multilateral and unilateral designations. Although the U.S. Government would most likely work to obtain multilateral status for items classified under the ECCN 0Y521 series, while the items are classified under ECCN 0Y521, they will be subject to unilateral foreign policy-based control (RS1) to secure control of the items in a timely manner and thereby avoid an EAR99 designation. At this point and with this final rule, items placed under 0Y521 ECCNs are controlled for RS1 reasons.

ECCN 0Y521 Control Entry Text

Comment 6: Commenters recommended that BIS revise the heading for the entry of a 0Y521 ECCN to name the particular group instead of using the term ''item.''

Response: BIS agrees. After reviewing comments indicating that it would help public understanding of the ECCN 0Y521 provisions if product group-specific terminology were used for each of the respective 0Y521 ECCNs (i.e., using ''commodity'' in 0A521 and 0B521, material in 0C521, ''software'' in 0D521 and ''technology'' in 0E521) rather than ''item,'' as was proposed in the July 15 rule, BIS accepted this suggested change, which is included in the headings for ECCNs 0A521, 0B521, 0C521, 0D521 and 0E521 included in this final rule.

Comment 7: A commenter suggested that ECCN 0Y521 items be listed in ECCN 0A521, 0B521, 0C521, 0D521 and 0E521 entries instead of in the proposed Supplement No. 5 to part 774 (Items Classified Under ECCNs 0A521, 0B521, 0C521, 0D521 and 0E521).

Response: As discussed in the Response to Comment 4, in evaluating how to structure the ECCN 0Y521 entries, BIS and the other agencies participating in the Export Control Reform Initiative determined that the Supplement No. 5 approach was a better alternative to adding individual ECCNs to the CCL. Listing the items under the respective entries would require adding 0Y521 ECCNs to each of the ten CCL categories. This would mean instead of adding five ECCN 0Y521 entries in the CCL, fifty ECCNs would be added to the CCL to account for all of the potential future 0Y521 items. The CCL currently contains approximately 500 ECCNs, so this alternative approach would have increased by 10 percent the overall number of ECCNs on the CCL. While BIS cannot affirmatively state how often items will be classified under ECCN 0Y521, the number of items that will likely warrant control under ECCN 0Y521 would not justify such a large expansion of ECCN entries. Additionally, the table format contained in the new Supplement No. 5 to part 774 has a structure that BIS believes makes it easy for the public to identify when an item was originally classified as an ECCN 0Y521 item and when that classification will no longer apply.

Comment 8: A commenter asserted that listing particular ECCN 0Y521 items in the respective ECCNs would permit deletion of proposed Supplement No. 5 to part 774.

Response: As noted above, BIS evaluated this option in developing the proposed Supplement No. 5 to part 774 included in the July 15 rule, along with the other related ECCN 0Y521 provisions. BIS agrees with the commenter that if that change were accepted that the supplement could be eliminated. However, for the reasons noted above in response to Comment 7, BIS decided against adopting such an approach.

Comment 9: With respect to the proposed ECCN 0Y521 heading stating that an item may be classified in a ECCN 0Y521 entry because it provides ''at least a significant military or intelligence advantage to the United States,'' a commenter described the use of the term ''advantage'' as too subjective and added that the term sets a higher bar than the term ''advance'' to determine whether items would be classified under 0Y521 ECCNs.

Response: BIS agrees there is some degree of interpretation required in applying the standard ''significant military or intelligence advantage to the United States,'' but does not agree that a more expansive term such as ''advance'' would be appropriate. BIS's intent is to create a fairly high threshold for an item to warrant control in the ECCN 0Y521 series, and for that reason the term advantage is appropriate. Ultimately, it is the U.S. Government that will determine whether the criteria for classifying an item under a 0Y521 ECCN have been met, but BIS's intent is to limit ECCN 0Y521 classification to those items that truly warrant the temporary classification.

License Requirements and Related Policies for ECCNs 0Y521

Comment 10: A commenter expressed confusion about the purpose and scope of the proposed ECCN 0Y521 series in relation to the items that would be listed in Supplement No. 5 to part 774. That commenter recommended that BIS edit or expand proposed § 742.6(a)(7) (RS Column 1 license requirements and related policies for '0Y521') to clarify that the list of items determined to be classified under ECCN 0Y521 is limited to those proposed to be enumerated in Supplement No. 5 to part 774.

Response: As noted above, only those items listed in Supplement No. 5 to part 774 are classified under ECCN 0Y521 on the CCL. To make this explicit, BIS is revising paragraph (a)(7) as suggested in the comment.

Comment 11: A commenter stated that § 742.6(a)(7) (RS Column 1 license requirements and related policies for '0Y521') should be revised to clarify that it is consistent with the foreign availability provisions in Section 4(c) of the Export Administration Act (EAA), 50 U.S.C. app. § 2403(c) (2000), regarding the imposition of unilateral controls.

Response: BIS intends that classifications of the ECCN 0Y521 items will be consistent with the foreign availability provisions of the EAA. Accordingly, no changes are necessary to the rule at this time.

Comment 12: A commenter stated that license exception eligibility should be added to conform with ITAR exemptions available for items in parallel ITAR Category XXI.

Response: In the July 15 proposed rule, BIS proposed that items classified under the ECCN 0Y521 series would be eligible only for License Exception GOV (§ 740.11(b)(2)(ii)). After reviewing the public comments, BIS has determined that additional license exception eligibility may be warranted for certain items that may be classified under ECCN 0Y521, but this additional license exception eligibility should be determined at the time an item is added to Supplement No. 5 to part 774 of the EAR. As such, BIS is revising the language of Section 740.2(a)(14) (Restrictions on all License Exceptions) and adding a clarifying note to that paragraph, as described above.

In terms of a parallel to the ITAR, as items falling under the ECCN 0Y521 series will not be defense articles being moved from the USML to the CCL, an ITAR parallel is unnecessary. The ECCN 0Y521 series is not part of the proposed ''600 series,'' informally known as the Commerce Munitions List inside the larger CCL.

Finally, in terms of adding license exception authorizations, BIS is conducting a comprehensive evaluation of the ITAR exemptions to determine if the EAR should be revised to add any

exceptions available in the ITAR for defense articles. This review is ongoing, and any changes would be published in separate rulemaking notices.

Comment 13: One commenter encouraged BIS to contact exporters before adding any new ECCN 0Y521 item to the CCL. According to the commenter, consulting with companies or the industry that created the technology in question or that have the greatest expertise about the technology would ensure that accurate information is considered before an item is classified under an 0Y521 ECCN. Similarly, one commenter stated that 0Y521 ECCN classifications should be appealable.

Response: BIS understands the rationale behind these comments. However, BIS is unable to implement the suggestion for a number of reasons. First, in terms of fairness and regulatory rulemaking requirements, if BIS were to contact and notify select companies or individuals in drafting a new control without providing the same opportunity to the entire public, one group of interested persons may be disadvantaged over another. This result would be unfair and inconsistent with the legal requirements of the Administrative Procedure Act (APA), 5 U.S.C. 551–559. However, as explained in response to a previous comment, BIS, as a matter of practice, consults with the TACs as final rules are drafted to classify items under 0Y521 ECCNs. The rule also does not prohibit any party from sending information to BIS about the item or comments about a control that was imposed on it. Also as noted above, such rules classifying items under ECCN 0Y521 would not be published as proposed rules because of the harm that would likely be done to U.S. national security interests if exporters and reexporters were given advance notice of future licensing requirements for items such as emerging technologies that warranted controls.

Regarding the appealability of ECCN 0Y521 classifications, as noted in the preamble of the July 15 proposed rule, the United States Government's decision to identify an item as classified under an 0Y521 ECCN is based on whether the item has significant military or intelligence advantage to the United States or a foreign policy reason, not a technical classification. Under § 756.1(a)(1), listing items in Supplement No. 5 to part 774 would be excluded from the part 756 appeals process. However, as stated in § 756.1(a)(1), the EAR provides that the public may submit a request to amend, revoke, or appeal a regulation at any time. As such, the public has an opportunity to provide input to BIS as soon as an ECCN 0Y521 classification is made. Given the limited duration that an item is likely to be classified under an 0Y521 ECCN, and the fact that BIS cannot classify items under an 0Y521 ECCN without the consensus of the Departments of State and Defense, the public may find it more useful to focus any comments after a regulation identifies a new item in Supplement No. 5 to part 774 on how an ECCN 0Y521 item should be permanently classified on the CCL.

Comment 14: A commenter stated that it would be appropriate to impose RS1 controls on ECCN 0Y521 items, provided that RS1 controls apply only to ''600 series'' items not yet controlled by multilateral agreement. However, the commenter added, subsequent relocation on the CCL for such items, if and when multilateral agreement is reached on how the ECCN 0Y521 items should be controlled permanently, should be made effective in a timely fashion to reduce unwarranted licensing burdens.

Response: As noted above, the ECCN 0Y521 series is not part of the ''600 series,'' which was initially proposed in the July 15 proposed rule. As such, reasons to control items classified under ECCN 0Y521 entries are not related to reasons to control proposed ''600 series'' items. ECCN 0Y521 classifications are temporary; if a permanent classification for an ECCN 0Y521 item is identified, the ECCN 0Y521 item would be re-classified under an existing, but revised, ECCN or a new ECCN and would thus no longer be subject to ECCN 0Y521 controls. Any ECCN 0Y521 items that are later added to multilateral control lists would be re-classified at the time a final rule is published implementing that change to the multilateral regime's control list by adding the items to the CCL. Alternatively, ECCN 0Y521 controls may expire if an extension or re-classification does not occur before the date identified for the items in Supplement No. 5 to part 774 entry, at which point the item would return to being an EAR99 item. An item's ECCN 0Y521 classification may be extended for two one-year periods, the requirements for which are described in BIS's response to Comment 2. Further extension may occur only if the Under Secretary for Industry and Security makes a determination that an extension is in the national security or foreign policy interests of the United States. Any extension or re-extension of an ECCN 0Y521 item will be published in the **Federal Register**.

Comment 15: Another commenter recognized the usefulness of a 0Y521 ECCN series and appreciates the careful consideration of how items should move out of the 0Y521 ECCN classification and into positive existing ECCNs or EAR99 designation in a consistent and timely fashion. However, the commenter also expressed concern with the proposal to include emerging technologies in the 0Y521 series of ECCNs, given the potential to capture technologies that are the product of university fundamental research activity. The commenter suggests that BIS clarify and open to the public prior to publication in a final rule the criteria for including items and technologies in the new 0Y521 ECCNs.

Response: Items classified in 0Y521 ECCNs by definition would only be items subject to the EAR. If an item were not subject to the EAR—such as technology that arises during, or results from, fundamental research, as described in § 734.8 of the EAR—then it would not be subject to the EAR. BIS will have the authority to control items under 0Y521 ECCNs if (i) they are not already controlled on the CCL or the USML and (ii) BIS determines that they provide at least a significant military or intelligence advantage to the United States or there is a foreign policy reason for controlling the item. Emerging technologies of concern that are subject to the EAR are likely to be items whose technological innovation outpaces existing CCL or USML controls. The CCL is constructed as a positive control list, so if an item is subject to the EAR, but not identified in an ECCN, the USML, or the controls of another government agency such as the Department of Energy, it is an EAR99 item. The 0Y521 ECCNs are intended to provide BIS the authority to impose quickly a license requirement on otherwise uncontrolled items in a transparent way for a limited period. During that period, BIS and its interagency partners will work with the relevant multilateral export control regime(s) to determine what, if any, more lasting controls are appropriate for the item. Items that the U.S. Government determines are more appropriately captured under the United States Munitions List (USML) Category XXI (Miscellaneous Articles) or other USML control, which are identified as part of the 0Y521 review will be controlled as such.

Publication of ECCN 0Y521 Classifications

Comment 16: One commenter recommended that BIS consult with the appropriate TACs on the process to determine descriptions for Supplement No. 5 to part 774.

Response: As noted above, BIS plans to consult with the TACs to identify the appropriate descriptions to be added to Supplement No. 5 to part 774 for ECCN 0Y521 items.

Comment 17: A commenter observed that identification of software and technology based on its model or a broader descriptor may present situations in which descriptions will need to be performance-based.

Response: The CCL has many software and technology ECCNs classified under product groups D and E. Although the item descriptor column in Supplement No. 5 to part 774 will be in a table format, the expertise BIS has in describing software and technology in other parts of the CCL will be relied on to ensure objective identification of software and technology in this Supplement. Other ECCNs on the CCL have identified items by model number, such as the QRS11–00100–100/101 and QRS11–00050–443569 Micromachined Angular Rate Sensors classified under ECCN 7A994.

Comment 18: A commenter asked what BIS anticipates will be the potential risk to industry of positively and publicly identifying items via Supplement No. 5 to part 774.

Response: Supplement No. 5 to part 774 will not disclose any proprietary information regarding the items classified therein. In addition, in most cases BIS will seek, with the assistance of the TACs, to identify items by a broader descriptor that need not be company specific.

Comment 19: One commenter disagrees with using a model number or a broader descriptor that is not necessarily company-specific for the ECCN 0Y521 items. The commenter adds that common nomenclatures and standards are used across industries, which might result in an overly generic and therefore confusing descriptor. Yet, in trying to avoid confusion, the commenter believes BIS still would need to avoid publishing company proprietary information.

Response: As noted in the BIS Response to Comment 18, the identification of an item in Supplement No. 5 to part 774 will not disclose any proprietary information regarding the item. BIS will seek, with the input of the TACs, to specifically enumerate the ECCN 0Y521 items as ''positively'' as possible. Also as noted above, where possible, BIS will seek to identify items by general descriptors, but these descriptors will need to be objective and avoid the potential pitfalls identified in this comment. This concern is not specific to Supplement No. 5, and is an issue that BIS and the multilateral export control regimes confront whenever a control parameter is written. BIS is confident that general descriptors can be developed and where a model number needs to be used, such as is the case in ECCN 7A994, that such descriptors will adequately define ECCN 0Y521 items.

Although the Export Administration Act expired on August 20, 2001, the President, through Executive Order 13222 of August 17, 2001, 3 CFR, 2001 Comp., p. 783 (2002), as extended by the Notice of August 12, 2011, 76 FR 50661 (August 16, 2011), has continued the Export Administration Regulations in effect under the International Emergency Economic Powers Act. BIS continues to carry out the provisions of the Export Administration Act, as appropriate and to the extent permitted by law, pursuant to Executive Order 13222.

This action is taken after consultation with the Secretary of State. BIS submitted a foreign policy report to the Congress indicating the imposition of new foreign policy controls on March 26, 2012.

Changes From Proposed Rule

The ECCN 0Y521 proposal set forth in the July 15 proposed rule is mainly unchanged in this final rule. However, in response to public comments, BIS has changed its approach to the circumstances and length of time an item may be controlled under ECCN 0Y521 and the availability of license exceptions for items classified under 0Y521 ECCNs. BIS has also made conforming changes to the EAR to clarify the ECCN 0Y521 series.

In the July 15 proposed rule, BIS proposed a mechanism for situations in which an item that warrants control is not controlled yet. The July 15 proposed rule proposed a three-year maximum control period for ECCN 0Y521 items, during which the initial one-year period would only be extended if the Departments of Commerce, State and Defense made a consensus determination to seek multilateral controls for the ECCN 0Y521 item and the U.S. Government submitted a proposal to obtain multilateral controls over the item. This final rule clarifies that the Departments of Commerce, State and Defense will decide whether to seek multilateral controls at the same time that the agencies consider classifying the item as an ECCN 0Y521 item. Consistent with the July 15 preamble, a second or third-year extension would still require that the United States has submitted a proposal for multilateral control for the ECCN 0Y521 item to the relevant multilateral regime. While the requirement to submit a proposal for extension for one or more one-year periods was identified in the preamble to the July 15 proposed rule, with this final rule, BIS has incorporated into revised Section 742.6(a)(7)(iii) the circumstances in which an item's ECCN 0Y521 classification may be extended for a second or third year.

In contrast to the proposed rule, this final rule also establishes the potential for further extension of ECCN 0Y521 controls beyond three years for a specific item if the Under Secretary for Industry and Security makes a determination that such extension is in the national security or foreign policy interests of the United States. Any extension or re-extension, including a determination by the Under Secretary for Industry and Security will be published in the **Federal Register**. As discussed in the ''Comments and Response'' section above, allowing for potential additional extensions is necessary to provide sufficient time for BIS and its interagency partners to work with the relevant multilateral export control regime(s) to determine what, if any, controls are appropriate for the item. Regulatory provisions related to this extension are set forth in revised § 742.6(a)(7)(iii).

Although License Exception GOV, set forth in § 740.11(b)(2)(ii), remains the only license exception identified at this time for all items classified in ECCN 0Y521, in contrast to the July 15 proposed rule, this final rule establishes the potential availability of additional license exceptions on an item-specific basis. To implement this change, in this final rule BIS adds a fourth column identified as ''Item-specific License Exceptions'' to Supplement No. 5 to part 774. To conform with that change, BIS also includes in this final rule a revision to § 740.2(a)(14) that differs from the proposed rule. In the July 15 proposed rule, that paragraph stated a restriction on all license exceptions for items designated as 0Y521, except for License Exception GOV (§ 740.11(b)(ii)). In this final rule, paragraph (a)(14) specifies that the only license exceptions that may be used to authorize items designated as 0Y521 are GOV (§ 740.11(b)(2)(ii)) or an item-specific license exception identified in Supplement No. 5 to part 774 for a particular ECCN 0Y521 item. This final rule also adds a new Note to paragraph (a)(14) of § 740.2 to indicate that license exception availability is specific to each ECCN 0Y521 entry in Supplement No. 5 to part 774 and may not be used for any other ECCN 0Y521 entries in the supplement. At the time the U.S.

Government makes a determination that items are classified under ECCNs 0A521, 0B521, 0C521, 0D521 or 0E521, the U.S. Government will specify whether any license exceptions in addition to License Exception GOV will be available. BIS also amends ECCN 0Y521 control entry text appearing in Supp. No. 1 to part 774 of the EAR to reflect that other license exceptions may be eligible for particular items. If there are additional license exceptions, they will be listed in Supplement No. 5 to part 774 under each designated item. In a corresponding change, to provide guidance about the applicability of licensing exceptions, BIS also adds paragraph (a)(14) and a note to paragraph (a)(14) to § 740.2.

BIS incorporated a recommendation to use product group-specific terminology for each of the respective 0Y521 ECCNs (i.e., using the term ''commodity'' in 0A521 and 0B521, material in 0C521 (as defined in the July 15 proposed rule), ''software'' in 0D521 and ''technology'' in 0E521), rather than ''item,'' as was proposed in the July 15 rule. The change has been made to the headings for ECCNs 0A521, 0B521, 0C521, 0D521 and 0E521 in this final rule.

Finally, to correspond with establishing the ECCN 0Y521 provisions, BIS is making other changes that are necessary to provide guidance to the public about these provisions, the applicability of licensing exceptions, and to make locating those provisions easier. To identify the 0Y521 ECCN series as within the scope of the EAR and primary provisions for the series, BIS amends: § 732.3 (Steps regarding the ten general prohibitions) by adding paragraph (b)(4); § 734.3 (Items Subject to the EAR) by revising paragraph (c); § 738.1(a) (Introduction—Commerce Control List Scope) by adding paragraph (a)(3); and § 774.1 by adding a new paragraph to the Introduction.

Rulemaking Requirements

1. Executive Orders 13563 and 12866 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, distribute 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,'' although not economically significant, under section 3(f) of Executive Order 12866. Accordingly, the rule has been reviewed by the Office of Management and Budget (OMB).

2. Notwithstanding any other provision of law, no person is required to respond to, nor is subject to a penalty for failure to comply with, a collection of information, subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (PRA), unless that collection of information displays a currently valid OMB control number. This rule affects two approved collections: (1) The Simplified Network Application Processing + System (control number 0694–0088), which carries a burden hour estimate of 43.8 minutes, including the time necessary to submit license applications, among other things, as well as miscellaneous and other recordkeeping activities that account for 12 minutes per submission. BIS does not believe that this rule will materially increase the number of submissions under this collection. (2) License Exceptions and Exclusions (0694–0137). BIS cannot at this point describe or estimate the items that may be classified under the new 0Y521 ECCN series.

3. This rule does not contain policies with Federalism implications as that term is defined under E.O. 13132.

4. The Chief Counsel for Regulation of the Department of Commerce has certified to the Chief Counsel for Advocacy of the Small Business Administration that the proposed rule, if adopted in final form, would not have a significant economic impact on a substantial number of small entities. The basis for that certification was published in the preamble to the proposed rule and is not repeated here. BIS received no comments regarding the certification. As a result, a final regulatory flexibility analysis is not required and none has been prepared.

5. BIS finds good cause to waive the requirement of 5 U.S.C.(d)(3) that this rule's effectiveness be delayed 30 days from its publication in the **Federal Register**. Delaying the rule's effectiveness for 30 days is unnecessary and contrary to the public interest. The delay is unnecessary because the rule is non-substantive and has no external impact. The agency is essentially inserting an empty box to be filled as items warranting export control under the CCL are identified. The rule adds no new requirements or burdens on the public, which need not take any action as a result of this rule to comply with its terms. In addition, a delay in effectiveness is contrary to the public interest, because additional delay would prevent the identification and addition of items to the CCL, which in turn could inhibit the public's ability to obtain export licenses for these items and potentially require the public to seek licenses under the USML licensing process during the period of delay. This rule, therefore, is effective upon publication in the **Federal Register**.

List of Subjects

15 CFR Parts 732 and 740

Administrative practice and procedure, Exports, Reporting and recordkeeping requirements.

15 CFR Part 734

Administrative practice and procedure, Exports, Inventions and patents, Research science and technology.

15 CFR Part 738

Exports.

15 CFR Part 742

Exports, Terrorism.

15 CFR Part 774

Exports, Reporting and recordkeeping requirements.

Accordingly, parts 732. 734, 738, 740, 742 and 774 of the Export Administration Regulations (15 CFR parts 730–774) are amended as follows:

PART 732—[AMENDED]

■ 1. The authority citation for 15 CFR part 732 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.;* 50 U.S.C. 1701 *et seq.;* E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 12, 2011, 76 FR 50661 (August 16, 2011).

■ 2. Amend § 732.3 by adding paragraph (b)(4) to read as follows:

§ 732.3 Steps regarding the ten general prohibitions.

* * * * *

(b) * * *

(4) Items subject to temporary CCL controls are classified under the ECCN 0Y521 series (i.e., 0A521, 0B521, 0C521, 0D521 and 0E521) pursuant to § 742.6(a)(7) of the EAR while a determination is being made as to whether classification under a revised or new ECCN or EAR99 designation is appropriate .

* * * * *

PART 734—[AMENDED]

■ 3. The authority citation for 15 CFR part 734 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.;* 50 U.S.C. 1701 *et seq.;* E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 13020, 61

FR 54079, 3 CFR, 1996 Comp., p. 219; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 12, 2011, 76 FR 50661 (August 16, 2011); Notice of November 9, 2011, 76 FR 70319 (November 10, 2011).

■ 4. Revise paragraph (c) of § 734.3 to read as follows:

§ 734.3 Items subject to the EAR.

* * * * *

(c) ''Items subject to the EAR'' consist of the items listed on the Commerce Control List (CCL) in part 774 of the EAR and all other items which meet the definition of that term. For ease of reference and classification purposes, items subject to the EAR which are *not* listed on the CCL are designated as ''EAR99.'' Items subject to temporary CCL controls are classified under the ECCN 0Y521 series (i.e., 0A521, 0B521, 0C521, 0D521, and 0E521) pursuant to § 742.6(a)(7) of the EAR, while a determination is made as to whether classification under a revised or new ECCN, or an EAR99 designation, is appropriate.

* * * * *

PART 738—[AMENDED]

■ 5. The authority citation for 15 CFR part 738 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.;* 50 U.S.C. 1701 *et seq.;* 10 U.S.C. 7420; 10 U.S.C. 7430(e); 22 U.S.C. 287c; 22 U.S.C. 3201 *et seq.;* 22 U.S.C. 6004; 30 U.S.C. 185(s), 185(u); 42 U.S.C. 2139a; 42 U.S.C. 6212; 43 U.S.C. 1354; 15 U.S.C. 1824a; 50 U.S.C. app. 5; 22 U.S.C. 7201 *et seq.;* 22 U.S.C. 7210; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 12, 2011, 76 FR 50661 (August 16, 2011).

■ 6. Amend § 738.1 by adding paragraph (a)(3) to read as follows:

§ 738.1 Introduction.

(a) * * *

(3) *Items that warrant control for export or reexport but currently are not permanently classified on the CCL.* Items subject to temporary CCL controls are classified under the ECCN 0Y521 series (i.e., 0A521, 0B521, 0C521, 0D521, and 0E521) pursuant to § 742.6(a)(7) of the EAR while a determination is made as to whether classification under a revised or new ECCN, or an EAR99 designation, is appropriate.

* * * * *

PART 740—[AMENDED]

■ 7. The authority citation for 15 CFR part 740 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.;* 50 U.S.C. 1701 *et seq.;* 22 U.S.C. 7201 *et seq.;* E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 12, 2011, 76 FR 50661 (August 16, 2011).

§ 740.2 [Amended]

■ 8. Amend § 740.2 by

■ a. Adding and reserving paragraphs (a)(12) and (a)(13);

■ b. Adding paragraph (a)(14); and

■ c. Adding a note to paragraph (a)(14), to read as follows:

§ 740.2 Restrictions on all License Exceptions.

(a) * * *

(12) [Reserved]

(13) [Reserved]

(14) Items classified under ECCNs 0A521, 0B521, 0C521, 0D521 and 0E521 may only be authorized by License Exception GOV (§ 740.11(b)(2)(ii)) or an item-specific license exception identified in Supplement No. 5 to part 774 for a particular ECCN 0Y521 item.

Note to Paragraph (a)(14): Item-specific license exception availability is specific to each ECCN 0Y521 entry in Supplement No. 5 to part 774 and may not be used for any other ECCN 0Y521 entries in the Supplement. The U.S. Government makes a determination at the time items are classified under ECCNs 0A521, 0B521, 0C521, 0D521 and 0E521 regarding whether any license exceptions will be available, in addition to License Exception GOV (§ 740.11(b)(2)(ii)).

* * * * *

PART 742—[AMENDED]

■ 9. The authority citation for 15 CFR part 742 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.;* 50 U.S.C. 1701 *et seq.;* E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 13020, 61 FR 54079, 3 CFR, 1996 Comp., p. 219; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 12, 2011, 76 FR 50661 (August 16, 2011); Notice of November 9, 2011, 76 FR 70319 (November 10, 2011).

■ 10. Amend § 742.6 by

■ a. Adding paragraph (a)(7), and

■ b. Revising the first sentence of paragraph (b)(1), to read as follows:

§ 742.6 Regional stability.

(a) * * *

(7) *RS Column 1 license requirements and related policies for ECCN 0Y521 items.*

(i) *Scope.* This paragraph (a)(7) supplements the information in the 0Y521 ECCNs and in Supplement No. 5 to part 774 (Items Classified Under ECCNs 0A521, 0B521, 0C521, 0D521 and 0E521). This paragraph alerts exporters, reexporters and transferors to the procedures that apply to items classified under the 0Y521 ECCNs.

(ii) *0Y521 Items.* Items subject to the EAR that are not listed elsewhere in the CCL, but which the Department of Commerce, with the concurrence of the Departments of Defense and State, has determined should be controlled for export because the items provide at least a significant military or intelligence advantage to the United States or for foreign policy reasons are classified under ECCNs 0A521, 0B521, 0C521, 0D521 and 0E521. These items are typically emerging technologies (including emerging commodities, software and technology) that are not yet included in the CCL, so such items are listed on the CCL in 0Y521 ECCNs while the U.S. Government determines whether classification under a revised or new ECCN, or an EAR 99 designation, is appropriate. The list of items classified under a 0Y521 ECCN is limited to those listed in Supplement No. 5 to part 774.

(iii) *Requirement to be classified under another ECCN within one calendar year of classification under ECCN 0Y521.* Items classified under an ECCN 0Y521 entry must be re-classified under another ECCN within one calendar year from the date they are listed in Supplement No. 5 to part 774 of the EAR. If such re-classification does not occur within that period, classification under an ECCN 0Y521 entry expires, and such items are designated as EAR99 items unless either the CCL is amended to impose a control on such items under another ECCN or the ECCN 0Y521 classification is extended. BIS may extend an item's ECCN 0Y521 classification for two one-year periods, provided that the U.S. Government has submitted a proposal to the relevant multilateral regime(s) to obtain multilateral controls over the item. Further extension beyond three years may occur only if the Under Secretary for Industry and Security makes a determination that such extension is in the national security or foreign policy interests of the United States. Any extension or re-extension of control of an ECCN 0Y521 item, including the determination by the Under Secretary, shall be published in the **Federal Register**.

(b) *Licensing policy.* (1) Applications for exports and reexports described in paragraph (a)(1), (a)(2), (a)(6) or (a)(7) of this section will be reviewed on a case-by-case basis to determine whether the export or reexport could contribute directly or indirectly to any country's

military capabilities in a manner that would alter or destabilize a region's military balance contrary to the foreign policy interests of the United States.
* * *

* * * * *

PART 774—[AMENDED]

■ 11. The authority citation for 15 CFR part 774 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.;* 50 U.S.C. 1701 *et seq.;* 10 U.S.C. 7420; 10 U.S.C. 7430(e); 22 U.S.C. 287c, 22 U.S.C. 3201 *et seq.,* 22 U.S.C. 6004; 30 U.S.C. 185(s), 185(u); 42 U.S.C. 2139a; 42 U.S.C. 6212; 43 U.S.C. 1354; 15 U.S.C. 1824a; 50 U.S.C. app. 5; 22 U.S.C. 7201 *et seq.;* 22 U.S.C. 7210; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 12, 2011, 76 FR 50661 (August 16, 2011).

■ 12. Revise § 774.1 to read as follows:

§ 774.1 Introduction.

(a) In this part, references to the EAR are references to 15 CFR chapter VII, subchapter C. The Bureau of Industry and Security (BIS) maintains the Commerce Control List (CCL) that describes items (i.e., commodities, software, and technology) subject to the jurisdiction of the EAR. The CCL does not include those items exclusively controlled for export by another department or agency of the U.S. Government. In instances where other agencies administer controls over related items, entries in the CCL will contain a reference to these controls. Those items subject to the EAR but not specified on the CCL are identified by the designator ''EAR99.'' See § 734.2(a) of the EAR for items that are ''subject to the EAR.'' You should consult part 738 of the EAR for an explanation of the organization of the CCL and its relationship to the Country Chart.

(b) Items that warrant control on the CCL, but for which a classification has yet to be determined, are temporarily classified under one of the 0Y521 ECCNs (i.e., 0A521, 0B521, 0C521, 0D521 or 0E521), according to their respective product group, pursuant to § 742.6(a)(7) of the EAR, while a determination is made as to whether classification under a revised or new ECCN, or an EAR99 designation, is appropriate. The technical description and list of such items appear in Supplement No. 5 to part 774—Items Classified Under ECCNs 0A521, 0B521, 0C521, 0D521 and 0E521. Items that the U.S. Government determines are more appropriately captured under the United States Munitions List (USML) Category XXI (Miscellaneous Articles) or other USML control, as part of the 0Y521 review process will be controlled as such.

(c) The CCL is contained in Supplement No. 1 to this part, and Supplement No. 2 to this part contains the General Technology and Software Notes relevant to entries contained in the CCL.

■ 13. In Supplement No. 1 to part 774 (the Commerce Control List), Category 0—Nuclear Materials, Facilities, and Equipment (and Miscellaneous Items), is amended by:

■ a. Adding Export Control Classification Number (ECCN) 0A521 after ECCN 0A018 and before ECCN 0A918,

■ b. Adding ECCN 0B521 after ECCN 0B006 and before ECCN 0B986;

■ c. Adding ECCN 0C521 after ECCN 0C201 and before the header that reads ''D. Software'';

■ d. Adding ECCN 0D521 after ECCN 0D001 and before ECCN 0D999; and

■ e. Adding ECCN 0E521 after ECCN 0E018 and before ECCN 0E918, to read as follows:

SUPPLEMENT NO. 1 TO PART 774—THE COMMERCE CONTROL LIST

CATEGORY 0—NUCLEAR MATERIALS, FACILITIES, AND EQUIPMENT [AND MISCELLANEOUS ITEMS]

A. SYSTEMS, EQUIPMENT AND COMPONENTS

* * * * *

0A521 Any commodity subject to the EAR that is not listed elsewhere in the CCL, but which is controlled for export because it provides at least a significant military or intelligence advantage to the United States or for foreign policy reasons.

0A521 commodities are subject to RS1 controls with no license exception eligibility other than License Exception GOV for U.S. Government personnel and agencies under § 740.11(b)(2)(ii) of the EAR, or an item-specific license exception identified in Supplement No. 5 to part 774 particular to an item covered under ECCN 0A521. The list of commodities determined to be classified under ECCN 0A521 controls is published in Supplement No. 5 to part 774. The license requirements and licensing policy relating to ECCN 0A521 are set forth in § 742.6(a)(7) of the EAR.

* * * * *

B. TEST, INSPECTION AND PRODUCTION EQUIPMENT

* * * * *

0B521 Any commodity subject to the EAR that is not listed elsewhere in the CCL, but which is controlled for export because it provides at least a significant military or intelligence advantage to the United States or for foreign policy reasons.

0B521 commodities are subject to RS1 controls with no license exception eligibility other than License Exception GOV for U.S. Government personnel and agencies under § 740.11(b)(2)(ii) of the EAR, or an item-specific license exception identified in Supplement No. 5 to part 774 particular to an item covered under ECCN 0B521. The list of commodities determined to be classified under ECCN 0B521 controls is published in Supplement No. 5 to part 774. The license requirements and licensing policy relating to ECCN 0B521 are set forth in § 742.6(a)(7) of the EAR.

* * * * *

C. MATERIALS

* * * * *

0C521 Any material subject to the EAR that is not listed elsewhere in the CCL, but which is controlled for export because it provides at least a significant military or intelligence advantage to the United States or for foreign policy reasons.

0C521 materials are subject to RS1 controls with no license exception eligibility other than License Exception GOV for U.S. Government personnel and agencies under § 740.11(b)(2)(ii) of the EAR, or an item-specific license exception identified in Supplement No. 5 to part 774 particular to an item covered under ECCN 0C521. The list of materials determined to be classified under ECCN 0C521 controls is published in Supplement No. 5 to part 774. The license requirements and licensing policy relating to ECCN 0C521 are set forth in § 742.6(a)(7) of the EAR.

* * * * *

D. SOFTWARE

* * * * *

0D521 Any software subject to the EAR that is not listed elsewhere in the CCL, but which is controlled for export because it provides at least a significant military or intelligence advantage to the United States or for foreign policy reasons.

0D521 software is subject to RS1 controls with no license exception eligibility other than License Exception GOV for U.S. Government personnel and agencies under § 740.11(b)(2)(ii) of the EAR, or an item-specific license exception identified in Supplement No. 5 to part 774 particular to an item covered under ECCN 0D521. The list of software determined to be classified under ECCN 0D521 controls is published in Supplement No. 5 to part 774. The license requirements and licensing policy relating to ECCN 0D521 are set forth in § 742.6(a)(7) of the EAR.

* * * * *

E. TECHNOLOGY

* * * * *

0E521 Any technology subject to the EAR that is not listed elsewhere in the CCL, but which is controlled for export because it provides at least a significant military or intelligence advantage to the United States or for foreign policy reasons.

0E521 technology is subject to RS1 controls with no license exception eligibility other than License Exception GOV for U.S.

Government personnel and agencies under § 740.11(b)(2)(ii) of the EAR, or an item-specific license exception identified in Supplement No. 5 to part 774 particular to an item covered under ECCN 0E521. The list of technologies determined to be classified under ECCN 0E521 controls is published in Supplement No. 5 to part 774. The license requirements and licensing policy relating to ECCN 0E521 are set forth in § 742.6(a)(7) of the EAR.

* * * * *

■ 14. Add and reserve Supplement No. 4 to part 774 to read as follows:

SUPPLEMENT NO. 4 TO PART 774—[RESERVED]

■ 15. Add Supplement No. 5 to part 774 to read as follows:

SUPPLEMENT NO. 5 TO PART 774—ITEMS CLASSIFIED UNDER ECCNS 0A521, 0B521, 0C521, 0D521 AND 0E521

The following table lists items subject to the EAR that are not listed elsewhere in the CCL, but which the Department of Commerce, with the concurrence of the Departments of Defense and State, has identified warrant control for export or reexport because the items provide at least a significant military or intelligence advantage to the United States or for foreign policy reasons.

Item descriptor. *Note:* The description must match by model number or a broader descriptor that does not necessarily need to be company specific.	Date of initial or subsequent BIS classification.	Date when the item will be designated EAR99, unless reclassified in another ECCN or the 0Y521 classification is reissued.	Item-specific license exception eligibility.
1. [Reserved]			
2. [Reserved]			

Dated: April 9, 2012.

Kevin J. Wolf,

Assistant Secretary for Export Administration.

[FR Doc. 2012–8944 Filed 4–12–12; 8:45 am]

BILLING CODE 3510–33–P

FEDERAL TRADE COMMISSION

16 CFR Parts 320, 321, 322, 603, 610, 611, 613, 614, and 901

RIN 3084–AB31

Rescission of Rules

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

ACTION: Final rule; rescission of regulations.

SUMMARY: Title X of the Dodd-Frank Wall Street Reform and Consumer Protection Act transferred rulemaking authority for a number of consumer financial protection laws to the Consumer Financial Protection Bureau (''CFPB''). As a result, the Commission is rescinding the following rules under the Fair Credit Reporting Act: ''[Identity Theft] Definitions''; ''Free Annual File Disclosures Rule''; ''Prohibition Against Circumventing Treatment as a Nationwide Consumer Reporting Agency''; ''Duration of Active Duty Alerts''; and ''Appropriate Proof of Identity.'' In addition, the Commission is rescinding two rules addressing mortgage advertising and mortgage assistance relief services under the 2009 Omnibus Appropriations Act: ''Mortgage Acts and Practices–Advertising Rule'' and ''Mortgage Assistance Relief Services Rule.'' The Commission is also rescinding its rules governing ''Disclosure Requirements for Depository Institutions Lacking Federal Deposit Insurance'' under the Federal Deposit Insurance Corporation Improvement Act and its ''Procedures for State Application for Exemption from the Provisions of the [Federal Debt Collection Practices] Act.'' These rules have been republished by the CFPB.

DATES: *Effective Date:* April 13, 2012.

ADDRESSES: Copies of this document are available from: Public Reference Branch, Room 130, Federal Trade Commission, 600 Pennsylvania Avenue NW., Washington, DC 20580. Copies of this document are also available on the Internet at the Commission's Web site: *http://www.ftc.gov.*

FOR FURTHER INFORMATION CONTACT:

FCRA Rules: Katherine Armstrong, Senior Attorney, Division of Privacy and Identity Protection, Bureau of Consumer Protection, (202) 326–3250, Federal Trade Commission, 600 Pennsylvania Avenue NW., Washington, DC 20580.

Mortgage Rules: For the Mortgage Acts and Practices—Advertising Rule, contact Laura Johnson, Senior Attorney, Financial Practices Division, Bureau of Consumer Protection, (202) 326–3224, Federal Trade Commission, 600 Pennsylvania Avenue NW., Washington, DC 20580. For the Mortgage Assistance Relief Services Rule, contact Evan Zullow, Senior Attorney, Financial Practices Division, Bureau of Consumer Protection, (202) 326–3224, Federal Trade Commission, 600 Pennsylvania Avenue NW., Washington, DC 20580.

Deposit Insurance: Hampton Newsome, Senior Attorney, Enforcement Division, Bureau of Consumer Protection, (202) 326–2889, Federal Trade Commission, 600 Pennsylvania Avenue NW., Washington, DC 20580.

Debt Collection: Thomas Kane, Senior Attorney, Financial Practices Division, Bureau of Consumer Protection, (202) 326–3224, Federal Trade Commission, 600 Pennsylvania Avenue NW., Washington, DC 20580.

SUPPLEMENTARY INFORMATION:

I. Background

On July 21, 2010, President Obama signed into law the Dodd-Frank Wall Street Reform and Consumer Protection Act (''Dodd-Frank Act'').[1] The Dodd-Frank Act substantially changed the federal legal framework for financial services providers. Among the changes, the Dodd-Frank Act transferred to the CFPB the Commission's rulemaking authority under the Fair Debt Collection Practices Act (''FDCPA''),[2] section 43 of the Federal Deposit Insurance Act (''FDIA''),[3] section 626 of the 2009 Omnibus Appropriations Act,[4] and portions of the Fair Credit Reporting Act

[1] Public Law 111–203, 124 Stat. 1376 (2010).

[2] 15 U.S.C. 1692–1692p.

[3] 12 U.S.C. 1831t(c)-(f).

[4] Public Law 111–8, section 626, 123 Stat. 524 (Mar. 11, 2009).

(''FCRA'') (collectively, ''the Acts''),[5] on July 21, 2011.[6]

As a result, the Commission is rescinding the following nine rules issued under the Acts, which have been republished by the CFPB:

- Disclosure Requirements for Depository Institutions Lacking Federal Deposit Insurance, 16 CFR Part 320 (republished by the CFPB at 12 CFR part 1009);
- Mortgage Acts and Practices—Advertising Rule, 16 CFR part 321 (republished by the CFPB at 12 CFR part 1014);
- Mortgage Assistance Relief Services Rule, 16 CFR part 322 (republished by the CFPB at 12 CFR part 1015);
- [Identity Theft] Definitions, 16 CFR Part 603 (republished by the CFPB at 12 CFR 1022.3);
- Free Annual File Disclosures Rule, 16 CFR Part 610 (republished by the CFPB at 12 CFR 1022.130);
- Prohibition Against Circumventing Treatment as a Nationwide Consumer Reporting Agency, 16 CFR Part 611 (republished by the CFPB at 12 CFR 1022.140);
- Duration of Active Duty Alerts, 16 CFR part 613 (republished by the CFPB at 12 CFR 1022.121);
- Appropriate Proof of Identity, 16 CFR part 614 (republished by the CFPB at 12 CFR 1022.123); and
- Procedures for State Application for Exemption from the Provisions of the [Fair Debt Collection Practices] Act, 16 CFR part 901 (republished by the CFPB at 12 CFR part 1006).

The CFPB republished these rules on an interim final basis and the CFPB rules became effective on December 30, 2011.[7] Accordingly, the FTC is rescinding its version of these rules effective immediately.

The FTC will retain rulemaking authority for other rules promulgated under the Acts to the extent the rules apply to motor vehicle dealers described in section 1029(a) of the Dodd-Frank Act that are predominantly engaged in the sale and servicing of motor vehicles, the leasing and servicing of motor vehicles, or both.[8] These seven rules are:

- Privacy of Consumer Financial Information Privacy Rule, 16 CFR part 313;
- Duties of Creditors Regarding Risk-Based Pricing, 16 CFR part 640;
- Duties of Users of Consumer Reports Regarding Address Discrepancies, 16 CFR part 641;
- Prescreen Opt-Out Notice, 16 CFR part 642;
- Duties of Furnishers of Information to Consumer Reporting Agencies, 16 CFR part 660;
- Affiliate Marketing, 16 CFR part 680; and
- Model Forms and Disclosures, 16 CFR part 698.

The Commission is authorized to maintain these rules pursuant to section 1029(c) of the Dodd-Frank Act and section 504(a) of the Gramm-Leach-Bliley Act.[9] These rules remain in effect to the extent that they apply to motor vehicle dealers and will remain in Title 16 of the Code of Federal Regulations.

Under the Dodd-Frank Act, the FTC also retains its authority to bring law enforcement actions to enforce the Acts and FTC and CFPB rules issued under the Acts.

A. Rules Under the Fair Credit Reporting Act

The FCRA governs the collection, assembly, and use of consumer report information and provides the framework for the credit reporting system in the United States.[10] Since enactment of the FCRA in 1970, the FTC has played a key role in its implementation, oversight, enforcement, and interpretation.

On July 21, 2011, the Dodd-Frank Act transferred to the CFPB most of the Commission's rulemaking authority under the FCRA.[11] As a result, the Commission is rescinding the rules discussed below, which the CFPB republished on an interim final basis on December 21, 2011. The republished rules became effective on December 30, 2011.[12]

1. 16 CFR Part 603: [Identity Theft] Definitions

The Fair and Accurate Credit Transactions Act of 2003 (''FACT Act'') amended the FCRA and included requirements for consumer reporting agencies, creditors, and others to help remedy identity theft. The FTC issued final rules to define the terms ''identity theft'' and ''identity theft report.''[13]

2. 16 CFR Part 610: Free Annual File Disclosures Rule

The FACT Act required consumer reporting agencies to provide consumers with one free copy of their file disclosure annually. (These free annual file disclosures are commonly known as ''free credit reports.'') As required by the FACT Act, the FTC issued a rule requiring the establishment of a centralized source through which consumers may request these free annual file disclosures from each nationwide consumer reporting agency; a standardized form for such requests; and a streamlined process for consumers to request free annual file disclosures from nationwide specialty consumer reporting agencies.[14] Pursuant to the Credit Card Accountability Responsibility and Disclosure Act of 2009 (''Credit CARD Act''),[15] the FTC amended the rule to require that certain advertisements for ''free credit reports'' include prominent disclosures, and to prohibit other practices that may interfere with the free annual file disclosure process.[16]

3. 16 CFR Part 611: Prohibition Against Circumventing Treatment as a Nationwide Consumer Reporting Agency

The FCRA imposes certain specific requirements on ''nationwide consumer reporting agencies.'' As required by the FACT Act, the FTC promulgated an interim final rule prohibiting consumer reporting agencies from avoiding treatment as nationwide consumer reporting agencies through any means, including corporate structuring or technological methods.[17]

4. 16 CFR Part 613: Duration of Active Duty Alerts

Active Duty Alerts help service members who are deployed and may find it difficult to monitor their financial accounts. These service members can place alerts on their credit reports, which require that users of such

[5] 15 U.S.C. 1681 *et seq.* The Dodd-Frank Act does not transfer to the CFPB rulemaking authority for FCRA sections 615(e) (''Red Flag Guidelines and Regulations Required'') and 628 (''Disposal of Records''). *See* 15 U.S.C. 1681s(e); Public Law 111–203, section 1088(a)(10)(E). Accordingly, the Commission retains rulemaking authority for its ''Identity Theft Rules,'' 16 CFR part 681, and its rules governing ''Disposal of Consumer Report Information and Records,'' 16 CFR Part 682. *See* 15 U.S.C. 1681m, 1681w. In addition, the Commission retains rulemaking authority under FCRA over any motor vehicle dealer described in Section 1029(a) of the Dodd-Frank Act that is predominantly engaged in the sale and servicing of motor vehicles, the leasing and servicing of motor vehicles, or both. *See* Dodd-Frank Act, § 1029(a), (c).

[6] Dodd-Frank Act, § 1061. This date is the ''designated transfer date'' established by the Treasury Department under the Dodd-Frank Act. *See* Dep't of the Treasury, *Bureau of Consumer Financial Protection; Designated Transfer Date,* 75 FR 57252, 57253 (Sept. 20, 2010); *see also* Dodd-Frank Act, § 1062.

[7] *See* 76 FR 78121 (Dec. 16, 2011); 76 FR 78126 (Dec. 16, 2011); 76 FR 78130 (Dec. 16, 2011); 76 FR 79308 (Dec. 21, 2011).

[8] *See* Dodd-Frank Act, § 1029(a), (c).

[9] 15 U.S.C. 6804(a).

[10] 15 U.S.C. 1681 *et seq.*

[11] *See supra* note 5.

[12] *See* 76 FR 79308 (Dec. 21, 2011); *see also* 12 CFR part 1022.

[13] 69 FR 63922 (Nov. 3, 2004).

[14] 69 FR 35468 (June 24, 2004).

[15] Public Law 111–24, 123 Stat. 1734.

[16] 75 FR 9726 (Mar. 3, 2010).

[17] 69 FR 29061 (May 20, 2004).

reports have reasonable policies and procedures to verify the identity of the person requesting credit. As required by the FACT Act, the FTC issued a final rule establishing that the duration of active duty alerts shall be twelve months.[18]

5. 16 CFR Part 614: Appropriate Proof of Identity

As required by the FACT Act, the FTC established requirements for what constitutes appropriate proof of identity for purposes of who can place fraud or active duty alerts or request truncation of social security numbers on credit reports.[19] The rule helps to ensure that identity thieves cannot easily access another person's credit report.

B. Mortgage Rules

Section 626 of the 2009 Omnibus Appropriations Act,[20] as clarified by the Credit CARD Act,[21] directed the Commission to initiate rulemakings with respect to unfair or deceptive acts or practices involving mortgage loans. To implement the Act, the Commission issued two rules on mortgage loan practices: the Mortgage Acts and Practices-Advertising (''MAP-Ad'') Rule and the Mortgage Assistance Relief Services (''MARS'') Rule.

Because the Dodd-Frank Act transferred to the CFPB the Commission's rulemaking authority under Section 626, the Commission is rescinding its MAP-Ad and MARS rules. The CFPB republished these rules on an interim final basis on December 16, 2011. The republished rules became effective on December 30, 2011.[22]

1. 16 CFR Part 321: Mortgage Acts and Practices—Advertising

The MAP-Ad Rule prohibits deceptive marketing of mortgage loans.[23]

2. 16 CFR Part 322: Mortgage Assistance Relief Services Rule

The MARS Rule addresses the practices of entities (other than mortgage servicers) who offer assistance to consumers in dealing with owners or servicers of their loans to modify them or avoid foreclosure.[24] The rule bans providers of mortgage foreclosure rescue and loan modification services from collecting fees until homeowners have a written offer from their lender or servicer that they decide is acceptable. The rule also requires mortgage relief companies to disclose key information to consumers to protect them from being misled and to help them make better informed purchasing decisions. In addition, the rule prohibits mortgage relief companies from making false or misleading claims about their services.

C. Deposit Insurance

The Federal Deposit Insurance Corporation Improvement Act (''FDICIA'') added a new section 43 (12 U.S.C. 1831t) to the FDIA, which directed the Commission to prescribe disclosures for depository institutions that lack federal deposit insurance.[25] Under Section 43, the Commission issued a rule requiring covered institutions to include a disclosure about the lack of federal deposit insurance on periodic statements and account records.[26] In addition, the rule requires most advertising for these institutions to include disclosures about the lack of federal insurance. The covered institutions also must obtain signed acknowledgments from new depositors about the fact that the institution is not federally insured.

The Dodd-Frank Act transferred the Commission's rulemaking authority under the FDIA to the CFPB. As a result, the Commission is rescinding its Disclosure Requirements for Depository Institutions Lacking Federal Deposit Insurance, which the CFPB republished on an interim final basis on December 16, 2011. The republished rules became effective on December 30, 2011.[27]

D. Debt Collection

The FDCPA provided the Commission with rulemaking authority to promulgate procedures for granting states exemptions from the FDCPA.[28] Pursuant to Section 817 of the FDCPA, the Commission promulgated Procedures for State Application for Exemption from the Provisions of the [Fair Debt Collection Practices] Act (''Procedures'').[29]

Under the Procedures, any state may apply to the Commission for a determination that debt collection practices within the state are subject to requirements under the laws of the state that are substantially similar to, or provide greater protection for consumers than, those imposed under sections 803 through 812 of the FDCPA, and that there is adequate provision for state enforcement of those requirements.[30] If the Commission determines that a state has met these criteria, the Commission must exempt the class of debt collection practices in that state from the requirements of sections 803 through 812.[31]

Because the Dodd-Frank Act transferred to the CFPB the Commission's authority under the FDCPA to grant exemptions by regulation, the Commission is rescinding its Procedures for State Application for Exemption from the Provisions of the [Fair Debt Collection Practices] Act. The CFPB republished rules governing these procedures on an interim final basis on December 16, 2011. The republished rules became effective on December 30, 2011.[32]

II. Procedural Requirements

Under the Administrative Procedure Act,[33] an agency may promulgate or rescind a rule without prior notice and an opportunity for public comment if the agency finds for good cause that notice and comment are unnecessary.[34] Public comment on the rescission of these rules is unnecessary because the FTC's rulemaking authority has transferred to the CFPB pursuant to the statutory mandate of the Dodd-Frank Act. Thus, the FTC has no discretion to maintain these rules, and there is no reason for public comment on this regulatory action. The CFPB's regulations went into effect on December 30, 2011. Therefore, rescission of the FTC rules will help avoid confusion as to which rules are now in effect. Accordingly, the Commission finds that public notice and comment is unnecessary.

In addition, the Commission has determined that the rescissions may take effect immediately upon publication of this notice in the **Federal Register**, as permitted by the Administrative Procedure Act.[35] The removal of the regulations is exempt from the usual 30-day notice requirement as it merely ''relieves a

[18] 69 FR 63922 (Nov. 3, 2004).

[19] *Id.*

[20] Omnibus Appropriations Act, 2009, Public Law 111–8, 123 Stat. 524.

[21] Credit Card Act § 511(a)(1)(B).

[22] 76 FR 78130 (Dec. 16, 2011); *see also* 12 CFR parts 1014 and 1015.

[23] 76 FR 43826 (July 22, 2011); *see also* 16 CFR part 321.

[24] 75 FR 75092 (Dec. 1, 2010); *see also* 16 CFR part 322.

[25] *See* Public Law 102–242, 105 Stat. 2236.

[26] 16 CFR part 320; *see also* 75 FR 31682 (June 4, 2010). These disclosure requirements do not apply to depository institutions that do not receive initial deposits of less than the standard maximum insurance amount for federal deposit insurance. That amount is currently $250,000.

[27] *See* 76 FR 78126 (Dec. 16, 2011); *see also* 12 CFR part 1009.

[28] FDCPA, § 817, 15 U.S.C. 1692o.

[29] 16 CFR part 901; *see also* 44 FR 21005 (Apr. 9, 1979).

[30] 16 CFR 901.2.

[31] 16 CFR 901.6.

[32] 76 FR 78121 (Dec. 16, 2011); *see also* 12 CFR Part 1006.

[33] 5 U.S.C. 553(b)(B).

[34] *Nat'l Customs Brokers & Forwarders Ass'n* v. *United States,* 59 F.3d 1219, 1223–1224 (Fed. Cir. 1995).

[35] 5 U.S.C. 553(d)(1).

restriction'' from FTC requirements.[36] The 30-day notice requirement does not apply under these circumstances, in which the Dodd-Frank Act transferred authority to issue these rules to the CFPB as of the designated transfer date. Therefore, affected persons do not need time to prepare for or take any action with regard to the rescission.[37]

III. Paperwork Reduction Act

The Free Annual File Disclosures Rule and the mortgage rules contain information requirements that have been approved by the Office of Management and Budget (''OMB'') under the Paperwork Reduction Act of 1995 (''PRA'').[38] Because the FTC and CFPB share enforcement authority for these rules, the CFPB has assumed half of the FTC's previously cleared burden estimates for these rules and OMB has approved the CFPB's request for emergency clearance. In turn, the FTC has submitted associated adjustment requests to OMB to reduce by half the FTC's previously cleared estimates under the PRA assigned to these rules.

IV. Regulatory Flexibility Act

Because the Commission has determined that it may remove these regulations without public comment, the Commission is also not required to publish any initial or final regulatory flexibility analysis under the Regulatory Flexibility Act as part of such action.[39]

List of Subjects

16 CFR Part 320

Credit unions, Depository institutions, and Federal deposit insurance.

16 CFR Part 321

Advertising, Communications, Consumer protection, Credit, Mortgages, Trade practices.

16 CFR Part 322

Consumer protection, Trade practices, Telemarketing.

16 CFR Part 603

Fair Credit Reporting Act, Consumer reports, Consumer reporting agencies, Credit, Information furnishers, Identity theft, Trade practices.

16 CFR Part 610

Fair Credit Reporting Act, Consumer reports, Consumer reporting agencies, Credit, Trade practices.

16 CFR Part 611

Consumer reports, Consumer reporting agencies, Credit, Information furnishers, Identity theft, Trade practices.

16 CFR Part 613

Fair Credit Reporting Act, Consumer reports, Consumer reporting agencies, Credit, Information furnishers, Identity theft, Trade practices.

16 CFR Part 614

Fair Credit Reporting Act, Consumer reports, Consumer reporting agencies, Credit, Information furnishers, Identity theft, Trade practices.

16 CFR Part 901

Administrative practice and procedure, Consumer protection, Credit, Intergovernmental relations.

Accordingly, for the reasons set forth above, the Commission amends Chapter I of Title 16, Code of Federal Regulations, as follows:

■ 1. Revise part 320 to read as follows:

PART 320—DISCLOSURE REQUIREMENTS FOR DEPOSITORY INSTITUTIONS LACKING FEDERAL DEPOSIT INSURANCE

Authority: 12 U.S.C. 1831t; 15 U.S.C. 41 *et seq.*

§ 320.1 Cross-reference.

The rules formerly at 16 CFR part 320 have been republished by the Consumer Financial Protection Bureau at 12 CFR part 1009, ''Disclosure Requirements for Depository Institutions Lacking Federal Deposit Insurance (Regulation I).''

■ 2. Revise part 321 to read as follows:

PART 321—MORTGAGE ACTS AND PRACTICES—ADVERTISING

Authority: Pub. L. 111–8, section 626, 123 Stat. 524, as amended by Pub. L. 111–24, section 511, 123 Stat. 1734.

§ 321.1 Cross-reference.

The rules formerly at 16 CFR part 321 have been republished by the Consumer Financial Protection Bureau at 12 CFR part 1014, ''Mortgage Acts and Practices Advertising (Regulation N).''

■ 3. Revise part 322 to read as follows:

PART 322—MORTGAGE ASSISTANCE RELIEF SERVICES

Authority: Pub. L. 111–8, section 626, 123 Stat. 524, as amended by Pub. L. 111–24, section 511, 123 Stat. 1734.

§ 322.1 Cross-reference.

The rules formerly at 16 CFR part 322 have been republished by the Consumer Financial Protection Bureau at 12 CFR part 1015, ''Mortgage Assistance Relief Services (Regulation O).''

■ 4. Revise part 603 to read as follows:

PART 603—DEFINITIONS

Authority: Pub. L. 108–159, sec. 111; 15 U.S.C. 1681a.

§ 603.1 Cross-reference.

The rules formerly at 16 CFR part 603 have been republished by the Consumer Financial Protection Bureau at 12 CFR 1022.3, ''Fair Credit Reporting (Regulation V).''

■ 5. Revise part 610 to read as follows:

PART 610—FREE ANNUAL FILE DISCLOSURES

Authority: 15 U.S.C. 1681a, g, and h; sec. 211(a) and (d), Pub. L. 108–159, 117 Stat. 1968 and 1972 (15 U.S.C. 1681j); Pub. L. 111–24.

§ 610.1 Cross-reference.

The rules formerly at 16 CFR part 610 have been republished by the Consumer Financial Protection Bureau at 12 CFR 1022.130, ''Fair Credit Reporting (Regulation V).''

■ 6. Revise part 611 to read as follows:

PART 611—PROHIBITION AGAINST CIRCUMVENTING TREATMENT AS A NATIONWIDE CONSUMER REPORTING AGENCY

Authority: Pub. L. 108–159, sec. 211(b); 15 U.S.C. 1681x.

§ 611.1 Cross-reference.

The rules formerly at 16 CFR part 611 have been republished by the Consumer Financial Protection Bureau at 12 CFR 1022.140, ''Fair Credit Reporting (Regulation V).''

■ 7. Revise part 613 to read as follows:

PART 613—DURATION OF ACTIVE DUTY ALERTS

Authority: Pub. L. 108–159, sec. 112(a); 15 U.S.C. 1681c–1.

§ 613.1 Cross-reference.

The rules formerly at 16 CFR part 613 have been republished by the Consumer Financial Protection Bureau at 12 CFR

[36] 5 U.S.C. 553(d)(1); *see also Indep. U.S. Tanker Owners Comm.* v. *Skinner,* 884 F.2d 587, 591 (DC Cir. 1989).

[37] *See Daniel Int'l Corp.* v. *Occupational Safety & Health Review Com.,* 656 F.2d 925, 931 (4th Cir. 1981) (''The purpose of the 30-day notice requirement in § 553(d) is to 'afford persons affected a reasonable time to prepare for the effective date of a rule or rules or to take any other action which the issuance of rules may prompt.' Administrative Procedure Act Legislative History, 79th Cong., 2d Sess. 201 (1946)'').

[38] 44 U.S.C. 3501 *et seq.*

[39] *See* 5 U.S.C. 603(a), 604(b).

1022.121, ''Fair Credit Reporting (Regulation V).''

■ 8. Revise part 614 to read as follows:

PART 614—APPROPRIATE PROOF OF IDENTITY

Authority: Pub. L. 108–159, sec. 112(b).

§ 614.1 Cross-reference.

The rules formerly at 16 CFR part 614 have been republished by the Consumer Financial Protection Bureau at 12 CFR 1022.123, ''Fair Credit Reporting (Regulation V).''

■ 9. Revise part 901 to read as follows:

PART 901—PROCEDURES FOR STATE APPLICATION FOR EXEMPTION FROM THE PROVISIONS OF THE ACT

Authority: Pub. L. 95–109, 91 Stat. 874, 15 U.S.C. 1692o; 5 U.S.C. 552.

§ 901.1 Cross-reference.

The rules formerly at 16 CFR part 901 have been republished by the Consumer Financial Protection Bureau at 12 CFR part 1006, ''Fair Debt Collection Practices Act (Regulation F).''

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 2012–8748 Filed 4–12–12; 8:45 am]

BILLING CODE 6750–01–P

DEPARTMENT OF LABOR

Office of the Secretary

29 CFR Part 15

Employment and Training Administration

20 CFR Parts 638 and 670

RIN 1290–AA25

Administrative Claims Under the Federal Tort Claims Act and Related Statutes

AGENCY: Office of the Secretary, Employment and Training Administration, Labor.

ACTION: Direct final rule.

SUMMARY: This amendment revises the Department of Labor's (DOL) regulations governing administrative claims submitted to DOL pursuant to the Federal Tort Claims Act (FTCA), the Military Personnel and Civilian Employees' Claims Act (MPCECA), and for payment of claims arising out of the operation of the Job Corps. The regulations governing such claims were last revised in 1995. MPCECA has since been amended to allow payment of up to $100,000 if the claim arose from an emergency or extraordinary circumstance. Further, the implementing authority for the Job Corps was changed to the Workforce Investment Act (WIA) since the last time the regulations were updated. These regulations are being amended to reflect those changes, improve the clarity and ease of use of the regulations, and to harmonize the regulations governing these claims between those regulations in titles 20 and 29 of the CFR, which includes deleting the references to these claims in 20 CFR part 638 as these revisions have rendered those sections unnecessary. Finally, the regulations in title 20 have also been updated to reflect the recently revised regulations regarding claims of Job Corps students under the Federal Employees' Compensation Act (FECA).

DATES: This direct final rule is effective July 12, 2012 without further action, unless adverse comment is received by June 12, 2012. If an adverse comment is received, DOL will publish a timely withdrawal of the rule in the **Federal Register**.

ADDRESSES: You may submit comments on the direct final rule, identified by Regulatory Information Number (RIN) 1290–AA25, by one of the following methods: *Federal e-Rulemaking Portal:* The Internet address to submit comments on the rule is *http://www.regulations.gov.* Follow the Web site instructions for submitting comments.

Mail: Submit written comments to Catherine P. Carter, Counsel for Claims and Compensation, Office of the Solicitor, U.S. Department of Labor, Room S–4325, 200 Constitution Avenue NW., Washington, DC 20210. Because of security measures, mail directed to Washington, DC is sometimes delayed. We will only consider comments postmarked by the U.S. Postal Service or other delivery service on or before the deadline for comments.

Instructions: All comments must include the RIN 1290–AA25 for this rulemaking. Receipt of any comments, whether by mail or Internet, will not be acknowledged. Because DOL continues to experience delays in receiving postal mail in the Washington, DC area, commenters are encouraged to submit any comments by mail early.

Comments on the direct final rule will be available for public inspection during normal business hours at the address listed above for mailed comments. Persons who need assistance to review the comments will be provided with appropriate aids such as readers or print magnifiers. Copies of this direct final rule may be obtained in alternative formats (e.g., large print, audiotape or disk) upon request. To schedule an appointment to review the comments and/or to obtain the direct final rule in an alternative format, contact DOL at 202–693–5320 (this is not a toll-free number).

FOR FURTHER INFORMATION CONTACT: Catherine P. Carter, Counsel for Claims and Compensation, Office of the Solicitor, U.S. Department of Labor, Room S–4325, 200 Constitution Avenue NW., Washington, DC 20210, Telephone: 202–693–5320 (this is not a toll-free number).

Individuals with hearing or speech impairments may access this telephone number via TTY by calling the toll-free Federal Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

I. Direct Final Rule and Concurrent, Identical Proposed Rule

Since this rule is not controversial and primarily concerns agency procedures, we have determined that the subject of this rulemaking is suitable for a direct final rule. No significant adverse comments are anticipated. However, concurrent with this direct final rule, a separate, identical proposed rule is published in today's issue of the **Federal Register**. The duplicate proposed rule will expedite rulemaking in the event we receive significant adverse comments and we withdraw this direct final rule. All interested parties should comment at this time because we will not initiate an additional comment period. If no significant adverse comments to the accompanying proposed rule are received on or before June 12, 2012, this direct final rule will become effective July 12, 2012 without further notice.

If significant adverse comments are received, we will publish a timely notice in the **Federal Register** withdrawing this direct final rule, and will then proceed with the rulemaking by addressing the comments and developing a final rule from the proposed rule published elsewhere in today's issue of the **Federal Register**. For purposes of withdrawing this direct final rule, a significant adverse comment is one that explains (1) why the direct final rule is inappropriate, including challenges to the rule's underlying premise or approach; or (2) why the direct final rule will be ineffective or unacceptable without a change. In determining whether a significant adverse comment

necessitates withdrawal of this direct final rule, we will consider whether the comment raises an issue serious enough to warrant a substantive response through the notice and comment process. A comment recommending an addition to the rule will not be considered significant and adverse unless the comment explains how this rule would be ineffective without the addition.

II. Background

The FTCA surrenders the sovereign immunity of the United States for the negligent or wrongful act or omission of a Government employee acting within the scope of his or her employment. The MPCECA authorizes payment of claims of employees of the Government for loss of, or damage to, property incident to Government service. The WIA provides that Job Corps students are Federal employees for purposes of claims under the FTCA and authorizes payment of claims arising out of the operation of the Job Corps that are not cognizable under the FTCA. Parts 638 and 670 of title 20 and part 15 of title 29 of the Code of Federal Regulations currently contain regulations implementing these three claims authorities.

III. Overview of the Regulations

The regulations reflect statutory changes and are otherwise largely unchanged. The majority of changes were made to change the format of 29 CFR part 15 to question and answer format, and to improve the structure and readability of the regulations in both 20 CFR part 670 and 29 CFR part 15. Furthermore, the numbering of sections in 29 CFR part 15 was changed to improve structure and to allow for splitting of current sections for improved clarity and readability.

20 CFR Part 638

Sections 638.526 Through 638.527

As the changes made to 20 CFR part 670 and 29 CFR part 15 have rendered these sections unnecessary, the regulations delete these sections.

20 CFR Part 670

Sections 670.900 Through 670.905

These sections were changed to direct possible claimants to 29 CFR part 15, which provides the actual regulations that govern such claims. This change was made to reduce the possibility of conflicting regulations and to clarify which regulations provide the decision making authority for such claims.

Sections 670.910 Through 670.930

These sections provide information for Job Corps students regarding their rights under the FECA. These sections were similarly amended to provide cross-references to the regulations governing claims under the FECA, while still providing the statutory information regarding the status of such students under the WIA. Sections no longer necessary as a result were removed.

29 CFR Part 15

As discussed above, 29 CFR part 15 was reorganized and the regulations themselves were modified to change to a question and answer format to promote clarity and readability of these regulations. As part of the reorganization, a new subpart A was added to this part, with the other subparts redesignated accordingly.

Subpart A

Subpart A of part 15 is a new subpart. It includes introductory information, such as describing the contents of the other subparts and definitions that apply to all subparts in this part.

Subpart B

Subpart B is largely subpart A of the old regulations. The text in this subpart is largely unchanged, although some of the old regulations have been broken out into new sections in order to promote clarity and use of a question and answer format. Changes in these sections are described below.

Section 15.102 is a new section that describes the filing of a claim by an insurance company and compiles the requirements into one section. The language of this section has also been rewritten for clarity.

Section 15.103 is a new section that addresses legal representatives and compiles them into one section. The statutory limitation on representative fees has also been included for ease of use.

Section 15.104 (formerly § 15.4) has been amended to clarify that the $25,000 jurisdictional limit applies to the aggregate of claims resulting from one incident. Furthermore, this section has been amended to codify the official duty stations' current practice of forwarding the FTCA claims to the Regional Offices of the Office of the Solicitor with the documentation they have regarding that claim.

Section 15.106 (formerly § 15.6) has been amended to include a requirement that all organizational units within the Department appoint an FTCA contact, unless that requirement for a contact is waived. For example, a small entity within the Office of the Secretary for which claims are rarely received would not be required to designate an FTCA contact. This section has also been amended to require the FTCA contact to submit an administrative report to the deciding official within 30 days.

Section 15.108 (formerly § 15.7) has been amended to clarify that the $25,000 jurisdictional limit applies to the aggregate of claims resulting from one incident.

Section 15.111 (formerly § 15.10) has been amended to clarify that the $25,000 jurisdictional limit applies to the aggregate of claims resulting from one incident and to update the forms used by the Department of Justice in settling and paying FTCA claims.

Subpart C

As above, subpart C is largely a redesignated version of former subpart B. The text in this subpart is largely unchanged, although some of the old regulations have been broken out into new sections in order to promote clarity. Changes in these sections are described below.

Section 15.202 (formerly a subsection of § 15.21) has been amended to include a reference to a sample claim for MPCECA claims and to note that the SF–95 form should not be used to file a claim under this subpart. This section has also been amended to allow the deciding official to waive the requirement of submitting two estimates of repair where unnecessary, lessening the burden on claimants in submitting these claims.

Section 15.206 is a new section that covers MPCECA claims made for damage to property at Telework locations and at residences.

Section 15.207 (formerly § 15.22) has been amended to include language allowing claims for loss or damage incident to service to cellular phones, personal data assistants and similar communication and electronic devices.

Section 15.210 has been amended to allow the deciding official to waive the requirement of filing a claim under the employee's insurance policy where such a claim is impracticable or inequitable.

Subpart D

As above, subpart D is largely a redesignated version of former subpart C. This subpart, however, has been reorganized to clearly delineate the types of claims that are covered by this subpart. Changes in these sections are described below.

Section 15.300 is a new section that has been drafted to specifically categorize the types of claims covered by this subpart. This section also clearly indicates that this includes claims

involving Job Corps Centers run by other Federal agencies.

Section 15.301 (part of former § 15.42) has been amended to clearly delineate which Department official has responsibility for which type of claim and for what amounts. It more clearly describes and explains the procedures for processing claims of loss or damage to persons or personal property of Job Corps students than the current regulations. In particular, it provides that the Regional Solicitor is responsible for such claims in excess of $300 and the Job Corps Regional Director is responsible for such claims of $300 or less.

Section 15.302 is a new section that has been added to distinguish what procedures apply to the different types of claims covered by this subpart.

Section 15.303 (part of former § 15.42) has been amended to change the process as to where claims under this subpart are initially filed. The new procedures require all claims under the WIA must first be filed with the Job Corps Regional Office.

Section 15.304 combines all prior subsections regarding limits on claims under the WIA into one new section.

IV. Administrative Requirements for the Direct Final Rulemaking

Executive Orders 12866 and 13563

Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects; distributive impacts; and equity). Executive Order 13563 is supplemental to and reaffirms the principles, structures, and definitions governing regulatory review as established in Executive Order 12866.

The Department has determined that this final rule is not a ''significant regulatory action'' under Executive Order 12866, section 3(f). Accordingly, there is no requirement for an assessment of potential costs and benefits under section 6(a)(3) of that order.

Regulatory Flexibility Act of 1980

This final rule has been reviewed in accordance with the Regulatory Flexibility Act of 1980, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 601–612. The Department has concluded that the final rule does not involve regulatory and informational requirements regarding businesses, organizations, and governmental jurisdictions subject to regulation.

Paperwork Reduction Act (PRA)

This final rule is not subject to the Paperwork Reduction Act (PRA) of 1995, 44 U.S.C. 3501, *et seq.,* since it does not contain any new collection of information requirements.

The National Environmental Policy Act of 1969

The Department certifies that this final rule has been assessed in accordance with the requirements of the National Environmental Policy Act of 1969, 42 U.S.C. 4321 *et seq.* (NEPA). The Department concludes that NEPA requirements do not apply to this rulemaking because this final rule includes no provisions impacting the maintenance, preservation, or enhancement of a healthful environment.

Federal Regulations and Policies on Families

The Department has reviewed this final rule in accordance with the requirements of section 654 of the Treasury and General Government Appropriations Act of 1999, 5 U.S.C. 601 note. This final rule was not found to have a potential negative effect on family well-being as it is defined thereunder.

Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

The Department certifies that this final rule has been assessed regarding environmental health risks and safety risks that may disproportionately affect children. This final rule was not found to have a potential negative effect on the health or safety of children.

Unfunded Mandates Reform Act of 1995 and Executive Order 13132

The Department has reviewed this final rule in accordance with the requirements of Executive Order 13132, 64 FR 43225, Aug. 10, 1999, and the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1501 *et seq.,* and has found no potential or 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 there is no Federal mandate contained herein that could result in increased expenditures by State, local, or tribal governments or by the private sector, the Department has not prepared a budgetary impact statement.

Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

The Department has reviewed this final rule in accordance with Executive Order 13175, 65 FR 67249, Nov. 9, 2000, and has determined that it does not have ''tribal implications.'' The final rule does not ''have substantial direct effects 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.''

Executive Order 12630: Governmental Actions and Interference With Constitutionally Protected Property Rights

The Department has reviewed this final rule in accordance with Executive Order 12630, 53 FR 8859, Mar. 15, 1988, and has determined that it does not contain any ''policies that have takings implications'' in regard to the ''licensing, permitting, or other condition requirements or limitations on private property use, or that require dedications or exactions from owners of private property.''

Executive Order 13211: Energy Supply, Distribution, or Use

The Department has reviewed this final rule and has determined that the provisions of Executive Order 13211, 66 FR 28355, May 18, 2001, are not applicable as there are no direct or implied effects on energy supply, distribution, or use.

The Privacy Act of 1974, 5 U.S.C. 552a, as Amended

Claims filed under these regulations are subject to the current Privacy Act System of Records DOL/SOL–3, Tort Claims Files; DOL/SOL–5,Workforce Investment Act Tort Claims Files; DOL/SOL–6, Military Personnel and Civilian Employees' Claims; and DOL/GOVT–1, Office of Workers' Compensation Programs, Federal Employees' Compensation Act File. 67 FR 16816, Apr 8, 2002.

Clarity of This Regulation

Executive Order 12866, 58 FR 51735, Sept. 30, 1993, and the President's memorandum of June 1, 1998, require each agency to write all rules in plain language. This final rule was written to improve the clarity of the rule in accordance with that Order.

List of Subjects

20 CFR Part 638

Administrative practice and procedure, Claims, Government employees, Labor, Workers' compensation.

20 CFR Part 670

Administrative practice and procedure, Claims, Government employees, Labor, Workers' compensation.

29 CFR Part 15

Tort claims, Indemnity payments, Administrative practice and procedure, Government employees.

For the reasons set forth in the preamble, the Department of Labor amends 20 CFR parts 638 and 670 and 29 CFR part 15 as follows:

Title 20—Employees' Benefits

PART 638—JOB CORPS PROGRAM UNDER TITLE IV–B OF THE JOB TRAINING PARTNERSHIP ACT

■ 1. The authority citation for 20 CFR part 638 continues to read as follows:

Authority: 29 U.S.C. 1579(a).

■ 2. Remove §§ 638.526 and 638.527.

PART 670—THE JOB CORPS UNDER TITLE I OF THE WORKFORCE INVESTMENT ACT

■ 3. The authority citation for 20 CFR part 670 continues to read as follows:

Authority: Subtitle C of Title I, sec. 506(c), Pub. L. 105–220, 112 Stat. 936 (20 U.S.C. 2881 *et seq.* and 9276(c)); 5 U.S.C. 301; Executive Order 13198, 66 FR 8497, 3 CFR 2001 Comp., p. 750; Executive Order 13279, 67 FR 77141, 3 CFR 2002 Comp., p. 258.

■ 4. Revise § 670.900 to read as follows:

§ 670.900 Are damages caused by the acts or omissions of students eligible for payment under the Federal Tort Claims Act?

Yes, students are considered Federal employees for purposes of the FTCA (28 U.S.C. 2671 *et seq.*). Claims for such damage should be filed pursuant to the procedures found in 29 CFR part 15, subpart D.

■ 5. Revise § 670.905 to read as follows:

§ 670.905 Are loss and damages that occur to persons or personal property of students at Job Corps centers eligible for reimbursement?

Yes, the Job Corps may pay students for valid claims under the procedures found in 29 CFR part 15, subpart D.

■ 6. Revise § 670.910 to read as follows:

§ 670.910 If a student is injured in the performance of duty as a Job Corps Student, what benefits may they receive?

(a) Job Corps students are considered Federal employees for purposes of the Federal Employees' Compensation Act (FECA) as specified in 29 U.S.C. 2897.

(b) Job Corps students may be entitled to benefits under FECA as provided by 5 U.S.C. 8143 for injuries occurring in the performance of duty.

(c) Job Corps students must meet the same eligibility tests for FECA benefits that apply to all other Federal employees. The requirements for FECA benefits may be found at 5 U.S.C. 8101, *et seq.* and part 10 of this title. The Department of Labor's Office of Workers' Compensation Programs (OWCP) administers the FECA program; all FECA determinations are within the exclusive authority of the OWCP, subject to appeal to the Employees' Compensation Appeals Board.

(d) Whenever a student is injured, develops an occupationally related illness, or dies while in the performance of duty, the procedures of the OWCP, at part 10 of this title, must be followed. To assist OWCP in determining FECA eligibility, a thorough investigation of the circumstances and a medical evaluation must be completed and required forms must be timely filed by the center operator with the DOL's OWCP. Additional information regarding Job Corps FECA claims may be found in OWCP's regulations and procedures available on DOL's Web site located at *www.dol.gov.*

■ 7. Revise § 670.915 to read as follows:

§ 670.915 When is a Job Corps student considered to be in the performance of duty?

(a) Performance of duty is a determination that must be made by the OWCP under FECA, and is based on the individual circumstances in each claim.

(b) In general, residential students may be considered to be in the ''performance of duty'' when:

(1) They are on center under the supervision and control of Job Corps officials;

(2) They are engaged in any authorized Job Corps activity;

(3) They are in authorized travel status; or

(4) They are engaged in any authorized offsite activity.

(c) Non-resident students are generally considered to be ''in performance of duty'' as Federal employees when they are engaged in any authorized Job Corps activity, from the time they arrive at any scheduled center activity until they leave the activity. The standard rules governing coverage of Federal employees during travel to and from work apply. These rules are described in guidance issued by the Secretary.

(d) Students are generally considered to be not in the performance of duty when:

(1) They are Absent Without Leave (AWOL);

(2) They are at home, whether on pass or on leave;

(3) They are engaged in an unauthorized offsite activity; or

(4) They are injured or ill due to their own willful misconduct, intent to cause injury or death to oneself or another or through intoxication or illegal use of drugs.

■ 8. Remove §§ 670.920, 670.925, and 670.930.

Title 29—Labor

■ 9. Revise Part 15 to read as follows:

PART 15—ADMINISTRATIVE CLAIMS UNDER THE FEDERAL TORT CLAIMS ACT AND RELATED CLAIMS STATUTES

Sec.

Subpart A—Introduction

15.1 What is the scope and purpose of this part?
15.2 What definitions apply to this part?

Subpart B—Claims Against the Government Under the Federal Tort Claims Act

15.100 What claims against the Department are covered by the FTCA?
15.101 Who may file an administrative claim under the FTCA against the Department?
15.102 May an insurance company file an FTCA administrative claim on behalf of a claimant?
15.103 May an agent or legal representative file an FTCA administrative claim on behalf of a claimant?
15.104 Where should the FTCA administrative claim be filed?
15.105 What information and evidence should be provided to DOL to substantiate an FTCA administrative claim?
15.106 How is the administrative claim processed?
15.107 What must be provided in the administrative report?
15.108 Who is authorized to decide an administrative claim?
15.109 What if the claim is denied?
15.110 What must a claimant do if the administrative claim is approved?
15.111 If the administrative claim is approved, how is the award paid?

Subpart C—Claims Under the Military Personnel and Civilian Employees' Claims Act of 1964

15.200 What is a claim under the MPCECA and who may file such a claim?
15.201 Where should the MPCECA claim be filed?

15.202 How is a claim filed under the MPCECA?
15.203 When should a claim under the MPCECA be filed?
15.204 Are there limits on claims under the MPCECA?
15.205 What types of claims for property damage are allowed under the MPCECA?
15.206 What claims arising at a residence or Telework location may be covered under the MPCECA?
15.207 What are examples of claims allowed under the MPCECA?
15.208 What are the restrictions on otherwise allowable claims?
15.209 What claims are not allowed?
15.210 What affect does insurance have on a claim under the MPCECA?
15.211 How is a claim under this subpart processed?
15.212 How is the amount of the award under this subpart calculated?
15.213 Are there limits to representatives' fees for claims under this subpart?
15.214 How may a decision under this subpart be reconsidered?

Subpart D—Claims Arising Out of the Operation of the Job Corps

15.300 How are claims involving the Job Corps initiated?
15.301 What office is responsible for determining liability in claims arising out of the Job Corps?
15.302 What procedures apply to these claims?
15.303 How does a Job Corps student file a claim for loss of or damages to personal property under the WIA?
15.304 Are there limits to claims for loss of or damages to personal property under the WIA?

Authority: 28 U.S.C. 2672; 28 CFR § 14.11; 31 U.S.C. 3721; 29 U.S.C. 2897(b).

Subpart A—Introduction

§ 15.1 What is the scope and purpose of this part?

(a) The regulations in this part provide procedures to be followed for claims asserted against the Department of Labor under the Federal Tort Claims Act, 28 U.S.C. 2671, *et seq.,* under the Military Personnel and Civilian Employees' Claims Act of 1964, 31 U.S.C. 3721, and for claims arising out of the operation of Job Corps Centers under the Workforce Investment Act of 1998, 29 U.S.C. 2897(b).

(b) Subpart B of this part provides the procedures followed in processing claims asserted under the Federal Tort Claims Act, as amended, for money damages against the United States for injury to or loss of property or personal injury or death caused by the negligent or wrongful act or omission of an officer or employee of the Department of Labor while acting within the scope of his or her office or employment. This subpart is issued subject to and consistent with applicable regulations on administrative claims under the Federal Tort Claims Act issued by the Attorney General (28 CFR part 14).

(c) Subpart C of this part provides the procedures for processing claims filed by or on behalf of employees of the Department of Labor for loss of or damage to personal property incident to their service with the Department under the Military Personnel and Civilian Employees' Claims Act of 1964.

(d) Subpart D of this part provides the procedures used in processing claims relating to damage to persons or property arising out of the operation of Job Corps, pursuant to the Workforce Investment Act, including damages under the Federal Tort Claims Act, damage to personal property of Job Corps students, and claims which the Secretary of Labor finds to be a proper charge against the United States but which are not cognizable under the Federal Tort Claims Act.

§ 15.2 What definitions apply to this part?

(a) *Department* means the Department of Labor.

(b) *Organizational unit* means the jurisdictional area of each Assistant Secretary and each office head within the Department reporting directly to the Secretary.

(c) *Counsel for Claims and Compensation* means the Department's deciding official in the Office of the Solicitor for certain administrative claims under this part. The address for the Counsel for Claims and Compensation is U.S. Department of Labor, 200 Constitution Avenue NW., Suite S4325, Washington, DC 20210. Telephone and fax numbers for this official may be found on the Department's Web site at *www.dol.gov.*

(d) *Regional Solicitor* means the head of the appropriate Regional Office (Regional Solicitor) or Branch Office (Associate Regional Solicitor) of the Office of Solicitor with jurisdiction to handle certain claims under this part.

(e) *FTCA* means the Federal Tort Claims Act, as amended, 28 U.S.C. 1346(b), 28 U.S.C. 2671, *et seq.*

(f) *MPCECA* means the Military Personnel and Civilian Employees' Claims Act of 1964, 31 U.S.C. 3721.

(g) *WIA* means the Workforce Investment Act of 1998, 29 U.S.C. 2897(b).

Subpart B—Claims Against the Government Under the Federal Tort Claims Act

§ 15.100 What claims against the Department are covered by the FTCA?

(a) The FTCA is a limited waiver of sovereign immunity that allows claims for money damages against the Department for negligent acts or omissions of its employees acting within the course and scope of their employment. Subject to the exception set forth in paragraph (b) of this section, all such claims against the Department should be handled under the procedures in this subpart.

(b) In instances where a third party has agreed to insure the Federal government, such as under a U.S. Government Car Rental Agreement, claimants are required to pursue those claims in accordance with such agreements.

§ 15.101 Who may file an administrative claim under the FTCA against the Department?

(a) A claim for the injury to or loss of property may be presented by the owner of the property, his or her duly authorized agent, or his or her legal representative.

(b) A claim for personal injury may be presented by the injured person, his or her duly authorized agent, or his or her legal representative.

(c) A claim for death may be presented by the executor or administrator of the decedent's estate or by any other person legally entitled to assert such a claim in accordance with applicable State law.

(d) A claim presented by an agent or legal representative shall be presented in the name of the claimant, be signed by the agent or representative, show the title or legal capacity of the person signing and be accompanied by evidence of his or her authority to present a claim on behalf of the claimant as agent, executor, administrator, parent, guardian, or legal representative.

(e) Only claims involving alleged acts or omissions of Department employees (including Job Corps students) should be presented to the Department.

§ 15.102 May an insurance company file an FTCA administrative claim on behalf of a claimant?

(a) A claim for loss wholly compensated by an insurance company may be presented by that company.

(b) A claim for loss partially compensated by an insurance company may be presented by the company or the insured individually, in accordance with their respective interests or jointly. It should be noted, however, that if the insurance company claims only part of the insured's interests, an acceptance of that claim may bar any additional claim by the insured for damages beyond that claimed by the insurance company as such acceptance would be in full and

final settlement of all such claims arising out the incident that gave rise to the claim as described in § 15.110(b).

(c) If the claimant is directly compensated by the Department for medical bills under this subpart, the claimant may be required to reimburse his or her insurance company in accordance with the terms of his or her insurance policy if the company has already paid those bills.

(d) Whenever an insurance company presents a claim on behalf of the insured (such as a claim for an auto loss that includes the deductible), it shall present with its claim appropriate evidence that it has the rights of a subrogee, such as a copy of the signed policy.

§ 15.103 May an agent or legal representative file an FTCA administrative claim on behalf of a claimant?

(a) An agent or legal representative may file a claim on behalf of a claimant.

(b) Representative's fees are limited to not more than 20 percent of the amount paid for a claim settled in an administrative claim, and to not more than 25 percent of a judgment or settlement award after litigation is initiated. 28 U.S.C. 2678.

(c) If a representative is dismissed from representing a claimant before the claim is resolved, the representative may not place a lien on the claimant's recoveries under the claim.

(d) Any purported representative of a minor must provide documentation that he or she is the legal agent of that minor.

§ 15.104 Where should the FTCA administrative claim be filed?

(a) Only claims involving alleged acts or omissions of Department employees should be presented to the Department. For the purposes of this subpart, an FTCA claim shall be deemed to have been presented when the Department receives, at a place designated in paragraph (b) of this section, a properly executed ''Claim for Damage, Injury, or Death'' on Standard Form 95, or other written notification of an incident accompanied by a claim for money damages in a sum certain for injury to or loss of property or personal injury or death by reason of the incident.

(b) In any FTCA case where the claim seeks damages for an incident resulting in aggregate claims in excess of $25,000 or which involves an alleged act or omission of an employee of the Department whose official duty station is in Washington, DC, the claimant shall mail or deliver the claim for money damages for injury to or loss of property or personal injury or death caused by the negligent or wrongful act or omission of any employee of the Department while acting within the scope of office or employment to the Counsel for Claims and Compensation, Office of the Solicitor, U.S. Department of Labor, 200 Constitution Avenue NW., Suite S4325, Washington, DC 20210.

(c) In all other cases, the claimant shall submit his or her claim to the official duty station of the employee whose act or omission forms the basis of the complaint, which should be immediately forwarded to the appropriate Regional Office of the Office of the Solicitor with all currently available documentation (such as a Standard Form 91, Motor Vehicle Accident Report).

§ 15.105 What information and evidence should be provided to DOL to substantiate an FTCA administrative claim?

(a) *Personal injury.* In support of a claim for personal injury, including pain and suffering, the claimant is required to submit the following evidence or information:

(1) A written report by the attending physician or dentist setting forth the nature and extent of the injury, nature and extent of treatment, any degree of temporary or permanent impairment, the prognosis, period of hospitalization, if any, and any diminished earning capacity. In addition, the claimant may be required to submit to a physical or mental examination by a physician employed or designated by the Department or another Federal agency. A copy of the report of the examining physician shall be made available to the claimant upon the claimant's written request.

(2) Itemized bills for medical, dental and hospital, or any other, expenses incurred or itemized receipts of payment for such expenses.

(3) If the prognosis reveals the necessity for future treatment, a statement of expected expenses for such treatment.

(4) Any other evidence or information which may have a bearing on either the responsibility of the United States for the personal injury or the damages claimed.

(b) *Death.* In support of a claim based on death, the claimant may be required to submit the following evidence or information:

(1) An authenticated death certificate, an autopsy report and or other competent evidence that includes cause or causes of death, date of death, and age of the decedent.

(2) Decedent's employment or occupation at the time of death, including his or her monthly or yearly salary or earnings (if any), and the duration of his or her last employment or occupation.

(3) Full name, address, birth date, kinship and marital status of the decedent's survivors, including identification of those survivors who were dependent for support upon the decedent at the time of his or her death.

(4) Degree of support afforded by the decedent to each survivor dependent upon him or her for support at the time of his or her death.

(5) Decedent's general physical and mental condition before his or her death.

(6) Itemized bills for medical and burial expenses incurred by reason of the incident causing death, or itemized receipts of payment for such expenses.

(7) If damages for pain and suffering prior to death are claimed, a physician's detailed statement specifying the injuries suffered, duration of pain and suffering, any drugs administered for pain, and the decedent's physical condition in the interval between injury and death.

(8) Any other evidence or information which may have a bearing on either the responsibility of the United States for the death or damages claimed.

(c) *Property damages.* In support of a claim for injury to or loss of property, real or personal, the claimant may be required to submit the following evidence or information with respect to each item of property:

(1) Proof of ownership.

(2) A detailed statement of the amount claimed.

(3) An itemized receipt of payment for necessary repairs or itemized written estimates of the cost of such repairs.

(4) A statement listing date of purchase, purchase price, and salvage value where repair is not economical.

(5) Any other evidence or information which may have a bearing on either the responsibility of the United States for the injury to or loss of property or the damages claimed.

(d) *Loss of income.* In support of a claim based on loss of income, the claimant may be required to submit the following evidence or information:

(1) A written statement from his or her employer showing actual time lost from employment, whether he or she is a full or part-time employee, and wages or salary actually lost.

(2) If the claimant is self-employed, documentary evidence showing the amount of earnings lost such as:

(i) Income tax returns for several years prior to the injury in question and the year in which the injury occurred may be used to indicate or measure lost income; or

(ii) A statement of the actual or projected cost for the claimant to hire

someone else to do the same work he or she was doing at the time of injury.

(3) Any other evidence or information which may have a bearing on either the responsibility of the United States for the personal injury or the damages claimed.

§ 15.106 How is the administrative claim processed?

(a) *Investigation.* When an organizational unit learns of an incident that reasonably can be expected to result in an allegation of harm caused to an individual or organization by an alleged negligent act or omission by an employee of that organizational unit or when it learns of an administrative claim or of litigation alleging such harm, it has the responsibility to fully investigate the incident and to take all actions necessary to preserve all relevant documents and other evidence. Each organizational unit should institute appropriate procedures to ensure that notification of such incidents are reported to the office responsible for ensuring that evidence is preserved and investigation undertaken.

(b) *Notification.* Upon receipt of an administrative claim under the Act or of notice of litigation seeking damages for an alleged negligent act or omission of an employee of the Department acting within the scope of his or her employment, the Office of the Solicitor shall notify the organizational unit responsible for the activity which gave rise to the claim or litigation and shall provide a copy of the administrative claim or the claim filed in the litigation.

(c) *FTCA Contact.* Each organizational unit will establish an FTCA contact, unless this requirement is waived by the Counsel for Claims and Compensation. The FTCA contact will coordinate and oversee the preservation of documents related to the circumstances of all claims arising from his or her organizational unit. The FTCA contact will arrange for the preparation and submission of the Administrative Report relating to each claim within 30 days after notification of receipt of an administrative claim, unless the Office of the Solicitor grants additional time.

(d) *Litigation.* During the course of any litigation, organizational units are responsible for providing assistance to the Office of the Solicitor in responding to discovery requests such as interrogatories and requests to produce documents, for providing assistance in analyzing factual and program issues, for providing witnesses for depositions and trials, and for assistance in producing affidavits and exhibits for use in the litigation.

§ 15.107 What must be provided in the administrative report?

(a) The administrative report shall be in the form of a single memorandum in narrative form with attachments. It should contain all of the following elements, unless permission is obtained from the Office of the Solicitor to dispense with a particular element:

(1) A brief explanation of the organization and operation of the program involved including statutory authority and applicable regulations;

(2) A complete description of the events that gave rise to the claim or litigation, including a specific response to every allegation in the claim or litigation;

(3) Any information available regarding the questions of whether the claimant or plaintiff actually suffered the harm alleged in the claim or litigation and what individual or organization caused any harm which appears to have occurred;

(4) Any information available regarding the damages claimed;

(5) Any policy reasons which the organizational unit wishes to advance for or against settlement of the claim or litigation; and

(6) Details of any claims the Department may have against the claimant or plaintiff, whether or not they appear to be related to the subject matter of the claim or litigation.

(b) A copy of all documents relevant to the issues involved in the claim or litigation should be attached to each copy of the Administrative Report. Original records should not be forwarded to the Office of the Solicitor unless specifically requested. They should be preserved, however, and remain available for litigation if necessary.

(c) Organizational units should ensure that all Administrative Reports are either prepared or reviewed by an official of the organizational unit who was not personally involved in the incident in question prior to filing of the claim or suit.

(d) The Office of the Solicitor may waive the requirement of an Administrative Report. If the Administrative Report is waived, the organizational unit or units involved in the circumstances of the claim or litigation shall provide certification from the supervisor of the employee whose alleged negligent act or omission gave rise to the claim, certifying that the employee was acting within the scope of his or her employment at the time of the alleged negligent act or omission.

§ 15.108 Who is authorized to decide an administrative claim?

(a) The Counsel for Claims and Compensation shall have the authority to consider, ascertain, adjust, determine, compromise and settle claims pursuant to the Federal Tort Claims Act which involve an alleged negligent or wrongful act or omission of an employee whose official duty station is the Department's national office in Washington, DC, or which involve aggregate claims in excess of $25,000, or which involve a new point of law or a question of policy.

(b) Regional Solicitors and the Associate Regional Solicitors are authorized to consider, ascertain, adjust, determine, compromise and settle claims arising in their respective jurisdictions pursuant to the Federal Tort Claims Act where the aggregate claimed does not exceed $25,000 in amount and which do not involve a new point of law or a question of policy.

§ 15.109 What if the claim is denied?

Denial of an administrative claim under this subpart shall be in writing, and notification of denial shall be sent to the claimant, or his or her attorney or legal representative by certified or registered mail. The notification of final denial shall include a statement of the reasons for the denial and shall include a statement that, if the claimant is dissatisfied with the Department's action, that claimant may file suit in an appropriate U.S. District Court not later than 6 months after the date of mailing of the notification.

§ 15.110 What must a claimant do if the administrative claim is approved?

(a) Payment of a claim approved under this subpart is contingent upon claimant's execution of the appropriate forms, such as the SF–194, SF–196, or SF–197, in accordance with instructions by the Department of Justice and/or the Judgment Fund. When a claimant is represented by an attorney, the voucher for payment shall designate the claimant as payee (as the beneficial interest holder), and the check shall be delivered to the attorney whose address appears on the voucher.

(b) Acceptance by the claimant, or his or her agent or legal representative, of an award, compromise, or settlement under 28 U.S.C. 2672 or 28 U.S.C. 2677 is final and conclusive on the claimant, his or her agent or legal representative, and any other person on whose behalf or for whose benefit the claim has been presented and constitutes a complete release of any claim against the United States and against any officer or employee of the Government whose act

or omission gave rise to the claim by reason of the same subject matter.

§ 15.111 If the administrative claim is approved, how is the award paid?

(a) Any award, compromise, or settlement in the amount of $2,500 or less made pursuant to this section shall be paid by the Secretary of Labor out of appropriations available to the Department.

(b) Payment of an award, compromise, or settlement in an amount in excess of $2,500 made pursuant to this subpart shall be made in accordance with 28 CFR 14.10.

(c) An award, compromise or settlement of a claim under 28 U.S.C. 2672 and this subpart in excess of $25,000 may be effected only with the prior written approval of the Attorney General or his designee. For the purpose of this subpart, a principal claim and any derivative or subrogated claim shall be treated as a single claim.

Subpart C—Claims Under the Military Personnel and Civilian Employees' Claims Act of 1964

§ 15.200 What is a claim under the MPCECA and who may file such a claim?

(a) A claim under the MPCECA for damage or loss is allowable only if the property involved was being used incident to service with the Department.

(b) A claim may be made under this subpart by an employee of the Department or by a spouse or authorized agent, or legal representative on behalf of the employee. If the employee is deceased, the claim may be filed by a survivor in the following order of preference: Spouse, children, parent, brother or sister or the authorized agent or legal representative of such person or persons.

(c) An MPCECA claim may not be made by or for the benefit of an insurance company, subrogee, assignee, conditional vendor or other third party.

§ 15.201 Where should the MPCECA claim be filed?

(a) If the claimant's official duty station is at the Department's national office in Washington, DC, or if the claim is for an amount in excess of $25,000, the claim should be filed with the Counsel for Claims and Compensation, Office of the Solicitor of Labor, U.S. Department of Labor, Suite S4325, 200 Constitution Avenue NW., Washington, DC, 20210.

(b) In all other cases, the claimant shall address the claim to the regional or branch office of the Office of the Solicitor servicing the claimant's official duty station.

§ 15.202 How is a claim filed under the MPCECA?

(a) A claim under this subpart must be presented in writing. A sample claim, located on the Department's Office of the Solicitor, Federal Employees' and Energy Workers' Compensation Division Web site at *www.dol.gov,* is provided as an example for convenience of filing. The SF–95 for FTCA claims is not an appropriate form for a MPCECA claim.

(b) The claimant is responsible for substantiating ownership or possession, the facts surrounding the loss or damage, and the value of the property. Any claim filed must be accompanied by the following:

(1) A written statement, signed by the claimant or his or her authorized agent, setting forth the circumstances under which the damage or loss occurred. This statement may also include:

(i) A description of the type, design, model number or other identification of the property.

(ii) The date of purchase or acquisition and the original cost of the property.

(iii) The location of the property when the loss or damage occurred.

(iv) The value of the property when lost or damaged.

(v) The actual or estimated cost of the repair of any damaged item.

(vi) The purpose of and authority for travel, if the loss or damage occurred incident to transportation or to the use of a motor vehicle.

(vii) Any and all available information as to the party responsible for the loss or damage, if such party is someone other than the claimant, and all information as to insurance contracts, whether held by the claimant or by the party responsible.

(2) Copies of all available and appropriate documents such as bills of sale, estimates of repairs, or travel orders. In the case of an automobile, the claimant must file two estimates of repair or a certified paid bill showing the damage incurred and the cost of all parts, labor and other items necessary to the repair of the vehicle or a statement from an authorized dealer or repair garage showing that the cost of such repairs exceeds the value of the vehicle. The Office of the Solicitor may waive the requirement of two estimates of repair.

(3) A copy of the power of attorney or other authorization if someone other than the employee files the claim.

(4) A statement from the employee's immediate supervisor confirming that possession of the property was reasonable, useful or proper under the circumstances and that the damage or loss was incident to service.

§ 15.203 When should a claim under the MPCECA be filed?

A claim under this subpart may be allowed only if it is filed in writing within 2 years after accrual of the claim. For the purpose of this part, a claim accrues at the later of:

(a) The time of the accident or incident causing the loss or damage;

(b) Such time as the loss or damage should have been discovered by the claimant by the exercise of due diligence; or

(c) Such time as cause preventing filing no longer exists or as war or armed conflict ends, whichever is earlier, if a claim otherwise accrues during war or an armed conflict or has accrued within 2 years before war or an armed conflict begins, and for cause shown.

§ 15.204 Are there limits on claims under the MPCECA?

(a) The maximum amount that can be paid for any claim under the MPCECA is $40,000, or, if the claim arises from emergency evacuation or extraordinary circumstances, up to $100,000, and property may be replaced in kind at the option of the Government. 31 U.S.C. 3721(b)(1).

(b) The Department is not an insurer and does not underwrite all personal property losses that an employee may sustain. Employees are encouraged to carry private insurance to the maximum extent practicable to avoid losses, which may not be recoverable from the Department.

§ 15.205 What types of claims for property damage are allowed under the MPCECA?

(a) Claims for property damage are allowed under the MPCECA only if the property involved was being used incident to service with the Department and:

(l) The damage or loss was not caused wholly or partly by the negligent or wrongful act or omission of the claimant, his or her agent, the members of his or her family, or his or her private employee (the standard to be applied is that of reasonable care under the circumstances); and

(2) The possession of the property lost or damaged and the quantity and the quality possessed is determined by the claimant's supervisor to have been reasonable, useful or proper under the circumstances; and

(3) The claim is substantiated by proper and convincing evidence.

(b) Claims otherwise allowable under this subpart shall not be disallowed solely because the claimant was not the legal owner of the property for which the claim is made.

§ 15.206 What claims arising at a residence or Telework location may be covered under the MPCECA?

(a) Claims arising at a residence, Telework center or other flexiplace location may be covered under the MPCECA.

(b) For the purpose of this subpart, residence means a house, apartment or other location that is a Department employee's principal abode.

(c) Claims for property damage at an alternative work location at which the employee is performing duties pursuant to an approved Telework agreement may be covered by the MPCECA if the property was being used incident to service with the Department, as, for the purposes of this subpart, that location is considered to be an official duty station. Under most circumstances, property damage will only be allowed if it occurs at or in connection with the employee's workstation.

(d) Claims under the MPCECA at a residence not covered by paragraph (c) of this section may be allowable for damage to, or loss of, property arising from fire, flood, hurricane, other natural disaster, theft, or other unusual occurrence, if the property was being used incident to service with the Department, while such property is located at:

(1) Residences within the 50 States or the District of Columbia that were assigned to the claimant or otherwise provided in kind by the United States; or

(2) Residences outside the 50 States and the District of Columbia that were occupied by the claimant, whether or not they were assigned or otherwise provided in kind by the United States, except when the claimant is a civilian employee who is a local inhabitant; or

(3) Any warehouse, office, working area or other place (except residences) authorized or apparently authorized for the reception or storage of property.

§ 15.207 What are examples of claims allowed under the MPCECA?

The following are examples of the principal types of allowable claims, but these examples are not exclusive; other claims may be allowed, unless hereinafter excluded:

(a) *Transportation or travel losses.* Claims may be allowed for damage to, or loss of, property incident to transportation or storage pursuant to order or in connection with travel under orders, including property in the custody of a carrier, an agent or agency of the Government, or the claimant.

(b) *Enemy action or public service.* Claims may be allowed for damage to, or loss of, property as a direct consequence of:

(1) Enemy action or threat thereof, or terrorism, combat, guerrilla, brigandage, or other belligerent activity, or unjust confiscation by a foreign power or its nationals.

(2) Action by the claimant to quiet a civil disturbance or to alleviate a public disaster.

(3) Efforts by the claimant to save human life or Government property.

(c) *Property used for the benefit of the Government.* Claims may be allowed for damage to, or loss, of property when used for the benefit of the Government at the request of, or with the knowledge and consent of superior authority.

(d) *Electronics and cellular phones.* Claims may be allowed for loss of, or damage to, cellular phones, personal data assistants and similar communication and electronic devices subject to the limitations in § 15.209(e).

(e) *Clothing and Accessories.* Claims may be allowed for damage to, or loss of, clothing and accessories customarily worn on the person, such as eyeglasses, hearing aids, or dentures subject to the limitations in § 15.209(e).

(f) *Expenses incident to repair.* Claimants may be reimbursed for the payment of any sales tax incurred in connection with repairs to an item. The costs of obtaining estimates of repair (subject to the limitations set forth in § 15.208(c)) are also allowable.

§ 15.208 What are the restrictions on otherwise allowable claims?

(a) *Money or currency.* Claims may be allowed for loss of money or currency (which includes coin collections) only when lost incident to fire, flood, hurricane, other natural disaster, or by theft from residence (as limited by § 15.206). In incidents of theft from a residence, it must be conclusively shown that the residence was locked at the time of the theft. Reimbursement for loss of money or currency is limited to an amount, which is determined to have been reasonable for the claimant to have had in his or her possession at the time of the loss.

(b) *Government property.* Claims may only be allowed for property owned by the United States for which the claimant is financially responsible to an agency of the Government other than the Department.

(c) *Estimate fees.* Claims may include fees paid to obtain estimates of repairs only when it is clear that an estimate could not have been obtained without paying a fee. In that case, the fee may be allowed only in an amount determined to be reasonable in relation to the value of the property or the cost of the repairs.

(d) *Automobiles and motor vehicles.* Claims may only be allowed for damage to, or loss of automobiles and other motor vehicles if:

(1) Such motor vehicles were required to be used for official Government business (official Government business, as used here, does not include travel, or parking incident thereto, between residence and office, or use of vehicles for the convenience of the owner. However, it does include travel, and parking incident thereto, between a residence and an assigned place of duty specifically authorized or otherwise shown to be permitted by the employee's supervisor as being more advantageous to the Government); or

(2) Shipment of such motor vehicles was being furnished or provided by the Government, subject to the provisions of § 15.210.

§ 15.209 What claims are not allowed?

(a) *Unassigned residences in United States.* Property loss or damage in quarters occupied by the claimant within the 50 States or the District of Columbia that were not assigned to him or otherwise provided in kind by the United States or part of an approved Telework agreement.

(b) *Business property.* Property used for business or profit.

(c) *Unserviceable property.* Wornout or unserviceable property.

(d) *Illegal possession.* Property acquired, possessed or transferred in violation of the law or in violation of applicable regulations or directives.

(e) *Articles of extraordinary value.* Valuable articles, such as watches, jewelry, furs, clothes, electronics or other articles of extraordinary value. This prohibition does not apply to articles in the personal custody of the claimant or articles properly checked, if the claimant has taken reasonable protection or security measures.

(f) *Intangible property.* Loss of property that has no extrinsic and marketable value but is merely representative or evidence of value (such as a non-negotiable stock certificate or warehouse receipt) is not compensable. Intangible value is not compensable.

(g) *Incidental expenses and consequential damages*. The MPCECA and this subpart authorize payment for loss of or damage to personal property only. Except as provided in § 15.207(f), consequential damages or other types of loss or incidental expenses (such as loss of use, interest, carrying charges, cost of lodging or food while awaiting arrival of shipment, attorney fees, telephone calls,

cost of transporting claimant or family members, inconvenience, time spent in preparation of claim, or cost of insurance premiums) are not compensable.

(h) *Real property.* Damage to real property is not compensable. In determining whether an item is considered to be an item of personal property, as opposed to real property, normally, any movable item is considered personal property even if physically joined to the land.

(i) *Commercial property.* Articles acquired or held for sale or disposition by other commercial transactions on more than an occasional basis, or for use in a private profession or business enterprise.

(j) *Commercial storage.* Property stored at a commercial facility for the convenience of the claimant and at his or her expense.

(k) *Minimum amount.* Loss or damage amounting to less than $40.

§ 15.210 What affect does insurance have on a claim under the MPCECA?

In the event the property, which is the subject of the claim, was lost or damaged while in the possession of a commercial carrier or was insured, the following procedures will apply:

(a) Whenever property is damaged, lost or destroyed while being shipped pursuant to authorized travel orders, the owner must file a written claim for reimbursement with the last commercial carrier known or believed to have handled the goods, or the carrier known to be in possession of the property when the damage or loss occurred, according to the terms of its bill of lading or contract, before submitting a claim against the Government under this subpart.

(b) Whenever property is damaged, lost or destroyed incident to the claimant's service and is insured in whole or in part, the claimant should make demand in writing against the insurer for reimbursement under the terms and conditions of the insurance coverage, prior to the filing of the claim against the Government, unless, in the subsequent determination of the deciding official, the filing of such a demand was impracticable or inequitable. For example, if the value of a claim is $535 and the insurance deductible is $500, the deciding official may determine that no claim need be made against the insurer.

(c) Unless the deciding official determines that no demand should have been or need be made, failure to make a demand on a carrier or insurer or to make all reasonable efforts to protect and prosecute rights available against a carrier or insurer and to collect the amount recoverable from the carrier or insurer may result in reducing the amount recoverable from the Government by the maximum amount which would have been recoverable from the carrier or insurer had the claim been timely or diligently prosecuted.

(d) Following the submission of the claim against the carrier or insurer, the claimant may immediately submit his claim against the Government in accordance with the provisions of this subpart, without waiting until either final approval or denial of the claim is made by the carrier or insurer.

(1) Upon submitting his or her claim, the claimant shall certify in the claim that he or she has or has not gained any recovery from a carrier or insurer, and enclose all correspondence pertinent thereto.

(2) If final action has not been taken by the carrier or insurer on the claim, the claimant shall immediately notify them to address all correspondence in regard to the claim to the appropriate Office of the Solicitor of Labor.

(3) The claimant shall advise the appropriate Office of the Solicitor of any action taken by the carrier or insurer on the claim and, upon request, shall furnish all correspondence, documents, and other evidence pertinent to the matter.

(e) The claimant shall assign to the United States, to the extent of any payment on the claim accepted by him or her, all rights, title and interest in any claim he or she may have against any carrier, insurer, or other party arising out of the incident on which the claim against the United States is based. After payment of the claim by the United States, the claimant shall, upon receipt of any payment from a carrier or insurer, pay the proceeds to the United States to the extent of the payment received by him or her from the United States.

(f) Where a claimant recovers for the loss from the carrier or insurer before his or her claim under this subpart is settled, the amount of recovery shall be applied to the claim as follows:

(1) When the amount recovered from a carrier, insurer, or other third party is greater than or equal to the claimant's total loss as determined under this part, no compensation is allowable under this subpart.

(2) When the amount recovered is less than such total loss, the allowable amount is determined by deducting the recovery from the amount of such total loss.

(3) For this purpose, the claimant's total loss is to be determined without regard to the maximum payment limitations set forth in § 15.204. However, if the resulting amount, after making this deduction exceeds the maximum payment limitations, the claimant shall be allowed only the maximum amount set forth in § 15.204.

§ 15.211 How is a claim under this subpart processed?

(a) The Counsel for Claims and Compensation, the Regional Solicitors, and the Associate Regional Solicitors are authorized to consider, ascertain, adjust, determine, compromise and settle claims filed under this subpart that arise within their respective jurisdictions, except that any claim for an amount in excess of $25,000 shall fall within the exclusive jurisdiction of the Counsel for Claims and Compensation.

(b) Any writing received by the Office of the Solicitor within the time limits set forth in § 15.203 will be accepted and considered a claim under the MPCECA if it constitutes a demand for compensation from the Department. A sample claim, located on the Department's Office of the Solicitor, Federal Employees' and Energy Workers' Compensation Division Web site at *www.dol.gov,* is provided for convenience of filing. The SF–95 form used to file a claim under the FTCA is not an appropriate form for a claim under the MPCECA claim.

(c) A demand is not required to be for a specific sum of money.

(d) The determination upon the claim shall be provided to the claimant in writing by the deciding official.

§ 15.212 How is the amount of the award under this subpart calculated?

(a) The amount allowable for damage to or loss of any item of property may not exceed the lowest of:

(1) The amount requested by the claimant for the item as a result of its loss, damage or the cost of its repair;

(2) The actual or estimated cost of its repair; or

(3) The actual value at the time of its loss, damage, or destruction. The actual value is determined by using the current replacement cost or the depreciated value of the item since its acquisition, whichever is lower, less any salvage value of the item in question.

(b) Depreciation in value is determined by considering the type of article involved, its cost, its condition when damaged or lost, and the time elapsed between the date of acquisition and the date of damage or loss.

(c) Current replacement cost and depreciated value are determined by use of publicly available adjustment rates or through use of other reasonable methods at the discretion of the official authorized to issue a determination upon the claim in question.

(d) Replacement of lost or damaged property may be made in kind wherever appropriate.

(e) At the discretion of the official authorized to issue the determination upon the claim in question, a claimant may be required to turn over an item alleged to have been damaged beyond economical repair to the United States, in which case no deduction for salvage value will be made in the calculation of actual value.

(f) Notwithstanding any other provisions of law, settlement of claims under the MPCECA is final and conclusive.

§ 15.213 Are there limits to representatives' fees for claims under this subpart?

Yes. No more than 10 percent of the amount in settlement of each individual claim submitted and settled under this subpart shall be paid or delivered to or received by any agent or attorney on account of services rendered in connection with that claim. 31 U.S.C. 3721(i).

§ 15.214 How may a decision under this subpart be reconsidered?

(a) While there is no appeal from the decision of the deciding official in regard to claims under the MPCECA, the deciding official may always reconsider his or her determination of a claim.

(b) A claimant may request reconsideration from the deciding official by directing a written request for reconsideration to the deciding official within 60 days of the date of the original determination. The claimant must clearly state the factual or legal basis upon which he or she rests the request for a more favorable determination.

(c) The determination upon the reconsideration will be provided to the claimant in writing by the deciding official.

Subpart D—Claims Arising Out of the Operation of the Job Corps

§ 15.300 How are claims involving the Job Corps initiated?

(a) Claims involving the Job Corps, including claims against Job Corps Centers run by other Federal agencies, claims by third parties involving the acts or omissions of students of Job Corps, and claims involving the loss of personal property of students of Job Corps should be submitted to the appropriate Job Corps Regional Office. Claims under the MPCECA for non-Department Federal employees should be sent to and must be handled by their respective Federal employer, subject to that employer's procedures. FTCA claims over $25,000 should be sent to and must be handled by the Counsel for Claims and Compensation under subpart B of this part.

(b) The Job Corps Regional Office shall investigate all facts of the claim, including accident and medical reports, interview witnesses, and, where necessary, prepare the appropriate administrative reports.

(c) Following the investigation, the Job Corps Regional Office will determine the appropriate reviewing official and if necessary forward the claim to the appropriate office immediately with all currently available documentation, as described in § 15.301.

§ 15.301 What office is responsible for determining liability in claims arising out of the Job Corps?

(a) The Director of the appropriate Job Corps Regional Office is responsible for claims not cognizable under the FTCA pursuant to the WIA arising out of the operation of the Job Corps involving loss or damage to persons or personal property of students of Job Corps Centers that do not exceed $300.

(b) The Regional Solicitor is responsible for claims not cognizable under the FTCA pursuant to the WIA arising out of the operation of the Job Corps involving loss or damage to persons or personal property of students of Job Corps Centers for claims exceeding $300.

(c) The Regional Solicitor is responsible for all FTCA claims involving damage to persons or property arising out of an act or omission of a Job Corps student or Federal employee that do not exceed $25,000 and do not involve a new point of law or a question of policy.

(d) All remaining claims with aggregate damages of $25,000 or more are the responsibility of the Counsel for Claims and Compensation.

(e) The Job Corps Regional Office Director, the Regional Solicitors and the Associate Regional Solicitors are authorized to consider, determine and settle claims filed under this subpart that arose within their respective jurisdictions.

§ 15.302 What procedures apply to these claims?

(a) Claims involving the negligent acts or omissions of Job Corps students or Federal employees are claims under the FTCA and are determined under the procedures in subpart B of this part. FTCA claims must be forwarded to and decided by the responsible Solicitor's Office.

(b) Claims involving loss or damage to persons or the personal property of Job Corps students are covered by the WIA, 29 U.S.C. 2897(b), which provides that the Secretary of Labor may adjust or settle claims for damages to a person or property of up to $1,500 if those claims are found to be a proper charge against the United States and are not cognizable under the FTCA.

§ 15.303 How does a Job Corps student file a claim for loss of or damages to personal property under the WIA?

(a) A WIA claim under this subpart must be in writing and signed by the claimant or by an authorized representative. In order to be a proper claim, a WIA claim must fully describe the property and the circumstances that gave rise to the loss or damage.

(b) All WIA claims under this subpart must be filed with the appropriate Job Corps Regional Office within 2 years of the date upon which the claim accrued. The Job Corps Regional Office may consult with the Regional Solicitor and/or Counsel for Claims and Compensation as necessary.

(c) The determination upon the claim shall be provided to the claimant in writing by the appropriate deciding official.

(d) Reconsideration of a determination under this subpart shall be available upon written request received within 60 days by the appropriate deciding official. The deciding official will provide a written response to the claimant within 60 days of such request. No further review of the matter will be permitted.

§ 15.304 Are there limits to claims for loss of or damages to personal property under the WIA?

(a) Only claims involving damage or loss to personal property that occurred while at the Job Corps Center or while on authorized travel, training or other authorized activities may be considered under the WIA.

(b) The Job Corps will only reimburse up to $300.00 per item for claims for loss or damage of personal property under the WIA, up to a maximum of $1,500 per occurrence.

(c) If the property in question is not of a type that the student is authorized to bring to the Job Corps Center, no compensation will be made under this subpart. For example, if the Job Corps Center has explicit written rules imposing limitations on the type of electronic equipment or other personal items such as jewelry that may be brought to the center, no compensation will be awarded for the loss or damage of such property.

Signed at Washington, DC, this 4th of April 2012.

M. Patricia Smith,

Solicitor of Labor, U.S. Department of Labor.

[FR Doc. 2012–8741 Filed 4–12–12; 8:45 am]

BILLING CODE 4510–23–P

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Part 4022

Benefits Payable in Terminated Single-Employer Plans; Interest Assumptions for Paying Benefits

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: This final rule amends the Pension Benefit Guaranty Corporation's regulation on Benefits Payable in Terminated Single-Employer Plans to prescribe interest assumptions under the regulation for valuation dates in May 2012. The interest assumptions are used for paying benefits under terminating single-employer plans covered by the pension insurance system administered by PBGC.

DATES: Effective May 1, 2012.

FOR FURTHER INFORMATION CONTACT: Catherine B. Klion (*Klion.Catherine@pbgc.gov*), Manager, Regulatory and Policy Division, Legislative and Regulatory Department, Pension Benefit Guaranty Corporation, 1200 K Street NW., Washington, DC 20005, 202–326–4024. (TTY/TDD users may call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to 202–326–4024.)

SUPPLEMENTARY INFORMATION: PBGC's regulation on Benefits Payable in Terminated Single-Employer Plans (29 CFR part 4022) prescribes actuarial assumptions—including interest assumptions—for paying plan benefits under terminating single-employer plans covered by title IV of the Employee Retirement Income Security Act of 1974. The interest assumptions in the regulation are also published on PBGC's Web site (*http://www.pbgc.gov*).

PBGC uses the interest assumptions in Appendix B to Part 4022 to determine whether a benefit is payable as a lump sum and to determine the amount to pay. Appendix C to Part 4022 contains interest assumptions for private-sector pension practitioners to refer to if they wish to use lump-sum interest rates determined using PBGC's historical methodology. Currently, the rates in Appendices B and C of the benefit payment regulation are the same.

The interest assumptions are intended to reflect current conditions in the financial and annuity markets. Assumptions under the benefit payments regulation are updated monthly. This final rule updates the benefit payments interest assumptions for May 2012.[1]

The May 2012 interest assumptions under the benefit payments regulation will be 1.50 percent for the period during which a benefit is in pay status and 4.00 percent during any years preceding the benefit's placement in pay status. In comparison with the interest assumptions in effect for April 2012, these interest assumptions represent an increase of 0.25 percent in the immediate annuity rate and are otherwise unchanged.

PBGC has determined that notice and public comment on this amendment are impracticable and contrary to the public interest. This finding is based on the need to determine and issue new interest assumptions promptly so that the assumptions can reflect current market conditions as accurately as possible.

Because of the need to provide immediate guidance for the payment of benefits under plans with valuation dates during May 2012, PBGC finds that good cause exists for making the assumptions set forth in this amendment effective less than 30 days after publication.

PBGC has determined that this action is not a ''significant regulatory action'' under the criteria set forth in Executive Order 12866.

Because no general notice of proposed rulemaking is required for this amendment, the Regulatory Flexibility Act of 1980 does not apply. See 5 U.S.C. 601(2).

List of Subjects in 29 CFR Part 4022

Employee benefit plans, Pension insurance, Pensions, Reporting and recordkeeping requirements.

In consideration of the foregoing, 29 CFR part 4022 is amended as follows:

PART 4022—BENEFITS PAYABLE IN TERMINATED SINGLE-EMPLOYER PLANS

■ 1. The authority citation for part 4022 continues to read as follows:

Authority: 29 U.S.C. 1302, 1322, 1322b, 1341(c)(3)(D), and 1344.

■ 2. In appendix B to part 4022, Rate Set 223, as set forth below, is added to the table.

Appendix B to Part 4022—Lump Sum Interest Rates for PBGC Payments

* * * * *

Rate set	For plans with a valuation date		Immediate annuity rate (percent)	Deferred annuities (percent)				
	On or after	Before		i_1	i_2	i_3	n_1	n_2
*	*	*	*	*	*	*	*	
223	5–1–12	6–1–12	1.50	4.00	4.00	4.00	7	8

■ 3. In appendix C to part 4022, Rate Set 223, as set forth below, is added to the table.

Appendix C to Part 4022—Lump Sum Interest Rates for Private-Sector Payments

* * * * *

[1] Appendix B to PBGC's regulation on Allocation of Assets in Single-Employer Plans (29 CFR part 4044) prescribes interest assumptions for valuing benefits under terminating covered single-employer plans for purposes of allocation of assets under ERISA section 4044. Those assumptions are updated quarterly.

Rate set	For plans with a valuation date		Immediate annuity rate (percent)	Deferred annuities (percent)				
	On or after	Before		i_1	i_2	i_3	n_1	n_2
*	*	*	*	*	*	*	*	
223	5–1–12	6–1–12	1.50	4.00	4.00	4.00	7	8

Issued in Washington, DC, on this 6th day of April 2012.

Laricke Blanchard,

Deputy Director for Policy, Pension Benefit Guaranty Corporation.

[FR Doc. 2012–8916 Filed 4–12–12; 8:45 am]

BILLING CODE 7709–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2012–0176]

Drawbridge Operation Regulations; Atlantic Intracoastal Waterway, Fort Lauderdale, FL

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviations from regulations.

SUMMARY: The Commander, Seventh Coast Guard District, has issued temporary deviations from the regulations governing the operation of the following two bridges that span across the Atlantic Intracoastal Waterway in Fort Lauderdale, Florida: The East Sunrise Boulevard (SR 838) Bridge, mile 1062.6; and the East Las Olas Bridge, mile 1064. The deviations are necessary due to the high volume of vessel and vehicle traffic anticipated during the Lauderdale Air Show. With the exception of opening for passage of public vessels of the United States, vessels in distress, and tugs with tows, the bridges will not open in the evening during during the Lauderdale Air Show.

DATES: These deviations are effective from 4 p.m. on April 28, 2012 through 6 p.m. on April 29, 2012.

ADDRESSES: Documents mentioned in this preamble as being available in the docket are part of docket USCG–2012–0176 and are available online by going to *http://www.regulations.gov,* inserting USCG–2012–0176 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 rule, call or email Michael Lieberum, Seventh District Bridge Branch, Coast Guard; telephone (305) 415–6744, email *Michael.B.Lieberum@uscg.mil.* If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION: The City of Fort Lauderdale Police Department has requested temporary modifications to the operating schedules of the East Sunrise Boulevard (SR 838) Bridge and the East Las Olas Bridge in Fort Lauderdale, Florida.

The Lauderdale Air Show generates a high volume of vessel and vehicle traffic. In past years, opening these bridges has resulted in significant vehicle congestion. By allowing the bridges to remain closed to navigation from 4 p.m. until 6 p.m. during the Lauderdale Air Show, traffic congestion will be reduced.

The details and regular operating schedule for each bridge are set forth below.

1. *East Sunrise Boulevard (SR 838) Bridge, mile 1062.6.* The vertical clearance of the East Sunrise Boulevard (SR 838) Bridge, across the Atlantic Intracoastal Waterway, is 21 feet. The normal operating schedule for the East Sunrise Boulevard (SR 838) Bridge is set forth in 33 CFR 117.261(bb)(6) requires the draw to open on the hour and half-hour. On the first weekend in May, the draw need not open from 4 p.m. to 6 p.m. on Saturday and Sunday, and, on the first Saturday in May, the draw need not open from 9:45 p.m. to 10:45 p.m.

2. *East Las Olas Bridge, mile 1064.* The vertical clearance of the East Las Olas Bridge, across the Atlantic Intracoastal Waterway, is 24 feet. The normal operating schedule for the East Last Olas Bridge is set forth in 33 CFR 117.261(bb)(7) and requires the bridge to open on the quarter-hour and three-quarter hour. On the first weekend in May, the draw need not open from 4 p.m. to 6 p.m. on Saturday and Sunday, and, on the first Saturday in May, the draw need not open from 9:45 p.m. to 10:45 p.m.

As a result of these temporary deviations, the East Sunrise Boulevard (SR 838) Bridge and the East Las Olas Bridge will remain closed to navigation from 4 p.m. to 6 p.m. on Saturday, April 28, 2012 and Sunday, April 29, 2012. However, the drawspans will open as soon as possible at any time for the passage of public vessels of the United States, vessels in distress, and tugs with tows.

In accordance with 33 CFR 117.35(e), the drawbridges must return to their regular operating schedules immediately at the end of the designated time period. These deviations from the operating regulations are authorized under 33 CFR 117.35.

Dated: March 6, 2012.

B.L. Dragon,

Bridge Program Director, Seventh Coast Guard District.

[FR Doc. 2012–8874 Filed 4–12–12; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2012–0243]

Drawbridge Operation Regulation; Sacramento River, Sacramento, CA

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Coast Guard has issued a temporary deviation from the operating schedule that governs the Tower Drawbridge across the Sacramento River, mile 59.0, at Sacramento, CA. The deviation is necessary to allow the community to participate in the Capitol City Classic run. This deviation allows the bridge to remain in the closed-to-navigation position during the event.

DATES: This deviation is effective from 8 a.m. to 9 a.m. on April 22, 2012.

ADDRESSES: Documents mentioned in this preamble as being available in the docket are part of docket USCG–2012–0243 and are available online by going to *http://www.regulations.gov*, inserting

USCG–2012–0243 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 rule, call or email David H. Sulouff, Chief, Bridge Section, Eleventh Coast Guard District; telephone 510–437–3516, email *David.H.Sulouff@uscg.mil*. If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION: The California Department of Transportation has requested a temporary change to the operation of the Tower Drawbridge, mile 59.0, Sacramento River, at Sacramento, CA. The Tower Drawbridge navigation span provides a vertical clearance of 30 feet above Mean High Water in the closed-to-navigation position. The draw opens on signal from May 1 through October 31 from 6 a.m. to 10 p.m. and from November 1 through April 30 from 9 a.m. to 5 p.m. At all other times the draw shall open on signal if at least four hours notice is given, as required by 33 CFR 117.189(a). Navigation on the waterway is commercial and recreational.

The drawspan will be secured in the closed-to-navigation position from 8 a.m. to 9 a.m. on April 22, 2012 to allow the community to participate in the Capitol City Classic run. This temporary deviation has been coordinated with waterway users. There are no scheduled river boat cruises or anticipated levee maintenance during this deviation period. No objections to the proposed temporary deviation were raised.

Vessels that can transit the bridge, while in the closed-to-navigation position, may continue to do so at any time. In the event of an emergency the drawspan can be opened with 15 minutes advance notice.

In accordance with 33 CFR 117.35(e), the drawbridge must return to its regular operating schedule immediately at the end of the designated time period. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: March 22, 2012.

D.H. Sulouff,

District Bridge Chief, Eleventh Coast Guard District.

[FR Doc. 2012–8873 Filed 4–12–12; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2012–0290]

Drawbridge Operation Regulation; Oregon Slough, Hayden Island, OR

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Coast Guard has issued a temporary deviation from the operating schedule that governs the Burlington Northern Santa Fe (BNSF) Railway Bridge across Oregon Slough, mile 3.2, at Hayden Island, OR. This deviation is necessary to accommodate maintenance of the train signaling system scheduled for April 30, 2012. This deviation allows the bridge to remain in the closed position for the duration of the maintenance activity.

DATES: This deviation is effective from 8 a.m. to 8 p.m. on April 30, 2012.

ADDRESSES: Documents mentioned in this preamble as being available in the docket are part of docket USCG–2012–0290 and are available online by going to *http://www.regulations.gov*, inserting USCG–2012–0290 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 rule, call or email Randall D. Overton, the Bridge Administrator, Coast Guard Thirteenth District; telephone 206–220–7282 email *randall.d.overton@uscg.mil.* If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION: BNSF has requested that the BNSF Swing Bridge across Oregon Slough remain closed to vessel traffic to facilitate maintenance of the train signaling system. BNSF will be ''cutting over'' the train signaling system to a new system on April 30, 2012. During this cut-over the swing span of the BNSF Railway Bridge across Oregon Slough will be disabled and the bridge will not be able to be opened. The BNSF Bridge crosses Oregon Slough at mile 3.2 and in accordance to NOAA Chart 18526 provides 39 feet of vertical clearance above Columbia River Datum 0.0 while in the closed position. Vessels which do not require a bridge opening may continue to transit beneath the bridge during this closure period. Under normal conditions this bridge operates in accordance with 33 CFR 117.887 which requires a half-hour advance notification when a bridge opening is needed. This deviation period is from 8 a.m. on April 30, 2012 through 8 p.m. April 30, 2012. The deviation allows the swing span of the BNSF Railway Bridge across Oregon Slough, mile 3.2, to remain in the closed position and need not open for maritime traffic from 8 a.m. through 8 p.m. on April 30, 2012. The bridge shall operate in accordance to 33 CFR § 117.887 at all other times. Waterway usage on this stretch of Oregon Slough includes vessels ranging from commercial sightseeing vessels to recreational pleasure craft including cabin cruisers and sailing vessels. Mariners will be notified and kept informed of the bridge's operational status via the Coast Guard Notice to Mariners publication and Broadcast Notice to Mariners as appropriate.

In accordance with 33 CFR 117.35(e), the drawbridge must return to its regular operating schedule immediately at the end of the designated time period. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: April 3, 2012

Randall D. Overton,

Bridge Administrator.

[FR Doc. 2012–8875 Filed 4–12–12; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2012–0281]

Drawbridge Operation Regulation; Snohomish River and Steamboat Slough, Everett and Marysville, WA

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Coast Guard has issued a temporary deviation from the operating schedules that govern the SR 529 Bridge across the Snohomish River, mile 3.6 near Everett, WA. and the SR 529 Bridge across Steamboat Slough, mile 1.1, near Marysville, WA. This deviation is necessary to accommodate the Total Health Events Heros Half Marathon scheduled for April 29, 2012. This

deviation allows the bridges to remain in the closed position to allow safe movement of event participants.

DATES: This deviation is effective from 5 a.m. on April 29, 2012 through 12:01 p.m. April 29, 2012.

ADDRESSES: Documents mentioned in this preamble as being available in the docket are part of docket USCG–2012–0281 and are available online by going to *http://www.regulations.gov,* inserting USCG–2012–0281 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 rule, call or email Randall D. Overton, Bridge Administrator, Coast Guard Thirteenth District; telephone 206–220–7282; email *randall.d.overton@uscg.mil.* If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION: The Washington State Department of Transportation (WSDOT) has requested that the SR 529 Bridge across the Snohomish River and the SR 529 Bridge across Steamboat Slough remain closed to vessel traffic to facilitate safe, uninterrupted roadway passage of participants of the Total Health Events Heros Half Marathon. The Heros Half Marathon is a benefit run for the St. Jude Children's Research Hospital. The race course passes over both bridges. The SR 529 Bridge which crosses the Snohomish River at mile 3.6 provides 38 feet of vertical clearance above mean high water elevation while in the closed position. The SR 529 Bridge which crosses Steamboat Slough at mile 1.1 provides 10 feet of vertical clearance above mean high water elevation while in the closed position. Vessels which do not require a bridge opening may continue to transit beneath the bridges during this closure period. Under normal conditions the SR 529 Bridge crossing the Snohomish River operates in accordance with 33 CFR 117.1059(c) which requires advance notification of one-hour when a bridge opening is needed. Under normal conditions the SR 529 Bridge crossing Steamboat Slough operates in accordance with 33 CFR 117.1059(g) which requires advance notification of four hours when a bridge opening is needed. This deviation period is from 5 a.m. on April 29, 2012 through 12:01 p.m. April 29, 2012. The deviation allows the SR 529 Bridge crossing the Snohomish River and the SR 529 Bridge crossing Steamboat Slough, to remain in the closed position and need not open for maritime traffic from 5 a.m. through 12:01 p.m. on April 29, 2012. The bridges shall operate in accordance to 33 CFR 117.1059 at all other times. Waterway usage on the Snohomish River and Steamboat Slough includes vessels ranging from commercial tug and barge to small pleasure craft. Mariners will be notified and kept informed of the bridges' operational status via the Coast Guard Notice to Mariners publication and Broadcast Notice to Mariners as appropriate. Both bridges will be required to open, if needed, for vessels engaged in emergency response operations during this closure period.

In accordance with 33 CFR 117.35(e), the drawbridges must return to their regular operating schedule immediately at the end of the designated time period. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: March 30, 2012.

Randall D. Overton,

Bridge Administrator.

[FR Doc. 2012–8966 Filed 4–12–12; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2012–0206]

RIN 1625–AA00

Safety Zone; Temporary Change for Air and Water Shows Within the Captain of the Port Lake Michigan Zone

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is temporarily changing the enforcement periods of three permanent safety zone regulations for recurring air and water shows that occur within the Captain of the Port Lake Michigan zone. These regulations apply to only the enforcement periods of three recurring Air and Water Shows. These safety zones are necessary to provide for the safety of life on navigable waters during these potentially dangerous events. This action is intended to notify the public about the temporary changes to the published enforcement periods for these three events.

DATES: This rule is effective from July 3, 2012 through August 19, 2012.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket USCG–2012–0206 and are available online by going to *http://www.regulations.gov,* inserting USCG–2012–0206 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 email BM1 Adam Kraft, Prevention Department, Coast Guard, Sector Lake Michigan, Milwaukee, WI, telephone (414) 747–7148, email *Adam.D.Kraft@uscg.mil.* If you have questions on viewing or submitting material to 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 publishing an NPRM is unnecessary as we previously published an NPRM (see 76 FR 30072) for the annual events listed in 33 CFR 165.929. When the NPRM was made available for comment, there were no objections to these events. This regulation represents the re-scheduling of the following events listed in § 165.929: the Gary Air and Water Show, the Chicago Air and Water Show, and the Milwaukee Air and Water Show. In addition, waiting for a comment period to run would inhibit the Coast Guard from performing its statutory function of protecting life on navigable waters from the hazards associated with air and water shows. Thus, waiting for a notice and comment

period to run would also be impractical and contrary to the public interest.

Background and Purpose

The Gary Air and Water Show, the Chicago Air and Water Show, and the Milwaukee Air and Water are held annually on or adjacent to U.S. navigable waters within the Captain of the Port Lake Michigan zone. Because of their recurring nature, a permanent safety zone with specific enforcement periods has been established for each event in 33 CFR 165.929. The organizers for these events, however, have temporarily rescheduled these events for the summer of 2012.

The Gary Air and Water Show is normally scheduled to occur from 10 a.m. to 9 p.m. on Friday, Saturday, and Sunday during the 2nd weekend of July each year.

This year, however, the event will take place on Tuesday, Thursday, Friday, Saturday, and Sunday during the first week of July. The enforcement times this year will be from 12 p.m. to 5 p.m. on Tuesday and Thursday, from 2:30 p.m. to 9:30 p.m. on Friday, and then from 10 a.m. to 5 p.m. on Saturday and Sunday.

The Milwaukee Air and Water show is normally scheduled to occur from 10 a.m. to 5 p.m. on the first Thursday, Friday, Saturday, and Sunday of each August. This year, however, the event will take place on the second Friday, Saturday, and Sunday of August. The enforcement times will be from 8 a.m. to 4 p.m. each day.

The Chicago Air and Water Show is normally scheduled to occur from 9 a.m. to 6 p.m. on the third Thursday, Friday, Saturday, and Sunday of August each year. This year, however, the event will take place on the third Wednesday, Friday, Saturday, and Sunday of August. The enforcement times will be from 12 p.m. to 3 p.m. on Wednesday and from 9 a.m. to 4 p.m. on Friday through Sunday.

Discussion of Rule

This rule temporarily amends the regulations found in 33 CFR 165.929, Annual Events requiring safety zones in the Captain of the Port Lake Michigan zone. Specifically, this rule will temporarily suspend § 165.929 (a)(42), (a)(43), and (a)(64) and temporarily add § 165.929 (a)(76), (a)(77), and (a)(78). The amendments will temporarily modify the enforcement dates and times of the three aforementioned events. These modifications are necessary to protect vessels and people from the hazards associated with large scale air and water shows.

The safety zone located at 33 CFR 165.929(a)(42) for the Gary Air and Water Show will be enforced on July 3 and 5, 2012 from 12 p.m. to 5 p.m., on July 6, 2012 from 2:30 p.m. to 9:30 p.m., and on July 7–8, 2012, from 10 a.m. to 5 p.m.

The safety zone located at 33 CFR § 165.929(a)(43) for the Milwaukee Air and Water show will be enforced on August 15, 2012 from 12 p.m. to 3 p.m. and on August 17–19, 2012, from 9 a.m. to 4 p.m.

The safety zone located at 33 CFR § 165.929(a)(64) for the Chicago Air and Water Show will be enforced on August 10–12, 2012 from 8 a.m. to 4 p.m.

Entry into, transiting, or anchoring within these safety zones during an enforcement period is prohibited without the authority of the Captain of the Port, Sector Lake Michigan, or his or her designated representative. The Captain of the Port, Sector Lake Michigan, or his or her designated representative may be contacted via VHF Channel 16. All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port, Sector Lake Michigan, or his or her designated representative.

The Captain of the Port Lake Michigan will notify the public when the zones in this rule will be enforced by all appropriate means, in keeping with 33 CFR 165.7(a). In addition to publishing this rule in the **Federal Register**, such means of notification may also include, but are not limited to Broadcast Notice to Mariners or Local Notice to Mariners. The Captain of the Port will issue a Broadcast Notice to Mariners notifying the public when enforcement of the safety zone established by this section is cancelled.

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, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under that those Orders. We conclude that this rule is not a significant regulatory action because we anticipate that 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 legal or policy issues. The safety zones discussed in this rule will be relatively small and enforced for relatively short time. Also, each safety zone is designed to minimize its impact on navigable waters. Furthermore, each safety zone has been designed to allow vessels to transit unrestricted to portions of the waterways not affected by the safety zones. Thus, restrictions on vessel movement within any particular area are expected to be minimal. Under certain conditions, moreover, vessels may still transit through a safety zone when permitted by the Captain of the Port, Sector Lake Michigan. On the whole, the Coast Guard expects insignificant adverse impact to mariners from the enforcement of these safety zones.

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 would not have a significant economic impact on a substantial number of small entities.

This 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 any one of the below established safety zones while the safety zone is being enforced. These safety zones will not have a significant economic impact on a substantial number of small entities for the following reasons: Each safety zone in this rule will be enforced for only a few hours within any given 24 hour period and only for a few days. Furthermore, these safety zones have been designed to allow traffic to pass safely around each zone. Moreover, vessels will be allowed to pass through each zone at the discretion of the Captain of the Port, Sector Lake Michigan, or his or her designated representative.

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 could 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 concern 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)(g), of the Instruction. This rule establishes a safety zone, and thus, paragraph (34)(g) of the Instruction. An 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 recordkeeping 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, 3306, 3703; 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. From July 3, 2012 through August 19, 2012, amend § 165.929 as follows:
■ a. Suspend paragraphs (pp), (qq), and (lll); and
■ b. Add paragraphs (sss), (ttt), and (uuu) to read as follows:

§ 165.929 Safety Zones; Annual events requiring safety zones in the Captain of the Port Lake Michigan zone.

* * * * *

(sss) Gary Air and Water Show; Gary, IN.

(i) *Location.* All waters of Lake Michigan bounded by a line drawn from 41°37′42″ N, 087°16′38″ W; then east to 41°37′54″ N, 087°14′00″ W; then south to 41°37′30″ N, 087°13′56″ W; then west to 41°37′17″ N, 087°16′36″ W; then north returning to the point of origin (NAD 83).

(ii) *Enforcement date and time.* July 3 and 5, 2012 from 12 p.m. to 5 p.m.; July 6, 2012 from 2:30 p.m. to 9:30 p.m.; and on July 7–8, 2012, from 10 a.m. to 5 p.m.

(ttt) Milwaukee Air and Water Show; Milwaukee, WI.

(i) *Location.* All waters and adjacent shoreline of Lake Michigan and Bradford Beach located within a 4000-yard by 1000-yard rectangle. The rectangle will be bounded by the points beginning at points beginning at 43°02′50″ N, 087°52′36″ W; then northeast to 43°04′33″ N, 087°51′12″ W; then northwest to 43°04′40″ N, 087°51′29″ W; then southwest to 43°02′57″ N, 087°52′53″ W; the southeast returning to the point of origin (NAD 83).

(ii) *Enforcement date and time.* August 15, 2012 from 12 p.m. to 3 p.m.; August 17–19, 2012, from 9 a.m. to 4 p.m.

(uuu) Chicago Air and Water Show; Chicago, IL.

(i) *Location.* All waters and adjacent shoreline of Lake Michigan and Chicago Harbor bounded by a line drawn from 41°55′54″ N at the shoreline, then east to 41°55′54″ N, 087°37′12″ W, then southeast to 41°54′00″ N, 087°36′00″ W (NAD 83), then southwestward to the northeast corner of the Jardine Water Filtration Plant, then due west to the shore.

(ii) *Enforcement date and time.* August 10–12, 2012 from 8 a.m. to 4 p.m.

* * * * *

Dated: March 14, 2012.

M.W. Sibley,

Captain, U.S. Coast Guard, Captain of the Port Sector Lake Michigan.

[FR Doc. 2012–8753 Filed 4–12–12; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2012–0052]

RIN 1625–AA87

Security Zones; North Atlantic Treaty Organization (NATO) Summit, Chicago, IL

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing four separate security zones on both the waters and waterfront area of Chicago Harbor and the Chicago River. These temporary security zones are intended to restrict vessels, regardless of the mode of propulsion, and people from certain land and water areas in Chicago Harbor and the Chicago River during the NATO Summit and associated events, which will be held in Chicago from May 16, 2012, through May 24, 2012. These security zones are necessary to protect visiting government officials and dignitaries from the potential dangers associated with a large scale, international political event.

DATES: This rule is effective between 8 a.m. on May 16, 2012, and 8 a.m. on May 24, 2012.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket USCG–2012–0052 and are available online at *www.regulations.gov.* This material is also available for inspection or copying at two locations: 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 and the U.S. Coast Guard Sector Lake Michigan, 2420 South Lincoln Memorial Drive, Milwaukee, WI 53207, between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary rule, call or email CWO Jon Grob, Prevention Department, Coast Guard Sector Lake Michigan, Milwaukee, WI at (414) 747–7188, email at *Jon.K.Grob@uscg.mil.* If you have questions on viewing material in the docket, call Renee Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On March 6, 2012, we published a notice of proposed rulemaking (NPRM) entitled Security Zones; G8/North Atlantic Treaty Organization (NATO) Summit, Chicago, Illinois in the **Federal Register** (77 FR 13232). Although the G8 Summit is now planned to take place at Camp David rather than in Chicago, which is discussed in more detail in the following paragraph, the security zones addressed in the NPRM remain the same. Thus, the Coast Guard views the relocation as having no effect on the comment period. We received no letters commenting on the proposed rule. No public meeting was requested, and none was held.

Background and Purpose

Leaders from around the world will gather in Chicago this spring for what was supposed to be two diplomatic summits hosted by President Obama. Since the NPRM that preceded this temporary final rule was published, on March 6, 2012, the G8 summit has been relocated to be held at Camp David. This relocation, however, does not change the Coast Guard security zones for this event. Rather, the NATO Summit remains a highly political event that still demands the four separate security zones that were originally detailed in the NPRM. The NATO Summit, along with certain associated events, will take place in Chicago from May 16, 2012, through May 24, 2012.

Considering the international, economical, and political objectives of NATO along with the high concentration of dignitaries and political figures, the NATO Summit is expected to draw significant domestic and international media interest and also attract a large number of protesters. Consequently, the Captain of the Port, Sector Lake Michigan, has determined that the implementation of four separate security zones is necessary to ensure the safety and security of those who attend, participate, and visit the NATO Summit and any associated events.

Discussion of Comments and Changes

No comments were received regarding this rule. Since the NPRM published back on March 6, 2012, the G8 Summit portion has been relocated to Camp David. The NATO portion still demands the four separate security zone structure that was originally proposed in the NPRM. As discussed above, the Coast Guard views the relocation as having no effect on the comment period. We made no changes to the regulatory text from what we proposed in the NPRM.

Discussion of Rule

To alleviate the safety and security concerns presented by the international, economical, and political implications of NATO; the high concentration of dignitaries and political figures; the expected interest of domestic and international media; and the anticipated presence of protesters; the Captain of the Port, Sector Lake Michigan, has determined that it is necessary to establish four separately enforceable security zones. These zones allow for the closure of four specific areas on and around the waterfront along both Chicago Harbor and the Chicago River.

The four temporary security zones will encompass:

Security Zone A—This zone encompasses all U.S. navigable waters, facilities, and shoreline within the arc of a circle with a 2000-yard radius of the Burnham park hoist ramp with its center point located in the approximate position 41°51′37″ N, 087°36′44″ W. [DATUM: NAD 83].

Security Zone B—This zone encompasses all U.S. navigable waters, facilities, and shoreline within the arc of a circle with a 2000-yard radius of the outer-most tip of the Chicago lock with its center point located in the approximate position 41°53′19″ N, 087°36′17″ W. [DATUM: NAD 83].

Security Zone C—This zone encompasses all U.S. navigable waters of the Chicago River between the Western Gate of the Chicago Controlling Works Lock which is located in approximate position 41°53′18″ N, 087°36′28″ W [DATUM: NAD 83] and the juncture of the north and south branches of the Chicago River which is located in approximate position 41°53′11″ N, 087°38′15″ W. [DATUM: NAD 83].

Security Zone D—This zone encompasses all U.S. navigable waters of the Chicago River between Mile Marker 322.0, which is in the vicinity of the Loomis Street coal storage terminal slip, and Mile Marker 326.4, which is in the vicinity of the Chicago Tribune Wharf. [DATUM: NAD 83].

These security zones will be effective and enforced between 8 a.m. on May 16, 2012, and 8 a.m. on May 24, 2012.

In accordance with 33 CFR 165.33, no person or vessel, regardless of the mode of propulsion, may enter or remain in any one of the security zones established in this temporary rule without first obtaining permission from the Captain of the Port Sector Lake Michigan. The Captain of the Port Sector Lake Michigan, at his or her discretion, may permit persons and vessels to enter the security zones established in this temporary rule. The security zones created by this rule do not prohibit members of the public from assembling on shore or expressing from locations on shore their points of view to those attending the NATO Summit.

Regulatory Analyses

We developed this temporary 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 temporary 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. It is not ''significant'' under the regulatory policies and procedures of the Department of Homeland Security (DHS). We conclude that this temporary rule is not a significant regulatory action because we anticipate that 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 legal or policy issues. Each security zone has been designed to allow as much free transit of vessels as possible while also preserving the security of the NATO Summit. Thus, vessels may still transit portions of the affected waterways not implicated by the security zones. Also, under certain conditions, vessels may still transit through a security zone when permitted by the Captain of the Port, Sector Lake Michigan. Moreover, the Captain of the Port, Sector Lake Michigan, retains the discretion to suspend enforcement of any or all these security zones when he deems necessary. On the whole, the Coast Guard expects insignificant adverse impact to mariners from the activation of these security zones

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this temporary 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 temporary rule would not have a significant economic impact on a substantial number of small entities.

This temporary rule would affect the following entities, some of which might be small entities: The owners and operators of vessels, regardless of the mode of propulsion, intending to transit or anchor in the security zones established in this rule. These security zones would not have a significant economic impact on a substantial number of small entities for the same reasons discussed in the above *Regulatory Planning and Review* section.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this temporary 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 temporary 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 want to assist small entities in understanding this temporary rule so that they can better evaluate its effects on them and participate in the rulemaking. If this temporary rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the Waterways Management Department, Coast Guard Sector Lake Michigan, Milwaukee, WI at (414) 747–7188. The Coast Guard will not retaliate against small entities that question or object to this rule or any policy or action of the Coast Guard.

Collection of Information

This temporary 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 temporary 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 temporary rule would not result in such an expenditure, we do discuss the effects of this temporary rule elsewhere in this preamble.

Taking of Private Property

This temporary rule will not affect the 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 temporary 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 temporary rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This temporary 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 temporary 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 temporary 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 temporary rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

Environment

We have analyzed this temporary rule under Commandant Instruction M16475.lD and Department of Homeland Security Management Directive 5100.1, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have made a determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This temporary rule involves the establishment of security zones and therefore, is categorically excluded under paragraph 34(g) of the Instruction. An environmental analysis check list supporting this determination is available in the docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

Harbors, Marine security, Navigation (water), Reporting and recordkeeping 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, 3306, 3703; 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.T09–0052 to read as follows:

§ 165.T09–0052 Security Zones; North Atlantic Treaty Organization (NATO) Summit, Chicago, Illinois.

(a) *Locations.* The following areas are designated security zones:

(1) Security Zone A—Security Zone A encompasses all U.S. navigable waters, facilities, and shoreline within the arc of a circle with a 2000-yard radius of the Burnham park hoist ramp with its center point located in the approximate position 41°51′37″ N, 087°36′44″ W. [DATUM: NAD 83].

(2) Security Zone B—Security Zone B encompasses all U.S. navigable waters, facilities, and shoreline within the arc of a circle with a 2000-yard radius of the outer most tip of the Chicago lock with its center point located in the approximate position 41°53′19″ N, 087°36′17″ W. [DATUM: NAD 83].

(3) Security Zone C—Security Zone C encompasses all U.S. navigable waters of the Chicago River between the Western Gate of the Chicago Controlling Works Lock which is located in approximate position 41°53′18″ N, 087°36′28″ W [DATUM: NAD 83] and the juncture of the north and south branches of the Chicago River which is located in approximate position 41°53′11″ N, 087°38′15″ W. [DATUM: NAD 83].

(4) Security Zone D—Security D encompasses all U.S. navigable waters of the Chicago River between Mile Marker 322.0, which is in the vicinity of the Loomis Street coal storage terminal slip, and Mile Marker 326.4, which is in the vicinity of the Chicago Tribune Wharf. [DATUM: NAD 83].

(b) *Enforcement period.* These security zones will be effective and enforced between 8 a.m. on May 16, 2012, and 8 a.m. on May 24, 2012.

(c) *Regulations.* (1) In accordance with § 165.33, entry into any area of these security zones is prohibited unless authorized by the Coast Guard Captain of the Port, Sector Lake Michigan, or his or her on-scene designated representative.

(2) The *designated representative* of the Captain of the Port, Sector Lake Michigan, is any Coast Guard commissioned, warrant or petty officer who has been designated by the Captain of the Port, Sector Lake Michigan, to act on his or her behalf.

(3) Vessel operators desiring to enter or operate within any of the security zones shall contact the Captain of the Port, Sector Lake Michigan, or his or her on-scene designated representative to obtain permission to do so. The Captain of the Port, Sector Lake Michigan, or his or her on-scene designated representative may be contacted via VHF Channel 16.

(4) Vessel operators given permission to enter or operate in any of the security zones shall comply with all directions given by the Captain of the Port, Sector Lake Michigan, or his or her on-scene designated representative.

Dated: April 6, 2012.

M.W. Sibley,

Captain, U.S. Coast Guard, Captain of the Port, Sector Lake Michigan.

[FR Doc. 2012–8965 Filed 4–12–12; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2011–0998; FRL–9657–1]

Approval and Promulgation of Air Quality Implementation Plans; Delaware; Amendments to the Handling, Storage, and Disposal of Volatile Organic Compounds Emissions; Automobile and Light-Duty Truck Coating Operations; Paper Coating; Coating of Flat Wood Paneling; Graphic Art Systems; and Industrial Cleaning Solvents

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving a State Implementation Plan (SIP) revision submitted by the State of Delaware. This revision amends the control of volatile organic compound (VOC) emissions from industrial cleaning solvents facilities; automobile and light-duty truck coating operations; paper, film, and foil coating units; flat wood paneling products; and flexible packaging printing presses. EPA is approving this SIP revision to meet the requirements to implement reasonably available control technology (RACT) controls on emission sources covered by EPA's control techniques guidelines (CTG) in accordance with the requirements of the Clean Air Act (CAA).

DATES: *Effective Date:* This final rule is effective on May 14, 2012.

ADDRESSES: EPA has established a docket for this action under Docket ID Number EPA–R03–OAR–2011–0998. All documents in the docket are listed in the *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 *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 Delaware Department of Natural Resources and Environmental Control, 89 Kings Highway, P.O. Box 1401, Dover, Delaware 19903.

FOR FURTHER INFORMATION CONTACT: Gregory Becoat, (215) 814–2036, or by email at *becoat.gregory@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On February 2, 2012 (77 FR 5207), EPA published a notice of proposed rulemaking (NPR) for the State of Delaware. The NPR proposed approval of the Delaware SIP revision that amends section 8.0, ''Handling, Storage, and Disposal of Volatile Organic Compounds,'' section 13.0, ''Automobile and Light-Duty Truck Coating Operations,'' section 16.0, ''Paper Coating,'' section 23.0, ''Coating of Flat Wood Paneling,'' section 37.0, ''Graphic Art Systems,'' and section 45.0, ''Industrial Cleaning Solvents,'' to reflect technology developments and expand VOC emission controls. The revision is part of Delaware's strategy to achieve and maintain the 8-hour ozone national ambient air quality standard (NAAQS) throughout the State. EPA received no comments on the NPR to approve Delaware's SIP revision. The formal SIP revision was submitted by the State of Delaware on June 20, 2011.

II. Summary of SIP Revision

The SIP revision consists of the following: (1) Amendments to section 8.0—Handling, Storage, and Disposal of Volatile Organic Compounds, in order to add definitions, update the existing work practice standards, and add an applicable cleaning solvent VOC content limit; (2) amendments to section 13.0—Automobile and Light-Duty Truck Coating Operations, in order to establish VOC limits in coating materials used in automobile and light-duty truck coating operations; (3) amendments to section 16.0—Paper Coating, in order to expand the regulated scope and add ''film and foil coating'' to the regulated category; (4) amendments to section 23.0—Coating of Flat Wood Paneling, in order to add tileboard panels and exterior sidings to the flat wood paneling product category and establish VOC emission limits, as well as establish more stringent emission limits to previously existing flat wood paneling products; (5) amendments to section 37.0—Graphic Arts Systems, in order to establish provisions for flexible packaging printing presses to the regulated category and establish efficiency requirements for control systems to be installed on the flexible packaging printing presses; and (6) amendments to section 45.0—Industrial Cleaning Solvents, in order to update the applicability for the industrial use of organic cleaning solvents and clarify that the requirements of section 45.0 are triggered based on a limit of VOC emissions rather than cleaning solvent used. Other specific requirements and the rationale for EPA's proposed action are explained in the NPR and will not be restated here.

III. Final Action

EPA is approving the control of VOC emissions from industrial cleaning solvents facilities; automobile and light-duty truck coating operations; paper, film, and foil coating units; flat wood paneling products; and flexible packaging printing presses (7 DE Admin Code 1124, sections 8.0, 13.0, 16.0, 23.0, 37.0, and 45.0) as a revision to the Delaware SIP. This SIP revision meets the requirements to implement RACT controls on emission sources.

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 June 12, 2012. 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 Delaware's control of VOCs from industrial cleaning solvents facilities; automobile and light-duty truck coating operations; paper, film, and foil coating units; flat wood paneling products; and flexible packaging printing presses 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, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: March 27, 2012.

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 I—Delaware

■ 2. In § 52.420, the table in paragraph (c) is amended by revising the entries for Regulation 1124, sections 8.0, 13.0, 16.0, 23.0, 37.0, and 45.0 to read as follows:

§ 52.420 Identification of plan.

* * * * *

(c) * * *

EPA-APPROVED REGULATIONS IN THE DELAWARE SIP

State regulation (7 DNREC 1100)	Title/subject	State effective date	EPA approval date	Additional explanation
*	*	*	*	*
1124	Control of Volatile Organic Compound Emissions			
*	*	*	*	*
Section 8.0	Handling, Storage, and Disposal of Volatile Organic Compounds.	3/11/11	*4/13/12 [Insert page number where the document begins].*	
*	*	*	*	*
Section 13.0	Automobile and Light-Duty Truck Coating Operations.	3/11/11	*4/13/12 [Insert page number where the document begins].*	
*	*	*	*	*
Section 16.0	Paper Coating	3/11/11	*4/13/12 [Insert page number where the document begins].*	Amended to add ''film and foil coating'' to the regulated category.
*	*	*	*	*
Section 23.0	Coating of Flat Wood Paneling	3/11/11	*4/13/12 [Insert page number where the document begins].*	

EPA-APPROVED REGULATIONS IN THE DELAWARE SIP—Continued

State regulation (7 DNREC 1100)	Title/subject	State effective date	EPA approval date	Additional explanation
*	*	*	*	*
Section 37.0	Graphic Art Systems	3/11/11	*4/13/12 [Insert page number where the document begins].*	Amended to add ''flexible packaging printing'' to the regulated category.
*	*	*	*	*
Section 45.0	Industrial Cleaning Solvents	3/11/11	*4/13/12 [Insert page number where the document begins].*	
*	*	*	*	*

* * * * *

[FR Doc. 2012–8854 Filed 4–12–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 260 and 261

[EPA–HQ–RCRA–2008–0808; FRL 9658–3]

RIN–2050–AE78

Regulation of Oil-Bearing Hazardous Secondary Materials From the Petroleum Refining Industry Processed in a Gasification System To Produce Synthesis Gas; Final Determination To Deny Administrative Petition

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; final determination to deny administrative petition.

SUMMARY: EPA is providing notice of a final determination to deny an administrative petition submitted by Earthjustice on behalf of the Sierra Club and the Louisiana Environmental Action Network under the Resource Conservation and Recovery Act. The petition requested EPA to review the final rule, ''Regulation of Oil-Bearing Hazardous Secondary Materials From the Petroleum Refining Industry Processed in a Gasification System To Produce Synthesis Gas,'' published in the **Federal Register** on January 2, 2008.

FOR FURTHER INFORMATION CONTACT: Alan Carpien, U.S. Environmental Protection Agency, Office of General Counsel, Mail Code 2366A, 1200 Pennsylvania Ave. NW., Washington, DC 20460; telephone (202) 564–5507; or *carpien.alan@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. How can I get copies of this document and other related information?

1. *Docket.* EPA has established a docket for this action under Docket ID No. EPA–HQ–RCRA–2008–0808. Publicly available docket materials are available either electronically through *www.regulations.gov* or in hard copy at the RCRA Docket in the EPA Docket Center, (EPA/DC) EPA West, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the RCRA Docket is (202) 566–0270. A reasonable fee may be charged for copying docket materials.

2. *Electronic Access.* You may access this **Federal Register** document electronically through the EPA Internet under the **Federal Register** listings at *http://www.epa.gov/fedrgstr/.*

II. Summary of the Action

EPA is providing notice of a final determination to deny an administrative petition submitted by Earthjustice on behalf of the Sierra Club and the Louisiana Environmental Action Network under the Resource Conservation and Recovery Act. EPA issued an earlier notice tentatively denying this same petition in January 2011 and solicited written comments on this tentative decision (76 FR 5107, Jan. 28, 2011). The petition requested EPA to review the final rule, ''Regulation of Oil-Bearing Hazardous Secondary Materials From the Petroleum Refining Industry Processed in a Gasification System To Produce Synthesis Gas,'' published in the **Federal Register** on January 2, 2008 (73 FR 57). The EPA has considered the petition, along with information contained in the rulemaking docket, as well as the five public comments received on the tentative denial. After evaluating all of this information, EPA has decided to issue a final determination denying the petition. In a letter from EPA Assistant Administrator Mathy Stanislaus dated April 3, 2012, EPA provided the petitioner with its final decision to deny the administrative petition. The letter, which is included as an Appendix to this **Federal Register** document explains EPA's reasons for denying the petition, as well as discussing the other comments received on the tentative denial.

Appendix: Letter to Earthjustice Denying Administrative Petition

Ms. Lisa Gollin Evans
Earthjustice
21 Ocean Avenue
Marblehead, MA 01945

Dear Ms. Evans:

This letter is written to inform you of our final determination to deny the April 1, 2008 administrative petition you submitted to the U.S. Environmental Protection Agency (EPA or the agency) under the Resource Conservation and Recovery Act (RCRA) § 7004(a), 42 U.S.C. § 6974(a) on behalf of the Sierra Club and the Louisiana Environmental Action Network (LEAN) (hereafter referred to as ''Sierra Club''). Sierra Club requested that EPA review the final rule, ''Regulation of Oil-Bearing Hazardous Secondary Materials from the Petroleum Refining Industry Processed in a Gasification System to Produce Synthesis Gas'' (Gasification Rule). This final rule was published in the **Federal Register** on January 2, 2008 (73 FR 57, *et seq.*). The petition raised both procedural (notice and comment) and substantive grounds for seeking the agency's review of the Gasification Rule. EPA has made a final determination to deny the petition and in accordance with the regulatory requirements of 40 CFR 260.20, EPA is providing notice of this determination to deny the petition in the **Federal Register**.

A tentative denial was issued on January 19, 2011, and published in the **Federal Register** on January 28, 2011 (76 FR 5107).

Sierra Club filed comments on this tentative denial (hereafter referred to as ''SC Comments'').[1] This final denial responds to the additional points raised in the SC Comments that were not raised in previous submittals and incorporates all previous agency responses to your original petition.[2]

This final denial to your petition adopts all of the reasoning stated in our letter of November 2008[3] and the January 2011 tentative denial, both of which are incorporated into this reply. We find no new substantive arguments in your comments that would cause the agency to grant your administrative petition.

In general, you argue that EPA has improperly and arbitrarily removed hazardous wastes from RCRA's comprehensive cradle-to-grave regulatory system and that EPA's Gasification Rule is directly contrary to what you describe as RCRA's statutory mandate to regulate the treatment, storage, and disposal of hazardous waste derived fuels and the burning of hazardous wastes. For the first time, in the proceeding on this rule, you also claim that it frustrates the Clean Air Act. You argue, furthermore, that EPA's ''finding'' that this rule will not jeopardize human health and the environment is unsupported by the administrative record for this rulemaking. Finally, you argue that the Gasification Rule was promulgated in violation of the Administrative Procedure Act (APA).

EPA disagrees with your comments. The agency has properly excluded the materials in question from RCRA Subtitle C regulation and does not expect adverse effects on human health or the environment from this regulation. EPA finds that you have not presented any new information that would suggest or otherwise require that we review the Gasification Rule, nor have you raised any issues that have not already been raised by the comments in the rulemaking process. EPA also finds that the Gasification Rule meets the notice and comment requirements of the APA and, therefore, disagrees with your view that the agency did not provide adequate notice to the public and an opportunity to comment on the provisions of the final rule.[4]

Legal Arguments

EPA has discussed in earlier responses that it disagrees with Sierra Club's legal argument that the final rule does not comport with RCRA § 3004(q), 42 U.S.C. § 6924(q). Because EPA is providing an exclusion from the definition of solid waste for oil-bearing hazardous secondary materials fed to gasifiers subject to this rule, EPA does not implicate the provisions of section 3004(q), which requires that the hazardous secondary material first be a solid waste. Nothing cited in your legal argument refutes this point. Discussion in SC Comments at pp. 6–7 merely provides a cumulative argument that burning of *hazardous* wastes must be regulated. Since the oil-bearing hazardous secondary materials are not considered solid wastes, they cannot be hazardous wastes.

Further, Sierra Club raises a legal argument that has already been considered and rejected by the D.C. Circuit. In *American Mining Congress (AMC)* v. *EPA*, 824 F2d. 1177, 1187–89, the agency relied upon section 3004(q) to defend a broad definition of solid waste. The court specifically considered whether the exemption in section 3004(q)(2)(A) for ''petroleum refinery wastes containing oil which are converted into petroleum coke at the same facility at which such wastes were generated'' implies that the term ''solid waste'' may include materials that have not been disposed of, but that are destined for reuse in another process. The court concluded that the exemption does not carry that implication, and section 3004(q) only applies to materials that have already become hazardous. See AMC at 1188 & n.16.

Plainly, section 3004(q) directs EPA to regulate all facilities that ''produce a fuel from hazardous wastes'' or ''burn, for purposes of energy recovery'' any such fuel. 42 U.S.C. § 3004. Moreover, EPA agrees with the thrust of your comment that a recycled material does not become a non-waste simply because it is burned or processed to produce a fuel. Rather, the issue is whether the recycled material is discarded.

The SC Comments (pp. 8–10) seem to imply that case law says that burning of recycled secondary materials is a waste activity, regardless. However, none of the cases cited deal with burning of material. In fact, the only case in the United States Court of Appeals that deals with whether certain burning of material is a waste found that the burning was not a waste activity. See *Safe Air For Everyone* v. *Waynemeyer* (''Safe Air''), 373 F.3d 1035 (9th Cir. 2004) (Kentucky bluegrass stubble burned to return nutrients to the soil is not a solid waste).

Your argument, including your discussions of the Clean Air Act, is ultimately based on your ''assertion'' that, in turn, EPA believes material inserted into a gasifier is not discarded. EPA disagrees. The agency, however, stands on the record developed in the rule for its determination that the recycled oil-bearing hazardous secondary material excluded from the definition of solid waste in this rule is not discarded.

For the first time in the SC Comments, you claim that the gasification rule is ''contrary to and frustrates the purposes'' of the Clean Air Act. EPA does not understand the relevance of the Clean Air Act to this proceeding, although coverage under the Clean Air Act may be an issue in other proceedings. As noted above, the issue in this case is simply whether the recycled oil-bearing hazardous secondary material inserted into the gasifier is discarded. As a result of the Gasification Rule, the gasifiers would be subject to Clean Air Act § 112 (42 U.S.C. § 7412) because EPA has determined that the material has not been discarded.

At least one of the arguments on the Clean Air Act is taken out of context. See SC Comments at pp. 10–12. As one aspect of its determination that gasification is not discard, EPA responded to public comments, which argued that ''gasification * * * is more a waste management process involving incineration than a petroleum refining process'' by comparing gasification to true waste management incineration. See 73 FR at 61. The SC Comments, however, discuss whether gasification involves combustion—a matter not relevant to the Gasification Rule. See SC Comments at pp. 11–12. Even if combustion occurs, the issue is whether this is a waste management activity or, as EPA found, a ''component of fuel manufacturing operations at a petroleum refinery.'' Id. The occurrence of combustion, by itself, does not render material a solid waste, if the Agency determines that this aspect is part of the manufacturing process and does not involve discard of the material.

Notice and Comment Issues

Your petition states that the rule violates the notice and comment requirements of the APA. Your basis for this assertion is that EPA ''relied on'' a proposal suggested in a 1998 **Federal Register** notice[5] and ''not on the 2002 proposed rule''[6] to formulate the Gasification Rule. You suggest that, as a result, the final rule ''is not a 'logical outgrowth' of the agency's proposed rule'' (Petition at p. 7) and, therefore, ''the public

[1] See docket item EPA–HQ–RCRA–2008–0808–0017.

[2] We note that § 7004(a) of RCRA, 42 U.S.C. § 6974, provides that any person may petition the Administrator for the promulgation, amendment or repeal of any regulation under the Act. While your original petition failed to state whether you were requesting that EPA amend or repeal the Gasification Rule, the SC Comments request the agency ''revoke the Rule in its entirety.'' SC Comments at p. 2. EPA also received another comment from a number of environmental organizations and persons (EPA–HQ–RCRA–2008–0808–0018) requesting that the agency revoke the rule. This comment is regarded by the agency as general support for the SC comments, in that it mirrored the concerns raised in the comments submitted by Earthjustice. (See comment EPA–HQ–RCRA–2008–0808–0018 for a complete list of the environmental organizations and persons that submitted this comment.)

[3] Letters to Lisa Gollin Evans and James S. Pew, Earthjustice, from Susan Parker Bodine, EPA Assistant Administrator, dated November 14, 2008. This letter is available in the docket (docket item EPA–HQ–RCRA–2008–0808–0004 and EPA–HQ–RCRA–2008–0808–0006).

[4] The American Petroleum Institute (API) (docket item EPA–HQ–RCRA–2008–0808–0010) and the Metals Industries Recycling Coalition (MIRC) (docket item EPA–HQ–RCRA–2008–0808–0013) also filed comments supporting the Gasification Rule. EPA accepts the reasoning in the comments in support of the decision with the exception that the agency does not agree that the residuals inserted into the gasification process ''may not be considered solid or hazardous wastes under controlling case law.'' API comments at p. 9. Rather, EPA has determined that it has the discretion to exclude the residuals from the definition of solid waste. A comment submitted by Industry Professionals for Clean Air and Air Alliance Houston (docket item EPA–HQ–RCRA–2008–0808–0012) expresses concern regarding monitoring and regulation of gasification processes. This is simply a general comment that EPA acknowledges regarding the appropriate monitoring and regulation under both RCRA and the Clean Air Act for these facilities.

[5] Notice of Data Availability (NODA), 63 FR 38139 (July 15, 1998).

[6] ''Regulation of Hazardous Oil-Bearing Secondary Materials From the Petroleum Refining Industry and Other Hazardous Secondary Materials Processed in a Gasification System To Produce Synthesis Gas; Proposed Rule,'' 67 FR 13684 (March 25, 2002).

was denied the opportunity for notice and comment in several critical areas.'' (Petition at p. 8)

The ''critical areas'' to which you refer in the petition are noted below.

(1) You assert that the Gasification Rule does not contain ''chemical and physical specifications of the synthesis gas fuel product that is produced by gasifying the oil-bearing hazardous secondary materials'' (Petition at pp. 8–10). In support of this assertion, you refer to statements in the preamble to the March 2002 proposal for the Gasification Rule (67 FR 13684, et seq.) and one statement in the January 2, 2008, final rule. The statements in the March 2002 proposal discuss various reasons why EPA thought, at the time, there should be chemical and physical specifications for synthesis gas produced and also express concerns as to what concentrations of metals actually exist in synthesis gas. The SC Comments reiterate this issue at pp. 14–15.

(2) You assert that the Gasification Rule ''fundamentally alters the definition of gasification and entirely removes proposed conditions pertaining to operation of the gasifier,'' particularly requirements for slagging inorganic feed at temperatures above 2,000 degrees C. (Petition at p. 10). These comments were reiterated in the SC Comments at pp. 15–17.

(3) You assert that the Gasification Rule is insufficiently protective of human health and the environment because it did not ''require that co-products and residues generated by the gasification system meet the Universal Treatment Standards if these materials are applied to the land,'' even though the agency had proposed such conditions in March 2002. (Petition at pp. 10–12). The SC Comments discuss these issues at pp. 17–18.

The SC Comments (at p. 18) acknowledge that the original petition ''enumerated'' these APA violations. EPA responded to these arguments in both the November 2008 letter and the January 2011 tentative denial, and believes it is not necessary to repeat those responses in this final denial, and simply incorporates by reference those responses in this denial. In summary, in the Gasification Rule, EPA scaled back on its plans for a more ''ambitious'' exclusion than proposed in March 2002 and returned largely to its original views regarding an exclusion for oil-bearing hazardous secondary materials returned to the petroleum refining system. See 73 FR 58–59. The final Gasification Rule retained some conditions and removed others as a result of the agency's deliberations on each condition that took into account all of the comments received. EPA had received comments ranging from demands for full hazardous waste regulation to those arguing that the agency should not be regulating gasification at all since it was an integral part of the petroleum refining process and did not constitute waste management. See 73 FR at 59. The variety and nature of comments submitted demonstrates that EPA had a record upon which to make a decision that was based on a wide range of opinions and information.

EPA's November 2008 and January 2011 documents stated that the March 2002 Gasification Proposal specifically provided notice that the provisions of the 1998 NODA were still being considered and noted that it is significant that your original administrative petition ignores this discussion in the March 2002 proposal. The SC Comments (at p. 18), for the first time, respond to this notice argument. EPA continues to defend its position that this discussion in the March 2002 Gasification Proposal is supportive of the agency's position that adequate notice and comment was provided.[7]

Arbitrary and Capricious Issues

The SC Comments (at pp. 19–28) provide a longer discussion than the original petition on your argument that the Gasification Rule is arbitrary and capricious. However, the arguments for the most part are simply those reiterated in comments on the rule and fail to cite information not provided in the rulemaking record which EPA has already considered. EPA understands that you may disagree with the agency's conclusions, but we believe that the regulatory choices made by the agency are reasonable based on the rulemaking record.

In the absence of any new relevant information, it would not be useful for the agency to revisit evidence and arguments it has already carefully considered. Moreover, in our view, the notice and comment issues you have raised are actually discussions of the merits of the agency's decision with which you disagree. See 73 FR 61–67. In fact, the SC Comments do not point to any information which EPA lacks to make its decision.

Additional Issues

The SC Comments do cite two reports issued after the Gasification Rule was published.[8] However, the information in these studies are cumulative at best and deal with the management of municipal solid waste and the role that incinerators, gasification and pyrolytic processes have on potentially affecting the use of waste reduction and recycling activities. Neither report specifically explores the subject of recycling of oil-bearing hazardous secondary materials at a petroleum refinery through gasification. Furthermore, the Gasification Rule applies only to gasification operations occurring at petroleum refineries for the recycling of oil-bearing hazardous materials and does not apply to other secondary materials, including municipal solid waste.

In addition, Sierra Club alleges that EPA predicted that ''over 150 refineries * * * could potentially exploit'' the Gasification Rule and thereby burn over 320,000 tons of hazardous waste without adequate protections. As discussed in the final rule, the agency's cost-benefits analysis was based on two scenarios drawn from U.S. Department of Energy projections on the future of gasification operations at petroleum refineries: A low capacity analysis (three gasifiers employed at three different refineries) and a high capacity analysis (five gasifiers at five refineries). This is far different than the 150 refineries Sierra Club argues would ''exploit'' the exclusion.[9] As for the 320,000 tons of hazardous waste being burned, this number represents the total amount of hazardous waste generated by petroleum refineries in 2003 as reported to the RCRA Biennial Reporting System (BRS) and in no way represents the amount of oil-bearing hazardous secondary material which would be fed into a gasifier at a petroleum refinery.[10]

Finally, Sierra Club introduces yet another new issue, not raised in the original administrative petition, regarding EPA's failure to adequately assess environmental justice as part of its cost assessment and the agency's lack of effort to ascertain the full range of threats the Gasification Rule would present to disadvantaged, low-income and minority communities living nearby the exempted refineries. The agency concluded, based on its technical analysis supporting the rule, that the gasification of hazardous secondary materials at petroleum refineries does not represent a greater risk to the public

[7] For example, see footnote 2 of the preamble found at 67 FR 13685, footnote 9 of the preamble found at 67 FR 13688, and the discussion in Section VI of the preamble found at 67 FR 13689.

[8] Waste Gasification—Impact on the Environment and Public Health. The Blue Ridge Environmental Defense League. February 2009. An Industry Blowing Smoke. 10 Reasons Why Gasification, Pyrolysis and Plasma Incineration are Not Green Solutions. Global Alliance for Incinerator Alternatives Global Anti-Incinerator Alliance. June 2009.

[9] This number is based on data from the 2003 RCRA Biennial Reporting System (BRS) using the following waste codes K048–K052, K169–K172, F037 and F038. This is hazardous waste that was reported to EPA that was generated and managed in 2003. The BRS reported 324,371 tons of hazardous waste generated by 153 sites (Standard Industrial Classification 2911). The average generation rate was calculated at 2,314 tons per year, with a maximum generation rate of 76,582 tons per year and a minimum of less than 1 ton per year. Information from the report, Refinery Technology Profiles: Gasification and Supporting Technologies. U.S. Department of Energy, National Energy Technology Laboratory, June 2003, suggests that growth in petroleum refinery gasification will most likely be driven by future supply and demand of petroleum coke with approximately 40 refineries within the U.S. producing sufficient quantities of petroleum coke to be considered candidates for the addition of gasification to their production process. The report suggests a market penetration rate of one plant every two years. EPA's analysis shows that both waste characterization data and waste generation rates indicate that industry would probably not build a gasification unit dedicated to gasifying oil-bearing hazardous secondary materials and the most probable gasification scenario would be a petroleum refinery building a gasification unit for petroleum coke gasification with oil-bearing hazardous secondary materials possibly used as a supplemental feed (accounting for between 0.1 and 10 percent of the total feed rate) (docket item EPA–HQ–RCRA–2002–0002–0110). Given these assumptions, EPA would estimate that with an average generation rate of 10,000 tons per year of oil-bearing hazardous secondary material, a total of no more than 50,000 tons per year of oil-bearing hazardous secondary material would be placed into a gasification unit as part of the petroleum refining process.

[10] See: Assessment of the Potential Costs, Benefits, and Other Impacts of the Exclusion for Gasification of Petroleum Oil-bearing Secondary Materials—Final Rule (docket item EPA–HQ–RCRA–2002–0002–0089).

than the baseline used to develop the analysis.[11]

As previously stated, a document will be published in the **Federal Register** announcing the agency's final decision to deny your administrative petition. If you should have any questions, please contact Alan Carpien, EPA's Office of General Counsel at (202) 564–5507.

Sincerely,

Mathy Stanislaus,

Assistant Administrator, Office of Solid Waste and Emergency Response.

Dated: April 3, 2012.

Mathy Stanislaus,

Assistant Administrator, Office of Solid Waste and Emergency Response.

[FR Doc. 2012–8921 Filed 4–12–12; 8:45 am]

BILLING CODE 6560–50–P

[11] The rule is projected to result in benefit-cost savings for petroleum refineries using the exclusion. Petroleum refineries choosing not to take advantage of the exclusion would experience no direct impact from the rule. The benefit-cost analysis showed between $5.2 million and $48.7 million in net social benefits per year with avoided waste management costs constituting the most significant share of the benefits, followed by the energy savings from increased fuel production. The analysis further showed that the areas potentially affected by the rule showed disproportionately high minority/low income populations, but that gasification of oil-bearing hazardous secondary materials does not represent a greater risk to the public than baseline management, and that as less material is received by hazardous waste management facilities, low income and minority populations would likely experience a potential reduction in risk under the rule.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 261 and 266

[EPA–RCRA–2008–0678; FRL–9659–7]

RIN 2050–AG52

Hazardous Waste Technical Corrections and Clarifications Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA or the Agency) is taking final action on two of six technical amendments that were withdrawn in a June 4, 2010, **Federal Register** partial withdrawal notice. The two amendments that are the subject of today's final rule are: A correction of the typographical error in the entry ''K107'' in a table listing hazardous wastes from specific sources; and a conforming change to alert certain recycling facilities that they have existing certification and notification requirements under the Land Disposal Restrictions regulations. The other four amendments that were withdrawn in the June 2010 partial withdrawal notice will remain withdrawn unless and until EPA determines action is warranted in the future.

DATES: This final rule is effective on May 14, 2012.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–RCRA–2008–0678. All documents in the docket are listed on the *www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically at *www.regulations.gov* or in hard copy at the OSWER Docket, EPA/DC, EPA West, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m. Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the RCRA Docket is (202) 566–0270.

FOR FURTHER INFORMATION CONTACT: Jim O'Leary, U.S. Environmental Protection Agency, Office of Resource Conservation and Recovery, MC 5304P, 1200 Pennsylvania Avenue NW., Washington, DC 20460, Phone: (703) 308–8827; or email: *oleary.jim@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Why is EPA publishing this final rule?

On March 18, 2010, EPA published in the **Federal Register** a Direct Final rule entitled, *Hazardous Waste Technical Corrections and Clarifications Rule* (75 FR 12989) (hereafter the Direct Final rule). This Direct Final rule included approximately 90 specific technical amendments to correct or clarify parts of the Resource Conservation and Recovery Act (RCRA) hazardous waste regulations. At the same time, EPA also published a parallel proposed rule (75 FR 13006) that requested comment on the same changes.

We stated in that Direct Final rule that if we received adverse comment on any of the amendments by May 3, 2010, the affected amendments would not take effect and we would publish a timely withdrawal in the **Federal Register** of those specific amendments. We received some adverse comments and as a result withdrew six amendments on June 4, 2010 (75 FR 31716). The remaining amendments for which we did not receive adverse comment became effective on June 16, 2010.

The six amendments that were withdrawn are:

- 40 CFR 262.34(a)—related to the hazardous waste accumulation time for large quantity generators;
- 40 CFR 262.34(a)(2)—related to the date upon which each period of accumulation begins and which must be clearly marked and visible for inspection on each container and tank;
- 40 CFR 262.34(a)(5)—related to the closure requirements for tanks, containers, drip pads and containment buildings;
- 40 CFR 262.34(a)(1)(iv)(B)—also related to the closure requirements for tanks, containers, drip pads and containment buildings;
- 40 CFR 266.20(b)—related to recyclable materials used in a manner constituting disposal; and
- 40 CFR 261.32(a)—related to the entry for hazardous waste number K107 in a table.

EPA is publishing today's final rule to address the adverse comments received on the last two amendments listed above and to finalize these amendments. The amendments we are finalizing are: (1) Making the conforming change to 40 CFR 266.20(b); and (2) correcting the entry ''K107'' in the table at 40 CFR 261.32(a). The other four amendments that were withdrawn will remain withdrawn unless and until EPA decides to take action on them in the future.[1]

II. Does this action apply to me?

Entities potentially affected by this action include facilities subject to the RCRA hazardous waste regulations and states implementing the RCRA hazardous waste regulations.

III. Acronyms

Acronym	Definition
CFR	United States Code of Federal Regulations.
EPA	United States Environmental Protection Agency.
HSWA	Hazardous and Solid Waste Amendments.
OMB	Office of Management and Budget.
RCRA	Resource Conservation and Recovery Act.
U.S.C	United States Code.

[1] See the public docket for this rule regarding the specific comments that were submitted on the four amendments that are not being finalized today.

IV. Background

A. What is the legal authority for this final rule?

This rule is authorized under Sections 1004 and 3001 through 3005 of the Resource Conservation and Recovery Act of 1976, as amended, 42 U.S.C. 6903, 6921–6925.

B. Description of Final Rule Amendments to Parts 261 and 266

For each of the two technical corrections being finalized today, the following sections provide a summary of the Agency's original proposal, a discussion of the adverse comments received on the proposal, and the Agency's response to those comments.

1. Correction to 40 CFR 261.32(a)

In our March 18, 2010, Direct Final rule (and companion proposed rule), we amended the entry for K107 in the table at 40 CFR 261.32 by correcting the misspelled chemical name ''* * * carboxylic acid hydrazines'' to read ''* * * carboxylic acid hydrazides.'' We explained that this was a misspelling as evidenced by the original listing background document supporting the K107 listing, which discusses ''carboxylic acid hydrazides.''

However, in the process of making this correction in the Direct Final rule, we inadvertently omitted the word ''acid'' in ''carboxylic acid hydrazides'' from the entry for K107. We withdrew this correction given the omission of the word ''acid'' on June 4, 2010 (see 75 FR 31716). Today's final rule corrects the misspelled chemical name.

2. Conforming Change to 40 CFR 266.20(b)

In 1988, EPA promulgated various certification and notification requirements under the Land Disposal Restrictions (''LDR'') regulatory program (53 FR 31138, August 17, 1988). This rule included, in 40 CFR 268.7(b)(8), specific certification and notification requirements for recyclers using recyclable materials in a manner constituting disposal. This provision included a reference to 40 CFR 266.20(b), a separate provision that specifies regulatory requirements for certain use constituting disposal activities. However, at that time, the Agency failed to add a similar reference in 40 CFR 266.20(b) alerting recyclers to the LDR certification and notification requirements in 40 CFR 268.7(b)(8). The LDR certification and notification requirement for use constituting disposal was later renumbered from 40 CFR 268.7(b)(8) to 40 CFR 268.7(b)(6).

In the March 18, 2010, Direct Final rule (and parallel proposed rule), 40 CFR 266.20(b) was revised by adding the phrase ''and the recycler complies with § 268.7(b)(6) of this chapter'' to alert recyclers to the existing LDR certification and notification requirement that is located elsewhere in the regulations.

EPA received one adverse comment concerning this amendment from Safe Food and Fertilizer (hereafter referred to as Safe Food), a grassroots citizens' organization. In their comments, Safe Food stated that making this change to 40 CFR 266.20(b) would not be a 'technical correction' but rather the promulgation of a new rule. Safe Food stated that when, in 2006, EPA amended 40 CFR 268.7(b)(6) as part of a larger RCRA Burden Reduction Initiative to require less frequent notification and certification (71 FR 16862, April 4, 2006), many states did not adopt this less-stringent provision and retained the more frequent notification and certification requirements.[2] Safe Food believes that because the amendment to 40 CFR 266.20(b) references the federal requirements in 40 CFR 268.7(b)(6), a state that adopts this amendment will also be inadvertently forced to adopt the more recent federal less-stringent notification and certification provision in 40 CFR 268.7(b)(6).

EPA disagrees. The amendment simply alerts persons subject to 40 CFR 266.20(b) that they also have an existing obligation to certify and notify under the LDR regulations. If and when states adopt this reference, they will translate the reference into their own existing regulatory structure and the reference will point to the existing state LDR certification and notification requirements, not the federal requirements. Thus, adoption of today's amendment by a state as part of their authorized RCRA program will not change that state's existing authorized LDR notification and certification requirements for recyclers using materials in a manner constituting disposal. The proposed addition to section 40 CFR 266.20(b) is an informational reference to alert recyclers to the existing LDR certification and notification obligations applicable to their activities. When incorporated into state regulations, the reference will refer to the appropriate existing state LDR requirements.

Safe Food also commented that the proposed change would be contrary to law, specifically, to 42 U.S.C. 6929. They believe such a change would ''prohibit a State from requiring that the State be provided with a copy of each manifest used in conjunction with hazardous waste which is generated within that State or transported to a treatment, storage, or disposal facility.'' Safe Food argues that the proposed amendment would change states' regulations governing materials used in a manner constituting disposal, including any state manifesting requirements, because the change made to the federal regulations would go into effect immediately on the effective date in all states.

The Agency disagrees. In the Direct Final rule (and parallel proposed rule), EPA explained that amendments to 40 CFR part 266 would only go into effect in authorized states if and when a state adopts the amendment. When an authorized state adopts this amendment, it will not retain the federal regulatory citation. The state will translate the citation into the appropriate state citation to refer to the existing state LDR certification and notification requirements for materials used in a manner constituting disposal (see section V.B. of this notice). Thus, this amendment will not change a state's existing regulations for materials used in a manner constituting disposal, including any existing state manifesting requirements.

Finally, Safe Food argued that the clarification to 40 CFR 266.20(b) is not necessary because recyclers subject to 40 CFR 266.20(b) are also subject to 40 CFR 266.23, which references all of 40 CFR part 268 (which would include 40 CFR 268.7(b)(6)). Again, the Agency disagrees. The parenthetical phrase at the end of 40 CFR 266.23(a), ''these requirements do not apply to products which contain these recycled materials under the provisions of 40 CFR 266.20(b) of this chapter,'' specifically exempts materials regulated under 40 CFR 266.20(b) from 40 CFR 266.23. This means that the reference in 40 CFR 266.23 to 40 CFR part 268 (which would include 40 CFR 268.7(b)(6)) is not applicable to, and not likely to be seen by, persons managing materials under 40 CFR 266.20(b). Thus, the amendment being promulgated today is a useful and important informational aid alerting recyclers managing hazardous wastes under 40 CFR 266.20(b) to their existing

[2] When 40 CFR 268.7(b)(6) was revised in 2006, it was deemed less stringent than the previous version, and therefore states with final authorization for their RCRA base program were not required to adopt it. Section 3009 of RCRA allows states to be more stringent than the federal hazardous waste rules. Specifically, it states, ''* * * Nothing in this title shall be construed to prohibit any State or political subdivision thereof from imposing any requirements, including those for site selection, which are more stringent than those imposed by such regulations * * *''

LDR notification and certification requirements.

As explained above, EPA does not agree that the proposed amendment will have any of the consequences that Safe Food is concerned about. Thus, to better alert recyclers to their existing LDR certification and notification requirements, EPA is today promulgating the change to add a reference to 40 CFR 266.20(b) as was proposed.

V. State Authorization

A. Applicability of Rules in Authorized States

Under section 3006 of RCRA, EPA may authorize a qualified state to administer its own hazardous waste program within the state in lieu of the federal program. Following authorization, EPA retains enforcement authority under Sections 3008, 3013, and 7003 of RCRA, although authorized states have primary enforcement responsibility. The standards and requirements for state authorization are found at 40 CFR part 271.

Prior to enactment of the Hazardous and Solid Waste Amendments of 1984 (HSWA), a state with final RCRA authorization administered its hazardous waste program entirely in lieu of EPA administering the federal program in that state. The federal requirements no longer applied in the authorized state, and EPA could not issue permits for any facilities in that state, since only the state was authorized to issue RCRA permits. When new, more stringent federal requirements were promulgated, the state was obligated to enact equivalent authorities within specified time frames. However, the new federal requirements did not take effect in an authorized state until the state adopted the federal requirements as state law.

In contrast, under RCRA section 3006(g) (42 U.S.C. 6926(g)), which was added by HSWA, new requirements and prohibitions imposed under HSWA authority take effect in authorized states at the same time that they take effect in unauthorized states. EPA is directed by the statute to implement these requirements and prohibitions in authorized states, including the issuance of permits, until the state is granted authorization to do so. While states must still adopt HSWA related provisions as state law to retain final authorization, EPA implements the HSWA provisions in authorized states until the states do so.

RCRA section 3009 allows states to impose standards more stringent than those in the federal program (see also 40 CFR 271.1). Therefore, authorized states may, but are not required to, adopt federal regulations, both HSWA and non-HSWA, that are considered less stringent than previous federal regulations.

B. Effect on State Authorization

Today's Final rule promulgates two technical corrections to regulations in 40 CFR parts 261 and 266 under non-HSWA authority. Thus, the technical corrections and clarifications finalized today under non-HSWA authority would be applicable on the effective date only in those states that do not have final authorization of their base RCRA programs. Moreover, authorized states are required to modify their programs only when EPA promulgates federal regulations that are more stringent or broader in scope than the authorized state regulations. For those changes that are less stringent or reduce the scope of the federal program, states are not required to modify their program. This is a result of section 3009 of RCRA, which allows states to impose more stringent regulations than the federal program. Today's final rule is considered to be neither more nor less stringent than the current standards. Therefore, authorized states are not required to modify their programs to adopt the technical corrections promulgated today, although we strongly urge authorized states to adopt these technical corrections to avoid any confusion or misunderstanding by the regulated community and the public.

VI. Statutory and Executive Order Reviews

As explained above, this rule takes final action on two amendments for which we received adverse comment in response to our March 18, 2010, RCRA Technical Corrections and Clarifications Direct Final rule (and parallel proposed rule). Because today's Final rule does not create any new regulatory requirements, but rather makes technical corrections, this action:

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Order 12866: Regulatory Planning and Review (58 FR 51735, October 4, 1993) or Executive Order 13563: Improving Regulation and Regulatory Review (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *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: Federalism (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045: Protection of Children from Environmental Health and Safety Risks (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211: Actions that Significantly Affect Energy Supply, Distribution, or Use (66 FR 28355, May 22, 2001);
- Does not involve technical standards; thus the requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272) do not apply; and
- Does not have tribal implications as specified by Executive Order 13175: Consultation and Coordination with Indian Tribal Governments (65 FR 67249, November 9, 2000), because as the rule does not make any substantive change, it will not impose substantial direct costs on tribal governments or preempt tribal law.

A. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to the 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 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 impact of today's final rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. This action does not create any new regulatory requirements, but rather

clarifies existing requirements and makes conforming changes.

B. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other information required by the Congressional Review Act (5 U.S.C. 801 *et seq.,* as amended) to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication 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 May 14, 2012.

List of Subjects

40 CFR Part 261

Environmental protection, Hazardous waste, Recycling, Reporting and recordkeeping requirements.

40 CFR Part 266

Environmental protection, Energy, Hazardous waste, Recycling, Reporting and recordkeeping requirements.

Dated: April 4, 2012.

Mathy Stanislaus,

Assistant Administrator, Office of Solid Waste and Emergency Response.

For the reasons set out in the preamble, title 40, chapter I of the Code of Federal Regulations is amended as follows:

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

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

Authority: 42 U.S.C. 6905, 6912(a), 6921, 6922, 6924(y), and 6938.

■ 2. In § 261.32(a), the table is amended by revising the entry for ''K107'' to read as follows:

§ 261.32 Hazardous wastes from specific sources.

* * * * *

(a) * * *

Industry and EPA hazardous waste No.	Hazardous waste	Hazard code
*	*	*
Organic chemicals		
*	*	*
K107	Column bottoms from product separation from the production of 1,1-dimethylhydrazine (UDMH) from carboxylic acid hydrazides.	(C,T)
*	*	*

* * * * *

PART 266—STANDARDS FOR THE MANAGEMENT OF SPECIFIC HAZARDOUS WASTES AND SPECIFIC TYPES OF HAZARDOUS WASTE MANAGEMENT FACILITIES

■ 3. The authority citation for part 266 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912, 6922–6925, 6935–6937, unless otherwise noted.

■ 4. Amend § 266.20 by revising paragraph (b) to read as follows:

§ 266.20 Applicability.

* * * * *

(b) Products produced for the general public's use that are used in a manner that constitutes disposal and that contain recyclable materials are not presently subject to regulation if the recyclable materials have undergone a chemical reaction in the course of producing the products so as to become inseparable by physical means and if such products meet the applicable treatment standards in subpart D of part 268 (or applicable prohibition levels in § 268.32 of this chapter or RCRA section 3004(d), where no treatment standards have been established) for each recyclable material (i.e., hazardous waste) that they contain, and the recycler complies with § 268.7(b)(6) of this chapter.

* * * * *

[FR Doc. 2012–8924 Filed 4–12–12; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

46 CFR Parts 2, 24, 30, 70, 90, 91, and 188

[Docket No. USCG–2011–0363]

RIN 1625–AB71

Seagoing Barges

AGENCY: Coast Guard, DHS.

ACTION: Direct final rule; withdrawal of correction.

SUMMARY: The Coast Guard is withdrawing its correction published on March 29, 2012, to a direct final rule published on December 14, 2011 and withdrawn on April 6, 2012. The correction was published to correct an inadvertent transposition in the titles of two tables in our amendatory instructions and to publish vessel inspection tables in their entirety so that the format of the tables would be consistent with current **Federal Register** format requirements. The direct final rule was withdrawn on April 6, 2012, because we received two adverse comments and the direct final rule will not become effective as scheduled. Therefore, we must also withdraw the vessel inspection tables published as part of the correction because they are not consistent with the current regulatory text.

DATES: The correction published March 29, 2012, (77 FR 18929), is withdrawn on April 11, 2012.

ADDRESSES: The docket for this withdrawn rulemaking is available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet by going to *http://www.regulations.gov,* inserting

USCG–2011–0363 in the ''Keyword'' box, and then clicking ''Search.''

FOR FURTHER INFORMATION CONTACT: If you have questions about this notice, call or email Mr. Ken Smith, U.S. Coast Guard, telephone (202) 372–1413, email *Ken.A.Smith@uscg.mil.* If you have questions on viewing material in the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION:

Background

On December 14, 2011, we published a direct final rule entitled ''Seagoing Barges'' in the **Federal Register** (76 FR 77712). That rule would have redefined ''seagoing barge'' in 46 CFR parts 90 and 91 and would have revised 46 CFR parts 2, 24, 30, 70, 90, 91, and 188 to exempt specified seagoing barges from inspection and certification to align Coast Guard regulations with the language of the applicable statutes. On March 29, 2012, we published a correction to the direct final rule in the **Federal Register** (77 FR 18929) to correct the inadvertent transposition of the titles of two tables in our amendatory instructions and to publish the vessel inspection tables in their entirety so that the format of the tables would be consistent with the current **Federal Register** format requirements. On April 6, 2012, (77 FR 20727) we published a notice of withdrawal for the original direct final rule because we received two adverse comments. Because the direct final rule will not become effective as scheduled, we must also withdraw the vessel inspection tables republished as part of the correction because they are not consistent with the current regulatory text.

Authority

We issue this notice of withdrawal under the authority of 33 U.S.C. 494, 502, 525, 33 CFR 1.05–55, and Department of Homeland Security Delegation No. 0170.1.

Because the inspection tables republished as part of the correction are not consistent with the current regulatory text, we are withdrawing the correction.

Dated: April 11, 2012.

Kathryn A. Sinniger,

Chief, Office of Regulations and Administrative Law, U.S. Coast Guard.

[FR Doc. 2012–9047 Filed 4–11–12; 4:15 pm]

BILLING CODE 9110–04–P

Proposed Rules

Federal Register
Vol. 77, No. 72
Friday, April 13, 2012

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.

FEDERAL TRADE COMMISSION

16 CFR Chapter I

Notice of Intent To Request Public Comments

AGENCY: Federal Trade Commission.

ACTION: Notice of intent to request public comments.

SUMMARY: As part of its ongoing, systematic review of all Federal Trade Commission rules and guides, the Commission announces a modified ten-year regulatory review schedule. No Commission determination on the need for, or the substance of, the rules and guides listed below should be inferred from the notice of intent to publish requests for comments.

DATES: Effective April 13, 2012.

FOR FURTHER INFORMATION CONTACT: Further details about particular rules or guides may be obtained from the contact person listed below for the rule or guide.

SUPPLEMENTARY INFORMATION: To ensure that its rules and industry guides stay relevant and are not unduly burdensome, the Commission reviews its rules and guides on a ten-year schedule. Each year the Commission publishes its review schedule, with adjustments in response to public input, changes in the marketplace, and resource demands.

When the Commission reviews a rule or guide, it publishes a notice in the **Federal Register** seeking public comment on the continuing need for the rule or guide as well as the rule's or guide's costs and benefits to consumers and businesses. Based on this feedback, the Commission may modify or repeal the rule or guide to address public concerns or changed conditions, or to reduce undue regulatory burden.

The Commission posts information about its review schedule on its Web site,[1] thereby facilitating comment about rules and guides, and providing links in one location to comment requests, comment forms, and comments for rules and guides that are currently under review. The Web site also has a continuously updated review schedule, a list of rules and guides previously eliminated in the regulatory review process, and the Commission's regulatory review plan.

When the Commission published its regulatory review schedule for 2011–2020, it also sought input on ways to improve its regulatory review program.[2] The Commission received three comments in response.[3]

Two commenters, the Association of Home Appliance Manufacturers (''AHAM'') and Whirlpool Corporation (''Whirlpool''), urged the Commission to reconsider its earlier decision to accelerate review of the Appliance Labeling Rule to 2012. AHAM explained, and Whirlpool concurred, that the Commission should avoid frequent rule revisions unless existing requirements are outdated, overly burdensome, or deficient. However, the Appliance Labeling Rule warrants a comprehensive review at this time that will allow the Commission to consider burden reductions associated with existing reporting requirements, explore ways to reduce the number of labels missing in showrooms, improve access to label information on retail Web sites, and consider whether additional consumer products should have energy labels. Therefore, the Commission has proceeded with the scheduled review of the Appliance Labeling Rule, 16 CFR part 305.

The Chamber of Commerce of the United States of America submitted a comment that noted the Commission's commitment to regulatory review and reduction of unnecessary burdens on business, but did not address the questions posed by the Commission, or any other aspect of the Commission's regulatory review plan. Rather, it expressed various concerns, principally relating to transparency and scope, regarding Commission enforcement of Section 5 of the Federal Trade Commission Act, 15 U.S.C. 45. The Commission notes that it is familiar with these concerns generally, has addressed them in various forums, and will continue to do so.

Modified Ten-Year Schedule for Review of FTC Rules and Guides

For 2012, the Commission intends to initiate reviews of, and solicit public comments on, the following guides:

(1) *Guides for the Rebuilt, Reconditioned and Other Used Automobile Parts Industry,* 16 CFR part 20. *Agency Contact:* Jonathan L. Kessler, (216) 263–3436, Federal Trade Commission, East Central Region, 1111 Superior Ave E # 200, Cleveland, OH 44114–2577.

(2) *Guides for the Jewelry, Precious Metals, and Pewter Industries,* 16 CFR part 23. *Agency Contact:* Reenah Kim, (202) 326–2272, Federal Trade Commission, Bureau of Consumer Protection, Division of Enforcement, 600 Pennsylvania Ave. NW., Washington, DC 20580.

(3) *Guides for Advertising Allowances and Other Merchandising Payments and Services,* 16 CFR part 240. *Agency Contact:* Michael Bloom, (202) 326–2475, Federal Trade Commission, Bureau of Competition, 600 Pennsylvania Ave. NW., Washington, DC 20580.

The Commission is currently reviewing 22 of the 65 rules and guides within its jurisdiction. Due to resource constraints caused by the large number of rules and guides under review, the Commission is postponing review of the following matters previously scheduled for review in 2012: Guides Against Deceptive Pricing, 16 CFR part 233; Guides Against Bait Advertising, 16 CFR part 238; Guides Concerning Use of the Word ''Free'' and Similar Representations, 16 CFR part 251; and the Preservation of Consumers' Claims and Defenses Rule [Holder in Due Course Rule], 16 CFR part 433. It is postponing the reviews of the three guides until 2017, and the review of the rule until 2013.

The Commission is also consolidating its review of the Hart-Scott-Rodino Antitrust Improvements Act Coverage Rules, 16 CFR part 801; and the Hart-Scott-Rodino Antitrust Improvements Act Exemption Rules, 16 CFR part 802, with its next review in 2020 of the Hart-

[1] *http://www.ftc.gov/ftc/regreview/index.shtml.*

[2] *Federal Trade Commission: Notice Announcing Ten-Year Regulatory Review Schedule and Request for Public Comment on the Federal Trade Commission's Regulatory Review Program,* 76 FR 41150 (July 13, 2011).

[3] These comments are available on the Commission's Web site at *http://www.ftc.gov/os/comments/regulatoryreviewschedule/index.shtm.*

Scott-Rodino Antitrust Improvement Act Transmittal Rules.[4]

A copy of the Commission's modified regulatory review schedule for 2012 through 2021 is appended. The Commission, in its discretion, may modify or reorder the schedule in the future to incorporate new rules, or to respond to external factors (such as changes in the law) or other considerations.

Authority: 15 U.S.C. 41–58.

By direction of the Commission.

Donald S. Clark,

Secretary.

Appendix

REGULATORY REVIEW
MODIFIED TEN-YEAR SCHEDULE

16 CFR part	Topic	Year to review
239	Guides for the Advertising of Warranties and Guarantees	Currently Under Review.
254	Guides for Private Vocational and Distance Education Schools	Currently Under Review.
259	Guide Concerning Fuel Economy Advertising for New Automobiles	Currently Under Review.
260	Guides for the Use of Environmental Marketing Claims	Currently Under Review.
300	Rules and Regulations Under the Wool Products Labeling Act of 1939	Currently Under Review.
301	Rules and Regulations Under Fur Products Labeling Act	Currently Under Review.
303	Rules and Regulations Under the Textile Fiber Products Identification Act	Currently Under Review.
305	Appliance Labeling Rule	Currently Under Review.
306	Automotive Fuel Ratings, Certification and Posting	Currently Under Review.
308	Trade Regulation Rule Pursuant to the Telephone Disclosure and Dispute Resolution Act of 1992 [Pay Per Call Rule].	Currently Under Review.
309	Labeling Requirements for Alternative Fuels and Alternative Fueled Vehicles	Currently Under Review.
312	Children's Online Privacy Protection Rule	Currently Under Review.
423	Care Labeling of Textile Wearing Apparel and Certain Piece Goods	Currently Under Review.
424	Retail Food Store Advertising and Marketing Practices [Unavailability Rule]	Currently Under Review.
425	Use of Prenotification Negative Option Plans	Currently Under Review.
429	Rule Concerning the Cooling-Off Period for Sales Made at Homes or at Certain Other Locations	Currently Under Review.
435	Mail or Telephone Order Merchandise	Currently Under Review.
455	Used Motor Vehicle Trade Regulation Rule	Currently Under Review.
700	Interpretations of Magnuson-Moss Warranty Act	Currently Under Review.
701	Disclosure of Written Consumer Product Warranty Terms and Conditions	Currently Under Review.
702	Pre-Sale Availability of Written Warranty Terms	Currently Under Review.
703	Informal Dispute Settlement Procedures	Currently Under Review.
20	Guides for the Rebuilt, Reconditioned and Other Used Automobile Parts Industry	2012.
23	Guides for the Jewelry, Precious Metals, and Pewter Industries	2012.
240	Guides for Advertising Allowances and Other Merchandising Payments and Services	2012.
310	Telemarketing Sales Rule	2013.
433	Preservation of Consumers' Claims and Defenses [Holder in Due Course Rule]	2013.
500	Regulations Under Section 4 of the Fair Packaging and Labeling Act	2013.
501	Exemptions From Requirements and Prohibitions under Part 500	2013.
502	Regulations Under Section 5(c) of the Fair Packaging and Labeling Act	2013.
503	Statements of General Policy or Interpretation [under the Fair Packaging and Labeling Act]	2013.
304	Rules and Regulations Under the Hobby Protection Act	2014.
314	Standards for Safeguarding Customer Information	2014.
315	Contact Lens Rule	2015.
316	CAN–SPAM Rule	2015.
456	Ophthalmic Practice Rules (Eyeglass Rule)	2015.
460	Labeling and Advertising of Home Insulation	2016.
682	Disposal of Consumer Report Information and Records	2016.
233	Guides Against Deceptive Pricing	2017.
238	Guides Against Bait Advertising	2017.
251	Guide Concerning Use of the Word AFree@ and Similar Representations	2017.
410	Deceptive Advertising as to Sizes of Viewable Pictures Shown by Television Receiving Sets	2017.
18	Guides for the Nursery Industry	2018.
311	Test Procedures and Labeling Standards for Recycled Oil	2018.
436	Disclosure Requirements and Prohibitions Concerning Franchising	2018.
681	Identity Theft [Red Flag] Rules	2018.
24	Guides for Select Leather and Imitation Leather Products	2019.
453	Funeral Industry Practices	2019.
14	Administrative Interpretations, General Policy Statements, and Enforcement Policy Statements	2020.
255	Guides Concerning Use of Endorsements and Testimonials in Advertising	2020.
313	Privacy of Consumer Financial Information	2020.
317	Prohibition of Energy Market Manipulation Rule	2020.
318	Health Breach Notification Rule	2020.
432	Power Output Claims for Amplifiers Utilized in Home Entertainment Products	2020.
444	Credit Practices	2020.
640	Duties of Creditors Regarding Risk-Based Pricing	2020.

[4] The Hart-Scott-Rodino ("HSR") program includes an ongoing review of all the HSR rules. In 2011, the Commission made significant changes to 16 CFR part 803 by overhauling the premerger notification form. The Commission also amended the definition of "associates" in 16 CFR part 801, and made minor amendments to several exemption rules in 16 CFR part 802. *See* the Statement of Basis and Purpose, *Federal Trade Commission: Premerger Notification; Reporting and Waiting Period Requirements,* 76 FR 42471 (July 19, 2011) at *http://www.gpo.gov/fdsys/pkg/FR-2011-07-19/pdf/2011-17822.pdf.* As this review covered all sections of the HSR rules, it is appropriate to consolidate future reviews of these rules with the next scheduled review of 16 CFR part 803. The Commission will accelerate these reviews if necessary.

REGULATORY REVIEW—Continued
MODIFIED TEN-YEAR SCHEDULE

16 CFR part	Topic	Year to review
641	Duties of Users of Consumer Reports Regarding Address Discrepancies	2020.
642	Prescreen Opt-Out Notice	2020.
660	Duties of Furnishers of Information to Consumer Reporting Agencies	2020.
680	Affiliate Marketing	2020.
698	Model Forms and Disclosures	2020.
801	[Hart-Scott-Rodino Antitrust Improvements Act] Coverage Rules	2020.
802	[Hart-Scott-Rodino Antitrust Improvements Act] Exemption Rules	2020.
803	[Hart-Scott-Rodino Antitrust Improvements Act] Transmittal Rules	2020.
437	Disclosure Requirements and Prohibitions Concerning Business Opportunities	2021.

[FR Doc. 2012–8742 Filed 4–12–12; 8:45 am]
BILLING CODE 6750–01–P

DEPARTMENT OF LABOR

Office of the Secretary of Labor

29 CFR Part 15

Employment and Training Administration

20 CFR Parts 638 and 670

RIN 1290–AA25

Administrative Claims Under the Federal Tort Claims Act and Related Statutes

AGENCY: Office of the Secretary, Employment and Training Administration, Labor.

ACTION: Notice of proposed rulemaking.

SUMMARY: This amendment revises the Department of Labor's (DOL's) regulations governing administrative claims submitted to DOL pursuant to the Federal Tort Claims Act (FTCA), the Military Personnel and Civilian Employees' Claims Act (MPCECA), and for payment of claims arising out of the operation of the Job Corps. The regulations governing such claims were last revised in 1995. MPCECA has since been amended to allow payment of up to $100,000 if the claim arose from an emergency or extraordinary circumstance. Further, the implementing authority for the Job Corps was changed to the Workforce Investment Act (WIA) since the last time the regulations were updated. These regulations are being amended to reflect those changes, improve the clarity and ease of use of the regulations, and to harmonize the regulations governing these claims between those regulations in titles 20 and 29 of the CFR, which includes deleting the references to these claims in 20 CFR part 638 as these revisions have rendered those sections unnecessary. Finally, the regulations in title 20 have also been updated to reflect the recently revised regulations regarding claims of Job Corps students under the Federal Employees' Compensation Act (FECA).

DATES: Written comments must be received on or before June 12, 2012.

ADDRESSES: You may submit comments on the proposed rule, identified by Regulatory Information Number (RIN) 1290–AA25, by ONE of the following methods:

Federal e-Rulemaking Portal: The Internet address to submit comments on the rule is *http://www.regulations.gov*. Follow the Web site instructions for submitting comments.

Mail: Submit written comments to Catherine P. Carter, Counsel for Claims and Compensation, Office of the Solicitor, U.S. Department of Labor, Room S–4325, 200 Constitution Avenue NW., Washington, DC 20210. Because of security measures, mail directed to Washington, DC is sometimes delayed. We will only consider comments postmarked by the U.S. Postal Service or other delivery service on or before the deadline for comments.

Instructions: All comments must include the RIN 1290–AA25 for this rulemaking. Receipt of any comments, whether by mail or Internet, will not be acknowledged. Because DOL continues to experience delays in receiving postal mail in the Washington, DC area, commenters are encouraged to submit any comments by mail early.

Comments on the proposed rule will be available for public inspection during normal business hours at the address listed above for mailed comments. Persons who need assistance to review the comments will be provided with appropriate aids such as readers or print magnifiers. Copies of this proposed rule may be obtained in alternative formats (e.g., large print, audiotape or disk) upon request. To schedule an appointment to review the comments and/or to obtain the proposed rule in an alternative format, contact DOL at 202–693–5320 (this is not a toll-free number).

FOR FURTHER INFORMATION CONTACT: Catherine P. Carter, Counsel for Claims and Compensation, Office of the Solicitor, U.S. Department of Labor, Room S–4325, 200 Constitution Avenue NW., Washington, DC 20210, Telephone: 202–693–5320 (this is not a toll-free number). Individuals with hearing or speech impairments may access this telephone number via TTY by calling the toll-free Federal Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

I. Proposed Rule and Concurrent, Identical Direct Final Rule

Since this rule is not controversial and primarily concerns agency procedures, we have determined that the subject of this rulemaking is suitable for a direct final rule. No significant adverse comments are anticipated. Accordingly, concurrent with this proposed rule, a separate, identical direct final rule is published in today's issue of the **Federal Register**. The duplicate direct final rule will expedite rulemaking in the event no significant adverse comments are received and we withdraw this notice of proposed rulemaking. All interested parties should comment at this time because we will not initiate an additional comment period. If no significant adverse comments to the accompanying proposed rule are received on or before June 12, 2012, the direct final rule will become effective July 12, 2012 without further notice.

If significant adverse comments are received, we will publish a timely notice in the **Federal Register** withdrawing the direct final rule, and will then proceed with the rulemaking by addressing the comments and developing a final rule from this proposed rule. For purposes of withdrawing the direct final rule, a significant adverse comment is one that explains (1) why the direct final rule is

inappropriate, including challenges to the rule's underlying premise or approach; or (2) why the direct final rule will be ineffective or unacceptable without a change. In determining whether a significant adverse comment necessitates withdrawal of the direct final rule, we will consider whether the comment raises an issue serious enough to warrant a substantive response through the notice and comment process. A comment recommending an addition to the rule will not be considered significant and adverse unless the comment explains how this rule would be ineffective without the addition.

II. Background

The FTCA surrenders the sovereign immunity of the United States for the negligent or wrongful act or omission of a Government employee acting within the scope of his or her employment. The MPCECA authorizes payment of claims of employees of the Government for loss of, or damage to, property incident to Government service. The WIA provides that Job Corps students are Federal employees for purposes of claims under the FTCA and authorizes payment of claims arising out of the operation of the Job Corps that are not cognizable under the FTCA. Parts 638 and 670 of title 20 and part 15 of title 29 of the Code of Federal Regulations currently contain regulations implementing these three claims authorities.

III. Overview of the Regulations

The regulations reflect statutory changes and are otherwise largely unchanged. The majority of changes were made to change the format of 29 CFR part 15 to question and answer format, and to improve the structure and readability of the regulations in both 20 CFR part 670 and 29 CFR part 15. Furthermore, the numbering of sections in 29 CFR part 15 was changed to improve structure and to allow for splitting of current sections for improved clarity and readability.

20 CFR Part 638

Sections 638.526 Through 638.527

As the changes made to 20 CFR part 670 and 29 CFR part 15 have rendered these sections unnecessary, the regulations delete these sections.

20 CFR Part 670

Sections 670.900 Through 670.905

These sections were changed to direct possible claimants to 29 CFR part 15, which provides the actual regulations that govern such claims. This change was made to reduce the possibility of conflicting regulations and to clarify which regulations provide the decisionmaking authority for such claims.

Sections 670.910 Through 670.930

These sections provide information for Job Corps students regarding their rights under the FECA. These sections were similarly amended to provide cross-references to the regulations governing claims under the FECA, while still providing the statutory information regarding the status of such students under the WIA. Sections no longer necessary as a result were removed.

29 CFR Part 15

As discussed above, 29 CFR part 15 was reorganized and the regulations themselves were modified to change to a question and answer format to promote clarity and readability of these regulations. As part of the reorganization, a new subpart A was added to this part, with the other subparts redesignated accordingly.

Subpart A

Subpart A of part 15 is a new subpart. It includes introductory information, such as describing the contents of the other subparts and definitions that apply to all subparts in this part.

Subpart B

Subpart B is largely subpart A of the old regulations. The text in this subpart is largely unchanged, although some of the old regulations have been broken out into new sections in order to promote clarity and use of a question and answer format. Changes in these sections are described below.

Section 15.102 is a new section that describes the filing of a claim by an insurance company and compiles the requirements into one section. The language of this section has also been rewritten for clarity.

Section 15.103 is a new section that addresses legal representatives and compiles them into one section. The statutory limitation on representative fees has also been included for ease of use.

Section 15.104 (formerly § 15.4) has been amended to clarify that the $25,000 jurisdictional limit applies to the aggregate of claims resulting from one incident. Furthermore, this section has been amended to codify the official duty stations current practice of forwarding the FTCA claims to the Regional Offices of the Office of the Solicitor with the documentation they have regarding that claim.

Section 15.106 (formerly § 15.6) has been amended to include a requirement that all organizational units within the Department appoint an FTCA contact, unless that requirement for a contact is waived. For example, a small entity within the Office of the Secretary for which claims are rarely received would not be required to designate an FTCA contact. This section has also been amended to require the FTCA contact to submit an administrative report to the deciding official within 30 days.

Section 15.108 (formerly § 15.7) has been amended to clarify that the $25,000 jurisdictional limit applies to the aggregate of claims resulting from one incident.

Section 15.111 (formerly § 15.10) has been amended to clarify that the $25,000 jurisdictional limit applies to the aggregate of claims resulting from one incident and to update the forms used by the Department of Justice in settling and paying FTCA claims.

Subpart C

As above, subpart C is largely a redesignated version of former subpart B. The text in this subpart is largely unchanged, although some of the old regulations have been broken out into new sections in order to promote clarity. Changes in these sections are described below.

Section 15.202 (formerly a subsection of § 15.21) has been amended to include a reference to a sample claim for MPCECA claims and to note that the SF–95 form should not be used to file a claim under this subpart. This section has also been amended to allow the deciding official to waive the requirement of submitting two estimates of repair where unnecessary, lessening the burden on claimants in submitting these claims.

Section 15.206 is a new section that covers MPCECA claims made for damage to property at Telework locations and at residences.

Section 15.207 (formerly § 15.22) has been amended to include language allowing claims for loss or damage incident to service to cellular phones, personal data assistants and similar communication and electronic devices.

Section 15.210 has been amended to allow the deciding official to waive the requirement of filing a claim under the employee's insurance policy where such a claim is impracticable or inequitable.

Subpart D

As above, subpart D is largely a redesignated version of former subpart C. This subpart, however, has been reorganized to clearly delineate the types of claims that are covered by this subpart. Changes in these sections are described below.

Section 15.300 is a new section that has been drafted to specifically categorize the types of claims covered by this subpart. This section also clearly indicates that this includes claims involving Job Corps Centers run by other Federal agencies.

Section 15.301 (part of former § 15.42) has been amended to clearly delineate which Department official has responsibility for which type of claim and for what amounts. It more clearly describes and explains the procedures for processing claims of loss or damage to persons or personal property of Job Corps students than the current regulations. In particular, it provides that the Regional Solicitor is responsible for such claims in excess of $300 and the Job Corps Regional Director is responsible for such claims of $300 or less.

Section 15.302 is a new section that has been added to distinguish what procedures apply to the different types of claims covered by this subpart.

Section 15.303 (part of former § 15.42) has been amended to change the process as to where claims under this subpart are initially filed. The new procedures require all claims under the WIA must first be filed with the Job Corps Regional Office.

Section 15.304 combines all prior subsections regarding limits on claims under the WIA into one new section.

IV. Administrative Requirements for the Proposed Rulemaking

Executive Orders 12866 and 13563

Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects; distributive impacts; and equity). Executive Order 13563 is supplemental to and reaffirms the principles, structures, and definitions governing regulatory review as established in Executive Order 12866.

The Department has determined that this proposed rule is not a ''significant regulatory action'' under Executive Order 12866, section 3(f). Accordingly, there is no requirement for an assessment of potential costs and benefits under section 6(a)(3) of that order.

Regulatory Flexibility Act of 1980

This proposed rule has been reviewed in accordance with the Regulatory Flexibility Act of 1980, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 601–612. The Department has concluded that the proposed rule does not involve regulatory and informational requirements regarding businesses, organizations, and governmental jurisdictions subject to regulation.

Paperwork Reduction Act (PRA)

This proposed rule is not subject to the Paperwork Reduction Act (PRA) of 1995, 44 U.S.C. 3501, *et seq.,* since it does not contain any new collection of information requirements.

The National Environmental Policy Act of 1969

The Department certifies that this proposed rule has been assessed in accordance with the requirements of the National Environmental Policy Act of 1969, 42 U.S.C. 4321 *et seq.* (NEPA). The Department concludes that NEPA requirements do not apply to this rulemaking because this proposed rule includes no provisions impacting the maintenance, preservation, or enhancement of a healthful environment.

Federal Regulations and Policies on Families

The Department has reviewed this proposed rule in accordance with the requirements of section 654 of the Treasury and General Government Appropriations Act of 1999, 5 U.S.C. 601 note. This proposed rule was not found to have a potential negative effect on family well-being as it is defined thereunder.

Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

The Department certifies that this proposed rule has been assessed regarding environmental health risks and safety risks that may disproportionately affect children. This proposed rule was not found to have a potential negative effect on the health or safety of children.

Unfunded Mandates Reform Act of 1995 and Executive Order 13132

The Department has reviewed this proposed rule in accordance with the requirements of Executive Order 13132, 64 FR 43225, Aug. 10, 1999, and the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1501 *et seq.,* and has found no potential or 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 there is no Federal mandate contained herein that could result in increased expenditures by State, local, or tribal governments or by the private sector, the Department has not prepared a budgetary impact statement.

Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

The Department has reviewed this proposed rule in accordance with Executive Order 13175, 65 FR 67249, Nov. 9, 2000, and has determined that it does not have ''tribal implications.'' The proposed rule does not ''have substantial direct effects 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.''

Executive Order 12630: Governmental Actions and Interference With Constitutionally Protected Property Rights

The Department has reviewed this proposed rule in accordance with Executive Order 12630, 53 FR 8859, Mar. 15, 1988, and has determined that it does not contain any ''policies that have takings implications'' in regard to the ''licensing, permitting, or other condition requirements or limitations on private property use, or that require dedications or exactions from owners of private property.''

Executive Order 13211: Energy Supply, Distribution, or Use

The Department has reviewed this proposed rule and has determined that the provisions of Executive Order 13211, 66 FR 28355, May 18, 2001, are not applicable as there are no direct or implied effects on energy supply, distribution, or use.

The Privacy Act of 1974, 5 U.S.C. 552a, as Amended

Claims filed under these regulations are subject to the current Privacy Act System of Records DOL/SOL–3, Tort Claims Files; DOL/SOL–5,Workforce Investment Act Tort Claims Files; DOL/SOL–6, Military Personnel and Civilian Employees' Claims; and DOL/GOVT–1, Office of Workers' Compensation Programs, Federal Employees' Compensation Act File. 67 FR 16816, Apr 8, 2002.

Clarity of This Regulation

Executive Order 12866, 58 FR 51735, Sept. 30, 1993, and the President's memorandum of June 1, 1998, require each agency to write all rules in plain language. This proposed rule was

written to improve the clarity of the rule in accordance with that Order.

List of Subjects

20 CFR Part 638

Administrative practice and procedure, Claims, Government employees, Labor, Workers' compensation.

20 CFR Part 670

Administrative practice and procedure, Claims, Government employees, Labor, Workers' compensation.

29 CFR Part 15

Tort claims, Indemnity payments, Administrative practice and procedure, Government employees.

For the reasons set forth in the preamble, the Department of Labor proposes to amend 20 CFR parts 638 and 670 and 29 CFR part 15 as follows:

Title 20—Employees' Benefits

PART 638—JOB CORPS PROGRAM UNDER TITLE IV–B OF THE JOB TRAINING PARTNERSHIP ACT

1. The authority citation for 20 CFR part 638 continues to read as follows:

Authority: 29 U.S.C. 1579(a).

§§ 638.526 and 838.527 [Removed]

2. Remove §§ 638.526 and 838.527.

PART 670—THE JOB CORPS UNDER TITLE I OF THE WORKFORCE INVESTMENT ACT

3. The authority citation for 20 CFR part 670 continues to read as follows:

Authority: Subtitle C of Title I, sec. 506(c), Pub. L. 105–220, 112 Stat. 936 (20 U.S.C. 2881 *et seq.* and 9276(c)); 5 U.S.C. 301; Executive Order 13198, 66 FR 8497, 3 CFR 2001 Comp., p. 750; Executive Order 13279, 67 FR 77141, 3 CFR 2002 Comp., p. 258.

4. Revise § 670.900 to read as follows:

§ 670.900 Are damages caused by the acts or omissions of students eligible for payment under the Federal Tort Claims Act?

Yes, students are considered Federal employees for purposes of the FTCA (28 U.S.C. 2671 *et seq.*). Claims for such damage should be filed pursuant to the procedures found in 29 CFR part 15, subpart D.

5. Revise § 670.905 to read as follows:

§ 670.905 Are loss and damages that occur to persons or personal property of students at Job Corps centers eligible for reimbursement?

Yes, the Job Corps may pay students for valid claims under the procedures found in 29 CFR part 15, subpart D.

6. Revise § 670.910 to read as follows:

§ 670.910 If a student is injured in the performance of duty as a Job Corps Student, what benefits may they receive?

(a) Job Corps students are considered Federal employees for purposes of the Federal Employees' Compensation Act (FECA) as specified in 29 U.S.C. 2897.

(b) Job Corps students may be entitled to benefits under FECA as provided by 5 U.S.C. 8143 for injuries occurring in the performance of duty.

(c) Job Corps students must meet the same eligibility tests for FECA benefits that apply to all other Federal employees. The requirements for FECA benefits may be found at 5 U.S.C. 8101, *et seq.* and part 10 of this title. The Department of Labor's Office of Workers' Compensation Programs (OWCP) administers the FECA program; all FECA determinations are within the exclusive authority of the OWCP, subject to appeal to the Employees' Compensation Appeals Board.

(d) Whenever a student is injured, develops an occupationally related illness, or dies while in the performance of duty, the procedures of the OWCP, at part 10 of this title, must be followed. To assist OWCP in determining FECA eligibility, a thorough investigation of the circumstances and a medical evaluation must be completed and required forms timely filed by the center operator with the DOL's OWCP. Additional information regarding Job Corps FECA claims may be found in OWCP's regulations and procedures available on DOL's Web site located at *www.dol.gov.*

7. Revise § 670.915 to read as follows:

§ 670.915 When is a Job Corps student considered to be in the performance of duty?

(a) Performance of duty is a determination that must be made by the OWCP under FECA, and is based on the individual circumstances in each claim.

(b) In general, residential students may be considered to be in the ''performance of duty'' when:

(1) They are on center under the supervision and control of Job Corps officials;

(2) They are engaged in any authorized Job Corps activity;

(3) They are in authorized travel status; or

(4) They are engaged in any authorized offsite activity.

(c) Non-resident students are generally considered to be ''in performance of duty'' as Federal employees when they are engaged in any authorized Job Corps activity, from the time they arrive at any scheduled center activity until they leave the activity. The standard rules governing coverage of Federal employees during travel to and from work apply. These rules are described in guidance issued by the Secretary.

(d) Students are generally considered to be not in the performance of duty when:

(1) They are Absent Without Leave (AWOL);

(2) They are at home, whether on pass or on leave;

(3) They are engaged in an unauthorized offsite activity; or

(4) They are injured or ill due to their own willful misconduct, intent to cause injury or death to oneself or another or through intoxication or illegal use of drugs.

§§ 670.920, 670.925, and 670.930 [Removed]

8. Remove §§ 670.920, 670.925, and 670.930.

Title 29—Labor

9. Revise Part 15 to read as follows:

PART 15—ADMINISTRATIVE CLAIMS UNDER THE FEDERAL TORT CLAIMS ACT AND RELATED CLAIMS STATUTES

Sec.

Subpart A—Introduction

15.1 What is the scope and purpose of this part?
15.2 What definitions apply to this part?

Subpart B—Claims Against the Government Under the Federal Tort Claims Act

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Subpart C—Claims Under the Military Personnel and Civilian Employees' Claims Act of 1964

15.200 What is a claim under the MPCECA and who may file such a claim?
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Subpart D—Claims Arising Out of the Operation of the Job Corps

15.300 How are claims involving the Job Corps initiated?
15.301 What office is responsible for determining liability in claims arising out of the Job Corps?
15.302 What procedures apply to these claims?
15.303 How does a Job Corps student file a claim for loss of or damages to personal property under the WIA?
15.304 Are there limits to claims for loss of or damages to personal property under the WIA?

Authority: 28 U.S.C. 2672; 28 CFR 14.11; 31 U.S.C. 3721; 29 U.S.C. 2897(b).

Subpart A—Introduction

§ 15.1 What is the scope and purpose of this part?

(a) The regulations in this part provide procedures to be followed for claims asserted against the Department of Labor under the Federal Tort Claims Act, 28 U.S.C. 2671, *et seq.,* under the Military Personnel and Civilian Employees' Claims Act of 1964, 31 U.S.C. 3721, and for claims arising out of the operation of Job Corps Centers under the Workforce Investment Act of 1998, 29 U.S.C. 2897(b).

(b) Subpart B of this part provides the procedures followed in processing claims asserted under the Federal Tort Claims Act, as amended, for money damages against the United States for injury to or loss of property or personal injury or death caused by the negligent or wrongful act or omission of an officer or employee of the Department of Labor while acting within the scope of his or her office or employment. This subpart is issued subject to and consistent with applicable regulations on administrative claims under the Federal Tort Claims Act issued by the Attorney General (28 CFR part 14).

(c) Subpart C of this part provides the procedures for processing claims filed by or on behalf of employees of the Department of Labor for loss of or damage to personal property incident to their service with the Department under the Military Personnel and Civilian Employees' Claims Act of 1964.

(d) Subpart D of this part provides the procedures used in processing claims relating to damage to persons or property arising out of the operation of Job Corps, pursuant to the Workforce Investment Act, including damages under the Federal Tort Claims Act, damage to personal property of Job Corps students, and claims which the Secretary of Labor finds to be a proper charge against the United States but which are not cognizable under the Federal Tort Claims Act.

§ 15.2 What definitions apply to this part?

(a) *Department* means the Department of Labor.

(b) *Organizational unit* means the jurisdictional area of each Assistant Secretary and each office head within the Department reporting directly to the Secretary.

(c) *Counsel for Claims and Compensation* means the Department's deciding official in the Office of the Solicitor for certain administrative claims under this part. The address for the Counsel for Claims and Compensation is U.S. Department of Labor, 200 Constitution Avenue NW., Suite S4325, Washington, DC 20210. Telephone and fax numbers for this official may be found on the Department's Web site at *www.dol.gov.*

(d) *Regional Solicitor* means the head of the appropriate Regional Office (Regional Solicitor) or Branch Office (Associate Regional Solicitor) of the Office of Solicitor with jurisdiction to handle certain claims under this part.

(e) *FTCA* means the Federal Tort Claims Act, as amended, 28 U.S.C. 1346(b), 28 U.S.C. 2671, *et seq.*

(f) *MPCECA* means the Military Personnel and Civilian Employees' Claims Act of 1964, 31 U.S.C. 3721.

(g) *WIA* means the Workforce Investment Act of 1998, 29 U.S.C. 2897(b).

Subpart B—Claims Against the Government Under the Federal Tort Claims Act

§ 15.100 What claims against the Department are covered by the FTCA?

(a) The FTCA is a limited waiver of sovereign immunity that allows claims for money damages against the Department for negligent acts or omissions of its employees acting within the course and scope of their employment. Subject to the exception set forth in paragraph (b) of this section, all such claims against the Department should be handled under the procedures in this subpart.

(b) In instances where a third party has agreed to insure the Federal government, such as under a U.S. Government Car Rental Agreement, claimants are required to pursue those claims in accordance with such agreements.

§ 15.101 Who may file an administrative claim under the FTCA against the Department?

(a) A claim for the injury to or loss of property may be presented by the owner of the property, his or her duly authorized agent, or his or her legal representative.

(b) A claim for personal injury may be presented by the injured person, his or her duly authorized agent, or his or her legal representative.

(c) A claim for death may be presented by the executor or administrator of the decedent's estate or by any other person legally entitled to assert such a claim in accordance with applicable State law.

(d) A claim presented by an agent or legal representative shall be presented in the name of the claimant, be signed by the agent or representative, show the title or legal capacity of the person signing and be accompanied by evidence of his or her authority to present a claim on behalf of the claimant as agent, executor, administrator, parent, guardian, or legal representative.

(e) Only claims involving alleged acts or omissions of Department employees (including Job Corps students) should be presented to the Department.

§ 15.102 May an insurance company file an FTCA administrative claim on behalf of a claimant?

(a) A claim for loss wholly compensated by an insurance company may be presented by that company.

(b) A claim for loss partially compensated by an insurance company may be presented by the company or the insured individually, in accordance with their respective interests or jointly.

It should be noted, however, that if the insurance company claims only part of the insured's interests, an acceptance of that claim may bar any additional claim by the insured for damages beyond that claimed by the insurance company as such acceptance would be in full and final settlement of all such claims arising out the incident that gave rise to the claim as described in § 15.110(b).

(c) If the claimant is directly compensated by the Department for medical bills under this subpart, the claimant may be required to reimburse his or her insurance company in accordance with the terms of his or her insurance policy if the company has already paid those bills.

(d) Whenever an insurance company presents a claim on behalf of the insured (such as a claim for an auto loss that includes the deductible), it shall present with its claim appropriate evidence that it has the rights of a subrogee, such as a copy of the signed policy.

§ 15.103 May an agent or legal representative file an FTCA administrative claim on behalf of a claimant?

(a) An agent or legal representative may file a claim on behalf of a claimant.

(b) Representative's fees are limited to not more than 20 percent of the amount paid for a claim settled in an administrative claim, and to not more than 25 percent of a judgment or settlement award after litigation is initiated. 28 U.S.C. 2678.

(c) If a representative is dismissed from representing a claimant before the claim is resolved, the representative may not place a lien on the claimant's recoveries under the claim.

(d) Any purported representative of a minor must provide documentation that he or she is the legal agent of that minor.

§ 15.104 Where should the FTCA administrative claim be filed?

(a) Only claims involving alleged acts or omissions of Department employees should be presented to the Department. For the purposes of this subpart, an FTCA claim shall be deemed to have been presented when the Department receives, at a place designated in paragraph (b) of this section, a properly executed ''Claim for Damage, Injury, or Death'' on Standard Form 95, or other written notification of an incident accompanied by a claim for money damages in a sum certain for injury to or loss of property or personal injury or death by reason of the incident.

(b) In any FTCA case where the claim seeks damages for an incident resulting in aggregate claims in excess of $25,000 or which involves an alleged act or omission of an employee of the Department whose official duty station is in Washington, DC, the claimant shall mail or deliver the claim for money damages for injury to or loss of property or personal injury or death caused by the negligent or wrongful act or omission of any employee of the Department while acting within the scope of office or employment to the Counsel for Claims and Compensation, Office of the Solicitor, U.S. Department of Labor, 200 Constitution Avenue NW., Suite S4325, Washington, DC 20210.

(c) In all other cases, the claimant shall submit his or her claim to the official duty station of the employee whose act or omission forms the basis of the complaint, which should be immediately forwarded to the appropriate Regional Office of the Office of the Solicitor with all currently available documentation (such as a Standard Form 91, Motor Vehicle Accident Report).

§ 15.105 What information and evidence should be provided to DOL to substantiate an FTCA administrative claim?

(a) *Personal injury.* In support of a claim for personal injury, including pain and suffering, the claimant is required to submit the following evidence or information:

(1) A written report by the attending physician or dentist setting forth the nature and extent of the injury, nature and extent of treatment, any degree of temporary or permanent impairment, the prognosis, period of hospitalization, if any, and any diminished earning capacity. In addition, the claimant may be required to submit to a physical or mental examination by a physician employed or designated by the Department or another Federal agency. A copy of the report of the examining physician shall be made available to the claimant upon the claimant's written request.

(2) Itemized bills for medical, dental and hospital, or any other, expenses incurred or itemized receipts of payment for such expenses.

(3) If the prognosis reveals the necessity for future treatment, a statement of expected expenses for such treatment.

(4) Any other evidence or information which may have a bearing on either the responsibility of the United States for the personal injury or the damages claimed.

(b) *Death.* In support of a claim based on death, the claimant may be required to submit the following evidence or information:

(1) An authenticated death certificate, an autopsy report and or other competent evidence that includes cause or causes of death, date of death, and age of the decedent.

(2) Decedent's employment or occupation at the time of death, including his or her monthly or yearly salary or earnings (if any), and the duration of his or her last employment or occupation.

(3) Full name, address, birth date, kinship and marital status of the decedent's survivors, including identification of those survivors who were dependent for support upon the decedent at the time of his or her death.

(4) Degree of support afforded by the decedent to each survivor dependent upon him or her for support at the time of his or her death.

(5) Decedent's general physical and mental condition before his or her death.

(6) Itemized bills for medical and burial expenses incurred by reason of the incident causing death, or itemized receipts of payment for such expenses.

(7) If damages for pain and suffering prior to death are claimed, a physician's detailed statement specifying the injuries suffered, duration of pain and suffering, any drugs administered for pain, and the decedent's physical condition in the interval between injury and death.

(8) Any other evidence or information which may have a bearing on either the responsibility of the United States for the death or damages claimed.

(c) *Property damages.* In support of a claim for injury to or loss of property, real or personal, the claimant may be required to submit the following evidence or information with respect to each item of property:

(1) Proof of ownership.

(2) A detailed statement of the amount claimed.

(3) An itemized receipt of payment for necessary repairs or itemized written estimates of the cost of such repairs.

(4) A statement listing date of purchase, purchase price, and salvage value where repair is not economical.

(5) Any other evidence or information which may have a bearing on either the responsibility of the United States for the injury to or loss of property or the damages claimed.

(d) *Loss of income.* In support of a claim based on loss of income, the claimant may be required to submit the following evidence or information:

(1) A written statement from his or her employer showing actual time lost from employment, whether he or she is a full or part-time employee, and wages or salary actually lost.

(2) If the claimant is self-employed, documentary evidence showing the amount of earnings lost such as:

(i) Income tax returns for several years prior to the injury in question and the year in which the injury occurred may be used to indicate or measure lost income; or

(ii) A statement of the actual or projected cost for the claimant to hire someone else to do the same work he or she was doing at the time of injury.

(3) Any other evidence or information which may have a bearing on either the responsibility of the United States for the personal injury or the damages claimed.

§ 15.106 How is the administrative claim processed?

(a) *Investigation.* When an organizational unit learns of an incident that reasonably can be expected to result in an allegation of harm caused to an individual or organization by an alleged negligent act or omission by an employee of that organizational unit or when it learns of an administrative claim or of litigation alleging such harm, it has the responsibility to fully investigate the incident and to take all actions necessary to preserve all relevant documents and other evidence. Each organizational unit should institute appropriate procedures to ensure that notification of such incidents are reported to the office responsible for ensuring that evidence is preserved and investigation undertaken.

(b) *Notification.* Upon receipt of an administrative claim under the Act or of notice of litigation seeking damages for an alleged negligent act or omission of an employee of the Department acting within the scope of his or her employment, the Office of the Solicitor shall notify the organizational unit responsible for the activity which gave rise to the claim or litigation and shall provide a copy of the administrative claim or the claim filed in the litigation.

(c) *FTCA Contact.* Each organizational unit will establish an FTCA contact, unless this requirement is waived by the Counsel for Claims and Compensation. The FTCA contact will coordinate and oversee the preservation of documents related to the circumstances of all claims arising from his or her organizational unit. The FTCA contact will arrange for the preparation and submission of the Administrative Report relating to each claim within 30 days after notification of receipt of an administrative claim, unless the Office of the Solicitor grants additional time.

(d) *Litigation.* During the course of any litigation, organizational units are responsible for providing assistance to the Office of the Solicitor in responding to discovery requests such as interrogatories and requests to produce documents, for providing assistance in analyzing factual and program issues, for providing witnesses for depositions and trials, and for assistance in producing affidavits and exhibits for use in the litigation.

§ 15.107 What must be provided in the administrative report?

(a) The administrative report shall be in the form of a single memorandum in narrative form with attachments. It should contain all of the following elements, unless permission is obtained from the Office of the Solicitor to dispense with a particular element:

(1) A brief explanation of the organization and operation of the program involved including statutory authority and applicable regulations;

(2) A complete description of the events that gave rise to the claim or litigation, including a specific response to every allegation in the claim or litigation;

(3) Any information available regarding the questions of whether the claimant or plaintiff actually suffered the harm alleged in the claim or litigation and what individual or organization caused any harm which appears to have occurred;

(4) Any information available regarding the damages claimed;

(5) Any policy reasons which the organizational unit wishes to advance for or against settlement of the claim or litigation; and

(6) Details of any claims the Department may have against the claimant or plaintiff, whether or not they appear to be related to the subject matter of the claim or litigation.

(b) A copy of all documents relevant to the issues involved in the claim or litigation should be attached to each copy of the Administrative Report. Original records should not be forwarded to the Office of the Solicitor unless specifically requested. They should be preserved, however, and remain available for litigation if necessary.

(c) Organizational units should ensure that all Administrative Reports are either prepared or reviewed by an official of the organizational unit who was not personally involved in the incident in question prior to filing of the claim or suit.

(d) The Office of the Solicitor may waive the requirement of an Administrative Report. If the Administrative Report is waived, the organizational unit or units involved in the circumstances of the claim or litigation shall provide certification from the supervisor of the employee whose alleged negligent act or omission gave rise to the claim, certifying that the employee was acting within the scope of his or her employment at the time of the alleged negligent act or omission.

§ 15.108 Who is authorized to decide an administrative claim?

(a) The Counsel for Claims and Compensation shall have the authority to consider, ascertain, adjust, determine, compromise and settle claims pursuant to the Federal Tort Claims Act which involve an alleged negligent or wrongful act or omission of an employee whose official duty station is the Department's national office in Washington, DC, or which involve aggregate claims in excess of $25,000, or which involve a new point of law or a question of policy.

(b) Regional Solicitors and the Associate Regional Solicitors are authorized to consider, ascertain, adjust, determine, compromise and settle claims arising in their respective jurisdictions pursuant to the Federal Tort Claims Act where the aggregate claimed does not exceed $25,000 in amount and which do not involve a new point of law or a question of policy.

§ 15.109 What if the claim is denied?

Denial of an administrative claim under this subpart shall be in writing, and notification of denial shall be sent to the claimant, or his or her attorney or legal representative by certified or registered mail. The notification of final denial shall include a statement of the reasons for the denial and shall include a statement that, if the claimant is dissatisfied with the Department's action, that claimant may file suit in an appropriate U.S. District Court not later than 6 months after the date of mailing of the notification.

§ 15.110 What must a claimant do if the administrative claim is approved?

(a) Payment of a claim approved under this subpart is contingent upon claimant's execution of the appropriate forms, such as the SF–194, SF–196, or SF–197, in accordance with instructions by the Department of Justice and/or the Judgment Fund. When a claimant is represented by an attorney, the voucher for payment shall designate the claimant as payee (as the beneficial interest holder), and the check shall be delivered to the attorney whose address appears on the voucher.

(b) Acceptance by the claimant, or his or her agent or legal representative, of an award, compromise, or settlement under 28 U.S.C. 2672 or 28 U.S.C. 2677 is final and conclusive on the claimant, his or her agent or legal representative, and any other person on whose behalf or for whose benefit the claim has been

presented and constitutes a complete release of any claim against the United States and against any officer or employee of the Government whose act or omission gave rise to the claim by reason of the same subject matter.

§ 15.111 If the administrative claim is approved, how is the award paid?

(a) Any award, compromise, or settlement in the amount of $2,500 or less made pursuant to this section shall be paid by the Secretary of Labor out of appropriations available to the Department.

(b) Payment of an award, compromise, or settlement in an amount in excess of $2,500 made pursuant to this subpart shall be made in accordance with 28 CFR 14.10.

(c) An award, compromise or settlement of a claim under 28 U.S.C. 2672 and this subpart in excess of $25,000 may be effected only with the prior written approval of the Attorney General or his designee. For the purpose of this subpart, a principal claim and any derivative or subrogated claim shall be treated as a single claim.

Subpart C—Claims Under the Military Personnel and Civilian Employees' Claims Act of 1964

§ 15.200 What is a claim under the MPCECA and who may file such a claim?

(a) A claim under the MPCECA for damage or loss is allowable only if the property involved was being used incident to service with the Department.

(b) A claim may be made under this subpart by an employee of the Department or by a spouse or authorized agent, or legal representative on behalf of the employee. If the employee is deceased, the claim may be filed by a survivor in the following order of preference: spouse, children, parent, brother or sister or the authorized agent or legal representative of such person or persons.

(c) An MPCECA claim may not be made by or for the benefit of an insurance company, subrogee, assignee, conditional vendor or other third party.

§ 15.201 Where should the MPCECA claim be filed?

(a) If the claimant's official duty station is at the Department's national office in Washington, DC, or if the claim is for an amount in excess of $25,000, the claim should be filed with the Counsel for Claims and Compensation, Office of the Solicitor of Labor, U.S. Department of Labor, Suite S4325, 200 Constitution Avenue, NW., Washington, DC 20210.

(b) In all other cases, the claimant shall address the claim to the regional or branch office of the Office of the Solicitor servicing the claimant's official duty station.

§ 15.202 How is a claim filed under the MPCECA?

(a) A claim under this subpart must be presented in writing. A sample claim, located on the Department's Office of the Solicitor, Federal Employees' and Energy Workers' Compensation Division Web site at *www.dol.gov,* is provided as an example for convenience of filing. The SF–95 for FTCA claims is not an appropriate form for a MPCECA claim.

(b) The claimant is responsible for substantiating ownership or possession, the facts surrounding the loss or damage, and the value of the property. Any claim filed must be accompanied by the following:

(1) A written statement, signed by the claimant or his or her authorized agent, setting forth the circumstances under which the damage or loss occurred. This statement may also include:

(i) A description of the type, design, model number or other identification of the property.

(ii) The date of purchase or acquisition and the original cost of the property.

(iii) The location of the property when the loss or damage occurred.

(iv) The value of the property when lost or damaged.

(v) The actual or estimated cost of the repair of any damaged item.

(vi) The purpose of and authority for travel, if the loss or damage occurred incident to transportation or to the use of a motor vehicle.

(vii) Any and all available information as to the party responsible for the loss or damage, if such party is someone other than the claimant, and all information as to insurance contracts, whether held by the claimant or by the party responsible.

(2) Copies of all available and appropriate documents such as bills of sale, estimates of repairs, or travel orders. In the case of an automobile, the claimant must file two estimates of repair or a certified paid bill showing the damage incurred and the cost of all parts, labor and other items necessary to the repair of the vehicle or a statement from an authorized dealer or repair garage showing that the cost of such repairs exceeds the value of the vehicle. The Office of the Solicitor may waive the requirement of two estimates of repair.

(3) A copy of the power of attorney or other authorization if someone other than the employee files the claim.

(4) A statement from the employee's immediate supervisor confirming that possession of the property was reasonable, useful or proper under the circumstances and that the damage or loss was incident to service.

§ 15.203 When should a claim under the MPCECA be filed?

A claim under this subpart may be allowed only if it is filed in writing within 2 years after accrual of the claim. For the purpose of this part, a claim accrues at the later of:

(a) The time of the accident or incident causing the loss or damage;

(b) Such time as the loss or damage should have been discovered by the claimant by the exercise of due diligence; or

(c) Such time as cause preventing filing no longer exists or as war or armed conflict ends, whichever is earlier, if a claim otherwise accrues during war or an armed conflict or has accrued within 2 years before war or an armed conflict begins, and for cause shown.

§ 15.204 Are there limits on claims under the MPCECA?

(a) The maximum amount that can be paid for any claim under the MPCECA is $40,000, or, if the claim arises from emergency evacuation or extraordinary circumstances, up to $100,000, and property may be replaced in kind at the option of the Government. 31 U.S.C. 3721(b)(1).

(b) The Department is not an insurer and does not underwrite all personal property losses that an employee may sustain. Employees are encouraged to carry private insurance to the maximum extent practicable to avoid losses, which may not be recoverable from the Department.

§ 15.205 What types of claims for property damage are allowed under the MPCECA?

(a) Claims for property damage are allowed under the MPCECA only if the property involved was being used incident to service with the Department and:

(l) The damage or loss was not caused wholly or partly by the negligent or wrongful act or omission of the claimant, his or her agent, the members of his or her family, or his or her private employee (the standard to be applied is that of reasonable care under the circumstances); and

(2) The possession of the property lost or damaged and the quantity and the quality possessed is determined by the claimant's supervisor to have been reasonable, useful or proper under the circumstances; and

(3) The claim is substantiated by proper and convincing evidence.

(b) Claims otherwise allowable under this subpart shall not be disallowed solely because the claimant was not the legal owner of the property for which the claim is made.

§ 15.206 What claims arising at a residence or Telework location may be covered under the MPCECA?

(a) Claims arising at a residence, Telework center or other flexiplace location may be covered under the MPCECA.

(b) For the purpose of this subpart, residence means a house, apartment or other location that is a Department employee's principal abode.

(c) Claims for property damage at an alternative work location at which the employee is performing duties pursuant to an approved Telework agreement may be covered by the MPCECA if the property was being used incident to service with the Department, as, for the purposes of this subpart, that location is considered to be an official duty station. Under most circumstances, property damage will only be allowed if it occurs at or in connection with the employee's workstation.

(d) Claims under the MPCECA at a residence not covered by paragraph (c) of this section may be allowable for damage to, or loss of, property arising from fire, flood, hurricane, other natural disaster, theft, or other unusual occurrence, if the property was being used incident to service with the Department, while such property is located at:

(1) Residences within the 50 States or the District of Columbia that were assigned to the claimant or otherwise provided in kind by the United States; or

(2) Residences outside the 50 States and the District of Columbia that were occupied by the claimant, whether or not they were assigned or otherwise provided in kind by the United States, except when the claimant is a civilian employee who is a local inhabitant; or

(3) Any warehouse, office, working area or other place (except residences) authorized or apparently authorized for the reception or storage of property.

§ 15.207 What are examples of claims allowed under the MPCECA?

The following are examples of the principal types of allowable claims, but these examples are not exclusive; other claims may be allowed, unless hereinafter excluded:

(a) *Transportation or travel losses.* Claims may be allowed for damage to, or loss of, property incident to transportation or storage pursuant to order or in connection with travel under orders, including property in the custody of a carrier, an agent or agency of the Government, or the claimant.

(b) *Enemy action or public service.* Claims may be allowed for damage to, or loss of, property as a direct consequence of:

(1) Enemy action or threat thereof, or terrorism, combat, guerrilla, brigandage, or other belligerent activity, or unjust confiscation by a foreign power or its nationals.

(2) Action by the claimant to quiet a civil disturbance or to alleviate a public disaster.

(3) Efforts by the claimant to save human life or Government property.

(c) *Property used for the benefit of the Government.* Claims may be allowed for damage to, or loss, of property when used for the benefit of the Government at the request of, or with the knowledge and consent of superior authority.

(d) *Electronics and cellular phones.* Claims may be allowed for loss of, or damage to, cellular phones, personal data assistants and similar communication and electronic devices subject to the limitations in § 15.209(e).

(e) *Clothing and Accessories.* Claims may be allowed for damage to, or loss of, clothing and accessories customarily worn on the person, such as eyeglasses, hearing aids, or dentures subject to the limitations in § 15.209(e).

(f) *Expenses incident to repair.* Claimants may be reimbursed for the payment of any sales tax incurred in connection with repairs to an item. The costs of obtaining estimates of repair (subject to the limitations set forth in § 15.208(c)) are also allowable.

§ 15.208 What are the restrictions on otherwise allowable claims?

(a) *Money or currency.* Claims may be allowed for loss of money or currency (which includes coin collections) only when lost incident to fire, flood, hurricane, other natural disaster, or by theft from residence (as limited by § 15.206). In incidents of theft from a residence, it must be conclusively shown that the residence was locked at the time of the theft. Reimbursement for loss of money or currency is limited to an amount, which is determined to have been reasonable for the claimant to have had in his or her possession at the time of the loss.

(b) *Government property.* Claims may only be allowed for property owned by the United States for which the claimant is financially responsible to an agency of the Government other than the Department.

(c) *Estimate fees.* Claims may include fees paid to obtain estimates of repairs only when it is clear that an estimate could not have been obtained without paying a fee. In that case, the fee may be allowed only in an amount determined to be reasonable in relation to the value of the property or the cost of the repairs.

(d) *Automobiles and motor vehicles.* Claims may only be allowed for damage to, or loss of automobiles and other motor vehicles if:

(1) Such motor vehicles were required to be used for official Government business (official Government business, as used here, does not include travel, or parking incident thereto, between residence and office, or use of vehicles for the convenience of the owner. However, it does include travel, and parking incident thereto, between a residence and an assigned place of duty specifically authorized or otherwise shown to be permitted by the employee's supervisor as being more advantageous to the Government); or

(2) Shipment of such motor vehicles was being furnished or provided by the Government, subject to the provisions of § 15.210.

§ 15.209 What claims are not allowed?

(a) *Unassigned residences in United States.* Property loss or damage in quarters occupied by the claimant within the 50 States or the District of Columbia that were not assigned to him or otherwise provided in kind by the United States or part of an approved Telework agreement.

(b) *Business property.* Property used for business or profit.

(c) *Unserviceable property.* Wornout or unserviceable property.

(d) *Illegal possession.* Property acquired, possessed or transferred in violation of the law or in violation of applicable regulations or directives.

(e) *Articles of extraordinary value.* Valuable articles, such as watches, jewelry, furs, clothes, electronics or other articles of extraordinary value. This prohibition does not apply to articles in the personal custody of the claimant or articles properly checked, if the claimant has taken reasonable protection or security measures.

(f) *Intangible property.* Loss of property that has no extrinsic and marketable value but is merely representative or evidence of value (such as a non-negotiable stock certificate or warehouse receipt) is not compensable. Intangible value is not compensable.

(g) *Incidental expenses and consequential damages.* The MPCECA and this subpart authorize payment for loss of or damage to personal property only. Except as provided in § 15.207(f), consequential damages or other types of

loss or incidental expenses (such as loss of use, interest, carrying charges, cost of lodging or food while awaiting arrival of shipment, attorney fees, telephone calls, cost of transporting claimant or family members, inconvenience, time spent in preparation of claim, or cost of insurance premiums) are not compensable.

(h) *Real property.* Damage to real property is not compensable. In determining whether an item is considered to be an item of personal property, as opposed to real property, normally, any movable item is considered personal property even if physically joined to the land.

(i) *Commercial property.* Articles acquired or held for sale or disposition by other commercial transactions on more than an occasional basis, or for use in a private profession or business enterprise.

(j) *Commercial storage.* Property stored at a commercial facility for the convenience of the claimant and at his or her expense.

(k) *Minimum amount.* Loss or damage amounting to less than $40.

§ 15.210 What affect does insurance have on a claim under the MPCECA?

In the event the property, which is the subject of the claim, was lost or damaged while in the possession of a commercial carrier or was insured, the following procedures will apply:

(a) Whenever property is damaged, lost or destroyed while being shipped pursuant to authorized travel orders, the owner must file a written claim for reimbursement with the last commercial carrier known or believed to have handled the goods, or the carrier known to be in possession of the property when the damage or loss occurred, according to the terms of its bill of lading or contract, before submitting a claim against the Government under this subpart.

(b) Whenever property is damaged, lost or destroyed incident to the claimant's service and is insured in whole or in part, the claimant should make demand in writing against the insurer for reimbursement under the terms and conditions of the insurance coverage, prior to the filing of the claim against the Government, unless, in the subsequent determination of the deciding official, the filing of such a demand was impracticable or inequitable. For example, if the value of a claim is $535 and the insurance deductible is $500, the deciding official may determine that no claim need be made against the insurer.

(c) Unless the deciding official determines that no demand should have been or need be made, failure to make a demand on a carrier or insurer or to make all reasonable efforts to protect and prosecute rights available against a carrier or insurer and to collect the amount recoverable from the carrier or insurer may result in reducing the amount recoverable from the Government by the maximum amount which would have been recoverable from the carrier or insurer had the claim been timely or diligently prosecuted.

(d) Following the submission of the claim against the carrier or insurer, the claimant may immediately submit his claim against the Government in accordance with the provisions of this subpart, without waiting until either final approval or denial of the claim is made by the carrier or insurer.

(1) Upon submitting his or her claim, the claimant shall certify in the claim that he or she has or has not gained any recovery from a carrier or insurer, and enclose all correspondence pertinent thereto.

(2) If final action has not been taken by the carrier or insurer on the claim, the claimant shall immediately notify them to address all correspondence in regard to the claim to the appropriate Office of the Solicitor of Labor.

(3) The claimant shall advise the appropriate Office of the Solicitor of any action taken by the carrier or insurer on the claim and, upon request, shall furnish all correspondence, documents, and other evidence pertinent to the matter.

(e) The claimant shall assign to the United States, to the extent of any payment on the claim accepted by him or her, all rights, title and interest in any claim he or she may have against any carrier, insurer, or other party arising out of the incident on which the claim against the United States is based. After payment of the claim by the United States, the claimant shall, upon receipt of any payment from a carrier or insurer, pay the proceeds to the United States to the extent of the payment received by him or her from the United States.

(f) Where a claimant recovers for the loss from the carrier or insurer before his or her claim under this subpart is settled, the amount of recovery shall be applied to the claim as follows:

(1) When the amount recovered from a carrier, insurer, or other third party is greater than or equal to the claimant's total loss as determined under this part, no compensation is allowable under this subpart.

(2) When the amount recovered is less than such total loss, the allowable amount is determined by deducting the recovery from the amount of such total loss.

(3) For this purpose, the claimant's total loss is to be determined without regard to the maximum payment limitations set forth in § 15.204. However, if the resulting amount, after making this deduction exceeds the maximum payment limitations, the claimant shall be allowed only the maximum amount set forth in § 15.204.

§ 15.211 How is a claim under this subpart processed?

(a) The Counsel for Claims and Compensation, the Regional Solicitors, and the Associate Regional Solicitors are authorized to consider, ascertain, adjust, determine, compromise and settle claims filed under this subpart that arise within their respective jurisdictions, except that any claim for an amount in excess of $25,000 shall fall within the exclusive jurisdiction of the Counsel for Claims and Compensation.

(b) Any writing received by the Office of the Solicitor within the time limits set forth in § 15.203 will be accepted and considered a claim under the MPCECA if it constitutes a demand for compensation from the Department. A sample claim, located on the Department's Office of the Solicitor, Federal Employees' and Energy Workers' Compensation Division Web site at *www.dol.gov*, is provided for convenience of filing. The SF–95 form used to file a claim under the FTCA is not an appropriate form for a claim under the MPCECA claim.

(c) A demand is not required to be for a specific sum of money.

(d) The determination upon the claim shall be provided to the claimant in writing by the deciding official.

§ 15.212 How is the amount of the award under this subpart calculated?

(a) The amount allowable for damage to or loss of any item of property may not exceed the lowest of:

(1) The amount requested by the claimant for the item as a result of its loss, damage or the cost of its repair;

(2) The actual or estimated cost of its repair; or

(3) The actual value at the time of its loss, damage, or destruction. The actual value is determined by using the current replacement cost or the depreciated value of the item since its acquisition, whichever is lower, less any salvage value of the item in question.

(b) Depreciation in value is determined by considering the type of article involved, its cost, its condition when damaged or lost, and the time elapsed between the date of acquisition and the date of damage or loss.

(c) Current replacement cost and depreciated value are determined by use

of publicly available adjustment rates or through use of other reasonable methods at the discretion of the official authorized to issue a determination upon the claim in question.

(d) Replacement of lost or damaged property may be made in kind wherever appropriate.

(e) At the discretion of the official authorized to issue the determination upon the claim in question, a claimant may be required to turn over an item alleged to have been damaged beyond economical repair to the United States, in which case no deduction for salvage value will be made in the calculation of actual value.

(f) Notwithstanding any other provisions of law, settlement of claims under the MPCECA is final and conclusive.

§ 15.213 Are there limits to representatives' fees for claims under this subpart?

Yes. No more than 10 percent of the amount in settlement of each individual claim submitted and settled under this subpart shall be paid or delivered to or received by any agent or attorney on account of services rendered in connection with that claim. 31 U.S.C. 3721(i).

§ 15.214 How may a decision under this subpart be reconsidered?

(a) While there is no appeal from the decision of the deciding official in regard to claims under the MPCECA, the deciding official may always reconsider his or her determination of a claim.

(b) A claimant may request reconsideration from the deciding official by directing a written request for reconsideration to the deciding official within 60 days of the date of the original determination. The claimant must clearly state the factual or legal basis upon which he or she rests the request for a more favorable determination.

(c) The determination upon the reconsideration will be provided to the claimant in writing by the deciding official.

Subpart D—Claims Arising Out of the Operation of the Job Corps

§ 15.300 How are claims involving the Job Corps initiated?

(a) Claims involving the Job Corps, including claims against Job Corps Centers run by other Federal agencies, claims by third parties involving the acts or omissions of students of Job Corps, and claims involving the loss of personal property of students of Job Corps should be submitted to the appropriate Job Corps Regional Office. Claims under the MPCECA for non-Department Federal employees should be sent to and must be handled by their respective Federal employer, subject to that employer's procedures. FTCA claims over $25,000 should be sent to and must be handled by the Counsel for Claims and Compensation under subpart B of this part.

(b) The Job Corps Regional Office shall investigate all facts of the claim, including accident and medical reports, interview witnesses, and, where necessary, prepare the appropriate administrative reports.

(c) Following the investigation, the Job Corps Regional Office will determine the appropriate reviewing official and if necessary forward the claim to the appropriate office immediately with all currently available documentation, as described in § 15.301.

§ 15.301 What office is responsible for determining liability in claims arising out of the Job Corps?

(a) The Director of the appropriate Job Corps Regional Office is responsible for claims not cognizable under the FTCA pursuant to the WIA arising out of the operation of the Job Corps involving loss or damage to persons or personal property of students of Job Corps Centers that do not exceed $300.

(b) The Regional Solicitor is responsible for claims not cognizable under the FTCA pursuant to the WIA arising out of the operation of the Job Corps involving loss or damage to persons or personal property of students of Job Corps Centers for claims exceeding $300.

(c) The Regional Solicitor is responsible for all FTCA claims involving damage to persons or property arising out of an act or omission of a Job Corps student or Federal employee that do not exceed $25,000 and do not involve a new point of law or a question of policy.

(d) All remaining claims with aggregate damages of $25,000 or more are the responsibility of the Counsel for Claims and Compensation.

(e) The Job Corps Regional Office Director, the Regional Solicitors and the Associate Regional Solicitors are authorized to consider, determine and settle claims filed under this subpart that arose within their respective jurisdictions.

§ 15.302 What procedures apply to these claims?

(a) Claims involving the negligent acts or omissions of Job Corps students or Federal employees are claims under the FTCA and are determined under the procedures in subpart B of this part. FTCA claims must be forwarded to and decided by the responsible Solicitor's Office.

(b) Claims involving loss or damage to persons or the personal property of Job Corps students are covered by the WIA, 29 U.S.C. 2897(b), which provides that the Secretary of Labor may adjust or settle claims for damages to a person or property of up to $1,500 if those claims are found to be a proper charge against the United States and are not cognizable under the FTCA.

§ 15.303 How does a Job Corps student file a claim for loss of or damages to personal property under the WIA?

(a) A WIA claim under this subpart must be in writing and signed by the claimant or by an authorized representative. In order to be a proper claim, a WIA claim must fully describe the property and the circumstances that gave rise to the loss or damage.

(b) All WIA claims under this subpart must be filed with the appropriate Job Corps Regional Office within 2 years of the date upon which the claim accrued. The Job Corps Regional Office may consult with the Regional Solicitor and/or Counsel for Claims and Compensation as necessary.

(c) The determination upon the claim shall be provided to the claimant in writing by the appropriate deciding official.

(d) Reconsideration of a determination under this subpart shall be available upon written request received within 60 days by the appropriate deciding official. The deciding official will provide a written response to the claimant within 60 days of such request. No further review of the matter will be permitted.

§ 15.304 Are there limits to claims for loss of or damages to personal property under the WIA?

(a) Only claims involving damage or loss to personal property that occurred while at the Job Corps Center or while on authorized travel, training or other authorized activities may be considered under the WIA.

(b) The Job Corps will only reimburse up to $300.00 per item for claims for loss or damage of personal property under the WIA, up to a maximum of $1,500 per occurrence.

(c) If the property in question is not of a type that the student is authorized to bring to the Job Corps Center, no compensation will be made under this subpart. For example, if the Job Corps Center has explicit written rules imposing limitations on the type of electronic equipment or other personal items such as jewelry that may be

brought to the center, no compensation will be awarded for the loss or damage of such property.

Signed at Washington, DC, this 4th of April 2012.

M. Patricia Smith,

Solicitor of Labor, U.S. Department of Labor.

[FR Doc. 2012–8735 Filed 4–12–12; 8:45 am]

BILLING CODE 4510–23–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 558

[Docket No. FDA–2010–N–0155]

Veterinary Feed Directive; Draft Text for Proposed Regulation

AGENCY: Food and Drug Administration, HHS.

ACTION: Notification; draft text for proposed regulation.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of draft text for a proposed regulation intended to improve the efficiency of FDA's Veterinary Feed Directive (VFD) program. The Agency is making this draft text for a proposal available because of the complex scientific and regulatory issues involved, and because of the potential impact that changes to the VFD regulations may have on stakeholders. The Agency invites the public to submit comments with questions and concerns about the draft text for a proposed regulation.

DATES: Submit either electronic or written comments by July 12, 2012.

ADDRESSES: You may submit comments, identified by Docket No. FDA–2010–N–0155, by any of the following methods:

Electronic Submissions

Submit electronic comments in the following way:

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

Written Submissions

Submit written submissions in the following ways:

• *FAX:* 301–827–6870.

• *Mail/Hand delivery/Courier (for paper or CD–ROM submissions):* Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

Instructions: All submissions received must include the Agency name and Docket No. FDA–2010–N–0155 for this rulemaking. All comments received may be posted without change to *http://www.regulations.gov,* including any personal information provided. For additional information on submitting comments, see the ''Comments'' heading of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Division of Dockets Management, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Sharon Benz, Center for Veterinary Medicine (HFV–220), Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855, 240–453–6864, email: *Sharon.Benz@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

This document is related to two other documents published elsewhere in this issue of the **Federal Register**, wherein FDA is announcing: (1) The availability of a guidance document entitled ''The Judicious Use of Medically Important Antimicrobial Drugs in Food-Producing Animals'' (GFI #209) and (2) the availability of a draft guidance document entitled ''New Animal Drugs and New Animal Drug Combination Products Administered in or on Medicated Feed or Drinking Water of Food-Producing Animals: Recommendations for Drug Sponsors for Voluntarily Aligning Product Use Conditions With GFI #209'' (draft GFI #213).

In the **Federal Register** of March 29, 2010 (75 FR 15387), FDA published an advance notice of proposed rulemaking (ANPRM) with a 90-day comment period requesting comments on all aspects of the VFD regulations. FDA published a subsequent document in the **Federal Register** of June 28, 2010 (75 FR 36588), extending the ANPRM comment period for an additional 60 days.

While FDA encouraged comments on all aspects of the VFD regulations, the Agency requested input specifically on whether efficiency improvements need to be made to the current VFD regulations. The Agency received considerable comments from stakeholders suggesting that efficiency improvements are needed for the VFD regulations. FDA reviewed comments to the docket and, based on its review of those comments, developed draft text of regulatory language intended to implement specified changes to the existing regulations in part 558 (21 CFR part 558).

Comments to the docket confirmed that this is a very complex issue that potentially affects many different stakeholder interests. Having carefully considered the comments and other relevant information, the Agency has prepared draft text for revisions to the existing regulatory language in part 558. Because stakeholders' interests are varied, striking the proper regulatory balance between sufficient veterinary oversight for VFD drugs and increased efficiency of the VFD process is a challenging proposition. Given the number and the nature of the comments received, and given the considerable impact proposed revisions potentially could have on stakeholders, FDA believes it is appropriate, before publishing an additional proposed rule, to offer stakeholders an opportunity to review and comment on our draft text of proposed revisions to the codified language in part 558.

For that reason, as provided for in §§ 10.40(f)(4) and 10.80(b)(2) (21 CFR 10.40(f)(4) and 21 CFR 10.80(b)(2)), FDA has decided to publish the draft text of proposed revisions to the codified language that the Agency has developed in response to public comments on this issue. FDA believes that, by making this document available under the provisions of §§ 10.40(f)(4) and 10.80(b)(2) and allowing an additional public comment period prior to publishing an additional proposed rule under the provisions of 21 CFR 10.40(b), the Agency will be able to develop a more informed proposal. When FDA publishes the proposed rule, the Agency will provide a detailed discussion of proposed changes to existing regulations.

The proposed revisions announced in this document were developed in conjunction with other initiatives designed to transition certain new animal drug products containing medically important antimicrobial drugs from an over-the-counter (OTC) status to a status that requires veterinary oversight. Specifically, the draft text of proposed revisions to part 558 reflect principles expressed in FDA's guidance document entitled ''The Judicious Use of Medically Important Antimicrobial Drugs in Food-Producing Animals'' (GFI #209). Further, this draft text of proposed revisions is also consistent with the specific recommendations described in FDA's draft guidance document entitled ''New Animal Drugs and New Animal Drug Combination Products Administered in or on

Medicated Feed or Drinking Water of Food-Producing Animals: Recommendations for Drug Sponsors for Voluntarily Aligning Product Use Conditions With GFI #209'' (draft GFI #213). The notices of availability for GFI #209 and draft GFI #213 are both published elsewhere in this issue of the **Federal Register**.

FDA acknowledges that in order to facilitate the transition of certain new animal drug products from an OTC status to a status that requires veterinary oversight, existing requirements related to the distribution and use of VFD drugs must be updated and streamlined. As reflected in the draft text of proposed revisions to part 558 in this document, some of the key changes being considered include (1) providing for alignment between the criteria for appropriate veterinary supervision or oversight and those established as part of veterinary licensing and practice requirements, (2) providing veterinarians greater flexibility to exercise their professional discretion to authorize producer access to appropriate VFD drugs, and (3) streamlining administrative procedures. To facilitate the transition from OTC to VFD status, FDA believes it is critically important that changes such as these be implemented to minimize impacts on veterinarians, the animal feed industry, and animal producers.

FDA is requesting comments on the draft text of proposed revisions to part 558 as well as comments on any other aspect of the VFD regulations, including aspects of the regulations not specifically addressed in the draft text of the proposal. FDA recognizes that it is critically important that the Agency work with the veterinary and animal producer communities, the end users of the affected products, to ensure that their concerns are taken into consideration as these changes are implemented. With this in mind, FDA is very interested in receiving comments on the practical implications of these changes for animal producers, particularly those with smaller operations in remote locations. The Agency is also interested in receiving input on how impacts or disruption to animal producers could be minimized.

FDA acknowledges that one issue of concern is the ability of producers, particularly those with smaller operations in remote locations, to have adequate access to veterinary services. Therefore, as steps are taken to phase in the changes discussed in this document, FDA recognizes the need to concurrently engage key stakeholders on this broader issue. Therefore, FDA intends to work collaboratively with U. S. Department of Agriculture (USDA) to engage the veterinary community and other stakeholders to explore strategic approaches (e.g., new models, pilot programs) to address this issue.

FDA encourages the submission of comments on the draft text of this proposed regulation so that practical implementation concerns are adequately considered and addressed. However, FDA is also exploring other venues for seeking and obtaining input, particularly from animal producers, such as through listening sessions held in various parts of the country. FDA is working closely with the USDA to identify mechanisms for obtaining this critical input.

The draft text of the proposed regulation is provided in this document and in the docket (refer to the docket number in brackets in the heading of this document). The Agency emphasizes that the draft text of the proposed revisions does not represent final Agency action or the Agency's final decision on this regulation.

II. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) either electronic or written comments on this document. It is only necessary to send one set of comments. Identify comments with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

Accordingly, 21 CFR part 558 is proposed to be amended as follows:

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

1. The authority citation for 21 CFR part 558 continues to read as follows:

Authority: 21 U.S.C. 360b, 371.

2. In § 558.3, republish the introductory text of paragraph (b), and revise paragraphs (b)(1) and (b)(7) to read as follows:

§ 558.3 Definitions and general considerations applicable to this part.

* * * * *

(b) The following definitions apply to terms used in this part:

(1) New animal drugs approved for use in animal feed are placed in two categories as follows:

(i) Category I—These drugs require no withdrawal period at the lowest use level in each species for which they are approved.

(ii) Category II—These drugs require a withdrawal period at the lowest use level for at least one species for which they are approved, or are regulated on a ''no-residue'' basis or with a zero tolerance because of a carcinogenic concern regardless of whether a withdrawal period is required.

* * * * *

(7) A ''veterinary feed directive'' is a written statement issued by a licensed veterinarian in the course of the veterinarian's professional practice that orders the use of a VFD drug in or on an animal feed. This written statement authorizes the client (the owner of the animal or animals or other caretaker) to obtain and use the VFD drug in or on an animal feed to treat the client's animals only in accordance with the directions for use approved, conditionally approved, or indexed by the Food and Drug Administration (FDA).

* * * * *

3. Revise § 558.6 to read as follows:

§ 558.6 Veterinary feed directive drugs.

(a) General requirements related to veterinary feed directives (VFD):

(1) A feed containing a VFD drug (a VFD feed) shall be fed to animals only by or upon a lawful VFD issued by a licensed veterinarian in the course of the veterinarian's professional practice.

(2) VFDs may not be filled after the expiration date on the VFD.

(3) Use and labeling of a VFD drug in feed is limited to the approved, conditionally approved, or indexed conditions of use. Extralabel use (i.e., actual or intended use other than as directed on the labeling) is not permitted.

(4) All involved parties (the veterinarian, the distributor, and the client) must retain a copy of the VFD and any other required records for 1 year.

(5) All involved parties must make the VFD and any other records specified in this section available for inspection and copying by FDA.

(6) All labeling and advertising for VFD drugs and feeds containing VFD drugs must prominently and conspicuously display the following cautionary statement: ''Caution: Federal law restricts medicated feed containing this VFD drug to use by or on the order of a licensed veterinarian.''

(b) Responsibilities of the veterinarian issuing the VFD:

(1) The veterinarian may only issue a VFD for use in animals under his or her supervision or oversight in the course of his or her professional practice, and in compliance with all applicable

veterinary licensing and practice requirements.

(2) The veterinarian must fully and accurately enter the following information on the VFD:

(i) The veterinarian's name, address, and telephone number;

(ii) The client's name, telephone number, and business or home address;

(iii) The premises at which the animals specified in the VFD are located;

(iv) The date of VFD issuance;

(v) The expiration date of the VFD. This date cannot extend beyond the expiration date specified in the approval, conditional approval, or index listing, if such date is specified. In cases where the expiration date is not specified in the approval, conditional approval, or index listing, the expiration date of the VFD cannot exceed 6 months after the date of issuance;

(vi) The name of the animal drug;

(vii) The species and production class of animals to be fed the medicated feed;

(viii) The approximate number of animals to be fed the medicated feed prior to the expiration date on the VFD;

(ix) The indication for which the VFD is issued;

(x) The level of drug in the feed and duration of use;

(xi) The withdrawal time, special instructions, and cautionary statements necessary for use of the drug in conformance with the approval;

(xii) The number of reorders (refills) authorized, if permitted by the drug approval, conditional approval, or index listing;

(xiii) The statement: ''Extralabel use (i.e., use of this VFD feed in a manner other than as directed on the labeling) is not permitted''; and

(xiv) The veterinarian's electronic or written signature.

(3) The veterinarian may, at his or her discretion, enter the following information on the VFD to more specifically identify the animals authorized to be treated/fed the medicated feed:

(i) A more specific description of the location of animals (e.g., by site, pen, barn, stall, tank, or other descriptor that the veterinarian deems appropriate);

(ii) The approximate age range of the animals;

(iii) The approximate weight range of the animals; and

(iv) Any other information the veterinarian deems appropriate to identify the animals specified in the VFD.

(4) The veterinarian must send the VFD to the feed distributor via hardcopy, fax, or electronically. If in hardcopy, the veterinarian may send the VFD to the distributor either directly or through the client.

(5) The veterinarian must provide a copy of the VFD to the client.

(6) The veterinarian may not transmit a VFD by phone.

(c) Responsibilities of any person who distributes an animal feed containing a VFD drug:

(1) The distributor may only fill a VFD if the VFD contains the information required in § 558.6(b)(2).

(2) The distributor may only distribute an animal feed containing a VFD drug that complies with the terms of the VFD.

(3) A distributor of animal feed containing VFD drugs must notify FDA at the time it first distributes animal feed containing VFD drugs. The notification is required one time per distributor and must include the following information:

(i) The distributor's complete name and business address;

(ii) The distributor's signature or the signature of the distributor's authorized agent; and

(iii) The date the notification was signed;

(4) A distributor must submit the notification by letter or facsimile to the Food and Drug Administration, Center for Veterinary Medicine, Division of Animal Feeds (HFV–220), 7519 Standish Pl., Rockville, MD 20855, prior to beginning its first distribution.

(5) A distributor must notify the Center for Veterinary Medicine within 30 days of any change in ownership, business name, or business address.

(6) A distributor may only distribute a VFD feed to another person for further distribution if the distributor first obtains a written acknowledgment from the person to whom the feed is shipped stating that that person must not ship or move such feed to an animal production facility without a VFD, or ship such feed to another person for further distribution unless that person has provided the same written acknowledgment to the distributor's immediate supplier.

Dated: April 5, 2012.

David Dorsey,

Acting Associate Commissioner for Policy and Planning.

[FR Doc. 2012–8844 Filed 4–11–12; 11:15 am]

BILLING CODE 4160–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R06–OAR–2009–0648; FRL–9658–2]

Approval and Promulgation of Implementation Plans; New Mexico; Albuquerque/Bernalillo County: Infrastructure and Interstate Transport Requirements for the 1997 and 2008 Ozone and the 1997 and 2006 $PM_{2.5}$ NAAQS

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve submittals from the Governor of New Mexico to the State Implementation Plan (SIP) for the City of Albuquerque/Bernalillo County area, pursuant to the Clean Air Act (CAA or the Act) that address the infrastructure elements specified in the CAA section 110(a)(2), necessary to implement, maintain, and enforce the 1997 and 2008 8-hour ozone and the 1997 and 2006 fine particulate matter ($PM_{2.5}$) national ambient air quality standards (NAAQS or standards). We are proposing to find that the current Albuquerque/Bernalillo County SIP meets the following infrastructure elements for the 1997 and 2008 8-hour ozone NAAQS and the 1997 and 2006 $PM_{2.5}$ NAAQS: 110(a)(2)(A), (B), (C), (D)(ii), (E), (F), (G), (H), (J), (K), (L), and (M). We are also proposing to find that the current Albuquerque/Bernalillo County SIP meets one of the four provisions of CAA section 110(a)(2)(D)(i), which addresses the requirement that emissions from sources in the area do not interfere with measures required in the SIP of any other state under part C of the CAA to prevent significant deterioration (PSD) of air quality, with regard to the 1997 and 2008 ozone and 1997 and 2006 $PM_{2.5}$ NAAQS. EPA is also proposing to approve SIP revisions that modify the PSD SIP to include nitrogen oxides (NO_X) as an ozone precursor. For purposes of the 1997 and 2006 $PM_{2.5}$ NAAQS, EPA is proposing to approve revisions to the Albuquerque/Bernalillo County PSD SIP that identify the $PM_{2.5}$ precursors and establish significant emission rates for said precursors, consistent with the federal requirements. We are also proposing to approve other revisions to the Albuquerque/Bernalillo County PSD SIP to maintain consistency with the federal PSD permitting requirements. In addition to these revisions, EPA is proposing to approve other revisions to the Albuquerque/Bernalillo County SIP

necessary to implement Ambient Air Quality Standards (AAQS). These actions are taken under section 110 and part C of the Act.

DATES: Comments must be received on or before May 14, 2012.

ADDRESSES: Submit your comments, identified by Docket No. EPA–R06–OAR–2009–0648, by one of the following methods:

- *Federal Rulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *U.S. EPA Region 6 ''Contact Us'' Web site: http://epa.gov/region6/r6comment.htm.* Please click on ''6PD (Multimedia)'' and select ''Air'' before submitting comments.
- *Email:* Mr. Guy Donaldson at *donaldson.guy@epa.gov.* Please also send a copy by email to the person listed in the **FOR FURTHER INFORMATION CONTACT** section below.
- *Fax:* Mr. Guy Donaldson, Chief, Air Planning Section (6PD–L), at fax number 214–665–7263.
- *Mail:* Mr. Guy Donaldson, Chief, Air Planning Section (6PD–L), Environmental Protection Agency, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202–2733.
- *Hand or Courier Delivery:* Mr. Guy Donaldson, Chief, Air Planning Section (6PD–L), Environmental Protection Agency, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202–2733. Such deliveries are accepted only between the hours of 8 a.m. and 4 p.m. weekdays, and not on legal holidays. Special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–R06–OAR–2009–0648. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or email. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through *www.regulations.gov,* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

Docket: All documents in the docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the Air Planning Section (6PD–L), Environmental Protection Agency, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733. The file will be made available by appointment for public inspection in the Region 6 FOIA Review Room between the hours of 8:30 a.m. and 4:30 p.m. weekdays except for legal holidays. Contact the person listed in the **FOR FURTHER INFORMATION CONTACT** paragraph below or Mr. Bill Deese at 214–665–7253 to make an appointment. If possible, please make the appointment at least two working days in advance of your visit. There will be a fee of 15 cents per page for making photocopies of documents. On the day of the visit, please check in at the EPA Region 6 reception area at 1445 Ross Avenue, Suite 700, Dallas, Texas.

The State submittal is also available for public inspection during official business hours, by appointment, at the City of Albuquerque, Environmental Health Department—Air Quality Division, One Civic Plaza, Room 3047, Albuquerque, New Mexico 87103, telephone 505–768–1972, email address *aqd@cabq.gov.*

FOR FURTHER INFORMATION CONTACT: Mr. John Walser, Air Planning Section (6PD–L), Environmental Protection Agency, Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733, telephone 214–665–7128; fax number 214–665–6762; email address *walser.john@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document, ''we,'' ''us,'' and ''our'' means EPA.

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I. Background

The Albuquerque/Bernalillo County Air Quality Control Board (AQCB) is the federally delegated air quality authority for the City of Albuquerque and Bernalillo County, New Mexico. Section 74–2–4 of the New Mexico Air Quality Control Act (AQCA) authorizes Albuquerque/Bernalillo County to locally administer and enforce the State Air Quality Control Act by providing for a local air quality control program. Thus, state law views Albuquerque/Bernalillo County and the State of New Mexico as distinct air quality control entities. Therefore, each entity is required to submit its own SIP in order to satisfy the requirements of section 110(a)(1) and (2) of the CAA and the AQCA, and to require local air pollution sources to comply with air quality standards. The AQCB is responsible for the portion of the New Mexico SIP that applies in Bernalillo County (excluding Tribal Land), which encompasses the

City of Albuquerque. As required by 40 CFR Part 51, the Governor of New Mexico has submitted SIP revisions, on behalf of the Albuquerque/Bernalillo County, under the AQCA (section 74–2–4), to satisfy the requirements of section 110(a)(2) and 110(a)(2)(D)(i) of the CAA for the Albuquerque/Bernalillo County area.[1] Because of Albuquerque/Bernalillo County's separate authority and SIP, it is necessary to separately address the requirements of 110(a)(2) for this portion of the State in order to ensure that the requirements are satisfied for the entire State of New Mexico.

A. What are the National Ambient Air Quality Standards?

Section 109 of the Act requires EPA to establish NAAQS for pollutants that ''may reasonably be anticipated to endanger public health and welfare,'' and to develop a primary and secondary standard for each NAAQS. The primary standard is designed to protect human health with an adequate margin of safety, and the secondary standard is designed to protect public welfare and the environment. EPA has set NAAQS for six common air pollutants, referred to as criteria pollutants: carbon monoxide, lead, nitrogen dioxide, ozone, particulate matter (PM), and sulfur dioxide. These standards present state and local governments with the minimum air quality levels they must meet to comply with the Act. Also, these standards provide information to residents of the United States about the air quality in their communities.

B. What is a SIP?

The SIP is a set of air pollution regulations, control strategies, other means or techniques, and technical analyses developed by the state (or in this case, local) air pollution control agency, to ensure that the state meets the NAAQS. The SIP is required by section 110 and other provisions of the Act. These SIPs can be extensive, containing state regulations or other enforceable documents and supporting information such as emissions inventories, monitoring networks, and modeling demonstrations. Each state must submit these regulations and control strategies to EPA for approval and incorporation into the Federally-enforceable SIP. Another important aspect of the SIP is to ensure that emissions from within the state do not have certain prohibited impacts on the ambient air in other states through interstate transport of pollutants. This SIP requirement is specified in section 110(a)(2)(D) of the CAA. Pursuant to that section, each state's SIP must contain provisions adequate to prevent, among other things, emissions that interfere with measures required to be included in the SIP of any other state to prevent significant deterioration of air quality in any other state. Each EPA-approved SIP protects air quality primarily by addressing air pollution at its point of origin.

C. What is the background for this rulemaking?

Under sections 110(a)(1) and (2) of the Act, states are required to submit SIPs that provide for the implementation, maintenance, and enforcement (the infrastructure) of a new or revised NAAQS within three years following the promulgation of the NAAQS, or within such shorter period as EPA may prescribe. Section 110(a)(2) lists the specific infrastructure elements that must be incorporated into the SIPs, including for example, requirements for emission inventories, new source review (NSR), air pollution control measures, and monitoring that are designed to assure attainment and maintenance of the NAAQS. Table 1 in Section D of this rulemaking provides a list of all 14 infrastructure elements.[2] EPA refers to the requirements of section 110(a)(2)(A)–(C), (D)(ii), (E)–(H), and (J)–(M) as the ''infrastructure'' SIPs. Additionally, EPA refers to the requirements of section 110(a)(2)(D)(i) as the ''interstate transport'' SIPs. EPA provided separate guidance to states on each type of SIP, infrastructure and interstate transport, and these actions are on separate tracks and timelines.

1. Section 110(a)(1) and (2) Infrastructure SIP Elements

On July 18, 1997, we published new and revised NAAQS for ozone (62 FR 38856) and PM (62 FR 38652). For ozone, we set an 8-hour standard of 0.08 parts per million (ppm) to replace the 1-hour standard of 0.12 ppm. For PM we set a new annual and a new 24-hour NAAQS for particles with an aerodynamic diameter less than or equal to a nominal 2.5 micrometers (denoted $PM_{2.5}$). The annual $PM_{2.5}$ standard was set at 15 micrograms per cubic meter ($\mu g/m^3$). The 24-hour $PM_{2.5}$ standard was set at 65 $\mu g/m^3$. On October 17, 2006, we published revised standards for PM (71 FR 61144). For $PM_{2.5}$, the annual standard of 15 $\mu g/m^3$ was retained, and the 24-hour standard was revised to 35 $\mu g/m^3$. For PM_{10} the annual standard was revoked, and the 24-hour standard (150 $\mu g/m^3$) was retained. On March 27, 2008, we published revised standards for ozone (73 FR 16436) of 0.75 ppm to replace the 1997 8-hour standard of 0.08 ppm. For more information on these standards, please see the 1997, 2006, and 2008 **Federal Register** notices (62 FR 38856, 62 FR 38652, 71 FR 61144, and 73 FR 16436).

Thus, states were required to submit such SIPs for the 1997 8-hour ozone and $PM_{2.5}$ NAAQS to EPA no later than June 2000.[3] However, intervening litigation over the 1997 8-hour ozone and $PM_{2.5}$ NAAQS created uncertainty about how to proceed, and many states did not provide the required ''infrastructure'' SIP submission for these newly promulgated NAAQS.

On March 4, 2004, Earthjustice submitted a notice of intent to sue related to EPA's failure to issue findings of failure to submit related to the infrastructure requirements for the 1997 8-hour ozone and $PM_{2.5}$ NAAQS. EPA entered into a consent decree with Earthjustice which required EPA, among other things, to complete a **Federal Register** notice announcing EPA's determinations pursuant to section 110(k)(1)(B) of the Act as to whether each state had made complete submissions to meet the requirements of section 110(a)(2) for the 1997 8-hour ozone NAAQS by December 15, 2007. Subsequently, EPA received an extension of the date to complete this **Federal Register** notice until March 17, 2008, based upon agreement to make the findings with respect to submissions made by January 7, 2008. In accordance with the consent decree, EPA made completeness findings for each state based upon what the Agency had received from each state as of January 7,

[1] This proposed rulemaking does not apply to Tribal Lands encompassed within the Albuquerque/Bernalillo County area.

[2] Two elements identified in section 110(a)(2) are not governed by the 3-year submission deadline of section 110(a)(1) because SIPs incorporating necessary local nonattainment area controls are not due within 3 years after promulgation of a new or revised NAAQS, but rather are due at the time the nonattainment area plan requirements are due pursuant to section 172 of the CAA. These elements are: (1) Submissions required by section 110(a)(2)(C) to the extent that subsection refers to a permit program as required in part D Title I of the CAA and (2) submissions required by section 110(a)(2)(I) which pertain to the nonattainment planning requirements of part D Title I of the CAA. Therefore, this action does not cover these specific SIP elements.

[3] EPA issued a revised 8-hour ozone standard on March 27, 2008 (73 FR 16436). On September 16, 2009, the EPA Administrator announced that EPA would take rulemaking action to reconsider the 2008 primary and secondary ozone NAAQS. On January 19, 2010, EPA proposed to set different primary and secondary ozone standards than those set in 2008 to provide requisite protection of public health and welfare, respectively (75 FR 2938). The final reconsidered ozone NAAQS have yet to be promulgated.

2008. With regard to the 1997 $PM_{2.5}$ NAAQS, EPA entered into a consent decree with Earthjustice, which required EPA, among other things, to complete a **Federal Register** notice announcing EPA's determinations pursuant to section 110(k)(1)(B) of the Act as to whether each state had made complete submissions to meet the requirements of section 110(a)(2) for the 1997 $PM_{2.5}$ NAAQS by October 5, 2008.

On March 27, 2008 and October 22, 2008, we published findings concerning whether states had made the 110(a)(2) submissions for the 1997 ozone (73 FR 16205) and $PM_{2.5}$ standards (73 FR 62902). In the March 27, 2008 action, we found that New Mexico (including Albuquerque/Bernalillo County) addressed all but one of the requirements of section 110(a)(2) of the Act necessary to implement the 1997 ozone NAAQS. As required by section 110(a)(2)(C) and (J), New Mexico failed to submit a SIP addressing changes to the part C Prevention of Significant Deterioration (PSD) permit program required by the November 29, 2005 (70 FR 71612, page 71699) final rule that made NO_X a precursor for ozone in the part C regulations at 40 CFR 51.166 and in 40 CFR 52.21. Subsequent to this finding, the Albuquerque/Bernalillo County PSD program was revised to implement the 8-hour ozone NAAQS by adopting regulations to implement NO_X as a precursor for ozone on December 22, 2005 and April 13, 2006. These revisions were submitted as SIP revisions by the Governor of New Mexico on May 24, 2006. EPA SIP-approved the December 22, 2005 PSD revisions on April 26, 2007 (72 FR 20728). In the October 22, 2008 action, we found that New Mexico (including Albuquerque/Bernalillo County) made complete submissions intended to provide for the basic program elements specified in section 110(a)(2) of the Act necessary to implement the 1997 $PM_{2.5}$ NAAQS.

On October 2, 2007 we issued ''Guidance on SIP Elements Required Under Section 110(a)(1) and (2) for the 1997 8-hour Ozone and $PM_{2.5}$ National Ambient Air Quality Standards,'' Memorandum from William T. Harnett, Director, Air Quality Policy Division (AQPD), Office of Air Quality Planning and Standards (OAQPS).[4] On September 25, 2009, we issued ''Guidance on SIP Elements Required Under Sections 110(a)(1) and (2) for the 2006 24-Hour Fine Particle ($PM_{2.5}$) National Ambient Air Quality Standards (NAAQS),'' Memorandum also from William T. Harnett, Director, AQPD, OAQPS. Each of these guidance memos addresses the SIP elements found in 110(a)(2). In each of these guidance memos, the guidance states that, to the extent that existing SIPs already meet the requirements, states need only certify that fact to us.

On December 11, 2007, EPA received a SIP submittal from Albuquerque/Bernalillo County, certifying that its portion of the New Mexico SIP includes all the requirements in section 110(a)(1) and (2) of the Act for implementation of the 1997 8-hour ozone NAAQS.

On April 7, 2008 the Governor of New Mexico submitted a certification letter addressing Albuquerque/Bernalillo County's requirements under section 110(a)(1) and (2) of the Act for implementation of the 1997 $PM_{2.5}$ NAAQS. The letter certified what sections of the New Mexico SIP (including Albuquerque/Bernalillo County) were met, as well as what sections needed to be revised to comply with the 110(a)(1) and (2) requirements.[5] The letter identified proposed revisions to the Albuquerque/Bernalillo County SIP and a timeline for finalizing the revisions.

On May 24, 2006 and August 16, 2010, the Governor of New Mexico submitted revisions to the Albuquerque/Bernalillo County portion of the New Mexico SIP to adopt and implement PSD permitting regulations to meet the federal requirements for implementation of the 2006 $PM_{2.5}$ NAAQS. The submissions also included revisions to the SIP to provide for NO_X to be treated as a precursor to ozone formation in the preconstruction permitting program for PSD. Also in the August 16, 2010 submittal, the Governor included an Infrastructure SIP ''Completeness Checklist,'' certifying how Albuquerque/Bernalillo County met all the requirements of section 110(a)(1) and (2) of the Act. We are proposing action on these items in today's rulemaking.

Additional information: EPA is currently acting upon SIPs that address the infrastructure requirements of CAA section 110(a)(1) and (2) for ozone and $PM_{2.5}$ NAAQS for various states across the country. Commenters on EPA's recent proposals for some states raised concerns about EPA statements that it was not addressing certain substantive issues in the context of acting on those infrastructure SIP submissions.[6] Those commenters specifically raised concerns involving provisions in existing SIPs and with EPA's statements in other proposals that it would address two issues separately and not as part of actions on the infrastructure SIP submissions: (i) Existing provisions related to excess emissions during periods of start-up, shutdown, or malfunction at sources, that may be contrary to the CAA and EPA's policies addressing such excess emissions (''SSM''); and (ii) existing provisions related to ''director's variance'' or ''director's discretion'' that purport to permit revisions to SIP approved emissions limits with limited public process or without requiring further approval by EPA, that may be contrary to the CAA (''director's discretion''). EPA notes that there are two other substantive issues for which EPA likewise stated in other proposals that it would address the issues separately: (i) Existing provisions for minor source new source review programs that may be inconsistent with the requirements of the CAA and EPA's regulations that pertain to such programs (''minor source NSR''); and (ii) existing provisions for Prevention of Significant Deterioration programs that may be inconsistent with current requirements of EPA's ''Final NSR Improvement Rule,'' 67 FR 80186 (December 31, 2002), as amended by 72 FR 32526 (June 13, 2007) (''NSR Reform''). In light of the comments, EPA believes that its statements in various proposed actions on infrastructure SIPs with respect to these four individual issues should be explained in greater depth. It is important to emphasize that EPA is taking the same position with respect to these four substantive issues in this action on the infrastructure SIP submittals for the 1997 and 2008 8-hour ozone NAAQS and the 1997 and 2006 $PM_{2.5}$ NAAQS submissions from Albuquerque/Bernalillo County.

EPA intended the statements in the other proposals concerning these four issues merely to be informational, and to provide general notice of the potential existence of provisions within the existing SIPs of some states that might require future corrective action. EPA did not want states, regulated entities, or members of the public to be under the misconception that the

[4] This and any other guidance documents referenced in this action are in the docket for this rulemaking.

[5] Specifically, the letter stated that New Mexico needed to revise its rules as follows: To include $PM_{2.5}$ in its definition of major sources; to include $PM_{2.5}$ in the definition of NAAQS and precursors of a criteria pollutant; to include significant harm levels for $PM_{2.5}$; and to include NO_X as a precursor for ozone.

[6] See, Comments of Midwest Environmental Defense Center, dated May 31, 2011. Docket # EPA–R05–OAR–2007–1179 (adverse comments on proposals for three states in Region 5). EPA notes that these public comments on another proposal are not relevant to this rulemaking and do not have to be directly addressed in this rulemaking. EPA will respond to these comments in the appropriate rulemaking action to which they apply.

Agency's approval of the infrastructure SIP submission of a given state should be interpreted as a re-approval of certain types of provisions that might exist buried in the larger existing SIP for such state. Thus, for example, EPA explicitly noted that the Agency believes that some states may have existing SIP approved SSM provisions that are contrary to the CAA and EPA policy, but that ''in this rulemaking, EPA is not proposing to approve or disapprove any existing State provisions with regard to excess emissions during SSM of operations at facilities.'' EPA further explained, for informational purposes, ''EPA plans to address such State regulations in the future.'' EPA made similar statements, for similar reasons, with respect to the director's discretion, minor source NSR, and NSR Reform issues. EPA's objective was to make clear that approval of an infrastructure SIP for these ozone and $PM_{2.5}$ NAAQS should not be construed as explicit or implicit reapproval of any existing provisions that relate to these four substantive issues. EPA is reiterating that position in this action on these infrastructure SIP submittals for Albuquerque/Bernalillo County.

Unfortunately, the commenters and others evidently interpreted these statements to mean that EPA considered action upon the SSM provisions and the other three substantive issues to be integral parts of acting on an infrastructure SIP submission, and therefore that EPA was merely postponing taking final action on the issues in the context of the infrastructure SIPs. This was not EPA's intention. To the contrary, EPA only meant to convey its awareness of the potential for certain types of deficiencies in existing SIPs, and to prevent any misunderstanding that it was reapproving any such existing provisions. EPA's intention was to convey its position that the statute does not require that infrastructure SIPs address these specific substantive issues in existing SIPs and that these issues may be dealt with separately, outside the context of acting on the infrastructure SIP submission of a state. To be clear, EPA did not mean to imply that it was not taking a full final agency action on the infrastructure SIP submission with respect to any substantive issue that EPA considers to be a required part of acting on such submissions under section 110(k) or under section 110(c). Given the confusion evidently resulting from EPA's statements in those other proposals, however, we want to explain more fully the Agency's reasons for concluding that these four potential substantive issues in existing SIPs may be addressed separately from actions on infrastructure SIP submissions.

The requirement for the SIP submissions at issue arises out of CAA section 110(a)(1). That provision requires that states must make a SIP submission ''within 3 years (or such shorter period as the Administrator may prescribe) after the promulgation of a national primary ambient air quality standard (or any revision thereof)'' and that these SIPs are to provide for the ''implementation, maintenance, and enforcement'' of such NAAQS. Section 110(a)(2) includes a list of specific elements that ''[e]ach such plan'' submission must meet. EPA has historically referred to these particular submissions that states must make after the promulgation of a new or revised NAAQS as ''infrastructure SIPs.'' This specific term does not appear in the statute, but EPA uses the term to distinguish this particular type of SIP submission designed to address basic structural requirements of a SIP from other types of SIP submissions designed to address other different requirements, such as ''nonattainment SIP'' submissions required to address the nonattainment planning requirements of part D, ''regional haze SIP'' submissions required to address the visibility protection requirements of CAA section 169A, new source review permitting program submissions required to address the requirements of part D, and a host of other specific types of SIP submissions that address other specific matters.

Although section 110(a)(1) addresses the timing and general requirements for these infrastructure SIPs, and section 110(a)(2) provides more details concerning the required contents of these infrastructure SIPs, EPA believes that many of the specific statutory provisions are facially ambiguous. In particular, the list of required elements provided in section 110(a)(2) contains a wide variety of disparate provisions, some of which pertain to required legal authority, some of which pertain to required substantive provisions, and some of which pertain to requirements for both authority and substantive provisions.[7] Some of the elements of section 110(a)(2) are relatively straightforward, but others clearly require interpretation by EPA through rulemaking, or recommendations through guidance, in order to give specific meaning for a particular NAAQS.[8]

Notwithstanding that section 110(a)(2) provides that ''each'' SIP submission must meet the list of requirements therein, EPA has long noted that this literal reading of the statute is internally inconsistent, insofar as section 110(a)(2)(I) pertains to nonattainment SIP requirements that could not be met on the schedule provided for these SIP submissions in section 110(a)(1).[9] This illustrates that EPA must determine which provisions of section 110(a)(2) may be applicable for a given infrastructure SIP submission. Similarly, EPA has previously decided that it could take action on different parts of the larger, general ''infrastructure SIP'' for a given NAAQS without concurrent action on all subsections, such as section 110(a)(2)(D)(i), because the Agency bifurcated the action on these latter ''interstate transport'' provisions within section 110(a)(2) and worked with states to address each of the four prongs of section 110(a)(2)(D)(i) with substantive administrative actions proceeding on different tracks with different schedules.[10] This illustrates that EPA may conclude that subdividing the applicable requirements of section 110(a)(2) into separate SIP actions may sometimes be appropriate for a given NAAQS where a specific substantive action is necessitated, beyond a mere submission addressing basic structural aspects of the state's SIP. Finally, EPA notes that not every element of section

[7] For example, section 110(a)(2)(E) provides that states must provide assurances that they have adequate legal authority under state and local law to carry out the SIP; section 110(a)(2)(C) provides that states must have a substantive program to address certain sources as required by part C of the CAA; section 110(a)(2)(G) provides that states must have both legal authority to address emergencies and substantive contingency plans in the event of such an emergency.

[8] For example, section 110(a)(2)(D)(i) requires EPA to be sure that each state's SIP contains adequate provisions to prevent significant contribution to nonattainment of the NAAQS in other states. This provision contains numerous terms that require substantial rulemaking by EPA in order to determine such basic points as what constitutes significant contribution. See, e.g., ''Rule To Reduce Interstate Transport of Fine Particulate Matter and Ozone (Clean Air Interstate Rule); Revisions to Acid Rain Program; Revisions to the NO_X SIP Call; Final Rule,'' 70 FR 25162 (May 12, 2005) (defining, among other things, the phrase ''contribute significantly to nonattainment'').

[9] See, e.g., Id., 70 FR 25162, at 63–65 (May 12, 2005) (explaining relationship between timing requirement of section 110(a)(2)(D) versus section 110(a)(2)(I)).

[10] EPA issued separate guidance to states with respect to SIP submissions to meet section 110(a)(2)(D)(i) for the 1997 ozone and 1997 $PM_{2.5}$ NAAQS. 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 AQPD, OAQPS, to Regional Air Division Directors, Regions I–X, dated August 15, 2006.

110(a)(2) would be relevant, or as relevant, or relevant in the same way, for each new or revised NAAQS and the attendant infrastructure SIP submission for that NAAQS. For example, the monitoring requirements that might be necessary for purposes of section 110(a)(2)(B) for one NAAQS could be very different than what might be necessary for a different pollutant. Thus, the content of an infrastructure SIP submission to meet this element from a state might be very different for an entirely new NAAQS, versus a minor revision to an existing NAAQS.[11]

Similarly, EPA notes that other types of SIP submissions required under the statute also must meet the requirements of section 110(a)(2), and this also demonstrates the need to identify the applicable elements for other SIP submissions. For example, nonattainment SIPs required by part D likewise have to meet the relevant subsections of section 110(a)(2) such as section 110(a)(2)(A) or (E). By contrast, it is clear that nonattainment SIPs would not need to meet the portion of section 110(a)(2)(C) that pertains to part C, *i.e.,* the PSD requirements applicable in attainment areas. Nonattainment SIPs required by part D also would not need to address the requirements of section 110(a)(2)(G) with respect to emergency episodes, as such requirements would not be limited to nonattainment areas. As this example illustrates, each type of SIP submission may implicate some subsections of section 110(a)(2) and not others.

Given the potential for ambiguity of the statutory language of section 110(a)(1) and (2), EPA believes that it is appropriate for EPA to interpret that language in the context of acting on the infrastructure SIPs for a given NAAQS. Because of the inherent ambiguity of the list of requirements in section 110(a)(2), EPA has adopted an approach in which it reviews infrastructure SIPs against this list of elements ''as applicable.'' In other words, EPA assumes that Congress could not have intended that each and every SIP submission, regardless of the purpose of the submission or the NAAQS in question, would meet each of the requirements, or meet each of them in the same way. EPA elected to use guidance to make recommendations for infrastructure SIPs for these ozone and $PM_{2.5}$ NAAQS.

On October 2, 2007, EPA issued guidance making recommendations for the infrastructure SIP submissions for both the 1997 8-hour ozone NAAQS and the 1997 $PM_{2.5}$ NAAQS.[12] Within this guidance document, EPA described the duty of states to make these submissions to meet what the Agency characterized as the ''infrastructure'' elements for SIPs, which it further described as the ''basic SIP requirements, including emissions inventories, monitoring, and modeling to assure attainment and maintenance of the standards.'' [13] As further identification of these basic structural SIP requirements, ''attachment A'' to the guidance document included a short description of the various elements of section 110(a)(2) and additional information about the types of issues that EPA considered germane in the context of such infrastructure SIPs. EPA emphasized that the description of the basic requirements listed on attachment A was not intended ''to constitute an interpretation of'' the requirements, and was merely a ''brief description of the required elements.'' [14] EPA also stated its belief that with one exception, these requirements were ''relatively self explanatory, and past experience with SIPs for other NAAQS should enable States to meet these requirements with assistance from EPA Regions.'' [15] For the one exception to that general assumption, however, *i.e.,* how states should proceed with respect to the requirements of section 110(a)(2)(G) for the 1997 $PM_{2.5}$ NAAQS, EPA gave much more specific recommendations. But for other infrastructure SIP submittals, and for certain elements of the submittals for the 1997 $PM_{2.5}$ NAAQS, EPA assumed that each State would work with its corresponding EPA regional office to refine the scope of a State's submittal based on an assessment of how the requirements of section 110(a)(2) should reasonably apply to the basic structure of the State's SIP for the NAAQS in question.

On September 25, 2009, EPA issued guidance to make recommendations to states with respect to the infrastructure SIPs for the 2006 $PM_{2.5}$ NAAQS.[16] In the 2009 Guidance, EPA addressed a number of additional issues that were not germane to the infrastructure SIPs for the 1997 8-hour ozone and 1997 $PM_{2.5}$ NAAQS, but were germane to these SIP submissions for the 2006 $PM_{2.5}$ NAAQS, e.g., the requirements of section 110(a)(2)(D)(i) that EPA had bifurcated from the other infrastructure elements for those specific 1997 ozone and $PM_{2.5}$ NAAQS.

Significantly, neither the 2007 Guidance nor the 2009 Guidance explicitly referred to the SSM, director's discretion, minor source NSR, or NSR Reform issues as among specific substantive issues EPA expected states to address in the context of the infrastructure SIPs, nor did EPA give any more specific recommendations with respect to how states might address such issues even if they elected to do so. The SSM and director's discretion issues implicate section 110(a)(2)(A), and the minor source NSR and NSR Reform issues implicate section 110(a)(2)(C). In the 2007 Guidance and the 2009 Guidance, however, EPA did not indicate to states that it intended to interpret these provisions as requiring a substantive submission to address these specific issues in existing SIP provisions in the context of the infrastructure SIPs for these NAAQS. Instead, EPA's 2007 Guidance merely indicated its belief that the states should make submissions in which they established that they have the basic SIP structure necessary to implement, maintain, and enforce the NAAQS. EPA believes that states can establish that they have the basic SIP structure, notwithstanding that there may be potential deficiencies within the existing SIP. Thus, EPA's proposals for other states mentioned these issues not because the Agency considers them issues that must be addressed in the context of an infrastructure SIP as required by section 110(a)(1) and (2), but rather because EPA wanted to be clear that it considers these potential existing SIP problems as separate from the pending infrastructure SIP actions. The same holds true for this action on the infrastructure SIP submittals for Albuquerque/Bernalillo County.

EPA believes that this approach to the infrastructure SIP requirement is reasonable, because it would not be feasible to read section 110(a)(1) and (2) to require a top to bottom, stem to stern,

[11] For example, implementation of the 1997 $PM_{2.5}$ NAAQS required the deployment of a system of new monitors to measure ambient levels of that new indicator species for the new NAAQS.

[12] See, ''Guidance on SIP Elements Required Under Section 110(a)(1) and (2) for the 1997 8-hour Ozone and $PM_{2.5}$ National Ambient Air Quality Standards,'' from William T. Harnett, Director AQPD, OAQPS, to Air Division Directors, Regions I-X, dated October 2, 2007 (the ''2007 Guidance'').

[13] Id., at page 2.

[14] Id., at attachment A, page 1.

[15] Id., at page 4. In retrospect, the concerns raised by commenters with respect to EPA's approach to some substantive issues indicates that the statute is not so ''self explanatory,'' and indeed is sufficiently ambiguous that EPA needs to interpret it in order to explain why these substantive issues do not need to be addressed in the context of infrastructure SIPs and may be addressed at other times and by other means.

[16] See, ''Guidance on SIP Elements Required Under Sections 110(a)(1) and (2) for the 2006 24-Hour Fine Particle ($PM_{2.5}$) National Ambient Air Quality Standards (NAAQS),'' from William T, Harnett, Director AQPD, OAQPS, to Regional Air Division Directors, Regions I–X, dated September 25, 2009 (the ''2009 Guidance'').

review of each and every provision of an existing SIP merely for purposes of assuring that the state in question has the basic structural elements for a functioning SIP for a new or revised NAAQS. Because SIPs have grown by accretion over the decades as statutory and regulatory requirements under the CAA have evolved, they may include some outmoded provisions and historical artifacts that, while not fully up to date, nevertheless may not pose a significant problem for the purposes of ''implementation, maintenance, and enforcement'' of a new or revised NAAQS when EPA considers the overall effectiveness of the SIP. To the contrary, EPA believes that a better approach is for EPA to determine which specific SIP elements from section 110(a)(2) are applicable to an infrastructure SIP for a given NAAQS, and to focus attention on those elements that are most likely to need a specific SIP revision in light of the new or revised NAAQS. Thus, for example, EPA's 2007 Guidance specifically directed states to focus on the requirements of section 110(a)(2)(G) for the 1997 $PM_{2.5}$ NAAQS because of the absence of underlying EPA regulations for emergency episodes for this NAAQS and an anticipated absence of relevant provisions in existing SIPs.

Finally, EPA believes that its approach is a reasonable reading of section 110(a)(1) and (2) because the statute provides other avenues and mechanisms to address specific substantive deficiencies in existing SIPs. These other statutory tools allow the Agency to take appropriate tailored action, depending upon the nature and severity of the alleged SIP deficiency. Section 110(k)(5) authorizes EPA to issue a ''SIP call'' whenever the Agency determines that a state's SIP is substantially inadequate to attain or maintain the NAAQS, to mitigate interstate transport, or otherwise to comply with the CAA.[17] Section 110(k)(6) authorizes EPA to correct errors in past actions, such as past approvals of SIP submissions.[18] Significantly, EPA's determination that an action on the infrastructure SIP submittal is not the appropriate time and place to address all potential existing SIP problems does not preclude the Agency's subsequent reliance on provisions in section 110(a)(2) as part of the basis for action at a later time. For example, although it may not be appropriate to require a state to eliminate all existing inappropriate director's discretion provisions in the course of acting on the infrastructure SIP, EPA believes that section 110(a)(2)(A) may be among the statutory bases that the Agency cites in the course of addressing the issue in a subsequent action.[19]

2. Section 110(a)(2)(D)(i) Interstate Transport SIP Elements

Section 110(a)(2)(D)(i) pertains to interstate transport of certain emissions. On August 15, 2006, the EPA issued its ''Guidance for State Implementation Plan (SIP) Submission 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'' (2006 Guidance). EPA developed the 2006 Guidance to make recommendations to states for making submissions to meet the requirements of section 110(a)(2)(D)(i) for the 1997 8-hour ozone standards and the 1997 $PM_{2.5}$ standards. As identified in the 2006 Guidance, the ''good neighbor'' provisions in section 110(a)(2)(D)(i) require each state to submit a SIP that prohibits emissions that adversely affect another state in the ways contemplated in the statute. Section 110(a)(2)(D)(i) contains four distinct requirements (prongs) related to the impacts of interstate transport. The SIP must prevent sources in the state from emitting pollutants in amounts which will: (1) Contribute significantly to nonattainment of the NAAQS in other states; (2) interfere with maintenance of the NAAQS in other states; (3) interfere with provisions to prevent significant deterioration of air quality in other states; and (4) interfere with efforts to protect visibility in other states.

On September 12, 2007 and August 25, 2010 (dated August 16, 2010), we received SIP submissions from the Governor of New Mexico intended to address the requirements of section 110(a)(2)(D)(i) for both the 1997 8-hour ozone and 1997 $PM_{2.5}$ NAAQS. EPA approved a portion of the 2007 SIP submittal—the first prong—that pertains to preventing sources in one state from emitting pollutants in amounts that will contribute significantly to nonattainment of the 1997 ozone and 1997 $PM_{2.5}$ NAAQS in any other state (75 FR 68447, November 8, 2010). In today's action, we are also addressing a portion of that submittal—the third prong—that pertains to preventing sources in Albuquerque/Bernalillo County from emitting pollutants that will interfere with measures required to prevent significant deterioration of air quality in other states. In its submission, New Mexico indicated that its current PSD NSR SIP is adequate to prevent such interference. In a separate rulemaking, EPA is taking action on the requirement regarding interference with efforts to protect visibility in other states. The remaining prong, which addresses interference with maintenance of the NAAQS in other states, will be evaluated in a separate rulemaking.

3. Revisions to the Albuquerque/Bernalillo County PSD SIP

Today's rulemaking includes the review and analysis of two separate revisions to the Albuquerque/Bernalillo County SIP for PSD permitting submitted to EPA on May 24, 2006 and August 16, 2010, that include provisions to implement the 1997 and 2008 8-hour ozone NAAQS and the 1997 and 2006 $PM_{2.5}$ NAAQS. We note that the AQCB also provided revisions to the NNSR permitting program in the August 16, 2010 submittal. EPA is severing the August 16, 2010 revisions to the NNSR SIP from our proposed action.[20] The NNSR SIP is a separate permit program for nonattainment areas that functions independently from the PSD program and is authorized under Part D of the Title I of the CAA. As explained previously in section I.C.1 of this proposed rule, the Albuquerque infrastructure SIP review does not include evaluation of NNSR provisions at this time. EPA will address the NNSR SIP revisions in a separate rulemaking.

[17] EPA has recently issued a SIP call to rectify a specific SIP deficiency related to the SSM issue. See, ''Finding of Substantial Inadequacy of Implementation Plan; Call for Utah State Implementation Plan Revision,'' 76 FR 21639 (April 18, 2011).

[18] EPA has recently utilized this authority to correct errors in past actions on SIP submissions related to PSD programs. See, ''Limitation of Approval of Prevention of Significant Deterioration Provisions Concerning Greenhouse Gas Emitting-Sources in State Implementation Plans; Final Rule,'' 75 FR 82536 (December 30, 2010). EPA has previously used its authority under CAA 110(k)(6) to remove numerous other SIP provisions that the Agency determined it had approved in error. See, e.g., 61 FR 38664 (July 25, 1996) and 62 FR 34641 (June 27, 1997) (corrections to American Samoa, Arizona, California, Hawaii, and Nevada SIPs); 69 FR 67062 (November 16, 2004) (corrections to California SIP); and 74 FR 57051 (November 3, 2009) (corrections to Arizona and Nevada SIPs).

[19] EPA has recently disapproved a SIP submission from Colorado on the grounds that it would have included a director's discretion provision inconsistent with CAA requirements, including section 110(a)(2)(A). See, e.g., 75 FR 42342 at 42344 (July 21, 2010) (proposed disapproval of director's discretion provisions); 76 FR 4540 (January 26, 2011) (final disapproval of such provisions).

[20] These portions are severable. By which, we mean that the portions of the SIP revision required by EPA's Implementation of the New Source Review (NSR) Program for Particulate Matter Less Than 2.5 Micrometers rule can be implemented independently of the remaining portions of the submittal, without affecting the stringency of the submitted rules. In addition, the remaining portions of the submittal are not necessary for approval of the provisions implementing the $PM_{2.5}$ NAAQS.

a. Revisions To Address the 1997 and 2008 8-Hour Ozone NAAQS

On May 24, 2006 and August 16, 2010, the Governor submitted revisions to the PSD SIP that include, but are not limited to, revisions that provide for NO_X to be treated as a precursor to ozone formation in the preconstruction permitting program for PSD, found at Title 20, Chapter 11, Section 61 of the New Mexico Administrative Code (20.11.61 NMAC). We are proposing to approve portions of two revisions to the PSD SIP that include revisions to 20.11.61 NMAC as submitted to EPA on May 24, 2006 and August 16, 2010 respectively, which implement the provisions for NO_X as a precursor for ozone, consistent with the 1997 8-hour ozone NAAQS as published in the November 29, 2005 FRN. EPA finds that these revisions are necessary for implementation of the 1997 and 2008 ozone standard. As discussed further in our Technical Support Document (TSD), these revisions adopted by the AQCB meet the requirements of the CAA and EPA's PSD SIP rules and are consistent with EPA's policy and guidance regarding the PSD permit program.

b. Revisions To Address the 1997 and 2006 $PM_{2.5}$ NAAQS

To implement the PSD permitting component of section 110(a)(2)(C) for the 1997 and 2006 $PM_{2.5}$ standards, states were required to submit the necessary SIP revisions to EPA by May 16, 2011 under EPA's Implementation of the New Source Review (NSR) Program for Particulate Matter Less Than 2.5 Micrometers (73 FR 28321, May 16, 2008; hereafter referred to as ''2008 $PM_{2.5}$ NSR rule''). On July 14, 2010, the Albuquerque/Bernalillo County AQCB adopted revisions to the Albuquerque/Bernalillo County SIP to amend their PSD and NNSR programs to implement $PM_{2.5}$ NAAQS. These revisions became effective on August 30, 2010. The Governor submitted these changes to EPA as a SIP revision on August 16, 2010. As noted previously, we are proposing action on only the PSD revisions at this time. We are proposing to approve portions of the revisions to the PSD SIP at 20.11.61 NMAC submitted on August 16, 2010 that implement the provisions for $PM_{2.5}$ permitting, including the identification of $PM_{2.5}$ precursors and significant emission rates, consistent with the requirements as published in the 2008 $PM_{2.5}$ NSR rule to adequately implement the 1997 and 2006 NAAQS. As discussed further in our TSD, these revisions adopted by the Albuquerque/Bernalillo County AQCB meet the requirements of the CAA and EPA's PSD SIP rules and are consistent with EPA's policy and guidance regarding the PSD permit program.

c. Revisions To Address the Greenhouse Gas (GHG) Permitting Requirements

EPA has recently undertaken a series of actions pertaining to the regulation of GHGs that, although for the most part are distinct from one another, establish the overall framework for today's proposed action on the Albuquerque infrastructure SIP. Four of these actions include, as they are commonly called, the ''Endangerment Finding'' and ''Cause or Contribute Finding,'' which EPA issued in a single final action,[21] the ''Johnson Memo Reconsideration,'' [22] the ''Light-Duty Vehicle Rule,'' [23] and the ''Tailoring Rule.'' [24] Taken together and in conjunction with the CAA, these actions established regulatory requirements for GHGs emitted from new motor vehicles and new motor vehicle engines; determined that such regulations, when they took effect on January 2, 2011, subjected GHGs emitted from stationary sources to PSD requirements; and limited the applicability of PSD requirements to GHG sources on a phased-in basis. EPA took this last action in the Tailoring Rule, which, more specifically, established appropriate GHG emission thresholds for determining the applicability of PSD requirements to GHG-emitting sources.

On December 15, 2010, the Governor of New Mexico submitted to EPA a SIP revision that modified Albuquerque/Bernalillo County's PSD program to establish appropriate emission thresholds for determining which new stationary sources and modification projects become subject to Albuquerque/Bernalillo County's PSD permitting requirements for their GHG emissions. The regulatory revisions that Albuquerque/Bernalillo County submitted, on December 15, 2010, incorporate the Tailoring Rule thresholds, thereby (i) assuring that, under State law, only sources at or above the Tailoring Rule thresholds would be subject to PSD; and (ii) avoiding confusion under the federally-approved SIP by clarifying that the SIP applies only to sources at or above the Tailoring Rule thresholds. EPA determined that the PSD SIP revision met the requirements of section 110 and part C of the CAA and EPA regulations regarding PSD permitting for GHGs, and EPA approved the PSD SIP revision effective January 30, 2012. (See 76 FR 81836).

d. Revisions To Maintain Consistency With the Federal PSD Requirements

In addition to the revisions submitted on May 24, 2006 and August 16, 2010 to implement the 1997 and 2008 8-hour ozone NAAQS and the 1997 and 2006 $PM_{2.5}$ NAAQS, Albuquerque also adopted and submitted several revisions to the general PSD program to maintain consistency with the Federal PSD requirements. It is incumbent on a permitting authority to routinely review and update the SIP to maintain consistency with the Federal requirements and submit these revisions as appropriate for review and incorporation into the state's SIP. As further explained in the TSD, EPA finds that these revisions are consistent with the Federal PSD requirements at 40 CFR 51.166 and necessary to implement the Albuquerque PSD SIP.

4. Additional Revisions to the Albuquerque/Bernalillo County SIP

On November 6, 2009, the Governor submitted a SIP revision that included among other things, updating the SIP rule entitled Ambient Air Quality Standards. We are taking this opportunity to evaluate and propose action on the Ambient Air Quality Standard SIP portion of the 2009 submission. EPA is not taking action on the other severable portions of November 2009 SIP revision submittal at this time.

D. What elements are required under section 110(a)(2)?

Pursuant to the October 2, 2007 EPA guidance for addressing the SIP infrastructure elements required under sections 110(a)(1) and (2) for the 1997 ozone and 1997 and 2006 $PM_{2.5}$ NAAQS, there are 14 essential components that must be included in the SIP. These are listed in Table 1 below.

[21] ''Endangerment and Cause or Contribute Findings for Greenhouse Gases Under Section 202(a) of the Clean Air Act.'' 74 FR 66496 (December 15, 2009).

[22] ''Interpretation of Regulations that Determine Pollutants Covered by Clean Air Act Permitting Programs.'' 75 FR 17004 (April 2, 2010).

[23] ''Light-Duty Vehicle Greenhouse Gas Emission Standards and Corporate Average Fuel Economy Standards; Final Rule.'' 75 FR 25324 (May 7, 2010).

[24] Prevention of Significant Deterioration and Title V Greenhouse Gas Tailoring Rule; Final Rule.'' 75 FR 31514 (June 3, 2010).

TABLE 1—SECTION 110(a)(2) ELEMENTS REQUIRED IN SIPS

Clean Air Act citation	Brief description
Section 110(a)(2)(A)	Emission limits and other control measures.
Section 110(a)(2)(B)	Ambient air quality monitoring/data system.
Section 110(a)(2)(C)	Program for enforcement of control measures.
Section 110(a)(2)(D)	Interstate transport.
Section 110(a)(2)(E)	Adequate resources.
Section 110(a)(2)(F)	Stationary source monitoring system.
Section 110(a)(2)(G)	Emergency power.
Section 110(a)(2)(H)	Future SIP revisions.
Section 110(a)(2)(J)[25]	Consultation with government officials.
Section 110(a)(2)(J)	Public notification.
Section 110(a)(2)(J)	Prevention of significant deterioration (PSD) and visibility protection.
Section 110(a)(2)(K)	Air quality modeling/submission of such data.
Section 110(a)(2)(L)	Permitting fees.
Section 110(a)(2)(M)	Consultation/participation by affected local entities.

II. What action is EPA proposing?

A. Section 110(a)(1) and (2)

In today's action, we are proposing to determine and approve that the following section 110(a)(2) elements are contained in the current Albuquerque/Bernalillo County SIP and provide the infrastructure for implementing the 1997 and 2008 ozone and the 1997 and 2006 $PM_{2.5}$ standards: Emission limits and other control measures (section 110(a)(2)(A)); ambient air quality monitoring/data system (section 110(a)(2)(B)); the program for enforcement of control measures (section 110(a)(2)(C)); international and interstate pollution abatement (section 110(a)(2)(D)(ii)); adequate resources (section 110(a)(2)(E)); stationary source monitoring system (section 110(a)(2)(F)); emergency power (section 110(a)(2)(G)); future SIP revisions (section 110(a)(2)(H)); consultation with government officials (section 110(a)(2)(J)); public notification (section 110(a)(2)(J)); PSD and visibility protection (section 110(a)(2)(J)); air quality modeling/data (section 110(a)(2)(K)); permitting fees (section 110(a)(2)(L)); and consultation/participation by affected local entities (section 110(a)(2)(M)).

We are also proposing that Albuquerque/Bernalillo County has adequately addressed one of the four required prongs of CAA section 110(a)(2)(D)(i), the interstate transport prong, which requires that the SIP prohibit air emissions from sources within a state from interfering with measures required to prevent significant deterioration of air quality in any other state. We are proposing to determine that emissions from sources in Albuquerque/Bernalillo County do not interfere with measures to prevent significant deterioration of air quality in any other state for the 1997 and 2008 ozone and the 1997 and 2006 $PM_{2.5}$ NAAQS (CAA section 110(a)(2)(D)(i)(II)). As noted previously, we already have found that emissions from sources within Albuquerque/Bernalillo County do not significantly contribute to nonattainment of the 1997 ozone and $PM_{2.5}$ standards in any other state. We are not addressing the prongs of section 110(a)(2)(D)(i) for the 1997 and 2008 8-hour ozone and 1997 and 2006 $PM_{2.5}$ NAAQS that pertain to prohibiting air emissions with Albuquerque/Bernalillo County from: (1) Interfering with the maintenance of the relevant NAAQS in any other state and (2) interfering with the measures required to protect visibility in any other state. We also are not addressing the remaining prong for the 2008 ozone and 2006 $PM_{2.5}$ NAAQS that pertain to prohibiting emissions from sources within Albuquerque/Bernalillo County from significantly contributing to nonattainment in any other state. We will take action on these prongs of section 110(a)(2)(D)(i) for these particular NAAQS, which address interstate transport, in separate rulemakings.

B. PSD Requirements

In conjunction with our proposed finding that the Albuquerque/Bernalillo County SIP meets the section 110(a)(1) and (2) infrastructure and interstate transport SIP elements listed above for the four NAAQS, we are also proposing to approve portions of two SIP revisions submitted by the Governor of New Mexico to EPA on May 24, 2006 and August 16, 2010 to the Albuquerque PSD Permitting Program at 20.11.61 NMAC. These revisions identify NO_X as a precursor to ozone, identify the precursors for $PM_{2.5}$ and the applicable significant emission rates for $PM_{2.5}$ PSD permitting, and make other necessary updates to maintain consistency with the federal PSD permitting requirements at 40 CFR 51.166 and 40 CFR Part 51, Appendix W. EPA is taking no action at this time on revisions to the Albuquerque NNSR Permitting program that were submitted to EPA on August 16, 2010. We find that the NNSR permitting program revisions can be severed from our action today on the PSD program revisions since the NNSR revisions are authorized under Title I, Part D of the CAA.

C. Additional SIP Revisions

EPA also is proposing to approve a portion of a revision submitted on November 6, 2009 to the New Mexico SIP for Ambient Air Quality Standards, codified at 20.11.8 NMAC (Part 8). The substantive revisions submitted to Part 8 revise the local ambient air quality standards to make them consistent with the current NAAQS.

III. How do the revisions to the Albuquerque/Bernalillo County PSD SIP meet EPA requirements?

A. Revisions To Address the 1997 and 2008 8-Hour Ozone NAAQS

To meet the requirements of 110(a)(2)(C) for the 1997 and 2008 ozone standard, EPA believes the State must have updated its PSD rules to treat NO_X as a precursor to ozone (70 FR 71612). On May 24, 2006 and August 16, 2010, the Governor of New Mexico submitted the provisions for NO_X as a precursor consistent with EPA's November 29, 2005 Phase 2 rule for the 1997 8-hour ozone NAAQS. EPA proposes to approve the May 24, 2006 and August

[25] Section 110(a)(2)(I) is omitted from the list. Section 110(a)(2)(I) pertains to the nonattainment planning requirements of part D, Title I of the Act. This section is not governed by the 3-year submission deadline of section 110(a)(1) because SIPs incorporating necessary local nonattainment area controls are not due within 3 years after promulgation of a new or revised NAAQS, but are due at the time the nonattainment area plan requirements are due pursuant to section 172. Thus this action does not cover section 110(a)(2)(I).

16, 2010 SIP revisions to Albuquerque/Bernalillo County's PSD permitting regulations that implement the provisions for NO_X as a precursor because EPA finds these rule revisions necessary to implement the 1997 and 2008 ozone NAAQS. The Albuquerque PSD program satisfies the November 29, 2005 rule as follows. A complete analysis is provided in the TSD for this action.

1. Revising the PSD definition of *Major Stationary Source* to state that a source major for VOC or NO_X will be considered major for ozone. EPA SIP-approved the revision to the *Major Stationary Source* definition at 20.11.61.7.JJ in our April 26, 2007 final action on the Albuquerque NSR Reform package, see 72 FR 20728.

2. Revising the PSD definition of *Major Modification* to state that any significant emissions increase from any emissions units or net emissions increase at a major stationary source that is significant for VOC or NO_X shall be considered significant for ozone. Albuquerque adopted the revised definition of *Major Modification* at 20.11.61.7.HH NMAC to include NO_X as an ozone precursor on April 13, 2006 and submitted to EPA on May 24, 2006.

3. Adding the emission rate for NO_X, as a precursor to ozone, as 40 tpy, in the PSD definition of *Significant.* The August 16, 2010 submittal revises the definition of *Significant* at 20.11.61.7.YY NMAC and Table 2 at 20.11.61.27 NMAC to identify NO_X as an ozone precursor.

4. Identifying NO_X as a precursor for ozone in the definition of *Regulated NSR Pollutant.* As currently SIP-approved at 20.11.61.7.VV(1), the definition of *Regulated NSR Pollutant* identifies NO_X as an ozone precursor. See EPA's April 26, 2007 approval of the Albuquerque NSR Reform package at 72 FR 20728. The August 16, 2010, revisions to the Albuquerque PSD Program revise the definition of *Regulated NSR Pollutant* to address $PM_{2.5}$ requirements (as discussed below) but continue to identify NO_X as an ozone precursor.

5. Under the PSD requirements, allowing for an exemption with respect to ambient air quality monitoring data for a source with a net emissions increase less than 100 tpy of NO_X. Albuquerque adopted and submitted revisions to 20.11.61.28 NMAC—Table 3 Significant Monitoring Concentrations on May 24, 2006 and August 16, 2010 to identify NO_X as an ozone precursor and allow for the aforementioned exemption from ambient air quality monitoring.

B. Revisions To Address the 2008 $PM_{2.5}$ NSR Rule

To meet the requirements of 110(a)(2)(C) for the 1997 and 2006 $PM_{2.5}$ standard, EPA believes that the State must have updated its PSD rules to identify the $PM_{2.5}$ precursors and significant emission rates as outlined in our May 16, 2008 rulemaking. The Governor of New Mexico submitted a SIP revision on August 16, 2010 to address the requirements of the 1997 and 2006 $PM_{2.5}$ NAAQS. EPA proposes to approve the August 16, 2010 SIP revision to Albuquerque/Bernalillo County's PSD permitting regulations that implement the provisions for $PM_{2.5}$ permitting because EPA finds these rule revisions adequate and necessary to implement the 1997 and 2006 $PM_{2.5}$ NAAQS. The Albuquerque PSD program satisfies the May 16, 2008 rulemaking as follows. A complete analysis is provided in the TSD for this action.

1. Revising the PSD definition of *Significant* to identify the significant emission rates for $PM_{2.5}$ precursors. Revisions to the Albuquerque PSD SIP at 20.11.61.7.YY NMAC and 20.11.61.27 Table 2 NMAC were submitted on August 16, 2010, that identify significant emission rates for the $PM_{2.5}$ precursors (10 TPY of direct $PM_{2.5}$, 40 TPY of SO_2, 40 TPY of NO_X unless demonstrated not to be a $PM_{2.5}$ precursor).

2. Revising the PSD definition of *Regulated NSR Pollutant* to identify the $PM_{2.5}$ precursors. Revisions to the Albuquerque PSD SIP at 20.11.61.7.VV NMAC submitted on August 16, 2010, revise the definition of *Regulated NSR Pollutant* to identify SO_2 is a $PM_{2.5}$ precursor in all attainment and unclassifiable areas, NO_X is presumed to be a $PM_{2.5}$ precursor in all attainment and unclassifiable areas unless demonstrated not to be, and VOC is presumed not to be a $PM_{2.5}$ precursor in any attainment or unclassifiable area unless demonstrated otherwise.

3. Reserving a section in the PSD definition of *Regulated NSR Pollutant.* The August 16, 2010 revisions to the Albuquerque PSD SIP reserve a section in the definition of *Regulated NSR Pollutant* at 20.11.61.7.VV(5) NMAC.

4. Revising the PSD definition of *Regulated NSR Pollutant* to require that PM, $PM_{2.5}$ and PM_{10} emissions shall include gaseous emissions from a source or activity which condense to form particulate matter at ambient temperatures. Revisions to the Albuquerque PSD SIP at 20.11.61.7.VV(6) NMAC submitted on August 16, 2010, revise the definition of *Regulated NSR Pollutant* to include condensables.

5. Revising the PSD requirements for monitoring by providing an exemption for sources if the pollutant of interest is less than the significant monitoring concentration. The August 16, 2010 revisions at 20.11.61.18(H) NMAC satisfy this requirement.

C. Revisions To Address GHG Permitting Requirements

Albuquerque adopted and submitted revisions to the PSD program consistent with EPA's GHG Tailoring Rule requirements on January 10, 2011. EPA evaluated and SIP-approved these PSD provisions in a separate rulemaking on December 29, 2011, see 76 FR 81836. Our approval action found that Albuquerque has the necessary rules and resources in place to apply the PSD permit program requirements to GHG-emitting sources.

D. Revisions To Maintain Consistency With Federal PSD Requirements

The May 24, 2006 and August 16, 2010 revisions to the Albuquerque PSD program also included several substantive and non-substantive revisions necessary to maintain consistency with the Federal PSD requirements. The TSD for this action includes a thorough review of each of the revisions, including non-substantive revisions to update internal cross-references and reformat SIP-approved provisions. The TSD also includes an analysis of each of the substantive revisions, which include revising:

- Multiple revisions to PSD definitions at 20.11.61.7 NMAC to maintain consistency with PSD program requirements at 40 CFR 51.166. Definitions substantively revised include: ''Baseline area'', ''Building, structure, facility or installation'', ''Federally Enforceable'', ''Regulated NSR Pollutant'', ''Significant'', and ''VOC'';
- 20.11.61.11 NMAC to include provisions for ''hybrid tests for projects that involve multiple types of emission units'' consistent with 40 CFR 51.166(a)(7)(iv)(f);
- 20.11.61.12 NMAC to include provision for ''reasonable possibility'' consistent with 40 CFR 51.166(r)(6)(vi);
- 20.11.61.21 NMAC to update the public notification provisions to require that the proposed control technology and alternatives be included in the notice, pursuant to 40 CFR 51.166(q);
- 20.11.61.23 to provide more clarity to the listed sources for exclusions from increment consumption pursuant to 40 CFR 51.166(f);

• 20.11.61.26 Table 1 NMAC to exclude ethanol production facilities that produce ethanol from natural fermentation from the listed PSD major source categories pursuant to 40 CFR 51.166(b)(1)(i)(a); and

• 20.11.61.27 Table 2 NMAC to include significant emission rates for municipal solid waste landfills pursuant to 40 CFR 51.166(b)(23)(i).

IV. How has Albuquerque/Bernalillo County addressed the elements of section 110(a)(2)?

The Albuquerque/Bernalillo County submittals address the elements of Section 110(a)(2) as described below. We provide a more detailed review and analysis of the Albuquerque/Bernalillo County infrastructure SIP elements in the TSD, located in the docket for this proposed rulemaking.

Enforceable emission limits and other control measures, pursuant to section 110(a)(2)(A): Section 110(a)(2)(A) requires that all measures and other elements in the SIP be enforceable. This provision does not require the submittal of regulations or emission limits developed specifically for attaining the 1997 and 2008 8-hour ozone and 1997 and 2006 $PM_{2.5}$ NAAQS. Those regulations are due later as part of attainment demonstrations. Additionally, as explained earlier (see footnote 2), EPA does not consider SIP requirements triggered by the nonattainment area mandates in part D of Title I of the CAA to be governed by the submission deadline of section 110(a)(1).

Enacted in 1967, the New Mexico Air Quality Control Act (AQCA) provided for the establishment of the Albuquerque-Bernalillo County AQCB as a joint local authority, acting on behalf of both the County of Bernalillo and the City of Albuquerque. Within the exterior boundary of Bernalillo County, the AQCB is authorized to adopt, promulgate, publish, amend and repeal regulations consistent with the New Mexico Air Quality Control Act, and to maintain national ambient air quality standards and prevent or abate air pollution, including regulations prescribing air standards, within Bernalillo County. Through the City of Albuquerque's Department of Environmental Health, the Albuquerque Air Quality Division (AQD) serves as the administrative agency for the AQCB. The AQD is authorized to administer and enforce the provisions of the New Mexico Air Quality Control Act within the boundary of Bernalillo County. The AQCB has promulgated rules to limit and control emissions of, among other things, PM, sulfur compounds (including SO_2), nitrogen compounds (including NO_X), and VOCs.[26] These rules include emission limits, control measures, permits, and compliance schedules and are found in 20.11 NMAC (e.g., 20.11.5 Visible Air Contaminants, 20.11.20 Fugitive Dust Control, 20.11.21 Open Burning, 20.11.22 Wood Burning, 20.11.65 Volatile Organic Compounds, 20.11.66 Process Equipment, 20.11.67 Equipment, Emissions, Limitations, 20.11.67.14 Coal Burning Equipment—Nitrogen Dioxide, 20.11.67.15 Coal Burning Equipment—Sulfur Dioxide, 20.11.67.17 Oil Burning Equipment—Nitrogen Dioxide, 20.11.67.19 Oil Burning Equipment—Sulfur Dioxide, 20.11.68 Incinerators and Crematories, and 20.11.60 NNSR NMAC and 20.11.61 PSD NMAC).

In this action, EPA is not proposing to approve or disapprove any existing state provisions with regard to excess emissions during startup, shutdown, or malfunction (SSM) of operations at a facility. However, EPA previously approved provisions with regard to excess emissions as part of the Albuquerque/Bernalillo County SIP (20.11.49 NMAC) on February 4, 2010. See 75 FR 5698. EPA believes that a number of states may have SSM SIP provisions which are contrary to the Act and inconsistent with existing EPA guidance,[27] and the Agency plans to address such state regulations in the future. In the meantime, EPA encourages any state having a deficient SSM provision to take steps to correct it as soon as possible. Similarly, in this proposed action EPA does not include a review of, and also does not propose to take any action to approve or disapprove, any existing SIP rules with regard to director's discretion or variance provisions. EPA believes that a number of states have such provisions that are contrary to the Act and not consistent with existing EPA guidance (52 FR 45044, November 24, 1987)[28] and the Agency plans to take action in the future to address such state regulations. In the meantime, EPA encourages any state having a director's discretion or variance provision in its SIP that is contrary to the Act and inconsistent with EPA guidance to take steps to correct the deficiency as soon as possible.

A detailed list of the applicable rules at 20.11 NMAC is provided in the TSD. The Albuquerque/Bernalillo County SIP contains enforceable emission limits and other control measures, which are in the federally enforceable SIP. EPA is proposing to determine that the Albuquerque/Bernalillo County SIP meets the requirements of section 110(a)(2)(A) of the Act with respect to the 1997 and 2008 ozone and the 1997 and 2006 $PM_{2.5}$ NAAQS.

Ambient air quality monitoring/data system, pursuant to section 110(a)(2)(B): Section 110(a)(2)(B) requires SIPs to include provisions for establishment and operation of ambient air quality monitors, collecting and analyzing ambient air quality data, and making these data available to EPA upon request. The AQD operates and maintains a network of air quality monitors throughout Bernalillo County; data are collected, results are quality assured and the data are submitted to EPA's Air Quality System[29] on a quarterly basis. The air quality surveillance network undergoes annual review by EPA. EPA evaluated Albuquerque's 2011 Annual Monitoring Network Plan (AAMNP) and approved it on January 13, 2012.[30] The AQD's AAMNP addresses each of the criteria pollutants, including 8-hour ozone and $PM_{2.5}$ and thus allows the AQD to measure the Albuquerque/Bernalillo County air quality for compliance with the 1997 and 2008 8-hour ozone and the 1997 and 2006 $PM_{2.5}$ standards.

The AQD's air quality surveillance network consists of nine stations that measure ambient concentrations of the criteria pollutants for which standards have been established in 40 CFR Part 50 (46 FR 2655), including ozone and $PM_{2.5}$. The AQD works closely with EPA Region 6 and the New Mexico Air Quality Bureau to ensure that its monitoring network meets the requirements for monitoring networks at 40 CFR part 58 Appendix D. The AQD's Web site (*www.cabq.gov/airquality*) and EPA's AirNow Web site (*www.airnow.gov*) contain up-to-date information about air quality monitoring, including a description of the network, information about

[26] NO_X and VOCs are precursors to ozone. PM can be emitted directly and secondarily formed; the latter is the result of NO_X and SO_2 precursors combining with ammonia to form ammonium nitrate and ammonium sulfate.

[27] ''State Implementation Plans (SIPs): Policy Regarding Excess Emissions During Malfunctions, Startup, and Shutdown,'' Memorandum from Steven A. Herman, Assistant Administrator for Enforcement and Compliance Assurance, and Robert Perciasepe, Assistant Administrator for Air and Radiation, dated September 20, 1999.

[28] The section addressing exemptions and variances is found on p. 45109 of the 1987 rulemaking.

[29] The Air Quality System (AQS) is EPA's repository of ambient air quality data. AQS stores data from over 10,000 monitors, 5,000 of which are currently active. State, Local and Tribal agencies collect the data and submit it to AQS on a periodic basis.

[30] A copy of EPA's evaluation and approval is in the docket for this rulemaking.

monitoring of ozone and $PM_{2.5}$, and the daily Air Quality Index (AQI).

In summary, Albuquerque/Bernalillo County meets the requirements to establish, operate, and maintain an ambient air monitoring network, collect and analyze the monitoring data, and make the data available to EPA upon request. EPA is proposing to find that the current Albuquerque/Bernalillo County SIP meets the requirements of section 110(a)(2)(B) of the Act for the 1997 and 2008 ozone and 1997 and 2006 $PM_{2.5}$ NAAQS.

Program for enforcement of control measures and regulation of the modification and construction of stationary sources, including a permit program, pursuant to section 110(a)(2)(C): The New Mexico Air Quality Control Act provides the AQCB with enforcement authority and Albuquerque/Bernalillo County has an EPA-approved air permitting program SIP for both major and minor sources. The administrative proceedings for enforcement actions, including administrative compliance orders and determination of penalty, are provided in 20.11.90 NMAC (75 FR 5698, February 4, 2010). The rules at Title 20, Chapter 11 of NMAC address allowable emission rates, compliance, control technology requirements, control schedules, monitoring and testing requirements, and reporting and recordkeeping requirements. These clarify the boundaries beyond which regulated entities in Albuquerque/Bernalillo County can expect enforcement action.

Bernalillo County Ordinance 94–5, also known as the Joint Air Quality Control Board Ordinance,[31] provides the AQD with authority to enforce permitting provisions, and provides for assessment of administrative enforcement actions and administrative penalties for violations of those permit terms and conditions, and injunctive relief (Bernalillo County Ordinance 94–5, Sections 9–18). The Albuquerque/Bernalillo County AQCB and AQD have the necessary legal authority and jurisdiction to adopt and implement requirements for measuring and monitoring air emissions and to require owners and operators of sources to make and maintain records of the emissions. Therefore, the Albuquerque/Bernalillo County AQCB and AQD have the requisite legal authority to implement and enforce the minor and major permit revision procedures in accordance with the requirements of the CAA.

To meet the requirement for having a program for the regulation of the modification and construction of any stationary source within the areas covered by the plan as necessary to assure that NAAQS are achieved, including a permit program as required by part C and part D of the CAA, generally, the State is required to have SIP–approved PSD, Nonattainment, and Minor NSR permitting programs adequate to implement the 1997 and 2008 8-hour ozone and the 1997 and 2006 $PM_{2.5}$ NAAQS. We are not evaluating nonattainment–related provisions, such as the nonattainment NSR program required by part D in 110(a)(2)(C) and measures for attainment required by section 110(a)(2)(I), as part of the infrastructure SIPs for these four NAAQS because these submittals are required beyond the date (three years from NAAQS promulgation) that section 110 infrastructure submittals are required.

PSD programs apply in areas that are meeting the NAAQS, referred to as attainment areas, or in areas that are unclassifiable, referred to as unclassifiable/attainment areas. PSD applies to new major sources and major modifications at existing sources. The Albuquerque/Bernalillo County PSD SIP program, found at 20.11.61 NMAC, was initially approved into the SIP on December 21, 1993, effective January 20, 1994 at 58 FR 67330. Subsequent revisions to the Albuquerque/Bernalillo County PSD SIP program were adopted by the AQCB on December 14, 2005, submitted May 24, 2006, and approved into the SIP on April 26, 2007 at 72 FR 20728. The AQD has the authority to issue PSD permits and enforce them under the approved PSD SIP, while the AQCB has appellate authority over the permitting.[32]

Additionally, as explained in sections II.B and III of this notice, EPA is proposing to approve revisions to the PSD program that were adopted by the AQCB on April 13, 2006 and July 14, 2010, submitted May 24, 2006 and August 16, 2010, respectively.

PSD Permitting for Sources that are Major for Ozone Precursors: To implement section 110(a)(2)(C) for the 1997 and 2008 ozone NAAQS, a state must have updated its PSD rules to address NO_X as an ozone precursor (70 FR 71612). On May 24, 2006 and August 16, 2010, the Governor submitted the provisions for NO_X as a precursor, consistent with EPA's November 29, 2005 Phase 2 rule for the 1997 ozone NAAQS (70 FR 71612) as part of its revisions to 20.11.61 NMAC. Based on our review and analysis of the May 24, 2006 and August 16, 2010 submittals, EPA is proposing to approve the following revisions to the Albuquerque/Bernalillo County PSD SIP as necessary to implement the provision for NO_X as a precursor to ozone consistent with 70 FR 71612: revisions to 20.11.61.7.HH *Major Modification* adopted April 13, 2006 and submitted May 24, 2006, revisions to 20.11.61.7.YY *Significant,* and 20.11.61.27 Table 2—Significant Emission Rates adopted July 14, 2010 and submitted August 16, 2010; revisions to 20.11.61.7.VV *Regulated New Source Review Pollutant* adopted July 12, 2010 and submitted August 16, 2010; and revisions to 20.11.61.28 Table 3—Significant Monitoring Concentrations adopted on April 13, 2006 and July 14, 2010 and submitted on May 24, 2006 and August 16, 2010, respectively. Please see sections II.B and III of this notice and the TSD accompanying this rulemaking for additional information about how the May 24, 2006 and August 16, 2010 PSD SIP revisions satisfy section 110(a)(2)(C) for the 1997 and 2008 8-hour ozone NAAQS.

$PM_{2.5}$ PSD Permitting: To implement the PSD permitting component of section 110(a)(2)(C) for the 1997 and 2006 $PM_{2.5}$ NAAQS, states were required to submit the necessary SIP revisions to EPA by May 16, 2011 under EPA's 2008 $PM_{2.5}$ NSR rule. On July 14, 2010 the AQCB adopted these revisions effective August 30, 2010. On August 16, 2010, the Governor submitted necessary revisions to the Albuquerque/Bernalillo County SIP to amend the PSD program to meet the 1997 and 2006 $PM_{2.5}$ NAAQS implementation requirements. EPA is proposing to approve the following revisions to the Albuquerque/Bernalillo County PSD SIP adopted on July 14, 2010 and submitted on August 16, 2010 in today's action: revisions to 20.11.61.7.YY *Significant* and 20.11.61.27 Table 2—Significant Emission Rates; revisions to 20.11.61.7.VV *Regulated NSR Pollutant;* and revisions to 20.11.61.18(H)—

[31] EPA approved Bernalillo County Ordinance 88–45 into the Albuquerque/Bernalillo County SIP in a June 1, 1999 rulemaking (64 FR 29235). Albuquerque/Bernalillo County has since amended the ordinance and re–codified it as Bernalillo County Ordinance 94–5. EPA will act on this amended ordinance in a future rulemaking. For purposes of the I–SIP discussion, we will cite to the current ordinance. The Joint Air Quality Control Board Ordinance 94–5 is also cited as legal authority in 20.11.1.3 NMAC, which is SIP–approved.

[32] Under the Bernalillo County Joint Air Quality Control Board Ordinance, the AQD ''shall administer and enforce the provisions of the Air Quality Control Act,'' while the AQCB ''shall adopt, promulgate, publish, amend and repeal regulations.'' Moreover, Any person who participated in a permitting action before the [AQD] and who is adversely affected by such permitting action may file a petition for hearing before the board.'' See Ordinance 88–45, Sections 7(A)–(H).

Monitoring Requirements Air Quality Analysis. Please see sections II.B and III of this notice and the accompanying TSD for more information on our approval of revisions to the PSD Program for $PM_{2.5}$ permitting.

GHG PSD Permitting: The Tailoring Rule established thresholds that phase in the applicability of PSD requirements to GHG sources, starting with the largest GHG emitters, and were designed to relieve the overwhelming administrative burdens and costs associated with the dramatic increase in permitting burden that would have resulted from applying PSD requirements to GHG emission increases at or above only the mass–based statutory thresholds of 100/250 tons per year generally applicable to all PSD–regulated pollutants starting on January 2, 2011. However, EPA recognized that even after it finalized the Tailoring Rule, many SIPs with approved PSD programs would, until they were revised, continue to apply PSD at the statutory thresholds, even though the States would not have sufficient resources to implement the PSD program at those levels. EPA consequently implemented its ''PSD SIP Narrowing Rule'' and narrowed its approval of those provisions of previously approved SIPs that apply PSD to GHG emissions increases from sources emitting GHGs below the Tailoring Rule thresholds (75 FR 82536, December 30, 2010). Through the PSD SIP Narrowing Rule, EPA withdrew its previous approvals of those programs to the extent the SIPs apply PSD to increases in GHG emissions from GHG–emitting sources below the Tailoring Rule thresholds. The portions of the PSD programs regulating GHGs from GHG–emitting sources with emission increases at or above the Tailoring Rule thresholds remained approved. The effect of EPA narrowing its approval in this manner is that the provisions of previously approved SIPs that apply PSD to GHG emissions increases from sources emitting GHGs below the Tailoring Rule thresholds have the status of having been submitted by the State but not yet acted upon by EPA (75 FR 82536).

On December 15, 2010, the Governor submitted a revision to the SIP to establish appropriate emission thresholds for determining which new stationary sources and modification projects become subject to PSD permitting requirements for GHG emissions. The PSD SIP revision to address GHGs was approved by the EPA on December 29, 2011 (76 FR 81836). Thus, the GHG emission thresholds for PSD applicability set forth in EPA's Tailoring Rule, ensuring that smaller GHG sources emitting less than these thresholds are not subject to section 110 of the CAA were approved.

Minor Source Permitting: Section 110(a)(2)(C) creates a ''general duty on States to include a program in their SIP that regulates the modification and construction of any stationary source as necessary to assure that the NAAQS are achieved'' (70 FR 71612, 71677). This duty is often referred to as ''minor NSR.'' EPA provides states with a ''broad degree of discretion'' in implementing their minor NSR programs (71 FR 48696, 48700, August 21, 2006). The ''considerably less detailed'' regulations for minor NSR are provided in 40 CFR 51.160 through 51.164. We have determined that the Albuquerque/Bernalillo County minor NSR regulations at 20.11.41 NMAC approved as part of the SIP pursuant to section 110(a)(2)(C) regulate emissions of ozone and its precursors and PM. Albuquerque/Bernalillo County and EPA have relied upon the Albuquerque/Bernalillo County SIP–approved existing minor NSR program to ensure that new and modified sources not captured by the major NNSR or PSD permitting programs do not interfere with attainment and maintenance of the NAAQS.

It is important to stress that EPA is not proposing to approve or disapprove the Albuquerque/Bernalillo County existing minor NSR SIP program itself to the extent that it may be inconsistent with EPA's regulations governing this program. EPA believes that a number of states may have minor NSR provisions that are contrary to the existing EPA regulations for this program. EPA intends to work with states to reconcile state minor NSR SIP programs with EPA's regulatory provisions for the program. The statutory requirements of section 110(a)(2)(C) provide for considerable flexibility in designing minor NSR programs, and EPA believes it may be time to revisit the regulatory requirements for this program in order to give the states an appropriate level of flexibility to design programs that meet their particular air quality concerns, while assuring reasonable consistency across the country in protecting the NAAQS with respect to new and modified minor sources.

Based on the above, we are proposing to find that the current Albuquerque/Bernalillo County PSD SIP meets section 110(a)(2)(C) with respect to the 1997 and 2008 8-hour ozone and the 1997 and 2006 $PM_{2.5}$ NAAQS.

Interstate transport, pursuant to section 110(a)(2)(D): Section 110(a)(2)(D) has two components, 110(a)(2)(D)(i) and 110(a)(2)(D)(ii). Section 110(a)(2)(D)(i) requires SIPs to include provisions prohibiting any source or other type of emissions activity in one state from contributing significantly to nonattainment, interfering with maintenance of the NAAQS in another state, or from interfering with measures required to prevent significant deterioration of air quality or to protect visibility in another state. Section 110(a)(2)(D)(ii) requires SIPs to include provisions insuring compliance with sections 115 and 126 of the Act, relating to interstate and international pollution abatement.

PSD and interstate transport, pursuant to section 110(a)(2)(D)(i): One of the four prongs in section 110(a)(2)(D)(i) requires a SIP to contain adequate provisions prohibiting emissions that interfere with any other state's required measures to prevent significant deterioration of its air quality. This is the only element of 110(a)(2)(D)(i) on which EPA is proposing action in this rulemaking. EPA's 2006 Guidance made recommendations for SIP submissions to meet this requirement with respect to both the 1997 8-hour ozone NAAQS and the 1997 $PM_{2.5}$ NAAQS.

The 2006 Guidance states that the PSD permitting program is the primary measure that each state must include to prevent interference with any other state's required measures to prevent significant deterioration of its air quality in accordance with section 110(a)(2)(D)(i)(II).

As discussed previously in this rulemaking with regards to section 110(a)(2)(C) and in the TSD, the Albuquerque/Bernalillo County PSD program is in the SIP and meets the basic requirements for implementing the ozone and $PM_{2.5}$ NAAQS. We are proposing to approve the portion of the submission from August 16, 2010 that has adequately addressed section 110(a)(2)(D)(i)(II) of the CAA, for the element that requires that the SIP prohibit air pollutant emissions from sources within a state from interfering with measures required to prevent significant deterioration of air quality in any other state.

Consistent with EPA's November 29, 2005 Phase 2 rule for the 1997 8-hour ozone NAAQS, the State submitted SIP revisions to modify its PSD provisions to address NO_X as an ozone precursor. Also consistent with EPA's 2008 $PM_{2.5}$ NSR rule, the State submitted SIP revisions to modify its PSD provisions to adequately implement the 1997 and 2006 $PM_{2.5}$ NAAQS. EPA is approving these revisions and they have been discussed previously in this notice. EPA believes that the PSD revision for the

1997 8-hour ozone NAAQS that makes NO_X a precursor for ozone for PSD purposes, and the PSD revisions to implement the EPA's 2008 $PM_{2.5}$ NSR SIP rule, taken together with the PSD SIP and the interstate transport SIP, satisfy the requirements of the third element of section 110(a)(2)(D)(i) for the 1997 and 2008 8-hour ozone and 1997 and 2006 $PM_{2.5}$ NAAQS, *i.e.,* there will be no interference with any other state's required PSD measures.

We are proposing to determine that emissions from sources in Albuquerque/Bernalillo County do not interfere with measures required to prevent significant deterioration of air quality for the 1997 and 2008 8-hour ozone and 1997 and 2006 $PM_{2.5}$ NAAQS in any other state. This rulemaking action is being taken under section 110(a) of the CAA.

In a prior action, EPA approved Albuquerque/Bernalillo County SIP revisions that addressed the requirements of section (110)(a)(2)(D)(i)(I) of the CAA that emissions from sources in Albuquerque/Bernalillo County do not significantly contribute to nonattainment of the 1997 8-hour ozone and 1997 $PM_{2.5}$ NAAQS in any other state (75 FR 68447). The final rule was effective December 8, 2010. The SIP revision demonstrated that air pollutant emissions from sources within Albuquerque/Bernalillo County do not significantly contribute to nonattainment of the relevant NAAQS in any other state for those pollutants. The remaining three elements of section 110(a)(2)(D)(i): (1) Do not significantly contribute to nonattainment of the relevant NAAQS in any other state for the 2008 ozone NAAQS and the 2006 $PM_{2.5}$ NAAQS; (2) interference with the maintenance of the NAAQS in any other state for all four NAAQS; (3) interference with measures required to protect visibility in any other state will be evaluated and addressed in future rulemakings.

Interstate and international pollution abatement, pursuant to section 110(a)(2)(D)(ii): Section 110(a)(2)(D)(ii) of the Act requires compliance with sections 115 and 126 of the Act, relating to interstate and international pollution abatement. Section 115(a) addresses endangerment of public health or welfare in foreign countries from pollution emitted in the United States. Pursuant to section 115, the Administrator has neither received nor issued a formal notification that emissions from Albuquerque/Bernalillo County are endangering public health or welfare in a foreign country. Section 126(a) of the Act requires new or modified sources to notify neighboring states of potential impacts from such sources. Albuquerque/Bernalillo County also has no pending obligations under section 126 of the Act.

EPA is proposing to find that the Albuquerque/Bernalillo County SIP meets the requirements of section 110(a)(2)(D)(ii) of the Act for the 1997 and 2008 ozone and 1997 and 2006 $PM_{2.5}$ NAAQS.

Adequate personnel, funding, and authority, pursuant to section 110(a)(2)(E): As stated previously, the Albuquerque/Bernalillo County AQCB is the federally delegated air quality authority for Albuquerque and Bernalillo County, New Mexico. The New Mexico Air Quality Control Act (AQCA, section 74–2–4) authorizes Albuquerque/Bernalillo County to locally administer and implement the State Air Quality Control Act by providing for a local air quality control program. Thus, state law views Albuquerque/Bernalillo County and the remainder of the State of New Mexico as distinct air quality control entities. The AQCA also provides for the establishment of the Albuquerque/Bernalillo County AQCB as a joint local authority, acting on behalf of both the County of Bernalillo and the City of Albuquerque. Within the boundary of Bernalillo County, the AQCB is authorized to adopt, promulgate, publish, amend and repeal regulations consistent with the New Mexico Air Quality Control Act, and to maintain national ambient air quality standards and prevent or abate air pollution, including regulations prescribing air standards, within Bernalillo County (with the exception of tribal lands).

Through the City of Albuquerque's Department of Environmental Health, the Albuquerque Air Quality Division (AQD) serves as the administrative agency for the AQCB. The AQD is authorized to administer and enforce the provisions of the New Mexico Air Quality Control Act within the boundary of Bernalillo County.

The City of Albuquerque and Bernalillo County Ordinances approved into the SIP on June 1, 1999 provide assurances that Albuquerque/Bernalillo County has the adequate personnel and funding to carry out their SIP.[33] The August 16, 2010 Albuquerque/Bernalillo County SIP submittal from the Governor includes a discussion of funding and personnel resources for carrying out the programs of the SIP for demonstrating attainment of 1997 and 2006 $PM_{2.5}$ and 1997 and 2008 ozone NAAQS. The submittals state that budgets are approved annually by the Albuquerque City Council, and that the annual budgeting process provides a periodic update that enables the AQD to adjust funding and personnel needs to carry out air programs to meet the CAA. The Bernalillo County Joint Air Quality Ordinance authorizes the AQCB to adopt rules, pursuant to AQCA section 74–2–7, for establishing fees, to review and act on permit applications; amend and review permits; conduct inspections of facilities; and enforce the rules and orders of permits. Fees collected pursuant to this ordinance are then deposited into a fund created by section 74–2–16 of the AQCA, which must be used by the municipality or county only for the purpose of paying the reasonable costs of, among other things, reviewing and acting on permit applications, implementing and enforcing rules of the permit, air monitoring, air modeling, preparing guidance, and preparing emission inventories.

Additionally, there are federal sources of funding for the implementation of the 1997 and 2008 8-hour ozone and 1997 and 2006 $PM_{2.5}$ NAAQS through, for example, the CAA sections 103 and 105 grant funds. The AQD receives federal funds on an annual basis, under sections 103 and 105 of the Act, to support its air quality programs. The AQD has authority to collect fees for Title V and non-Title V permit applications, revisions, renewals and inspections pursuant to New Mexico AQCA, New Mexico Statutes Annotated (NMSA) 1978 Sections 74–2–4, 74–2–5 and 74–2–7, the Bernalillo County Ordinance 94–5 Sections 3, 4 and 7, and the revised ordinances of Albuquerque 1994, Section 9–5–1–3, Section 9–5–1–4 and Section 9–5–1–7. For example, New Mexico AQCA Section 74–2–7(B)(7) requires by regulation a schedule of emission fees consistent with the provisions of Section 502(b)(3) of the 1990 Amendments to the Federal Clean Air Act. The SIP-approved regulation that addresses permit fees, AQCB Air Quality Control Regulation Section 21—Permit Fees (April 10, 1980 at 45 FR 24460) was repealed and replaced by the Albuquerque/Bernalillo County AQCB rule effective July 1, 2001 and recodified as 20.11.2 NMAC. It was submitted as a SIP revision on May 24, 2011. We have proposed to approve the revisions that repeal and replace the existing SIP rule but have not finalized our action (November 4, 2011, 76 FR 68385). A detailed list of the applicable sections of the NMAC is provided in the TSD. More specific information on permitting fees is provided in the discussion for 110(a)(2)(L) below and in the TSD.

[33] See 64 FR 29235.

Section 110(a)(2)(E)(ii) requires that states comply with section 128. Section 128 requires: (1) That the majority of members of the state body which approves permits or enforcement orders do not derive any significant portion of their income from entities subject to permitting or enforcement orders under the CAA; and (2) any potential conflicts of interest by such body be adequately disclosed. On June 1,1999, the EPA approved into the SIP the AQCB Ordinances and provisions of the ACQA that pertain to financial disclosures, conflicts of interest, code of conduct and ethical conduct for the Executive Director and classified employees of the agency (64 FR 29235). The EPA action, effective August 2, 1999, approved the SIP revisions for Board composition and conflict of interest disclosure requirements submitted by the Governor for Albuquerque/Bernalillo County. These include public interest requirements and safeguards against conflict of interest and are codified in the City of Albuquerque Ordinances, 2–6–1–3(A)(4), 9–5–1–3(B)(4), 9–5–1–3(E) and County Ordinance 94–5, Section (3)(E) Joint Air Quality Control Board Ordinance. For example, County Ordinance 94–5 Section (3)(E) states:

> Any member of the Board who has a conflict of interest regarding a matter before the Board shall disqualify himself or herself from the discussion and shall abstain from the vote on such matter. A conflict of interest means any interest which may yield, directly or indirectly any monetary or other material benefit to the Board member or the member's spouse or minor child.[34]

EPA is proposing to find that the Albuquerque/Bernalillo County SIP meets the requirements of section 110(a)(2)(E) of the Act for the 1997 and 2008 8-hour ozone and the 1997 and 2006 $PM_{2.5}$ NAAQS.

Stationary source monitoring system, pursuant to section 110(a)(2)(F): Rules that require stationary sources to monitor for compliance, provide recordkeeping and reporting, and provide for enforcement of ozone, $PM_{2.5}$, and precursors to these pollutants (SO_2, ammonia, VOCs and NO_X), consistent with the requirements of 40 CFR part 51, subpart K have been approved into the Albuquerque/Bernalillo County SIP and codified at 20.11.1 NMAC (General Provisions, 70 FR 41963, July 21, 2005), 20.11.5 NMAC (Visible Air Contaminants, 69 FR 78312, Dec. 30, 2004), 20.11.40 NMAC (Source Registration, 69 FR 78312), 20.11.49 NMAC (Excess Emissions, 75 FR 5698, Feb. 4, 2010), 20.11.66 NMAC (Process Equipment, 69 FR 78312), 20.11.67 NMAC (Equipment, Emissions, Limitations, 69 FR 78312), and 20.11.90 NMAC (Source Surveillance, 75 FR 5698). Requirements in 20.11.47 NMAC (Emission Inventory Requirements) provide for the reporting of emission inventories on a schedule consistent with EPA regulations at 40 CFR 51.211, subpart K—Source Surveillance. 20.11.42 NMAC, Operating Permits, encompasses the Title V operating permit program for facilities within Bernalillo County. The Title V program is a delegated program and does not reside in the SIP.[35]

Under the Albuquerque/Bernalillo County SIP rules, the AQD is required to analyze the emissions data from point, area, mobile, and biogenic (natural) sources. The AQD uses this data to track progress towards maintaining the NAAQS, develop control and maintenance strategies, identify sources and general emission levels, and determine compliance with Albuquerque/Bernalillo County and EPA requirements. Additionally, the AQD air quality inspectors compare source emissions to emission limitations and standards pursuant to 20.11.90.6 NMAC. Emissions data are available electronically: *http://www.epa.gov/ttn/chief/eiinformation.html.* These rules are in the federally-approved SIP. A comprehensive list of the chapters and **Federal Register** citations is provided in the TSD.

EPA is proposing to find that the Albuquerque/Bernalillo County SIP meets the requirements of section 110(a)(2)(F) for the 1997 and 2008 8-hour ozone and the 1997 and 2006 $PM_{2.5}$ NAAQS.

Emergency power, pursuant to section 110(a)(2)(G): Section 110(a)(2)(G) requires states to provide for authority to address activities causing imminent and substantial endangerment to public health, including contingency plans to implement the emergency episode provisions in their SIPs. The AQCB and AQD are empowered by the New Mexico Air Quality Control Act to respond to air pollution episodes and other air quality emergencies, and the AQCB adopted contingency plans to implement emergency episode provisions in the SIP. The Air Pollution Episode Contingency Plan for Bernalillo County was approved into the SIP on August 12, 1991 (56 FR 38073, effective October 11, 1991). The Albuquerque/Bernalillo County Air Pollution Episode Contingency Plan (Plan) addresses all the necessary requirements for a Priority 1 region (defined in 40 CFR 51.150).

First, the Plan includes significant harm levels for sulfur dioxide, particulate matter, carbon monoxide, ozone, and nitrogen dioxide as per 40 CFR 51.151. Second, the Plan adequately addresses all requirements for contingency plans outlined in 40 CFR 51.152. Three stages of episode criteria as per 40 CFR 51.152(a)(1) and 40 CFR 51, appendix L, are set forth: air pollution alert, air pollution warning, and air pollution emergency. Prior to reaching the first episode stage, an air Stagnation Advisory will be in effect. This is initiated when the AQD is notified by the National Weather Service (NWS) that air stagnation conditions will persist for a period of 36 hours or more within the Middle Rio Grande portion of New Mexico (includes Bernalillo County). The Episode Criteria Table on page 3 of the Plan shows alert, warning, emergency, and significant harm levels for each of the pollutants. The Plan also provides for public announcement of, and specifies adequate emission control actions to be taken at, each episode stage (40 CFRR 51.152(a)(2) and 40 CFR 51.152(a)(3)). Finally, the Plan sufficiently addresses the requirements of 51.152(b)(1–3) concerning prompt acquisition of forecasts of atmospheric stagnation conditions including updates, source compliance inspections, and communication procedures.

The criteria for ozone are based on a 1-hour average ozone level. These episode criteria and contingency measures are adequate to address 8-hour ozone emergency episodes and are in the federally approved SIP. The Albuquerque/Bernalillo County Plan provides for the pollutants specified under 40 CFR 51.150, including particulate matter, and is consistent with the provisions of 40 CFR 51.151 and 152, and Appendix L to Part 51.

The 2009 Infrastructure SIP Guidance for $PM_{2.5}$ recommends that a state with at least one monitored 24-hour $PM_{2.5}$ value exceeding 140.4 $\mu g/m^3$ since 2006 establish an emergency episode plan and contingency measures to be implemented should such level be exceeded again. The 2006–2010 ambient air quality monitoring data for Albuquerque/Bernalillo County do not exceed 140.4 $\mu g/m^3$. The $PM_{2.5}$ levels have consistently remained below this level (140.4 $\mu g/m^3$), and furthermore, the AQCB has appropriate general

[34] As explained in greater detail in footnote 31, Bernalillo County Ordinance 94–5 amended Ordinance 88–45, which is in the Albuquerque/Bernalillo County SIP. EPA will act on Bernalillo County Ordinance 94–5 in a future rulemaking.

[35] EPA approved the Albuquerque/Bernalillo County Title V program (20.11.42 NMAC, Operating Permits) on November 26, 1996 (61 FR 60032, effective January 27, 1997) and subsequent revisions on September 8, 2004 (69 FR 54244, effective November 8, 2004).

emergency powers to address $PM_{2.5}$ related episodes to protect the environment and public health. Given Albuquerque/Bernalillo County's monitored $PM_{2.5}$ levels, EPA is proposing that Albuquerque/Bernalillo County is not required to submit an emergency episode plan and contingency measures at this time, for the 1997 and 2006 $PM_{2.5}$ standards. Additional detail is provided in the TSD.

EPA is proposing to find that the Albuquerque/Bernalillo County SIP meets the requirements of section 110(a)(2)(G) for the 1997 and 2008 8-hour ozone and 1997 and 2006 $PM_{2.5}$ NAAQS.

Future SIP revisions, pursuant to section 110(a)(2)(H): The New Mexico AQCA directs the AQD to prepare and develop the SIP and provides the AQD with the authority to carry out other duties, requirements and responsibilities necessary for the implementation and fulfillment of the requirements of the CAA. The New Mexico AQCA (section 74–2–4) delegates authority to AQCB to adopt, promulgate, publish, amend and repeal regulations consistent with the AQCA to attain and maintain NAAQS and prevent or abate air pollution. Thus, the AQCB has the authority (AQCA Section 74–2–5.1) to revise the SIP from time to time as may be necessary to take into account revisions of primary or secondary NAAQS, or the availability of improved or more expeditious methods of attaining such standards. Furthermore, the AQCB also has the authority under these New Mexico AQCA provisions to revise the SIP in the event the EPA, pursuant to the federal CAA, finds the SIP to be substantially inadequate to attain the NAAQS.

EPA is proposing to find that the Albuquerque/Bernalillo County SIP meets the requirements of section 110(a)(2)(H) for the 1997 and 2008 8-hour ozone and 1997 and 2006 $PM_{2.5}$ NAAQS.

Consultation with government officials, pursuant to section 110(a)(2)(J):[36] The New Mexico AQCA (section 74–2–5—Duties and Powers of the Local Board) and Air Quality Control Board Ordinances gives the AQD and AQCB authority to advise, consult, contract and cooperate with municipalities, counties, other states, the federal government and other interested persons or groups in regards to matters of common interest in the field of air quality control. The County Ordinance 94–5 ''establishes powers and duties of the Board for providing for the adoption, administration and enforcement of the regulations; providing for variances; providing for permits; providing for special regulations consistent with Federal and State requirements for prevention of significant deterioration, new source performance standards, national emissions standards for hazardous air pollutants and providing for operating permits and fees as required by the 1990 Amendments to the Federal CAA.'' Additionally, 20.11.82 NMAC—Rulemaking Procedures standardizes the procedures used in rulemaking proceedings before the AQCB, including public notice. These rules and regulations comply with the requirements of section 121 of the CAA that requires that states provide a satisfactory process of consultation with general purpose local governments. Furthermore, Bernalillo County Ordinance 94–5 states that any regulations adopted by the AQCB must include, among other things, any information that the AQD deems necessary; specification of public notice; comment period and public period; provisions requiring notice to the New Mexico Environment Department for permitting sources that emit 100 or more tpy of any regulated air contaminant; and provisions that require notice to, and review by, EPA. These rules comply with the requirements of CAA section 121.

Therefore, EPA is proposing to find that the Albuquerque/Bernalillo County SIP meets this portion of the section 110(a)(2)(J) requirements for the 1997 and 2008 8-hour ozone and the 1997 and 2006 $PM_{2.5}$ NAAQS.

Public notification if NAAQS are exceeded, pursuant to section 110(a)(2)(J): Public notification begins with the air quality forecasts, which advise the public of conditions capable of exceeding the 8-hour ozone and $PM_{2.5}$ NAAQS. The air quality forecasts for Albuquerque/Bernalillo County can be found on the City of Albuquerque[37] Web site at *www.cabq.gov/airquality* and are updated hourly. Ozone forecasts are made daily during the ozone season for the Bernalillo County. The ozone forecasts are made, in most cases, a day in advance local time and are valid for the next day. Ozone readings/warnings and the daily air quality index for the area are generated automatically, and sent to the all persons that have signed up on the City of Albuquerque Web site (*www.cabq.gov/airquality/enviroflash.html*) to receive email updates, which includes the public, various stakeholders and government officials. This Air Quality Notification System is a service through airnow.gov and is called EnviroFlash. EnviroFlash is a system that sends emails about daily air quality forecasts. The message is the same air quality information that the local radio or television stations provide, plus suggested safety measures when air quality levels are unhealthy. Additionally, the air quality index is available via telephone by calling the AQD. Public notice is governed by the New Mexico AQCA (section 74–2–6) and 20.11.82 NMAC—Rulemaking Procedures Air Quality Control Board.

EPA is proposing to find that the Albuquerque/Bernalillo County SIP meets this portion of the section 110(a)(2)(J) requirements for the 1997 and 2008 8-hour ozone and 1997 and 2006 $PM_{2.5}$ NAAQS.

PSD and visibility protection, section 110(a)(2)(J): This portion of section 110(a)(2)(J) in part requires that a state's SIP meet the applicable requirements of section 110(a)(2)(C) as relating to PSD programs. As discussed previously in this rulemaking with regards to section 110(a)(2)(C) and in the TSD, the Albuquerque/Bernalillo County's PSD program is in the SIP (12/21/93 at 58 FR 67330 and 4/26/07 at 72 FR 20728). In addition to the approved program and to meet the requirements of 110(a)(2)(C) and 110(a)(2)(D)(i) for 1997 and 2008 ozone standard, EPA believes Albuquerque/Bernalillo County must have updated its PSD rules to treat NO_X as a precursor for ozone. Thus, we are proposing to approve the SIP revisions (submitted May 24, 2006 and August 16, 2010) to implement NO_X as a precursor to ozone. To implement section 110(a)(2)(C) for the 1997 and 2006 $PM_{2.5}$ standard, states must provide a SIP revision due May 16, 2011 under EPA's Implementation of the New Source Review (NSR) Program for Particulate Matter Less Than 2.5 Micrometers (73 FR 28321). The AQCB adopted rules on July 14, 2010 to meet this requirement and the Governor submitted them on August 16, 2010 for approval as a SIP revision. We discuss our proposal to approve these revisions and the revisions implementing NO_X as a precursor to ozone in further detail in this rulemaking and in the TSD.

The most recent New Mexico SIP revision of the Albuquerque/Bernalillo

[36] Section 110(a)(2)(J) is divided into three segments: consultation with government officials; public notification; and PSD and visibility protection.

[37] As discussed earlier in this proposed action, the Albuquerque Air Quality Division is a part of the City of Albuquerque's Department of Environmental Health. The AQD serves as the administrative agency for the Bernalillo County Air Quality Control Board, which encompasses the City of Albuquerque.

County Regional Haze program, which addresses the visibility transport prong for Albuquerque/Bernalillo County, was submitted to EPA on July 28, 2011. We are evaluating this submittal and will be proposing action on the Regional Haze submittal in Spring of 2012. With regard to the applicable requirements for visibility protection, EPA recognizes that states are subject to visibility and regional haze program requirements under part C of the Act (which includes sections 169A and 169B). In the event of the establishment of a new NAAQS, however, the visibility and regional haze program requirements under part C do not change. Thus, we find that there is no new visibility obligation ''triggered'' under section 110(a)(2)(J) when a new NAAQS becomes effective. This would be the case even in the event a secondary $PM_{2.5}$ NAAQS for visibility is established, because this NAAQS would not affect visibility requirements under part C.

EPA is proposing to find that the Albuquerque/Bernalillo County SIP meets the visibility protection requirements of section 110(a)(2)(J) for the 1997 and 2008 8-hour ozone and 1997 and 2006 $PM_{2.5}$ NAAQS.

Air quality and modeling and submission of data, pursuant to section 110(a)(2)(K): The New Mexico Air Quality Control Act charges the AQCB and AQD with preparing and implementing the SIP, which includes modeling to inform decisions on nonattainment area boundaries and demonstrate effectiveness of SIP control strategies.

The AQD's air quality modeling work complies with EPA's guidance on the use of models in attainment demonstrations for the 8-hour ozone standard and uses EPA's latest draft final guidance for modeling $PM_{2.5}$ consistent with the air quality modeling requirements in 40 CFR 52.21(l) and (m). EPA Region 6 and AQD modeling staff have communicated on numerous occasions regarding modeling for Bernalillo County. Additionally, 20.11.61 NMAC Prevention of Significant Deterioration requires approval of permits consistent with the modeling requirements of 40 CFR 51.21(l) and (m). As stated in the August 16, 2010 SIP submittal, the AQD commits to continue to use air quality models in accordance with EPA's currently approved modeling guidance and protocols and the continued submittal of data and modeling results to EPA.

EPA is proposing to find that the Albuquerque/Bernalillo County SIP meets the requirements of section 110(a)(2)(K) for the 1997 and 2008 8-hour ozone and the 1997 and 2006 $PM_{2.5}$ NAAQS.

Permitting fees, section 110(a)(2)(L): The AQD has authority to collect fees for Title V [38] and non-Title V permit applications, revisions, renewals and inspections pursuant to New Mexico AQCA, New Mexico Statutes Annotated (NMSA) 1978 Sections 74–2–4, 74–2–5 and 74–2–7, the Bernalillo County Ordinance 94–5—Joint Air Quality Control Board Sections 3, 4 and 7, and the revised ordinances of Albuquerque 1994, Section 9–5–1–3, Section 9–5–1–4 and Section 9–5–1–7. For example, New Mexico AQCA Section 74–2–7(B)(7) requires by regulation a schedule of emission fees consistent with the Title V provisions of Section 502(b)(3) of the CAA. The SIP-approved regulation that addresses permit fees, AQCB Air Quality Control Regulation Section 21—Permit Fees (April 10, 1980 at 45 FR 24460) was repealed and replaced by the more stringent and broader in scope Albuquerque/Bernalillo County AQCB rule effective July 1, 2001 and recodified as 20.11.2 NMAC. It was submitted as a SIP revision on May 24, 2011. We have proposed to approve the revisions that repeal and replace the existing SIP rule but have not finalized our action (November 4, 2011, 76 FR 68385). A detailed list of the applicable sections of the NMAC is provided in the TSD.

The submitted revision that we have proposed to approve addresses fees for reviewing and acting on specific permit applications received by the AQCD; fees to partially offset the administrative costs of permit-related administrative hearings; funding for small business stationary sources; and fees to cover administrative expenses. The comment period on the proposal closed on December 5, 2011. No comments were received.

EPA is proposing to find that the Albuquerque/Bernalillo County SIP meets the requirements of section 110(a)(2)(L) for the 1997 and 2008 8-hour ozone and the 1997 and 2006 $PM_{2.5}$ NAAQS.

Consultation/participation by affected local entities, section 110(a)(2)(M): New Mexico is divided in two air authorities, Albuquerque/Bernalillo County and State of New Mexico covering the remaining counties. Each authority is responsible for controlling air pollution emitted by stationary sources within its respective jurisdiction. The AQD, consistent with regulations adopted by the AQCB, consults with and provides liaison to the New Mexico Environment Department's Air Quality Bureau and provides frequent and regular communication and consultation with their management and staff. Section 5(B)(4) of the AQCA authorizes the AQD to advise, consult, contract and cooperate with municipalities, counties, other states, the federal government and other interested persons or groups in regards to matters of common interest in the field of air quality control. The AQCB is required to conduct public hearings and to solicit testimony from the public when plans or rules are proposed to be adopted by the AQCB for inclusion into the SIP. Consultation and public involvement are also required by 20.11.3 NMAC, Transportation Conformity (75 FR 20922, April 22, 2010). For example, Subsection (F) Public Consultation Procedures of 20.11.3.105 NMAC, requires ''affected agencies making conformity determinations on transportation plans, programs and projects shall establish a proactive public involvement process that provides opportunity for public review and comments * * *'' EPA is proposing to find that the Albuquerque/Bernalillo County SIP meets the requirements of section 110(a)(2)(M) for the 1997 and 2008 8-hour ozone and the 1997 and 2006 $PM_{2.5}$ NAAQS.

V. Additional Revisions to the Albuquerque/Bernalillo County SIP

EPA is also proposing to approve a portion of a SIP submission that addresses Ambient Air Quality Standards.

Ambient Air Quality Standards: The provisions for ambient air quality standards are addressed at 20.11.8 NMAC, or Part 8 of the Albuquerque/Bernalillo County SIP. This provision was approved into the SIP on May 31, 2006 (71 FR 30805). This provision incorporates by reference the state ambient air quality standards and summarizes the local ambient air quality standards that are identical to the NAAQS, which are codified at 40 CFR Part 50.4 et seq. On November 6, 2009, the Governor of New Mexico submitted a revision to the New Mexico SIP that included among other things, Ambient Air Quality Standards, codified at 20.11.8 NMAC (Part 8). The substantive revisions submitted to Part 8 again revise the local ambient air quality standards to make them consistent with the current NAAQS. Specifically, the standards for carbon monoxide (CO), ozone (O_3), sulfur

[38] Albuquerque/Bernalillo County has an federally-approved Title V fee program in place. EPA approved Albuquerque/Bernalillo County's Title V fee program as part of its Title V Operating Permit Program on November 26, 1996. See 61 FR 60032. EPA approved revisions to the Albuquerque/Bernalillo County Title V fee program on September 8, 2004. See 69 FR 54244.

dioxide (SO_2), $PM_{2.5}$, PM_{10} and lead (Pb) were revised to reflect the new standards for those pollutants. Non-substantive revisions are editorial in nature with the replacement of terms and other clarifications or typographical corrections. We are proposing to approve the severable portion of the November 6, 2009 SIP revision submittal that revises Part 8, because it will ensure that the Albuquerque/Bernalillo County SIP contains standards that are consistent with the latest Federally-promulgated NAAQS. Appendix A of the TSD for this rulemaking provides more detail regarding the specific revisions.

VI. Proposed Action

We are proposing to approve the submittals provided to demonstrate that the Albuquerque/Bernalillo County SIP meets the infrastructure elements for the 1997 and 2008 ozone and 1997 and 2006 $PM_{2.5}$ NAAQS listed below:

Emission limits and other control measures (110(a)(2)(A) of the Act);

Ambient air quality monitoring/data system (110(a)(2)(B) of the Act);

Program for enforcement of control measures (110(a)(2)(C) of the Act);

Interstate transport, pursuant to section 110(a)(2)(D)(ii) of the Act;

Adequate resources (110(a)(2)(E) of the Act);

Stationary source monitoring system (110(a)(2)(F) of the Act);

Emergency power (110(a)(2)(G) of the Act);

Future SIP revisions (110(a)(2)(H) of the Act);

Consultation with government officials (110(a)(2)(J) of the Act);

Public notification (110(a)(2)(J) of the Act);

Prevention of significant deterioration and visibility protection (110(a)(2)(J) of the Act);

Air quality modeling data (110(a)(2)(K) of the Act);

Permitting fees (110(a)(2)(L) of the Act); and

Consultation/participation by affected local entities (110(a)(2)(M) of the Act).

We are also proposing to approve the portion of the Albuquerque/Bernalillo County SIP revision submittal that addresses the requirement of section (110)(a)(2)(D)(i)(II) of the Act that emissions from sources in Albuquerque/Bernalillo County do not interfere with measures required in the SIP of any other state under part C of the Act regarding PSD for the 1997 and 2008 8-hour ozone and 1997 and 2006 $PM_{2.5}$ NAAQS.

We are proposing to approve Albuquerque/Bernalillo County PSD SIP provisions to 20.11.61 NMAC submitted May 24, 2006 and August 16, 2010. These SIP revisions address NO_X as a precursor for ozone, consistent with EPA's November 29, 2005 Phase 2 rule for the 1997 ozone NAAQS (70 FR 71612). These revisions also identify the precursors for $PM_{2.5}$ and significant emission rates necessary for $PM_{2.5}$ PSD permitting, consistent with the 1997 and 2006 $PM_{2.5}$ NAAQS (73 FR 28321, May 16, 2008). Additionally, the May 24, 2006 and August 16, 2010 submittals make numerous other changes necessary to maintain consistency with the federal PSD permitting requirements. Specifically, we are proposing to approve revisions to 20.11.61.7, 20.11.61.28, and 20.11.61.29 NMAC submitted on May 24, 2006. We are also proposing to approve revisions to 20.11.61.1, 20.11.61.2, 20.11.61.7, 20.11.61.11, 20.11.61.12, 20.11.61.14, 20.11.61.15, 20.11.61.16, 20.11.61.17, 20.11.61.18, 20.11.61.19, 20.11.61.20, 20.11.61.23, 20.11.61.24, 20.11.61.25, 20.11.61.26, 20.11.61.27, 20.11.61.28, 20.11.61.29, 20.11.61.30, and 20.11.61.31 NMAC submitted on August 16, 2010.

We are also proposing to approve SIP revisions from November 6, 2009 pertaining to updating Part 8 Ambient Air Quality Standards (20.11.8 NMAC). EPA is proposing to approve these revisions pursuant to section 110 of the CAA. These revisions improve the Albuquerque/Bernalillo County SIP and update 20.11.8 NMAC to add new standards and revise existing NAAQS in 20.11.8 NMAC to be consistent with 40 CFR Part 50—National Primary and Secondary Ambient Air Quality Standards.

VII. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely proposes to approve 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.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Nitrogen dioxides, Ozone, Particulate matter, Reporting and recordkeeping requirements, Volatile organic compounds.

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

Dated: March 30, 2012.

Samuel Coleman,

Acting Regional Administrator, Region 6.

[FR Doc. 2012–8927 Filed 4–12–12; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Parts 13 and 22

[Docket No. FWS–R9–MB–2011–0054: FF09M21200–123–FXMB123209EAGL0L2]

RIN 1018–AX91

Eagle Permits; Changes in the Regulations Governing Eagle Permitting

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: We propose to revise the regulations for permits for nonpurposeful take of golden eagles (*Aquila chrysaetos*) and bald eagles (*Haliaeetus leucocephalus*) where the take is associated with, but not the purpose of, an activity. We propose to extend the maximum term for programmatic permits to 30 years. The permits must incorporate conditions specifying additional measures that may be necessary to ensure the preservation of eagles, should monitoring data indicate the need for the measures. This change will facilitate the responsible development of renewable energy and other projects designed to operate for many decades, while continuing to protect eagles consistent with statutory mandates. For a permit valid for 5 years or more, we propose to charge an application processing fee sufficient to offset the estimated costs associated with working with the applicants to develop site plans and conservation measures, and prepare applications, and for us to review applications. For any project that is deemed likely to take eagles, we also propose to collect an additional administration fee when we grant a permit. The proposed change does not affect the tenure of any other migratory bird or eagle permit type.

DATES: Electronic comments on this proposal via *http://www.regulations.gov* must be submitted by 11:59 p.m. Eastern time on May 14, 2012. Comments submitted by mail must be postmarked no later than May 14, 2012.

ADDRESSES: You may submit comments by either of the following two methods. Please do not submit comments by both.

- *Federal eRulemaking portal: http://www.regulations.gov*. Follow the instructions for submitting comments on Docket No. FWS–R9–MB–2011–0054.
- *U.S. mail or hand delivery:* Public Comments Processing, Attention: FWS–R9–MB–2011–0054; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 North Fairfax Drive, MS 2042–PDM; Arlington, VA 22203–1610.

We will not accept email or faxes. We will post all comments on *http://www.regulations.gov*. This generally means that we will post any personal information that you provide. See the Public Comments section below for more information.

Submit comments on the information collection requirements to the Desk Officer for the Department of the Interior at Office of Management and Budget (OMB–OIRA) at (202) 395–5806 (fax) or *OIRA_DOCKET@OMB.eop.gov* (email). Please provide a copy of your comments to the Service Information Collection Clearance Officer, U.S. Fish and Wildlife Service, MS 2042–PDM, 4401 North Fairfax Drive, Arlington, VA 22203 (mail), or *INFOCOL@fws.gov* (email).

FOR FURTHER INFORMATION CONTACT: Chief, Division of Migratory Bird Management, at 703–358–1714.

SUPPLEMENTARY INFORMATION:

Background

The Bald and Golden Eagle Protection Act (16 U.S.C. 668–668d) (Eagle Act) prohibits take of bald eagles and golden eagles except pursuant to Federal regulations. The Eagle Act regulations at title 50, part 22 of the Code of Federal Regulations (CFR), define the ''take'' of an eagle to include the following broad range of actions: ''pursue, shoot, shoot at, poison, wound, kill, capture, trap, collect, destroy, molest, or disturb'' (§ 22.3). The Eagle Act allows the Secretary of the Interior to authorize certain otherwise prohibited activities through regulations. The Secretary is authorized to prescribe regulations permitting the ''taking, possession, and transportation of [bald eagles or golden eagles] * * * for the scientific or exhibition purposes of public museums, scientific societies, and zoological parks, or for the religious purposes of Indian tribes, or * * * for the protection of wildlife or of agricultural or other interests in any particular locality,'' provided such permits are ''compatible with the preservation of the bald eagle or the golden eagle'' (16 U.S.C. 668a). Both as a matter of statutory interpretation and as a matter of policy discretion, the Secretary applies the foregoing compatibility standard to all types of permits issued under the Eagle Act.

On September 11, 2009, we published a final rule that established new permit regulations under the Eagle Act for nonpurposeful take of eagles (74 FR 46836). Those regulations at 50 CFR 22.26 provide for permits to take bald eagles and golden eagles, where the taking is associated with, but not the purpose of, an activity. The regulations provide for both standard permits, which authorize individual instances of take that cannot practicably be avoided, and programmatic permits, which authorize recurring take that is unavoidable even after implementation of advanced conservation practices. We have issued standard permits for commercial and residential construction, transportation projects, maintenance of utility lines and dams, and in a variety of other circumstances where take is expected to occur in a limited timeframe, such as during clearing and construction.

''Programmatic take'' of eagles is defined at 50 CFR 22.3 as ''take that is recurring, is not caused solely by indirect effects, and that occurs over the long term or in a location or locations that cannot be specifically identified.'' Take that does not reoccur, or that is caused solely by indirect effects such as short-term construction, does not require a programmatic permit. For additional explanation of programmatic take and programmatic permits, see 74 FR 46841–46843.

We can issue programmatic permits for disturbance as well as take resulting in mortalities, based on implementation of ''advanced conservation practices'' developed in coordination with the Service. ''Advanced conservation practices'' are defined at 50 CFR 22.3 as ''scientifically supportable measures approved by the Service that represent the best available techniques to reduce eagle disturbance and ongoing mortalities to a level where remaining take is unavoidable.'' Most take authorized under § 22.26 has been in the form of disturbance; however, permits may authorize lethal take that is incidental to an otherwise lawful activity, such as mortalities caused by collisions with rotating wind turbines.

Permit Duration and Transferability

In February 2011, we published draft Eagle Conservation Plan Guidance that provided information on how to prepare Eagle Conservation Plans and apply for eagle take permits. Many commenters recommended that we extend the term of the permit, as we are proposing to do with this rule. Since publication of the 2009 final rule, we have reviewed applications from proponents of renewable energy projects, such as wind and solar power facilities, for programmatic permits to authorize eagle take that may result from both the construction and ongoing operations of renewable energy projects. During our

review, it became evident that the 5-year term limit imposed by the 2009 regulations (see 50 CFR 22.26(h)) needed to be extended to better correspond to the timeframe of renewable energy projects. We propose to amend the regulations to provide for terms of up to 30 years for programmatic permits. The maximum permit tenure for standard § 22.26 permits would remain at 5 years.

The extended tenure permit would be only for programmatic permits issued under 50 CFR 22.26 for nonpurposeful take of eagles. Permits for take of eagle nests (§ 22.27 and § 22.25), including programmatic nest take permits, such as we may issue to airports, would not be affected by any provisions proposed in this rule. Permits for collection and possession of eagles and eagle parts for scientific purposes (§ 22.21), exhibition (§ 22.21), Native American religious use (§ 22.22), depredation/health and safety (§ 22.23), and falconry (§ 21.29) also would be unaffected by this proposed rule.

Current regulations specify that the duration of programmatic permits is to be based, among other things, on ''the nature and extent of mitigation measures incorporated into the terms and conditions of the permit.'' In light of the much longer permit durations that would be possible under the proposed regulations, we intend to incorporate into the terms and conditions of the permit a commitment from the applicant to implement additional specified mitigation measures that would be triggered if the level of take anticipated is exceeded or if new scientific information demonstrates that the additional mitigation measures are necessary for the preservation of eagles. These additional specified mitigation measures could be described in detail in the permit so as to reduce uncertainty with respect to costs. It seems prudent to describe ''up front'' in the permit the consequences and expectations from the applicant of unexpected take or new information about eagle populations affected by the activity, as well as to describe the specific additional mitigation measures that may be required. However, if such conditions prove inadequate to meet the Eagle Act's preservation standard, the regulations at § 22.26(c)(7) allow the Service to further amend programmatic permits if necessary to safeguard eagle populations. The last option would be permit revocation if the activity is not compatible with the preservation of the eagle. Potential additional mitigation measures identified as permit conditions would reduce the likelihood of amendments to the permit or revocation.

The current regulations require advanced conservation practices to avoid and minimize take of eagles to the maximum degree. Additional conservation measures that may be implemented during the life of a project for the proposed longer-term permit would be designed to achieve the intended (but not fully achieved) objectives of the original mitigation measures. The additional conservation measures may also include additional compensatory mitigation to mitigate to the level of authorized take, or, if necessary for the preservation of eagles, below the originally authorized take levels, for example if, during the 30-year permit tenure, new information indicates unexpected declines in eagle populations that warrant restricting take.

We seek public comment on how this approach could be implemented in a way that is not unduly burdensome, in light of the fact that, under the 2009 final rule, programmatic permits are to be issued where take is necessary, and FWS ''interpret[s] 'necessary' as something that cannot practicably be avoided.'' See *Eagle Permits; Take Necessary To Protect Interests in Particular Localities; Final Rules,* (74 FR 46836–46852, September 11, 2009).

Monitoring and reporting by the permittee will be critically important for assessing impacts to eagles. For example, we have relatively little information on the impacts of wind energy on eagles. The impacts could be due to turbine design or operation, location of a facility or even a single turbine, weather conditions, or other factors. In addition to ensuring that the effects of the permitted activity are compatible with the preservation of eagles, monitoring data will be critical for assessing the impacts of proposed facilities, small or large, in the future.

Current regulations also allow Service personnel to access the site where take is permitted for purposes of monitoring (see § 22.26(c)(4)). Some of the cost of the proposed increased application processing fees is to recoup Service costs for conducting periodic evaluations of the site to ascertain whether take from the permitted activity does not exceed what was anticipated and also whether the conservation measures being implemented are both necessary and sufficient.

Right of Succession and Transferability of Permits

We are also proposing changes to regulations at 50 CFR 13.24 (Right of succession by certain persons) and 13.25 (Transfer of permits and scope of permit authorization) to allow a programmatic permit to be transferable to the new owner of a project, and to ensure that any successors to the permittee commit to carrying out the conditions of the permit. We recognize that a succession of owners may purchase or resell the affected company or land during the term of the permit. We will negotiate such permits if successive owners agree to the terms of the permit.

Regulations at 50 CFR 13.24 and 13.25 impose restrictions on the right of succession and transferability of Service permits. These restrictions are appropriate for most wildlife permitting situations, but they are impractical and unduly restrictive for situations in which the permitted activity will be conducted over a lengthy period of years and ownership of the land or facility covered by a permit could reasonably be expected to change over that period.

For that reason, existing regulations carve out an exception from the usual restrictions on succession and transferability for certain Endangered Species Act (ESA) permits that typically have these characteristics. Specifically, 50 CFR 13.25(b) allows certain permits issued under the ESA to be transferred in whole or in part through a joint submission by the permittee and proposed transferee, subject to certain determinations that we must make. This proposed rule would treat Eagle Act programmatic permits issued pursuant to 50 CFR 22.26 in the same way that ESA incidental take permits issued pursuant to 50 CFR 17.22(b) and 17.32(b) are currently treated. Thus, in the event of a sale of a permitted facility to a new owner, the permit could be transferred through the mechanism set forth in 50 CFR 13.25(b) without the need to issue a new permit. Similarly, the holder of a permit authorizing multiple new facilities in a given area could transfer that permit in part to the new owner of a particular qualifying facility through the mechanism set forth in 50 CFR 13.25(b).

An analogous second proposed change to 50 CFR 13.25 would provide similar treatment for Eagle Act programmatic permits issued to State or local governmental entities as is currently provided for ESA permits issued to such governmental entities. Under proposed new paragraph (f) of 50 CFR 13.25, a person would be considered to be under the direct control of an Eagle Act programmatic permittee (and, therefore, authorized to carry out the activity contemplated by the permit) if the person is under the

jurisdiction of the permittee, and if the permit allows the person to carry out the authorized activity.

Currently, 50 CFR 13.24 allows for certain persons to be successors to a permit: The surviving spouse, child, executor, administrator, or other legal representative of a deceased permittee; or a receiver or trustee in bankruptcy or a court-designated assignee for the benefit of creditors. For most Service permits, with the exception of certain long-term permits issued under ESA regulations, all the potential successor needs to do to gain the privileges of the permit is to ''furnish the permit for endorsement'' to the permit office within 90 days from the date the successor begins to carry out the permitted activity. We are proposing that long-term Eagle Act permits be subject to the same additional provisions that currently apply to long-term ESA permits. The permit would be subject to our determination that: the successor meets all of the qualifications under this part for holding a permit; has provided adequate written assurances that it will provide sufficient funding for any applicable conservation plan or agreement and will implement the relevant terms and conditions of the permit, including any outstanding minimization and mitigation requirements; and has provided other information we determine is needed for processing the request.

The proposed revisions to 50 CFR 13.25(b) would also allow for transfer of ESA permits issued for Safe Harbor Agreements per 50 CFR 17.22(c) or 17.32(c) and Candidate Conservation Agreements with Assurances per 50 CFR 17.22(d) or 17.32(d). The existing regulation limits such transfer only to permits issued under 50 CFR 17.22(b) but that limitation was an oversight that the Service now proposes to correct.

Existing paragraph 13.25(d) provides that ''any person who is under the direct control of the permittee'' is covered by the authorization in the permit. This general provision applies to all wildlife and plants permits issued by the Service, including eagle permits. See 50 CFR 13.3. We are also proposing to add a new paragraph 13.25(f) to clarify when a person is considered to be under the direct control of a government agency that receives a non-purposeful eagle take permit and therefore is covered by the take authorization in the permit. Under new paragraph 13.25(f) the authorization under the permit issued to the government agency extends to any person who is under the jurisdiction of the permittee, provided the permittee has the regulatory authority to require the person to comply with the terms and conditions of the permit and the permit provides that such person(s) may carry out the authorized activity. The Service's position is that this clarifying language describes the current situation that applies to any Service wildlife or plant permit issued to a government agency for an activity regulated by the agency, but we are proposing to add this specific provision to ensure there is no ambiguity with regard to non-purposeful eagle take permits issued under paragraph 22.26.

Permit Application Processing Fee and Administration Fee

This proposed rule also would amend the schedule of permit application processing fees set forth at 50 CFR 13.11 by substantially increasing the fees to be charged for processing applications for programmatic permits for nonpurposeful take of bald or golden eagles. However, Federal, State, tribal, and other governmental agencies are exempt from the requirement to pay permit application processing fees for any permits issued by the Service (see 50 CFR 13.11(d)(3)(i)). This proposed rule would not change that exemption.

Current regulations set the permit application fee for eagle nonpurposeful take permits for private individual and entities at $500 for standard permits and $1,000 for programmatic permits. The renewal fees are $150 and $500, respectively. Experience to date has demonstrated that these fee amounts are significantly less than the actual cost to the Service of reviewing and processing programmatic permit applications, including providing technical assistance, as well as the anticipated costs of administering the permits. This would particularly be the case for programmatic permits that authorize the taking of eagles over a decade or more.

Executive Branch agencies have been directed to recover costs for providing special benefits to identifiable recipients (*http://www.whitehouse.gov/omb/circulars_a025*). The Service must recover the costs for working with applicants, assessing permit applications, and undertaking monitoring associated with each permit. Many of these costs are borne by the Service prior to receiving the permit application. The proposed increased application processing fee reflects the estimated cost to the Service of developing and monitoring the effectiveness of the terms and conditions of the permit.

Most of the costs to the Service will occur during the development and initiation of projects. The application processing fee we are proposing combines both the costs of working with the applicant prior to submitting a permit application and processing the application. We estimate that cost to be approximately $36,000, and accordingly are proposing a permit application processing fee for a programmatic permit of $36,000. Not all permit applications will be approved, and, as with other permits issued by the Service, the application processing fee will not be refunded once an application is processed (see 50 CFR 13.11(d)(i)).

We also propose to collect permit administration fees based on the duration of the permits to recover the Service costs for monitoring and working with the permittees over the lives of the permits (items 11 and 12 in Table 1). We estimate those costs to be approximately $2,600 for each 5 years that the permit is valid. Therefore our proposed administration fees range from $2,600 for permits with tenures of 5 years or less to $15,600 for 30-year permits. We propose to collect the entire permit administration fee when we issue a permit.

The Service typically assesses a fee for processing substantive amendments to permits during the tenure of the permit. For all programmatic permits, regardless of duration, the amendment processing fee is proposed to be $1,000, and the fee for processing the transfer of a programmatic permit is proposed to be $1,000.

For some ongoing activities, such as the operation of some types of infrastructure, there is a likelihood that one or more eagles will be taken during the lifetime of the operation, but the overall impact to eagles is expected to be small. The smaller impact may correlate with the size of the project, but project scale may not be as important as where the project is sited in relation to eagle use-areas, including migration corridors. In evaluating which projects are ''small-impact,'' information about eagle use of the area will be a key factor in determining whether a project has a reduced likelihood of taking eagles. We strongly encourage wind energy developers and other project proponents to avoid known eagle-use areas when siting their projects.

If there will be no impact, a permit is not necessary or appropriate. However, if any take will occur, a permit is necessary to avoid violating the Eagle Act and developers and operators of ''small-impact'' projects may wish to seek the coverage provided by a programmatic permit to cover non-purposeful eagle take for up to 30 years. The proposed application processing fee for such programmatic, small-impact projects such as some small wind

projects and other activities expected to have low levels of take is $5,000 and there would be no administration fee for these permits. We are proposing a $1,000 fee for amending small-impact programmatic permits. Table 1 is a comparison between the current fee structure and the proposed fee structure for § 22.26 permits.

TABLE 1—PROPOSED APPLICATION COSTS, AMENDMENT FEES, AND TRANSFER FEES

	Current fees				Proposed fees			
	Application cost	Additional cost for every 5 years *	Amendment fee	Transfer fee	Application cost	Additional costs for every 5 years *	Amendment fee	Transfer fee
Standard	$1,000	NA	$500	NA	$500	NA	$1,000	$1,000
Programmatic	1,000	NA	500	NA	36,000	$2,600	1,000	1,000
Small-Impact Programmatic	1,000	NA	500	NA	5,000	0	1,000	1,000

* Administration fee

Table 2 shows the proposed application and administration fees for the programmatic permits of different tenures.

TABLE 2—PROPOSED PROGRAMMATIC PERMIT FEES

Permit tenure	Application processing fee	Administration fee
Up to 5 years	$36,000	$2,600
Over 5 years to 10 years	36,000	5,200
Over 10 years to 15 years	36,000	7,800
Over 15 years to 20 years	36,000	10,400
Over 20 years to 25 years	36,000	13,000
Over 25 years to 30 years	36,000	15,600
Small-Impact, 5 to 30 years	5,000	NA

Economic Analysis

This rule will provide for the authorization of activities that take bald eagles and golden eagles under the Bald and Golden Eagle Protection Act (Eagle Act). Under the rule, the public will have the opportunity to apply for permits to authorize the take of bald eagles and golden eagles under the Eagle Act. This proposed rule amends the Eagle Act to provide terms of up to 30 years for programmatic permits. Currently, permits are available for only up to five years, which does not allow some applicants enough time to secure the funding, lease agreements, and other necessary assurances to move forward with longer-term projects.

In the 2009 final rule, the Service estimated that we would receive approximately 40 programmatic permit applications each year of which one-half would be by private applicants (Federal, State, local, and tribal applicants are not required to pay a permit applicant fee). The annual programmatic fee cost was estimated to be $24,000 (74 FR 46849). This was calculated at the sum of the total number of new applicants (20) times the application fee ($1,000) plus the number of annual amendments (8) times the amendment fee ($500).

Because industry has indicated that it desires a longer permit, the Service is proposing to expand the program to include a variety of permits based on a five-year interval. Permits will be made available for 5 years minimum through 30 years maximum. The application cost associated with this permit for the private sector is proposed to be $36,000. Applicants with small-impact projects may choose to apply for a small impact permit for a fee of $5,000. Upon issuance of a permit, the Service would charge a permit administration fee of $2,600 for every 5-year interval. This fee however, only applies to the programmatic permits and does not apply to the small-impact permit.

The fee to amend programmatic permits is being proposed to increase from $500 to $1,000. These fees are being proposed so that the Service can better recoup their own costs for reviewing and processing these permits. Table 3 presents a breakdown of permit fees by permit tenure.

TABLE 3—PROPOSED NEW FEES FOR EAGLE INCIDENTAL TAKE PERMITS

Permit tenure	Application processing fee	Administration fee	Total
5 years	$36,000	$2,600	$38,600
5–10 years	36,000	5,200	41,200
11–15 years	36,000	7,800	43,800
16–20 years	36,000	10,400	46,400
21–25 years	36,000	13,000	49,000
26–30 years	36,000	15,600	51,600
Small Impact	5,000		5,000

Table 4 shows the estimated burden and cost to the government to provide technical assistance to project proponents, process an eagle nonpurposeful take permit application, as well as monitor the project over the life of the permit.

TABLE 4—ANTICIPATED HOURS SPENT PROCESSING A LONG-TERM PROGRAMMATIC PERMIT OVER THE LIFE OF THE 30-YEAR PERMIT. HOURS FOR TASKS 11 AND 12 DEPEND ON PERMIT TENURE [1]

Task No.	Service biologist and examiner task	Grade level and hours				
		GS 9	GS 11	GS 12	GS 13	GS 14
1	Participate in preapplication communication with a potential applicant.	.....	12	12	10	.....
2	Participate in preapplication technical assistance with a potential applicant.	.....	10	20	10	.....
3	Coordinate regionally and nationally on permit preapplication/permit application.	.....	25	25	.....	.....
4	Review and determine the adequacy of the information an applicant provides.	.....	12	12	1	.....
5	Conduct any internal research necessary to verify information in the application or evaluate the biological impact of the proposed activity.	.....	12	2	1	.....
6	Coordinate internally, regionally on application (tribal, SHPO, biological, etc).	.....	20	2	4	2
7	Evaluate whether the proposed activity meets the issuance criteria.	.....	8	4	.....	.....
8	Prepare or review NEPA documentation	.....	80	80	80	.....
9	Prepare either a permit or a denial letter for the applicant	.....	12	4	.....	.....
10	When necessary to evaluate the impact of the proposed activity, visit the location to examine site-specific conditions.	.....	16	16	3	.....
11	*Monitor reports over 30 years*	.....	*60*	*40*	*40*	.....
12	*Evaluate project impacts for adaptive management, including coordination with permittee if minimization or mitigation measures are not adequate.*	*12*	*20*	*20*	*20*	*4*
	Total hours	12	287	237	169	6
	Cost per hour (Step 5 × 1.5 × 1.25) [2]	$50.92	$61.61	$73.85	$87.82	$103.78
	Total cost per grade level	$611	$17,682	$17,502	$14,841	$623
	Total Cost per Permit	$51,259				

[1] Labor cost based on 2012 hourly locality rates for Portland-Vancouver-Beaverton, OR–WA (*http://www.opm.gov/oca/12tables/html/por_h.asp*).
[2] 1.5 for employee benefits and other Government costs; 1.25 for overhead for Service Field Offices.

Lower-Bound Estimate

For the purposes of this analysis the Service has estimated both a lower-bound and upper-bound economic impact scenario. Under the lower-bound scenario, the Service estimates that over the next 30 years it will process 1,043 permit applications. Permit applications will begin modestly in this year and quickly rise to an average of 40 per year beginning in the year 2020. Table 5 shows specifically how many permits each year, by type, the Service expects. In addition, the Service expects that they will have to process on average one amendment per year beginning in 2013.

TABLE 5—ESTIMATED PERMIT APPLICATIONS BY TENURE (2012–2041)—LOWER-BOUND ESTIMATE

	2012	2013	2014	2015	2016	2017	2018	2019	2020–2041*	30 yr total
5-year	0	0	0	0	0	0	0	0	0	.....
10-year	1	1	1	2	2	2	3	3	3	81
15-year	0	1	1	2	2	2	4	4	4	104
20-year	0	1	2	3	4	5	5	5	6	157
25-year	0	0	0	0	0	0	0	0	0	.....
30-year	2	2	4	6	10	12	20	21	22	561
Small-impact	1	2	3	4	5	5	5	5	5	140
Total	4	7	11	17	23	26	37	38	*40	1,043

*Per Year.

* Based on the estimated number of permit applications identified in Table 3, the Service estimates that the government would incur a net loss of over $32.1 million (three percent discount rate) or $18.5 million (seven percent discount rate) under the current fee structure. This is illustrated in Table 6.

TABLE 6—ESTIMATED BASELINE ECONOMIC IMPACT ASSOCIATED WITH BASELINE FEES TO GOVERNMENT AND PRIVATE SECTOR APPLICANTS ($2011)—LOWER-BOUND ESTIMATE

Discount rate	Government cost	Private cost			Total net cost to government
		Application fees	Amendments	Total private	
0.03					
NPV	$32,835,964	$640,579	$9,800	$650,379	($32,185,585)
ANN	(1,675,267)	(32,682)	(500)	(33,182)	1,642,085
0.07					
NPV	18,873,469	368,192	6,205	374,397	(18,499,072)
ANN	(1,520,945)	(29,671)	(500)	(30,171)	1,490,774

The net loss to government associated with processing permits is expected to fall under the proposed new fees to less than $0.5 million under both a three percent and seven percent discount rate. Table 7 shows the results.

TABLE 7—ESTIMATED ECONOMIC IMPACT ASSOCIATED WITH PROPOSED FEES TO GOVERNMENT AND PRIVATE SECTOR APPLICANTS ($2011)—LOWER-BOUND ESTIMATE

Discount rate	Government cost	Private cost			Total net cost to government
		Application fees	Amendments	Total private	
0.03					
NPV	$8,204,590	$7,777,030	$19,600	$7,782,926	($421,664)
ANN	(418,592)	(396,778)	(1,000)	(397,079)	21,513
0.07					
NPV	1,613,041	1,510,720	12,409	1,513,022	(100,019)
ANN	(129,989)	(121,744)	(1,000)	(121,929)	8,060

Upper-Bound Economic Impact Estimate

For the upper-bound cost analysis, the Service is providing a conservative estimate of impacts. Specifically, this analysis is based on an assumption that every permit application will be for the maximum number of years (30). While the Service does not yet offer a 30 year permit, the Service expects these permits, if approved, to be in high demand, particularly from wind power generator farms as the lifecycle of these plants are expected to last longer than 30 years.

According to the American Wind Energy Association, the level of production is expected to double by the end of this century in order to meet a goal of providing 20 percent of the country's electricity supply (*http://www.awea.org/issues/supply_chain/Market-Growth-Potential.cfm*). Based on the 2009 final rule's assumption that there would be 20 private programmatic permits issued annually, this analysis assumes that by 2020 industry will be seeking on average 40 permits per year. Over the next thirty years, the Service could issue 1,108 30-year permits. The Service also estimates, for purposes of this analysis that there will be one amendment, on average per year. Table 8 shows the baseline calculation of future impacts to the government under the existing fee structure based on the application assumptions just mentioned. If the fee structure is not changed, the government would incur a total net cost of over $35.2 million based on a three percent discount rate, as shown in Table 9. This roughly translates into an impact of $50,250 per permit.

TABLE 8—ESTIMATED PERMIT APPLICATIONS BY TYPE (2012–2041)—UPPER-BOUND ESTIMATE

	2012	2013	2014	2015	2016	2017	2018	2019	2020–2041	30 year total
30-year	20	22	25	27	30	32	35	37	40	1,108
Total	20	22	25	27	30	32	35	37	40	1,108

TABLE 9—ESTIMATED ECONOMIC IMPACT ASSOCIATED WITH BASELINE FEES TO GOVERNMENT AND PRIVATE SECTOR APPLICANTS ($2011)—UPPER-BOUND ESTIMATE

Discount rate	Government cost	Private cost			Total net cost to government
		Application fees	Amendments	Total private	
0.03					
NPV	$35,912,443	$700,596	$9,315	$709,911	($35,202,532)
ANN	(1,832,226)	(35,744)	(475)	(36,219)	1,796,007
0.07					
NPV	21,655,515	422,466	5,737	428,203	(21,227,312)
ANN	(1,745,140)	(34,045)	(462)	(34,507)	1,710,633

Table 10 shows the calculated total cost to industry over the next 30 years under the revised fee and amendment structure. The Table shows both the net present value of impacts of total costs as well as annualized costs using both a three percent and seven percent discount rate as prescribed by the Office of Management and Budget. Based on a three percent rate, the total maximum cost to the Service would be $35.9 million compared to a total private sector application cost of $36.2 million. The net discounted cost to the government associated with processing these applications would be $257,000, which is equivalent to about $350 per permit. Under this proposal the government would recoup the cost of its services (as identified in Table 2) on essentially a break-even basis.

TABLE 10—ESTIMATED ECONOMIC IMPACT ASSOCIATED WITH PROPOSED FEES TO GOVERNMENT AND PRIVATE SECTOR APPLICANTS ($2011)—UPPER-BOUND ESTIMATE

Discount rate	Government cost	Private cost			Total net cost to government
		Application fees	Amendments	Total private	
0.03					
NPV	$35,912,443	$36,150,772	$18,630	$36,169,401	$256,958
ANN	(1,832,226)	(1,844,386)	(950)	(1,845,336)	(13,110)
0.07					
NPV	21,655,515	21,799,229	11,474	21,810,704	155,189
ANN	(1,745,140)	(1,756,721)	(925)	(1,757,646)	(12,506)

Over time, the application processing and administration fees needed to recoup costs to the Service will likely need to increase to account for inflation. Adjustment in fees may also be warranted to reflect actual costs (versus the cost estimates we are using for this rulemaking). Consequently, we anticipate revising the fee schedule periodically in the future. However, each permittee who has paid the fees required at the time his or her permit was issued would not be required to submit additional administration fees during the life of the permit.

In a separate notice being published in today's **Federal Register**, we are soliciting public comment on all other aspects of the nonpurposeful eagle take permit regulations at § 22.26 that are not addressed in this proposed rule.

Public Comments

We request comments on this proposed rule. Specifically, we are interested in public comment on the Service's plan to require commitment from long-term programmatic permit applicants to implement additional specified mitigation measures if take exceeds predicted levels or if monitoring or new scientific information indicates that such measures are necessary to protect eagles adequately. We are interested in public comment on how such an approach could be developed in a way that would be practicable. Also, we are interested in suggestions for identifying and specifically defining what we are referring to as ''programmatic, small-impact'' projects that are expected to result in take of eagles over the life of their operations but are expected to have negligible impacts on bald or golden eagle populations, individually.

We request public comment on whether the fee proposal should be revised in the final regulation to consist of a processing fee to be paid on submission of the permit application and an administration fee to be paid if the applicant is advised that the permit has been approved. We also seek comment on whether the administration fee that would recoup the costs of monitoring during the life of the permit should be a one-time expense paid when the permit is issued. The alternative would be to require the permittee to pay for those costs periodically over the life of the permit.

You may submit your comments and supporting materials by one of the methods listed in **ADDRESSES**. We request that you submit comments by only one method. We will not consider comments sent by email or fax, or written comments sent to an address other than the one listed in **ADDRESSES**. If you submit a comment via *http://www.regulations.gov,* your entire comment—including any personal identifying information—will be posted on the Web site. If you submit a hardcopy comment that includes personal identifying information, you may request that we withhold this information from public review, but we cannot guarantee that we will be able to do so. We will post all hardcopy comments on *http://www.regulations.gov.*

Comments and materials we receive, as well as supporting documentation we used in preparing this proposed rule, will be available for public inspection at *http://www.regulations.gov,* or by appointment, during normal business hours, by contacting one of the people listed above under **FOR FURTHER INFORMATION CONTACT**.

Required Determinations

Regulatory Planning and Review (Executive Order 12866)

The Office of Management and Budget (OMB) has determined that this rule is significant under Executive Order 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 the 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; and

(d) Whether the rule raises novel legal or policy issues.

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

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.,* as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 (Pub. L. 104–121)), whenever an 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 businesses, small organizations, and small government jurisdictions. However, no regulatory flexibility analysis is required if the head of an agency certifies the rule would not have a significant economic impact on a substantial number of small entities.

SBREFA amended the Regulatory Flexibility Act to require Federal

agencies to provide the statement of the factual basis for certifying that a rule would not have a significant economic impact on a substantial number of small entities. We have examined this proposed rule's potential effects on small entities as required by the Regulatory Flexibility Act and determined that this action would not have a significant economic impact on a substantial number of small entities.

In the nearly two and a half years since the eagle permit regulations were published, we have received only one programmatic permit application, which was for a utility-scale wind energy facility. As noted previously, we anticipate a greater volume of permit applications in the future, although we expect the number to increase gradually for a period of years and perhaps eventually reach an average of 40 or fewer per year.

Utility-scale wind energy facilities and electric transmission companies are likely to be the most frequent programmatic permit applicants, because of the known risk to eagles from collisions with wind turbines and electric power lines. Although smaller wind energy facilities could seek programmatic permits, we anticipate that most of the applications for wind energy facilities will be for those that are commercial or utility scale. Small projects often will consist of turbines with smaller structural dimensions (smaller tower and rotor blades) than commercial scale turbines. The number of turbines associated with utility-scale facilities, and their distribution on the landscape, are such that they are likely to pose a much greater risk of incidentally taking eagles than are facilities with few, smaller turbines.

Given current domestic wind energy cumulative wind capacity and other wind energy industry statistics, we anticipate that a substantial number of applicants for programmatic permits for wind energy projects will be small entities as defined in 13 CFR 121.201 (*e.g.,* industrial building construction companies with less than $33.5 million of annual receipts, or electrical generating companies with less than 4 million megawatt hours of generation, transmission and/or distribution). The SBA Small Business Size Standards identifies utilities engaged in electric power generation and electric power distribution as small entities if their total output for the preceding fiscal year did not exceed 4 million megawatt hours. Using this standard, we estimate that a substantial number of applicants for a programmatic permit would be small entities.

An applicant for a programmatic permit would pay a $36,000 processing fee, or $5,000 for a small-impact project, to apply for a permit up to 30 years. Additionally a permittee would pay an administration fee ranging from $2,600 to $15,600, depending upon the permit tenure. No administration fee would be assessed for a small-impact permit. Amortized over the life of a 30-year permit, this would range from $167 per year to $1,720 per year. We believe most applicants will seek a 30-year permit to match the life of the project. We do not believe this would impose a significant economic impact on these small entities. We may lack information on other potential economic impacts to these small entities. Therefore, we request comments and information from industry and any other interested parties regarding probable economic impacts of this proposal.

Although businesses in other business sectors, such as railroads, timber companies, and pipeline companies could also apply for programmatic permits, we anticipate the number of permit applicants in such sectors to be very small, on the order of one or two per year for each such sector. Thus, we anticipate that the proposed rule would not have a significant economic impact on a substantial number of small entities in sectors other than the utility sector as described above.

In addition to the increased application processing fee, the additional specified mitigation measures that could be required under the terms and conditions of permits issued with a term of longer than 5 years could result in some additional costs to the permittee, but those costs should be offset by the reduction in uncertainty for the permittee achieved by securing a 30-year programmatic permit rather than a 5-year standard permit. Consequently, we certify that because this proposed rule would not have a significant economic effect on a substantial number of small entities, a regulatory flexibility analysis is not required.

This proposed rule is not a major rule under SBREFA (5 U.S.C. 804(2)).

a. This proposed rule would not have an annual effect on the economy of $100 million or more.

b. This proposed rule would not cause a major increase in costs or prices for consumers; individual industries; Federal, State, or local government agencies; or geographic regions.

c. This proposed rule 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

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*), we have determined the following:

a. This proposed rule would not ''significantly or uniquely'' affect small governments. A small government agency plan is not required. The proposed regulations changes would not affect small government activities in any significant way.

b. This proposed rule would not produce a Federal mandate of $100 million or greater in any year. It is not a ''significant regulatory action'' under the Unfunded Mandates Reform Act.

Takings

In accordance with E.O. 12630, the rule would not have significant takings implications. This proposed rule does not contain any provisions that could constitute taking of private property. Therefore, a takings implication assessment is not required.

Federalism

This proposed rule would not have sufficient Federalism effects to warrant preparation of a Federalism assessment under E.O. 13132. It would not interfere with the States' abilities to manage themselves or their funds. No significant economic impacts are expected to result from the regulations change.

Civil Justice Reform

In accordance with E.O. 12988, the Office of the Solicitor has determined that the rule would not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order.

Paperwork Reduction Act

This proposed rule contains a collection of information that we are submitting to the Office of Management and Budget (OMB) for review and approval under Sec. 3507(d) of the Paperwork Reduction Act (PRA). OMB has reviewed and approved the information collection requirements associated with migratory bird permits and assigned OMB Control Number 1018–0022, which expires February 28, 2014. This approval includes 5-year eagle take programmatic permits.

We propose to revise the regulations for permits for nonpurposeful take of golden eagles and bald eagles where the take is associated with, but not the purpose, of the activity. We propose to extend the maximum term for programmatic permits to 30 years, if they incorporate conditions requiring the permittee to implement additional adaptive conservation measures if necessary to ensure the preservation of

eagles. This change will facilitate the development of renewable energy and other projects that are designed to be in operation for many decades. This change will also provide more certainty to project proponents and their funding sources, while continuing to protect eagles consistent with statutory mandates. We also propose to raise the application processing fee for 5-year programmatic permits from $1,000 to $36,000. See above, under ''Permit Application Processing Fee and Administration Fee'' for more detailed information on the increase in permit fees.

For permits valid for more than 5 years, we propose to charge a fee sufficient to offset the estimated costs associated with processing and our periodic review of these permits. Revised OMB circular A–25 directs Executive Branch agencies to recover costs, stating that, ''When a service (or privilege) provides special benefits to an identifiable recipient beyond those that accrue to the general public, a charge will be imposed (to recover the full cost to the Federal Government for providing the special benefit, or the market price).'' Further, Circular A–25 directs that, ''Except as provided in Section 6c, user charges will be sufficient to recover the full cost to the Federal Government (as defined in Section 6d) of providing the service, resource, or good when the Government is acting in its capacity as sovereign.'' Thus, the directive to the Service is to recover the costs for working with applicants, assessing permit applications, and undertaking monitoring associated with each permit. Many of these costs are borne by the Service prior to receiving an eagle permit.

We are requesting that OMB assign a new control number for the requirements associated with the new programmatic permits. When we publish the final rule, we will incorporate the new requirements into OMB Control Number 1018–0022 and discontinue the new number. An agency may not conduct or sponsor and you are not required to respond to a collection of information unless it displays a currently valid OMB control number.

Title: Long-Term Eagle Take Programmatic Permits, 50 CFR 13 and 22.

OMB Control Number: None. This is a new collection.

Service Form Number(s): 3–200–71 and 3–202–15.

Type of Request: New collection.

Description of Respondents: Individuals; businesses; and State, local, and tribal governments. We expect that the majority of private applicants seeking a 30-year permit will be in the energy production and electrical distribution business.

Respondent's Obligation: Required to obtain or retain a benefit.

Frequency of Collection: On occasion.

Activity	Number of non-Federal respondents *	Number of responses	Completion time per response	Total annual hours spent
Application **	20	20	452	9,040
Monitoring and Reporting	20	20	312	6,240
Recordkeeping	20	20	30	600
Amendments	3	3	70	210
Transfers	3	3	120	120
Totals	66	66	.....	16,210

* For the next three years, we expect a maximum of 20 private entities to apply for programmatic long-term permits.
** Includes researching permit requirements, conducting pre-application surveys/studies, and completing the application form.

Estimated Total Nonhour Burden Cost: $688,000, based primarily on application processing fees, as well as fees for amendments to permits and for transfer of permits. States, local governments, and tribal governments are exempt from paying these fees.

As part of our continuing effort to reduce paperwork and respondent burdens, we invite the public and other Federal agencies to comment on any aspect of the reporting burden, including:

(1) Whether or not the collection of information is necessary, including whether or not the information will have practical utility;

(2) The accuracy of our estimate of the burden for this collection of information;

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

(4) Ways to minimize the burden of the collection of information on respondents.

Send your comments and suggestions on this information collection to the Desk Officer for the Department of the Interior at OMB–OIRA at (202) 395–5806 (fax) or *OIRA_DOCKET@OMB.eop.gov* (email). Please provide a copy of your comments to the Service Information Collection Clearance Officer, U.S. Fish and Wildlife Service, MS 2042–PDM, 4401 North Fairfax Drive, Arlington, VA 22203 (mail), or *INFOCOL@fws.gov* (email).

National Environmental Policy Act

We have analyzed this proposed rule in accordance with the National Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq.*) and Department regulations at 43 CFR part 46. The changes we propose to 50 CFR 22.26 would have negligible new effects. Although take authorizations under the proposed regulations could be valid for up to 30 years, we would continue to require appropriate mitigation for impacts to eagles and will thoroughly evaluate the effects to eagles at periodic intervals during the life of the permit. If necessary, we would require the permittee to implement additional measures specified in the terms and conditions of the permit to further safeguard eagles. This would be similar to the current process, which could also require an applicant to implement additional measures to renew a permit after expiration of the current 5-year term limit. In 2009, we completed a Final Environmental Assessment (FEA) on the take authorized by permits under § 22.26 when we published those permit regulations (U.S. Fish and Wildlife Service; Final Environmental Assessment: Proposal to Permit Take as Provided Under the Bald and Golden Eagle Protection Act; April 2009). The proposed changes to the regulation would fully comply with the FEA. Any take of eagles under these proposed revisions must be compatible with the preservation of the eagles and cannot be permitted if it would exceed the take thresholds established in the 2009 FEA.

We have determined that the proposed changes to 50 CFR 22.26 are categorically excluded under the NEPA because the action is a revision of regulations that would change the tenure of a permit issued under 50 CFR

22.26. A change in the permit tenure would not remove the permittee's obligation to comply with the provisions of the permit. The revision of 50 CFR 10.13 is strictly administrative. Therefore, it is categorically excluded from further NEPA requirements (43 CFR 46.210(i)). No more comprehensive NEPA analysis of the regulations change is required.

Endangered and Threatened Species

Section 7 of the Endangered Species Act (ESA) of 1973, as amended (16 U.S.C. 1531 *et seq.*), requires that ''The Secretary [of the Interior] shall review other programs administered by him and utilize such programs in furtherance of the purposes of this Act'' (16 U.S.C. 1536(a)(1)). It further states that the Federal agency must ''insure that any action authorized, funded, or carried out * * * is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of [critical] habitat'' (16 U.S.C. 1536(a)(2)). This proposed rule would not affect endangered or threatened species or critical habitats; it simply proposes to increase the number of years that a programmatic permit may be valid under certain conditions. In addition, each individual permit must comply with the provisions of section 7 at the time the permit is issued.

Government-to-Government Relationship with Tribes

In accordance with the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951), E.O. 13175, and 512 DM 2, we have evaluated potential effects on federally recognized Indian tribes and have determined that this proposed rule would not interfere with tribes' abilities to manage themselves, their funds, or tribal lands. However, we have not yet consulted with tribes regarding this proposed rule.

Some tribes that value eagles as part of their cultural heritage objected to the promulgation of the 2009 eagle take permit rule based on the belief that the regulations would not adequately protect eagles. Those tribes may perceive further negative effects from these proposed changes. However, eagles would be sufficiently protected under this proposal because only those applicants who commit to adaptive management measures to ensure the preservation of eagles will receive permits with terms longer than 5 years.

Energy Supply, Distribution, or Use (Executive Order 13211)

E.O. 13211 addresses regulations that significantly affect energy supply, distribution, and use. E.O. 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. Although this rule, if finalized as proposed, would facilitate the funding, construction, and operation of numerous energy generation projects, including wind power facilities, the rule is not a significant regulatory action under E.O. 13211, and no Statement of Energy Effects is required.

List of Subjects

50 CFR Part 13

Administrative practice and procedure, Exports, Fish, Imports, Plants, Reporting and recordkeeping requirements, Transportation, Wildlife.

50 CFR Part 22

Birds, Exports, Imports, Migratory birds, Reporting and recordkeeping requirements, Transportation, Wildlife.

Proposed Regulation Promulgation

For the reasons described in the preamble, we propose to amend subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 13—GENERAL PERMIT PROCEDURES

1. The authority for part 13 continues to read as follows:

Authority: 16 U.S.C. 668a, 704, 712, 742j–l, 1374(g), 1382, 1538(d), 1539, 1540(f), 3374, 4901–4916; 18 U.S.C. 42; 19 U.S.C. 1202; 31 U.S.C. 9701.

2. Revise the table in § 13.11(d)(4) to read as follows:

§ 13.11 Application procedures.

* * * * *

(d) * * *

(4) * * *

Type of permit	CFR citation	Permit application fee	Administration fee [1]	Amendment fee
Migratory Bird Treaty Act				
Migratory Bird Import/Export	50 CFR 21	75		
Migratory Bird Banding or Marking	50 CFR 21	No fee		
Migratory Bird Scientific Collecting	50 CFR 21	100		50
Migratory Bird Taxidermy	50 CFR 21	100		
Waterfowl Sale and Disposal	50 CFR 21	75		
Special Canada Goose	50 CFR 21	No fee		
Migratory Bird Special Purpose/Education	50 CFR 21	75		
Migratory Bird Special Purpose/Salvage	50 CFR 21	75		
Migratory Bird Special Purpose/Game Bird Propagation	50 CFR 21	75		
Migratory Bird Special Purpose/Miscellaneous	50 CFR 21	100		
Falconry	50 CFR 21	100		
Raptor Propagation	50 CFR 21	100		
Migratory Bird Rehabilitation	50 CFR 21	50		
Migratory Bird Depredation	50 CFR 21	100		50
Migratory Bird Depredation/Homeowner	50 CFR 21	50		
Bald and Golden Eagle Protection Act				
Eagle Scientific Collecting	50 CFR 22	100		50
Eagle Exhibition	50 CFR 22	75		
Eagle Falconry	50 CFR 22	100		
Eagle—Native American Religion	50 CFR 22	No fee		
Eagle Take permits—Depredation and Protection of Health and Safety	50 CFR 22	100		
Golden Eagle Nest Take	50 CFR 22	100		50

Type of permit	CFR citation	Permit application fee	Administration fee [1]	Amendment fee
Eagle Transport—Scientific or Exhibition	50 CFR 22	75		
Eagle Transport—Native American Religious Purposes	50 CFR 22	No fee		
Eagle Take—Associated With but Not the Purpose of an Activity	50 CFR 22	500		150
Eagle Take—Associated With But Not the Purpose of an Activity—Programmatic, small-impact projects, 5- to 30-year tenure.	50 CFR 22	5,000		1,000
Eagle Take—Associated With But Not the Purpose of an Activity—Programmatic, up to 5-year tenure.	50 CFR 22	36,000	2,600	1,000
Eagle Take—Associated With But Not the Purpose of an Activity—Programmatic, over 5-year to 10-year tenure.	50 CFR 22	36,000	5,200	1,000
Eagle Take—Associated With But Not the Purpose of an Activity—Programmatic, over 10-year to 15-year tenure.	50 CFR 22	36,000	7,800	1,000
Eagle Take—Associated With But Not the Purpose of an Activity—Programmatic, over 15-year to 20-year tenure.	50 CFR 22	36,000	10,400	1,000
Eagle Take—Associated With But Not the Purpose of an Activity—Programmatic, over 20-year to 25-year tenure.	50 CFR 22	36,000	13,000	1,000
Eagle Take—Associated With But Not the Purpose of an Activity—Programmatic, over 25-year to 30-year tenure.	50 CFR 22	36,000	15,600	1,000
Eagle Take—Associated With But Not the Purpose of an Activity—Transfer of a programmatic permit.	50 CFR 22	1,000		
Eagle Nest Take	50 CFR 22	500		150
Eagle Nest Take—Programmatic	50 CFR 22	1000		500
Eagle Take—Exempted under ESA	50 CFR 22	No fee		
Endangered Species Act/CITES/Lacey Act				
ESA Recovery	50 CFR 17	100		50
ESA Interstate Commerce	50 CFR 17	100		50
ESA Enhancement of Survival (Safe Harbor Agreement)	50 CFR 17	50		25
ESA Enhancement of Survival (Candidate Conservation Agreement with Assurances).	50 CFR 17	50		25
ESA Incidental Take (Habitat Conservation Plan)	50 CFR 17	100		50
ESA and CITES Import/Export and Foreign Commerce	50 CFR 17	100		50
ESA and CITES Museum Exchange	50 CFR 17	100		50
ESA Captive-bred Wildlife Registration	50 CFR 17	200		100
—Renewal of Captive-bred wildlife registration	50 CFR 17	100		
CITES Import (including trophies under ESA and MMPA)	50 CFR 17, 18, 23.	100		50
CITES Export	50 CFR 23	100		50
CITES Pre-Convention	50 CFR 23	75		40
CITES Certificate of Origin	50 CFR 23	75		40
CITES Re-export	50 CFR 23	75		40
CITES Personal Effects and Pet Export/Re-Export	50 CFR 23	50		
CITES Appendix II Export (native furbearers and alligators—excluding live animals).	50 CFR 23	100		50
CITES Master File (includes files for artificial propagation, biomedical, etc. and covers import, export, and re-export documents).	50 CFR 23	200		100
—Renewal of CITES Master File	50 CFR 23	100		
—Single-use permits issued on Master File	50 CFR 23	[2] 5		
CITES Annual Program File	50 CFR 23	50		
—Single-use permits issued under Annual Program	50 CFR 23	[2] 5		
CITES replacement documents (lost, stolen, or damaged documents)	50 CFR 23	50		50
CITES Passport for Traveling Exhibitions and Pets	50 CFR 23	[3] 75		
CITES/ESA Passport for Traveling Exhibitions	50 CFR 23	[3] 100		
CITES Introduction from the Sea	50 CFR 23	100		50
CITES Participation in the Plant Rescue Center Program	50 CFR 23	No fee		
CITES Registration of Commercial Breeding Operations for Appendix-I wildlife	50 CFR 23	100		
CITES Request for Approval of an Export Program for a State or Tribe (American Ginseng, Certain Furbearers, and American Alligator).	50 CFR 23	No fee		
Import/Export License	50 CFR 14	100		50
Designated Port Exception	50 CFR 14	100		50
Injurious Wildlife Permit	50 CFR 16	100		50
—Transport Authorization for Injurious Wildlife	50 CFR 16	25		
Wild Bird Conservation Act (WBCA)				
Personal Pet Import	50 CFR 15	50		
WBCA Scientific Research, Zoological Breeding or Display, Cooperative Breeding.	50 CFR 15	100		50
WBCA Approval of Cooperative Breeding Program	50 CFR 15	200		100
—Renewal of a WBCA Cooperative Breeding Program	50 CFR 15	50		
WBCA Approval of a Foreign Breeding Facility	50 CFR 15	[4] 250		

Type of permit	CFR citation	Permit application fee	Administration fee [1]	Amendment fee
Marine Mammal Protection Ac				
Marine Mammal Public Display	50 CFR 18	300		150
Marine Mammal Scientific Research/Enhancement/Registered Agent or Tannery.	50 CFR 18	150		75
—Renewal of Marine Mammal Scientific Research/Enhancement/Registered Agent or Tannery.	50 CFR 18	75		

[1] Assessed when a permit is issued.
[2] Each.
[3] Per animal.
[4] Per species.

* * * * *

3. Amend § 13.24 by revising paragraph (c) to read as follows:

§ 13.24 Right of succession by certain persons.

* * * * *

(c) In the case of permits issued under § 17.22(b) through (d) or § 17.32(b) through (d) or permits issued under § 22.26 of this subchapter B, the successor's authorization under the permit is also subject to our determination that:

(1) The successor meets all of the qualifications under this part for holding a permit;

(2) The successor has provided adequate written assurances that it will provide sufficient funding for any applicable conservation measures, conservation plan, or Agreement and will implement the relevant terms and conditions of the permit, including any outstanding minimization and mitigation requirements; and

(3) The successor has provided such other information as we determine is relevant to the processing of the request.

4. Amend § 13.25 by revising paragraph (b) and adding a new paragraph (f) to read as follows:

§ 13.25 Transfer of permits and scope of permit authorization.

* * * * *

(b) Permits issued under § 17.22(b) through (d) or § 17.32(b) through (d) or permits issued under § 22.26 of this subchapter B may be transferred in whole or in part through a joint submission by the permittee and the proposed transferee, or in the case of a deceased permittee, the deceased permittee's legal representative and the proposed transferee, provided we determine that:

(1) The proposed transferee meets all of the qualifications under this part for holding a permit;

(2) The proposed transferee has provided adequate written assurances that it will provide sufficient funding for the conservation measures, conservation plan, or Agreement and will implement the relevant terms and conditions of the permit, including any outstanding minimization and mitigation requirements; and

(3) The proposed transferee has provided such other information as we determine is relevant to the processing of the submission.

* * * * *

(f) In the case of permits issued under § 22.26 of this subchapter B to a Federal, State, tribal, or local governmental entity, a person is under the direct control of the permittee if the person is under the jurisdiction of the permittee, provided the permittee has the regulatory authority to require the person to comply with the terms and conditions of the permit and the permit provides that such person(s) may carry out the authorized activity.

PART 22—EAGLE PERMITS

5. The authority for part 22 continues to read as follows:

Authority: 16 U.S.C. 668–668d; 16 U.S.C. 703–712; 16 U.S.C. 1531–1544.

6. Amend § 22.26 by revising paragraph (h) and adding paragraph (i) to read as follows:

§ 22.26 Permits for eagle take that is associated with, but not the purpose of, an activity.

* * * * *

(h) *Permit duration.* The duration of each permit issued under this section will be designated on its face and will be based on the duration of the proposed activities, the period of time for which take will occur, the level of impacts to eagles, and the nature and extent of mitigation measures incorporated into the terms and conditions of the permit. Standard permits will not exceed 5 years. A permit for programmatic take will be issued for a term no shorter than 5 years and no longer than 30 years.

(i) *Transfer of programmatic permits.* Programmatic permits may be transferred to new owners of facilities, provided that the new owners have never had a permit issued by the U.S. Fish and Wildlife Service suspended or revoked, and have not been convicted of violating a Federal wildlife law in the last 10 years. The transferee must meet all of the qualifications under this part for holding a permit, as well as the requirements of § 13.25(b) of this subchapter B.

Dated: January 19, 2012.

Rachel Jacobson,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 2012–8086 Filed 4–12–12; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 22

[Docket No. FWS–R9–MB–2011–0094: 91200–1231–9BPP]

RIN 1018–AY30

Eagle Permits; Revisions to Regulations Governing Take Necessary To Protect Interests in Particular Localities

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: We solicit public comment on possible revisions to regulations under the Bald and Golden Eagle Protection Act for permits to take eagles where the take is associated with, but not the purpose of, otherwise lawful activities. During the 2 years that the regulations have been in effect, some stakeholders have expressed concerns with some provisions of the rule. We are giving interested members of the public the opportunity to review the regulations and recommend revisions that would create a more efficient permit process

while continuing to adequately protect eagles.

DATES: We will accept comments received or postmarked by the end of the day on July 12, 2012.

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

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments on Docket No. FWS–R9–MB–2011–0094.
- *U.S. mail or hand delivery:* Public Comments Processing, Attention: FWS–R9–MB–2011–0094; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 North Fairfax Drive, MS 2042–PDM; Arlington, VA 22203–1610.

We will not accept email or faxes. We will not consider comments submitted after the due date. We will post all comments on *http://www.regulations.gov.* This generally means that we will post any personal information that you provide. See the Public Comments section below for more information.

FOR FURTHER INFORMATION CONTACT: Chief, Division of Migratory Bird Management, at 703–358–1714.

SUPPLEMENTARY INFORMATION:

Public Comments

We request comments and suggestions and encourage the submission of new ideas, materials, recommendations, and arguments from the public; ornithological organizations; environmental organizations; corporations; local, State, tribal, and Federal agencies; and any other interested party. Please ensure that the comments pertain only to the issues presented in this advance notice of proposed rulemaking.

You may submit your comments and supporting materials only by one of the methods listed in **ADDRESSES**. We will not consider comments sent by email or fax, or written comments sent to an address other than the one listed in **ADDRESSES**.

If you submit a comment via *http://www.regulations.gov*, your entire comment—including any personal identifying information—will be posted on the Web site. If you submit a hardcopy comment that includes personal identifying information, you may request that we withhold this information from public review, but we cannot guarantee that we will be able to do so. We will post all hardcopy comments on *http://www.regulations.gov.*

Comments and materials we receive will be available for public inspection at *http://www.regulations.gov*, or by appointment, during normal business hours, at the U.S. Fish and Wildlife Service (see **FOR FURTHER INFORMATION CONTACT**).

Background

The Bald and Golden Eagle Protection Act (16 U.S.C. 668–668d) (Eagle Act) prohibits take of bald eagles and golden eagles except pursuant to Federal regulations. The Eagle Act regulations at title 50, part 22, of the Code of Federal Regulations (CFR), define the ''take'' of an eagle to include the following broad range of actions: ''pursue, shoot, shoot at, poison, wound, kill, capture, trap, collect, destroy, molest, or disturb'' (50 CFR 22.3). The Eagle Act allows the Secretary of the Interior to authorize certain otherwise prohibited activities through regulations. The Secretary is authorized to prescribe regulations permitting the ''taking, possession, and transportation of [bald eagles or golden eagles] * * * for the scientific or exhibition purposes of public museums, scientific societies, and zoological parks, or for the religious purposes of Indian tribes, or * * * for the protection of wildlife or of agricultural or other interests in any particular locality,'' provided such permits are ''compatible with the preservation of the bald eagle or the golden eagle'' (16 U.S.C. 668a).

On September 11, 2009, we published a final rule that established new permit regulations under the Bald and Golden Eagle Protection Act for nonpurposeful take of eagles (74 FR 46836). Those regulations at 50 CFR 22.26 provide for permits to take bald eagles and golden eagles where the taking is associated with, but not the purpose of, an activity. The regulations provide for both standard permits and programmatic permits. Standard permits authorize individual instances of take that cannot practicably be avoided. Programmatic permits authorize recurring take that is unavoidable even after implementation of advanced conservation practices.

''Programmatic take'' is defined at 50 CFR 22.3 as ''take that is recurring, is not caused solely by indirect effects, and that occurs over the long term or in a location or locations that cannot be specifically identified.'' This definition distinguishes programmatic take from any other take that has indirect effects that continue to cause take after the initial action. We can issue programmatic permits for disturbance, as well as take resulting in mortalities, based on implementation of ''advanced conservation practices'' developed in coordination with the Service. ''Advanced conservation practices'' (ACPs) are defined at 50 CFR 22.3 as ''scientifically supportable measures that are approved by the Service and represent the best available techniques to reduce eagle disturbance and ongoing mortalities to a level where remaining take is unavoidable.'' Most take authorized under § 22.26 has been in the form of disturbance; however, permits may authorize lethal take that is incidental to an otherwise lawful activity, such as mortalities caused by collisions with rotating wind turbines. Since publication of the 2009 final rule, the Service has issued approximately 50 permits under the new regulations. However, we have not yet issued any programmatic permits.

In a separate action, [Docket No. FWS–R9–MB–2011–0054] we are proposing revisions to the regulations to extend the maximum term for programmatic permits up to 30 years, incorporating additional adaptive conservation measures if necessary to ensure the preservation of eagles. As part of that action, we are also proposing to modify the application fee structure for programmatic permits. Because those proposed regulations are a separate action from this notice, we are not soliciting, and will not consider, any comments submitted in response to this notice that are related to the issues addressed in the proposed regulations (the maximum term of programmatic permits and the programmatic permit application fee structure). Through this notice, we solicit public input on any other aspects of the permit program governed by 50 CFR 22.26 that may be improved by revision of the regulations. We are particularly interested in public input on the following three issues:

(1) *Clarifying the criteria for issuance of programmatic and standard permits.* Under the criteria, ''take that cannot practicably be avoided'' can be authorized with a standard permit; however, a programmatic permit requires that the take be ''unavoidable.'' The preamble accompanying the 2009 rule states, however, that ''applicants for both types of permits must take all practicable steps to avoid and minimize take'' (74 FR 46838). Should the regulations be revised so that the issuance criterion for programmatic permits is the same as for standard permits: That the project proponent has reduced take to the maximum degree practicable?

(2) *Compensatory mitigation.* Under what circumstances should permittees be required to provide compensatory mitigation? To what degree should any required mitigation offset the detrimental impacts to eagles? We also welcome input regarding what types of

specific compensatory mitigation measures may be appropriate.

(3) *Eagle Act preservation standard.* The Eagle Act requires the Service to determine that any take of eagles it authorizes is ''compatible with the preservation of bald eagles or golden eagles.'' In the preamble to the final regulations for eagle nonpurposeful take permits, and in the Final Environmental Assessment of the regulations, we defined that standard to mean ''consistent with the goal of stable or increasing breeding populations.'' We seek public input as to whether this standard is appropriate or whether it should be further refined or otherwise modified.

Authority: The authorities for this notice are the Migratory Bird Treaty Act of 1918, as amended (16 U.S.C. 703–712), and the Bald and Golden Eagle Protection Act (16 U.S.C. 668a).

Dated: December 20, 2011.

Rachel Jacobson,

Acting Assistant Secretary for Fish and Wildlife and Parks.

Editorial Note: This document was received in the Office of the Federal Register on March 30, 2012.

[FR Doc. 2012–8087 Filed 4–12–12; 8:45 am]

BILLING CODE 4310–55–P

Notices

Federal Register
Vol. 77, No. 72
Friday, April 13, 2012

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

April 10, 2012.

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), *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 this notification. Copies of the submission(s) may be obtained by calling (202) 720–8958.

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.

Animal and Plant Health Inspection Service

Title: Requirements for Request to Amend 7 CFR Part 319 Import Regulations.

OMB Control Number: 0579–0261.

Summary of Collection: As authorized by the Plant Protection Act (PPA) (7 U.S.C. 7701–*et seq.*), the Secretary of Agriculture may prohibit or restrict the importation, entry, exportation, or movement in interstate commerce of any plant, plant product, biological control organism, noxious weed, means of conveyance, or other article if the Secretary determines that the prohibition or restriction is necessary to prevent a plant pest or noxious weed from being introduced or disseminated within the United States. The Animal and Plant Health Inspection Service (APHIS) has established regulations governing the submission of requests for changes in its regulations that restrict the importation of plants, plant parts, and products.

Need and Use of the Information: APHIS will collect required information to properly consider requests and help to ensure that the information required to prepare a risk analysis and/or other analyses that evaluate the risks and other effects associated with a final ruling to change a regulation. This process requires the use of collecting information about the requestor, information about the commodity to be imported, shipping information, a description of pests and diseases associated with the commodity, risk mitigation or management strategies, and additional information as determined by APHIS to complete a pest risk analysis in accordance with international standards.

Description of Respondents: Business or other for-profit .

Number of Respondents: 37.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 2,960.

Animal and Plant Health Inspection Service

Title: Importation of Christmas Cactus and Easter Cactus in Growing Media from the Netherlands and Denmark.

OMB Control Number: 0579–0266.

Summary of Collection: Under the Plant Protection Act (PPA) (7 U.S.C. 7701–*et seq.*), the Secretary of Agriculture is authorized to prohibit or restrict the importation, entry, or movement of plants and plant pests to prevent the introduction of plant pests into the United States or their dissemination within the United States. The regulations contained in ''Subpart-Nursery Stock, Plants, Roots, Bulbs, Seeds, and Other Plant Products,'' §§ 319.37 through 319.37–14 contains, among other things, prohibitions and restrictions on the importation of plants, plant parts, and seeds for propagation. Christmas cactus and Easter cactus established in growing media are now allowed to be imported into the United States from the Netherlands and Denmark under certain conditions.

Need and Use of the Information: The Animal and Plant Health Inspection Service (APHIS) requires a phytosanitary certificate and a declaration stating the plants were grown in accordance with specific conditions, an agreement between APHIS and the plant protection services of the country where the plants are grown, and an agreement between the foreign plant protection service and the grower. The information is used as a guide to the intensity of the inspection that APHIS must conduct when the shipment arrives.

Without this information, all shipments would need to be inspected very thoroughly, thereby requiring considerably more time.

Description of Respondents: Business or other for-profit; Federal Government.

Number of Respondents: 20.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 120.

Animal and Plant Health Inspection Service

Title: Importation of Peppers from the Republic of Korea.

OMB Control Number: 0579–0282.

Summary of Collection: Under the Plant Protection Act (PPA) (7 U.S.C. 7701–7772), the Secretary of Agriculture is authorized to carry out operations or measures to detect, eradicate, suppress, control, prevent, or retard the spread of plant pests new to the United States or not known to be widely distributed throughout the United States. Regulations authorized by the PPA concerning the importation of fruits and

vegetables into the United States from certain parts of the world are contained in ''Subpart Fruits and Vegetables'' (7 CFR 319.56–1 through 319.56–47). The Animal and Plant Health Inspection Service (APHIS) amended the fruits and vegetables regulations to allow the importation of peppers from the Republic of Korea under certain conditions. As a condition of entry, the peppers would have to be grown in approved insect-proof, pest-free greenhouses and packed in pest-exclusionary packinghouses.

Need and Use of the Information: Each shipment of pepper from the Republic of Korea must be accompanied by a phytosanitary certificate of inspection with a declaration issued by the National Plant Quarantine Service of Korea officials stating the peppers were grown in greenhouses in accordance with the regulations in 7 CFR 319–56–42 and found free of certain plant pests. Failing to collect this information would cripple APHIS' ability to ensure that peppers from Korea are not carrying plant pests and would cause millions of dollars in damage to U.S. agriculture.

Description of Respondents: Federal Government (Foreign).

Number of Respondents: 1.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 3.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2012–8959 Filed 4–12–12; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Doc. No. AMS–DA–10–0089; DA–11–01]

Milk in the Northeast and Other Marketing Areas; Determination of Equivalent Price Series

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Determination of equivalent price series.

SUMMARY: It has been determined by the Deputy Administrator of Dairy Programs that the dairy products price series in the Dairy Products Sales report released by the Agricultural Marketing Service (AMS) is equivalent to the price series previously released by the National Agricultural Statistics Service (NASS) in the Dairy Products Prices report. The dairy product price series is used in the price discovery mechanism for raw milk component values, and the component values are then used in determining Federal milk market order (FMMO) minimum classified milk prices. AMS previously used the NASS prices in the determination of raw milk component values; however, the responsibility for the collection of dairy product sales data was transferred from NASS to AMS effective April, 1, 2012 (77 FR 8717), at which time NASS discontinued the publication of its Dairy Products Prices report. The data collected by AMS through this new system will be used for future component value computations and the subsequent calculation of FMMO minimum classified milk prices. The establishment of an equivalent dairy products price series is essential to the continuing operation of the FMMO program.

DATES: April 18, 2012.

FOR FURTHER INFORMATION CONTACT: Bret Tate, Order Formulation and Enforcement Division, USDA/AMS/Dairy Programs, STOP 0231–Room 2963, 1400 Independence Ave. SW., Washington, DC 20250–0231, (202) 720–7183, email address: *Bret.Tate@ams.usda.gov.*

SUPPLEMENTARY INFORMATION: This action provides an equivalent series of dairy products prices for the calculation of milk component values and classified milk prices in all FMMOs (7 CFR parts 1001, 1005, 1006, 1007, 1030, 1032, 1033, 1124, 1126, and 1131). The Department of Agriculture (Department) has been using the Dairy Products Prices report as published weekly by NASS in the calculation of raw milk component values, as referenced in section 1000.50. These component values are subsequently used in the computation of the minimum classified prices used by the FMMO program.

Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674 and 7253), and part 1000 and the applicable provisions of the orders regulating the handling of milk in the previously mentioned marketing areas, it is found and determined that:

(1) In September 2010, the Mandatory Price Reporting Act of 2010 (Pub. L. 111–239) amended section 273(d) of the Agricultural Marketing Act of 1946 (7 U.S.C. 1637b) to require that the Secretary establish an electronic reporting system for reporting data under the dairy product mandatory reporting program.

(2) As such, AMS implemented the electronic reporting system (77 FR 8717) and, as part of that rulemaking, it also announced the transfer of the collection of dairy product sales data from NASS to AMS, effective April 1, 2012. Subsequently, NASS discontinued its Dairy Products Prices report as of Friday, March 30, 2012.

(3) AMS began releasing its own dairy products price series for cheddar cheese (40 pound blocks and 500 pound barrels), butter, nonfat dry milk, and dry whey in a report titled Dairy Products Sales on April 4, 2012.

(4) Section 1000.54 provides that if for any reason a price required by the order for computing class prices is not available as prescribed in the order, the market administrator may use an equivalent price as determined by the Deputy Administrator, Dairy Programs, AMS.

(5) As the NASS publication stipulated in the order is unavailable for use in the computation of class prices, the Deputy Administrator for Dairy Programs has determined that the AMS price series is equivalent to those data previously collected by NASS, in accordance with the authorities granted by section 1000.54.

(6) Effective April 18, 2012, and thereafter, the data series contained in the AMS Dairy Products Sales report will be used to compute the raw milk component values that are used in determining FMMO minimum classified prices.

Authority: 7 U.S.C. 601–674, and 7253

Dated: April 9, 2012.

Ruihong Guo,

Associate Administrator, Agricultural Marketing Service.

[FR Doc. 2012–8911 Filed 4–12–12; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2012–0022]

Draft Guidelines on Biologics Quality Monitoring: Testing for the Detection of Mycoplasma Contamination

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of availability and request for comments.

SUMMARY: The International Cooperation on Harmonization of Technical Requirements for the Registration of Veterinary Medicinal Products (VICH) has developed a draft guideline titled ''Testing for the Detection of Mycoplasma Contamination.'' This draft guideline identifies stages of manufacture where products are to be tested and test procedures used to detect

the presence of Mycoplasma contamination. Because the guidelines apply to final product and master seed/cell testing in veterinary vaccines regulated by the Animal and Plant Health Inspection Service under the Virus-Serum-Toxin Act, we are requesting comments on the scope of the guideline and its provisions so that we may include any relevant public input on the draft in the Agency's comments to the VICH Steering Committee.

DATES: We will consider all comments that we receive on or before June 12, 2012.

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

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov/#!documentDetail;D=APHIS-2012-0022-0001*.
- *Postal Mail/Commercial Delivery:* Send your comment to Docket No. APHIS–2012–0022, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238.

Supporting documents and any comments we receive on this docket may be viewed at *http://www.regulations.gov/#!docketDetail;D=APHIS-2012-0022* or in our reading room, which is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 799–7039 before coming.

FOR FURTHER INFORMATION CONTACT: Dr. Donna L. Malloy, Section Leader, Operational Support, Center for Veterinary Biologics, Policy, Evaluation, and Licensing, VS, APHIS, 4700 River Road Unit 148, Riverdale Maryland 20737–1231; (301) 851–3426.

SUPPLEMENTARY INFORMATION: The International Cooperation on Harmonization of Technical Requirements for the Registration of Veterinary Medicinal Products (VICH) is a unique project conducted under the auspices of the World Organization for Animal Health that brings together the regulatory authorities of the European Union, Japan, and the United States and representatives from the animal health industry in the three regions. The purpose of VICH is to harmonize technical requirements for veterinary products (both drugs and biologics). Regulatory authorities and industry experts from Australia and New Zealand participate in an observer capacity. The World Federation of the Animal Health Industry (COMISA, the Confederation Mondiale de L'Industrie de la Sante Animale) provides the secretarial and administrative support for VICH activities.

The United States Government is represented in VICH by the Food and Drug Administration (FDA) and the Animal and Plant Health Inspection Service (APHIS). The FDA provides expertise on veterinary drugs, while APHIS fills a corresponding role for veterinary biological products. As VICH members, APHIS and FDA participate in efforts to enhance harmonization and have expressed their commitment to seeking scientifically based, harmonized technical requirements for the development of veterinary drugs and biological products. One of the goals of harmonization is to identify and reduce the differences in technical requirements for veterinary drugs and biologics among regulatory agencies in different countries.

The draft guideline ''Testing for the Detection of Mycoplasma Contamination'' (VICH Topic GL34) has been made available by the VICH Steering Committee for comments by interested parties. Mycoplasma contaminants may be introduced into cell culture and *in ovo* origin biological products through the master seeds, the master cell seed (stock), starting materials of animal origin, and in processing of biological materials during passage and product assembly. Therefore, it is necessary to demonstrate through testing that Mycoplasmas are not present, within the limits of the test, in the final product, working seeds and cells and harvests, and starting materials such as the master seed, master cell seed, and ingredients of animal origin. The draft guideline establishes stages of manufacture to be tested and test procedures to detect the presence of Mycoplasma contamination and would provide a unified standard to facilitate the mutual acceptance of test data by the relevant regulatory authorities. Because the draft guideline would apply to final product and master seed/cell testing in veterinary vaccines regulated by the APHIS under the Virus-Serum-Toxin Act (VSTA), we are requesting comments on its provisions so that we may include any relevant public input on the draft in the Agency's comments to the VICH Steering Committee.

In accordance with the VICH process, once a final draft of the document has been approved, the guideline will be recommended for adoption by the regulatory bodies of the European Union, Japan, and the United States. As with all VICH documents, each final guideline will not create or confer any rights for or on any person and will not operate to bind APHIS or the public. Further, the VICH guidelines specifically provide for the use of alternative approaches if those approaches satisfy applicable regulatory requirements.

Ultimately, APHIS intends to consider the VICH Steering Committee's final guideline for use by U.S. veterinary biologics licensees, permittees, and applicants. In addition, we may consider using the final guideline as the basis for proposed amendments to the regulations in 9 CFR chapter I, subchapter E (Viruses, Serums, Toxins, and Analogous Products; Organisms and Vectors). Because we anticipate that applicable provisions of the final version of ''Testing for the Detection of Mycoplasma Contamination'' may be introduced into APHIS' veterinary biologics regulatory program in the future, we encourage your comments on the draft guideline.

The draft guideline may be viewed on the Regulations.gov Web site or in our reading room (see **ADDRESSES** above for instructions for accessing Regulations.gov and information on the location and hours of the reading room). You may request copies of the draft guideline by calling or writing to the person listed under **FOR FURTHER INFORMATION CONTACT**.

Authority: 21 U.S.C. 151 *et seq.*

Done in Washington, DC, this 9th day of April 2012.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2012–8908 Filed 4–12–12; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2012–0017]

Availability of an Environmental Assessment for Field Testing Feline Interleukin-2 Immunomodulator, Live Canarypox Vector

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that the Animal and Plant Health Inspection Service has prepared an environmental assessment concerning authorization to ship for the purpose of field testing, and then to field test, an unlicensed Feline Interleukin-2

Immunomodulator, Live Canarypox Vector. The environmental assessment, which is based on a risk analysis prepared to assess the risks associated with the field testing of this vaccine, examines the potential effects that field testing this veterinary vaccine could have on the quality of the human environment. Based on the risk analysis, we have reached a preliminary determination that field testing this veterinary vaccine will not have a significant impact on the quality of the human environment, and that an environmental impact statement need not be prepared. We intend to authorize shipment of this vaccine for field testing following the close of the comment period for this notice unless new substantial issues bearing on the effects of this action are brought to our attention. We also intend to issue a U.S. Veterinary Biological Product license for this vaccine, provided the field test data support the conclusions of the environmental assessment and the issuance of a finding of no significant impact and the product meets all other requirements for licensing.

DATES: We will consider all comments that we receive on or before May 14, 2012.

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

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov/#!documentDetail;D=APHIS-2012-0017-0001.*
- *Postal Mail/Commercial Delivery:* Send your comment to Docket No. APHIS–2012–0017, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238.

Supporting documents and any comments we receive on this docket may be viewed at *http://www.regulations.gov/#!docketDetail;D=APHIS-2012-0017* or in our reading room, which is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 799–7039 before coming.

FOR FURTHER INFORMATION CONTACT: Dr. Donna Malloy, Operational Support Section, Center for Veterinary Biologics, Policy, Evaluation, and Licensing, VS, APHIS, 4700 River Road Unit 148, Riverdale, MD 20737–1231; phone (301) 851–3426, fax (301) 734–4314.

For information regarding the environmental assessment or the risk analysis, or to request a copy of the environmental assessment (as well as the risk analysis with confidential business information removed), contact Dr. Patricia L. Foley, Risk Manager, Center for Veterinary Biologics, Policy, Evaluation, and Licensing VS, APHIS, 1920 Dayton Avenue, P.O. Box 844, Ames, IA 50010; phone (515) 337–6100, fax (515) 337–6120.

SUPPLEMENTARY INFORMATION: Under the Virus-Serum-Toxin Act (21 U.S.C. 151 *et seq.*), a veterinary biological product must be shown to be pure, safe, potent, and efficacious before a veterinary biological product license may be issued. A field test is generally necessary to satisfy prelicensing requirements for veterinary biological products. Prior to conducting a field test on an unlicensed product, an applicant must obtain approval from the Animal and Plant Health Inspection Service (APHIS), as well as obtain APHIS' authorization to ship the product for field testing.

To determine whether to authorize shipment and grant approval for the field testing of the unlicensed product referenced in this notice, APHIS conducted a risk analysis to assess the potential effects of this product on the safety of animals, public health, and the environment. Based on the risk analysis, APHIS has prepared an environmental assessment (EA) concerning the field testing of the following unlicensed veterinary biological product:

Requester: Merial, Inc.

Product: Feline Interleukin-2 Immunomodulator, Live Canarypox Vector.

Field Test Locations: Georgia, North Carolina, New York, Tennessee, Florida, and Arizona.

The product consists of a live recombinant canarypox virus vector expressing the feline interleukin-2 cytokine. The vaccine is for subcutaneous vaccination of adult cats diagnosed with Stage I fibrosarcoma as an aid in delaying post-surgical recurrence following excision of the tumor.

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

Unless substantial issues with adverse environmental impacts are raised in response to this notice, APHIS intends to issue a finding of no significant impact (FONSI) based on the EA and authorize shipment of the above product for the initiation of field tests following the close of the comment period for this notice.

Because the issues raised by field testing and by issuance of a license are identical, APHIS has concluded that the EA that is generated for field testing would also be applicable to the proposed licensing action. Provided that the field test data support the conclusions of the original EA and the issuance of a FONSI, APHIS does not intend to issue a separate EA and FONSI to support the issuance of the product license, and would determine that an environmental impact statement need not be prepared. APHIS intends to issue a veterinary biological product license for this vaccine following completion of the field test provided no adverse impacts on the human environment are identified and provided the product meets all other requirements for licensing.

Authority: 21 U.S.C. 151–159.

Done in Washington, DC, this 9th day of April 2012.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2012–8912 Filed 4–12–12; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2012–0013]

Notice of Establishment of a Veterinary Services Stakeholder Registry

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: This notice announces the availability of a new Veterinary Services email subscription service.

FOR FURTHER INFORMATION CONTACT: Mrs. R.J. Cabrera, Writing, Editing, and Regulatory Coordination, VS, APHIS, 4700 River Road Unit 35, Riverdale, MD 20737–1231; (301) 851–3478.

SUPPLEMENTARY INFORMATION: The Animal and Plant Health Inspection Service (APHIS) has established a Veterinary Services (VS) Stakeholder Registry, an email subscription service for individuals and organizations interested in receiving updates regarding APHIS and VS issues. Subscribers will be able to choose from an array of topics such as VS spotlights

and news releases, Federal notices, and current VS programs, as well as material sorted by diseases, guidance documents and manual updates, and updates on frameworks for proposed and final rules. In addition to choosing topics of interest, subscribers may select how often they want to receive email messages.

Persons interested in becoming subscribers may sign up now for the new registry at *https://public.govdelivery.com/accounts/USDAAPHIS/subscriber/topics?qsp=USDAAPHIS_1*. Questions concerning the VS registry may be directed to the person listed under **FOR FURTHER INFORMATION CONTACT**.

Done in Washington, DC, this 9th day of April 2012.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2012–8913 Filed 4–12–12; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XB166

Mid-Atlantic Fishery Management Council; Public Hearings

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

ACTION: Notice of public hearings.

SUMMARY: The Mid-Atlantic Fishery Management Council (Council) will hold public hearings in April and May of 2012 to allow for public input on Amendment 14 to the Atlantic Mackerel, Squid, and Butterfish (MSB) Fishery Management Plan (FMP).

DATES: Written public comments must be received before 5 p.m. EST, Monday, June 4, 2012. The hearings will be held between April 30 and May 22, 2012. For specific dates and times, see **SUPPLEMENTARY INFORMATION** below.

ADDRESSES: The hearings will be held (chronologically) in Alexandria, VA; Riverhead, NY; Newport News, VA; Cape May, NJ; Gloucester, MA; and Providence, RI. The Newport News hearing will also be available via webinar. For specific locations and webinar access, see **SUPPLEMENTARY INFORMATION** below. Written comments should be mailed to the Council office at the address below and marked ''AMENDMENT 14.'' The public hearing document can be obtained by contacting the Council at the address below or at *http://www.mafmc.org/fmp/msb.htm.*

Council address: Mid-Atlantic Fishery Management Council, 800 N. State Street, Suite 201, Dover, DE 19901; telephone: (302) 674–2331.

FOR FURTHER INFORMATION CONTACT: Christopher M. Moore Ph.D., Executive Director, Mid-Atlantic Fishery Management Council, 800 N. State Street, Suite 201, Dover, DE 19901; telephone: (302) 526–5255.

SUPPLEMENTARY INFORMATION: Amendment 14 deals with incidental catch and general management of blueback herring, alewife, American shad, and hickory shad (river herrings and shads or ''RH/S'') in the MSB FMP. The Amendment has three purposes: (A) Implement Effective RH/S Catch Monitoring; (B) Reduce RH/S Bycatch and/or Catch; and (C) Consider if RH/S should be added as species directly managed by the Council. There are 9 alternative sets that consider the following management measures:

Alternative Set 1: Additional Vessel Reporting Measures;

Alternative Set 2: Additional Dealer Reporting Measures;

Alternative Set 3: Additional At-Sea Observation Optimization Measures;

Alternative Set 4: Port-side and Other Sampling/Monitoring Measures;

Alternative Set 5: At-Sea Observer Coverage Requirements;

Alternative Set 6: Mortality Caps on RH/S catch in the MSB fisheries.

Alternative Set 7: Large area restrictions on the MSB fisheries in areas of high RH/S catch;

Alternative Set 8: Smaller hotspot restrictions on the MSB fisheries in areas of high RH/S catch;

Alternative Set 9: Adding RH/S as ''Stocks in the Fishery'' in the MSB FMP.

Summaries of the proposed actions will be available and presented at the hearings. The full Draft Environmental Impact Statement (DEIS) that analyzes the proposed actions is available by contacting the Council office or at *http://www.mafmc.org/fmp/msb.htm* after April 16th. The scheduled public hearings follow. If no one is present halfway through a hearing or later, the hearing may be closed. Some GPS navigation units may provide faulty directions for these locations so call ahead with the number provided if unfamiliar with a hearing location. All hearings will be digitally recorded and saved as transcripts of the hearing.

April 30, 2012: 5:30–7:30 p.m.; Crowne Plaza Hotel Old Town; 901 North Fairfax Street; Alexandria, VA, telephone: (703) 683–6000.

May 15, 2012: 7–9 p.m.; Hyatt Place Long Island/East End; 451 East Main Street; Riverhead, NY, telephone: (631) 208–0002.

May 16, 2012: 6–8 p.m.; Available via Internet webinar (*https://www1.gotomeeting.com/register/887273248*). There will also be a listening station at: The Virginia Marine Resources Commission; 2600 Washington Avenue; Newport News, VA, telephone: (757) 247–2200.

May 17, 2012: 7–9 p.m.; Congress Hall Hotel; 29 Perry St; Cape May, NJ, telephone: (609) 884–8421.

May 21, 2012: 6–8 p.m.; Annisquam River Marine Fisheries Station; 30 Emerson Ave; Gloucester, MA, telephone: (978) 282–0308.

May 22, 2012: 5:30–7:30 p.m.; Radisson Hotel Providence Airport; 2081 Post Road; Warwick, RI, telephone: (401) 739–3000.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to M. Jan Saunders at the Mid-Atlantic Council Office (302) 526–5251 at least five days prior to the meeting date.

Dated: April 10, 2012.

Tracey L. Thompson,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2012–8885 Filed 4–12–12; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XB165

Fisheries of the South Atlantic; South Atlantic Fishery Management Council; Public Meeting

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

ACTION: Notice of a public meeting of the South Atlantic Fishery Management Council's Technical Shrimp Review Panel.

SUMMARY: The South Atlantic Fishery Management Council (SAFMC) will hold a meeting of its Technical Shrimp Review Panel via Webinar. See **SUPPLEMENTARY INFORMATION**.

DATES: The meeting will take place May 2, 2012. See **SUPPLEMENTARY INFORMATION**.

ADDRESSES: The meeting will be held via webinar. The webinar is open to

members of the public. Those interested in participating should contact Kim Iverson (See **FOR FURTHER INFORMATION CONTACT**) to request an invitation providing webinar access information.

FOR FURTHER INFORMATION CONTACT: Kim Iverson, Public Information Officer, South Atlantic Fishery Management Council, 4055 Faber Place Drive, Suite 201, N. Charleston, SC, 29405; telephone: (843) 571–4366 or toll free (866) SAFMC–10; fax: (843) 769–4520; email: *kim.iverson@safmc.net.*

SUPPLEMENTARY INFORMATION: Members of the Shrimp Review Panel will meet via webinar from 9 a.m. until 11 a.m. on May 2, 2012. The focus of the meeting will be to recommend changes in the biological parameters and survey methods used in determining the stock abundance of pink shrimp. This information will be used in developing Amendment 9 to the Shrimp Fishery Management Plan, which includes an action for revising methods to be better determine the Minimum Stock Size Threshold (MSST) for pink shrimp.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for auxiliary aids should be directed to the Council office (see **ADDRESSES**) 3 days prior to the meeting.

Note: The times and sequence specified in this agenda are subject to change.

Dated: April 10, 2012.

Tracey L. Thompson,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2012–8910 Filed 4–12–12; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XB164

Western Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of public meetings.

SUMMARY: The Western Pacific Fishery Management Council (Council) will hold a meeting of its Pelagics Plan Team (PPT) in Honolulu, HI to discuss fishery issues and develop recommendations for future management.

DATES: The meeting of the PPT will be held between May 15, 2012 and May 17 2012, from 8:30 a.m. to 5 p.m. See **SUPPLEMENTARY INFORMATION** for specific dates and times.

ADDRESSES: The meeting will be held at the Council Office Conference Room, Western Pacific Fishery Management Council, 1164 Bishop St., Suite 1400, Honolulu, HI 96813; telephone: (808) 522–8220.

FOR FURTHER INFORMATION CONTACT: Kitty M. Simonds, Executive Director; telephone: (808) 522–8220.

SUPPLEMENTARY INFORMATION: The PPT will meet at the Council Conference Room to discuss the following agenda items:

Tuesday, May 15, 2012, 8:30 a.m.

1. Introduction
2. Annual Report review
   a. Review of 2011 Annual Report modules and recommendations
   i. Commonwealth of the Northern Mariana Islands (CNMI)
   ii. American Samoa
   iii. Guam
   iv. Hawaii
   v. International
   vi. Recreational
   b. 2011 Annual Report region wide recommendations

Wednesday–Thursday, May 16–17, 2012, 8:30 a.m.

3. Hawaii pelagics annual report module changes
4. American Samoa annual report module changes
5. Summary of current Pelagics Fishery Ecosystem Plan amendment actions
6. Value of marker (≤100 pounds) bigeye tuna in relation to proposed False Killer Whale management measures
7. Outcomes of the eighth meeting of the Western and Central Pacific Fishery Commission
8. Other business
9. Public comment
10. Pelagic Plan Team Recommendations

The order in which the agenda items are addressed may change. The PPT will meet as late as necessary to complete scheduled business.

Although non-emergency issues not contained in this agenda may come before the PPT for discussion, those issues may not be the subject of formal action during these meetings. Plan Team action will be restricted to those issues specifically listed in this document and any issue arising after publication of this document that requires emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Kitty M. Simonds, (808) 522–8220 (voice) or (808) 522–8226 (fax), at least 5 days prior to the meeting date.

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

Dated: April 10, 2012.

Tracey L. Thompson,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2012–8949 Filed 4–12–12; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No. 120314189–2189–01]

NCAnet: Building a Network of Networks in Support of the National Climate Assessment (NCA)

AGENCY: Office of Oceanic and Atmospheric Research (OAR), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce.

ACTION: Notice.

SUMMARY: This notice announces the establishment of and invites participation in NCAnet, a network of partners who extend the National Climate Assessment (NCA) process and products to a broad audience of assessment users through the development of assessment-related capacities and products, such as collection and synthesis of data or other technical and scientific information relevant to current and future NCA reports, dissemination of NCA report findings to various users of assessment information, engagement of assessment information producers and users, supporting NCA events, and producing communications materials related to the NCA and NCA report findings.

DATES: Comments and expressions of interest may be submitted at any time and will be reviewed on a rolling basis.

ADDRESSES: General inquiries and expressions of interest should be submitted via email to Emily Therese Cloyd, NCA Public Participation and Engagement Coordinator, at *ecloyd@usgcrp.gov.* Prospective partners may also use the online submission tool at *http://ncanet.usgcrp.gov/home/sign-up* to submit their expression of interest.

Responses to this notice cannot be accepted by the government to form a

binding contract or issue a grant. Information obtained as a result of this request may be used by the government for program planning on a non-attribution basis. Do not submit any information that might be considered proprietary or confidential.

More information about the NCA process, including the strategic plan, engagement strategy, and information about the National Climate Assessment Development and Advisory Committee can be found at *http://assessment.globalchange.gov.*

FOR FURTHER INFORMATION CONTACT: Any questions about the content of this request should be sent to Emily Therese Cloyd, NCA Public Participation and Engagement Coordinator, US Global Change Research Program National Coordination Office, 1717 Pennsylvania Ave. NW., Suite 250, Washington, DC 20006, Telephone (202) 223–6262, Fax (202) 223–3065, email *ecloyd@usgcrp.gov.*

SUPPLEMENTARY INFORMATION:

Background

The National Climate Assessment (NCA) is being conducted under the auspices of the US Global Change Research Program (USGCRP), pursuant to the Global Change Research Act of 1990, 15 U.S.C. 2936, which requires a report to the President and the Congress every four years that: Integrates, evaluates, and interprets the findings of the USGCRP; analyzes the effects of global change on the natural environment, agriculture, energy production and use, land and water resources, transportation, human health and welfare, human social systems, and biological diversity; and analyzes current trends in global change, both human-induced and natural, and projects major trends for the subsequent 25 to 100 years.

The National Climate Assessment Development and Advisory Committee (NCADAC) is an advisory body convened to produce the 2013 NCA report and to provide advice and recommendations toward the development of an ongoing, sustainable national assessment of global change impacts and adaptation and mitigation strategies for the United States. Although this NCA report and subsequent reports will continue to depend heavily on Federal agency leadership and corresponding technical reports, NCADAC recognizes and seeks to leverage the important and growing distributed science capabilities and core competencies across the US. Indeed, it is a goal of the NCA process to increase assessment capacity—that is, the ability to conduct and use scientific assessments—both within and outside of the Federal government. Expertise within state and local governments, non-governmental organizations, impacted communities, professional societies, and private industry represent currently untapped assets and diverse scientific and technical perspectives, especially as they relate to the value of climate and global change information for decision making.

As a way of engaging expertise outside of the federal government, the Engagement, Communication, and Evaluation Working Group of the NCADAC has established NCAnet as a network of partner organizations that can support and extend the NCA process, convey NCA products to a broader audience, and encourage submission of data and other technical inputs from non-federal sources. The NCADAC is seeking to build sustained assessment capacity to conduct and use assessments by cultivating partnerships with organizations that will participate as a part of the sustained assessment process. Partners may contribute a variety of technical and assessment capacities, such as collection and synthesis of data or other technical and scientific information relevant to current and future NCA reports, dissemination of NCA report findings to various users of assessment information, engagement of assessment information producers and users, supporting NCA events, and producing communications materials related to the NCA and NCA report findings.

The NCADAC has identified a number of characteristics that it seeks in NCAnet partners. These include:

- Organization's ability to support its own participation
- Interest (and experience) in climate-related issues
- Support for the objectives of the NCA (*http://www.globalchange.gov/what-we-do/assessment/nca-overview/objectives*)
- Ability to contribute knowledgeably and meaningfully to the NCA
- Capacity to link to key regions, sectors, and stakeholder groups for the NCA
- Responsive point of contact within the partner organization
- Willingness and ability to meet deadlines and participate in a collaborative fashion

Partners in NCAnet will, individually and in collaboration with each other, work to disseminate information about the NCA through their networks of members and stakeholders, aggregate and provide information from their members and stakeholders to the NCA, help identify individuals and groups within their networks who can actively contribute to assessment activities, and provide feedback to NCA staff and the NCADAC Engagement, Communications and Evaluation Working Group on NCAnet and the NCA as a whole. Partners will accomplish this through the development and delivery of a variety of technical and assessment capacities, including technical inputs that collect or synthesize data or other technical and scientific information, facilitation of meetings or workshops, development of communications materials, helping to build a community of practice and supporting resources around assessment activities, or other contributions, including those described in ''Potential Technical Inputs and Assessment Capacities and Suggested Best Practices'', available from *http://www.globalchange.gov/what-we-do/assessment/nca-activities/guidance.*

An initial vision for NCAnet is further described in ''An Overview of NCAnet'', available from *http://ncanet.usgcrp.gov.* More information about the NCA process, including the strategic plan, engagement strategy, and information about the NCADAC can be found at *http://assessment.globalchange.gov.*

Request for Expressions of Interest

Individuals, organizations, or existing networks (collectively, ''prospective partners'') with an interest in climate and global change who would like to join NCAnet are encouraged to review the online materials about NCAnet, available from *http://ncanet.usgcrp.gov,* and to prepare a short expression of interest (EOI) describing their interest. All EOIs submitted in response to this notice must include a primary point of contact and contact information (phone number, mailing address, email address, institutional affiliation(s), and web site if applicable). In addition, it is recommended that EOIs include the following:

- Background information about the prospective partner
- The NCA topic(s) of interest (the most recent strategic planning documents and outline of NCA report topics is available from *http://www.globalchange.gov/what-we-do/assessment/backgroundprocess*)
- Description of anticipated contributions of technical and assessment capacities

Please see the **ADDRESSES** section for more information on how prospective partners may submit general inquiries or expressions of interest. Comments and expressions of interest may be

submitted at any time and will be reviewed on a rolling basis.

Prospective partners submitting an EOI may choose to join NCAnet directly or to coordinate their participation through an existing partner organization. Upon joining, NCAnet partners will be asked to further describe potential contributions to the NCA, including planned technical inputs, facilitation of meetings or workshops, development of communications materials, or other contributions. All descriptions and resulting contributions will be provided to the NCADAC Engagement, Communication, and Evaluation Working Group.

Teams are encouraged to maximize transparency, openness, and information quality in any contributions they make. Partners are requested to provide written summaries to the Engagement, Communications and Evaluation Working Group of their NCA related activities, along with any external sources of funding used to conduct such activities. Only those contributions centered on documented evidence and defensible scientific foundations, and those that document their expert and stakeholder engagement and communication methods, are likely to be considered by the NCADAC. Contributions that are found to be consistent with NCA standards for scientific quality and rigor (e.g., *http://www.globalchange.gov/what-we-do/assessment/nca-activities/guidance*) may be considered by the NCADAC for posting in the publicly-accessible NCA online database, referenced on other NCA Web pages, or used within the NCA.

While the NCADAC welcomes submissions from prospective partners and subsequent contributions to the NCA, it makes no commitments about how contributions will be used in any NCA reports or processes (*http://www.globalchange.gov/what-we-do/assessment/nca-activities/guidance*). In addition, the US Global Change Research Program (USGCRP), NOAA and the NCADAC are not able to fund the development of partners' technical or assessment capacities. Partners are free, of course, to seek funding from within or outside of their organization to support their NCAnet-related activities.

Responses to this notice cannot be accepted by the government to form a binding contract or issue a grant. Information obtained as a result of this request may be used by the government for program planning on a non-attribution basis. Do not submit any information that might be considered proprietary or confidential.

Dated: April 10, 2012.

Terry Bevels,

Acting Chief Financial Officer/Chief Financial Officer, Office of Oceanic and Atmospheric Research, National Oceanic and Atmospheric Administration.

[FR Doc. 2012–8931 Filed 4–12–12; 8:45 am]

BILLING CODE P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Additions and Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to and deletions from the Procurement List.

SUMMARY: This action adds services to the Procurement List that will be provided by nonprofit agencies employing persons who are blind or have other severe disabilities, and deletes services from the Procurement List previously provided by such agencies.

DATES: *Effective Date:* 5/14/2012.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202–3259.

FOR FURTHER INFORMATION CONTACT: Barry S. Lineback, Telephone: (703) 603–7740, Fax: (703) 603–0655, or email *CMTEFedReg@AbilityOne.gov.*

SUPPLEMENTARY INFORMATION:

Additions

On 2/17/2012 (77 FR 9631), the Committee for Purchase From People Who Are Blind or Severely Disabled published a notice of proposed additions to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the services and impact of the additions on the current or most recent contractors, the Committee has determined that the services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 8501–8506 and 41 CFR 51–2.4.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will provide the services to the Government.

2. The action will result in authorizing small entities to provide the services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 8501–8506) in connection with services proposed for addition to the Procurement List.

End of Certification

Accordingly, the following services are added to the Procurement List:

Services

Service Type/Location: Base Supply Center & Individual Equipment Element, 310 M Street, Keesler AFB, MS.
NPA: L.C. Industries for the Blind, Inc., Durham, NC.
Contracting Activity: Dept of the Air Force, FA3010 81 CONS CC, Keesler AFB, MS.
Service Type/Location: Base Supply Center, Securities and Exchange Commission, 100 F Street NE., Washington, DC.
NPA: Winston-Salem Industries for the Blind, Inc., Winston-Salem, NC.
Contracting Activity: Securities and Exchange Commission, Office of Acquisitions, Alexandria, VA.

Deletions

On 2/17/2012 (77 FR 9631), the Committee for Purchase From People Who Are Blind or Severely Disabled published a notice of proposed deletions from the Procurement List.

After consideration of the relevant matter presented, the Committee has determined that the services listed below are no longer suitable for procurement by the Federal Government under 41 U.S.C. 8501–8506 and 41 CFR 51–2.4.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in additional reporting, recordkeeping or other compliance requirements for small entities.

2. The action may result in authorizing small entities to provide the services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 8501–8506) in connection with the services deleted from the Procurement List.

End of Certification

Accordingly, the following services are deleted from the Procurement List:

Services

Service Type/Location: Custodial Services, Veterans Center, 1642 42nd Street NE., Cedar Rapids, IA.
NPA: Goodwill Industries of the Heartland, Iowa City, IA.
Contracting Activity: Department of Veterans Affairs, NAC, Hines, IL.
Service Type/Location: Janitorial/Custodial, U.S. Federal Building, First and Water Street, Alpena, MI.
NPA: Northeastern Michigan Rehabilitation and Opportunity Center (NEMROC), Alpena, MI.
Contracting Activity: General Services Administration, Public Buildings Service, Property Management Service Center, Detroit, MI.

Barry S. Lineback,

Director, Business Operations.

[FR Doc. 2012–8905 Filed 4–12–12; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List Proposed Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed additions to the Procurement List.

SUMMARY: The Committee is proposing to add products and services to the Procurement List that will be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

Comments Must Be Received On or Before: 5/14/2012.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202–3259.

FOR FURTHER INFORMATION OR TO SUBMIT COMMENTS CONTACT: Barry S. Lineback, Telephone: (703) 603–7740, Fax: (703) 603–0655, or email *CMTEFedReg@AbilityOne.gov.*

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 8503(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the proposed actions.

Additions

If the Committee approves the proposed additions, the entities of the Federal Government identified in this notice will be required to procure the products and services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. If approved, the action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the products and services to the Government.

2. If approved, the action will result in authorizing small entities to furnish the products and services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 8501–8506) in connection with the products and services proposed for addition to the Procurement List.

Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

End of Certification

The following products and services are proposed for addition to the Procurement List for production by the nonprofit agencies listed:

Products

NSN: MR 355—Set, Serving Set, Party Traveling.
NSN: MR 927—Set, Brush and Caddy, Contour Bowl.
NPA: Industries for the Blind, Inc., West Allis, WI.
Contracting Activity: Military Resale-Defense Commissary Agency, Fort Lee, VA.
Coverage: C-List for the requirements of military commissaries and exchanges as aggregated by the Defense Commissary Agency.

Services

Service Type/Location:
Janitorial Services, Engineering Research & Development Center, Construction Engineering Research Lab (ERDC–CERL), 2902 Newmark Drive, Champaign, IL.
AT&T Building, 3001 Newmark Drive, Champaign, IL.
NPA: The Chicago Lighthouse for People Who Are Blind or Visually Impaired, Chicago, IL.
Contracting Activity: Dept of the Army, XU W2R2 Const Engrg Lab, Champaign, IL.
Service Type/Locations:
Latrine Services, Stryker Overflow Lot, Railroad Avenue, Joint Base Lewis-McChord, WA.
Stryker National Logistics Center, Building 2701 C Street SW., Auburn, WA.
NPA: Skookum Educational Programs, Bremerton, WA.
Contracting Activity: Dept of the Army, W4GG HQ US Army TACOM, Warren, MI.

Barry S. Lineback

Director, Business Operations.

[FR Doc. 2012–8904 Filed 4–12–12; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed Additions to the Procurement List.

SUMMARY: The Committee is proposing to add products to the Procurement List that will be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

Comments Must Be Received On or Before: 5/14/2012.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia, 22202–3259.

FOR FURTHER INFORMATION OR TO SUBMIT COMMENTS CONTACT: Barry S. Lineback, Telephone: (703) 603–7740, Fax: (703) 603–0655, or email *CMTEFedReg@AbilityOne.gov.*

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 8503 (a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the proposed actions.

Additions

If the Committee approves the proposed additions, the entities of the Federal Government identified in this notice will be required to procure the products listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. If approved, the action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other

than the small organizations that will furnish the products to the Government.

2. If approved, the action will result in authorizing small entities to furnish the products to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 8501–8506) in connection with the products proposed for addition to the Procurement List.

Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

End of Certification

The following products are proposed for addition to the Procurement List for production by the nonprofit agencies listed:

Products

Floor Mat, Anti-Skid Backing

NSN: 7220–01–411–1515—3′ x 5′, Slate/Gray.
NSN: 7220–01–411–2979—3′ x 5′, Chestnut/Dark Brown.
NSN: 7220–01–411–2980—4′ x 6′, Chestnut/Dark Brown.
NPA: Wiscraft, Inc., Milwaukee, WI.
Contracting Activity: General Services Administration, Fort Worth, TX.
Coverage: A–List for the Total Government Requirement as aggregated by the General Services Administration.
NSN: MR 353—Scrubber with Handle, Nylon Mesh, All Purpose, 2PK.
NPA: Industries for the Blind, Inc., West Allis, WI.
Contracting Activity: Military Resale-Defense Commissary Agency, Fort Lee, VA.
Coverage: C-List for the requirements of military commissaries and exchanges as aggregated by the Defense Commissary Agency.

Barry S. Lineback,

Director, Business Operations.

[FR Doc. 2012–8950 Filed 4–12–12; 8:45 am]

BILLING CODE 6353–01–P

CONSUMER PRODUCT SAFETY COMMISSION

Sunshine Act Meetings Notice

TIME AND DATE: Wednesday, April 11, 2012; 10 a.m.–11 a.m.

PLACE: Hearing Room 420, Bethesda Towers, 4330 East West Highway, Bethesda, Maryland.

STATUS: Closed to the Public.

MATTER TO BE CONSIDERED:

Compliance Status Report.

The Commission staff will brief the Commission on the status of compliance matters.

For a recorded message containing the latest agenda information, call (301) 504–7948.

CONTACT PERSON FOR MORE INFORMATION: Todd A. Stevenson, Office of the Secretary, U.S. Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814, (301) 504–7923.

Dated: April 6, 2012.

Todd A. Stevenson,

Secretary.

[FR Doc. 2012–9040 Filed 4–11–12; 4:15 pm]

BILLING CODE 6355–01–P

CONSUMER PRODUCT SAFETY COMMISSION

Sunshine Act Meetings

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: Vol. 77, No. 62, Friday, March 30, 2012, page 19263.

ANNOUNCED TIME AND DATE OF MEETING: Wednesday, April 4, 2012, 10 a.m.–11 a.m.

MEETING CANCELED: For a recorded message containing the latest agenda information, call (301) 504–7948.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Todd A. Stevenson, Office of the Secretary, 4330 East West Highway, Bethesda, MD 20814 (301) 504–7923.

Dated: April 3, 2012.

Todd A. Stevenson,

Secretary.

[FR Doc. 2012–9042 Filed 4–11–12; 4:15 pm]

BILLING CODE 6355–01–P

CONSUMER PRODUCT SAFETY COMMISSION

Sunshine Act Meeting Notice

TIME AND DATE: Wednesday, April 18, 2012, 10 a.m.–11 a.m.

PLACE: Room 420, Bethesda Towers, 4330 East West Highway, Bethesda, Maryland.

STATUS: Commission Meeting—Open to the Public.

MATTERS TO BE CONSIDERED:

Decisional Matter: § 1112: Lab Withdrawal, Codification & Audit Provisions.

A live webcast of the Meeting can be viewed at *www.cpsc.gov/webcast.*

For a recorded message containing the latest agenda information, call (301) 504–7948.

CONTACT PERSON FOR MORE INFORMATION: Todd A. Stevenson, Office of the Secretary, U.S. Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814, (301) 504–7923.

Dated: April 10, 2012.

Todd A. Stevenson,

Secretary.

[FR Doc. 2012–9041 Filed 4–11–12; 4:15 pm]

BILLING CODE 6355–01–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID DOD–2012–OS–0047]

Privacy Act of 1974; System of Records

AGENCY: Defense Intelligence Agency, DoD.

ACTION: Notice to alter a system of records.

SUMMARY: The Defense Intelligence Agency proposes to alter a system in its existing inventory of records systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: This proposed action will be effective on May 14, 2012 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, 4800 Mark Center Drive, East Tower, 2nd Floor, Suite 02G09, Alexandria, VA 22350–3100.

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. Theresa Lowery at Defense Intelligence Agency, DAN 1–C, 600 McDill Blvd., Washington, DC 20340–0001, or by phone at (202) 231–1193.

SUPPLEMENTARY INFORMATION: The Defense Intelligence Agency 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 April 6, 2012, 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: April 9, 2012.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

LDIA 07–0003

Information Technology Support System (September 6, 2007, 72 FR 51215)

CHANGES:

* * * * *

SYSTEM NAME:

Delete entry and replace with ''Department of Defense Intelligence Information System (DoDIIS) Customer Relationship Management.''

SYSTEM LOCATION:

Delete entry and replace with ''Defense Intelligence Agency, 200 MacDill Boulevard, Washington, DC 20304–0001.''

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Delete entry and replace with ''Civilian, military and contract employees who request access to information under the security cognizance of DoDIIS''.

CATEGORIES OF RECORDS IN THE SYSTEM:

Delete entry and replace with ''Records include identifying information: Name, Social Security Number (SSN), Employee Identification Number (EIN), work email address, work phone number and network user identification; service request records relating to password issuance, type of security clearance, and name of system to which access has been granted.''

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with ''Executive Order 12958, Classified National Security Information; Homeland Security Presidential Directive (HSPD–12), Policy for a Common Identification Standard for Federal Employees and Contractors; Director of Central Intelligence Directive (DCID) 6–3, Protecting Sensitive Compartmented Information within Information Systems; Department of Defense (DoD), DoD 5200.2–R, DoD Personnel Security Program; Defense Intelligence Agency (DIA) 8500.003, Systems Access; and E.O. 9397 (SSN), as amended.''

PURPOSE:

Delete entry and replace with ''The system will manage records generated as a result of requests for access to systems under DoDIIS. Information is used to meet regulatory requirements when granting access to information systems and to maintain a repository of personnel who have been granted access.''

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act of 1974, these records contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD ''Blanket Routine Uses'' set forth at the beginning of the Defense Intelligence Agency's compilation of systems records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

* * * * *

RETRIEVABILITY:

Delete entry and replace with ''Individual's last name and network user-identification.''

* * * * *

RETENTION AND DISPOSAL:

Delete entry and replace with ''Temporary records are deleted when the individual is no longer under the security cognizance of DoDIIS. Records are electronically deleted from the database.''

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with ''Functional Program Manager, Deputy Directorate for Information Management and Chief Information Officer, Defense Intelligence Agency, 200 MacDill Boulevard, Washington, DC 20304–0001.''

NOTIFICATION PROCEDURE:

Delete entry and replace with ''Individuals seeking to determine whether information about themselves is contained in this system of records should address written inquiries to the DIA Freedom of Information Office (DAN–1A), Defense Intelligence Agency, 200 MacDill Boulevard, Washington, DC 20340–0001.

Request should contain the individual's full name, current address, and telephone number.''

RECORD ACCESS PROCEDURES:

Delete entry and replace with ''Individuals seeking access to information about themselves, contained in this system of records, should address written inquiries to the DIA Freedom of Information Office (DAN–1A), 200 MacDill Boulevard, Washington, DC 20340–0001.

Request should contain the individual's full name, current address, and telephone number.''

CONTESTING RECORD PROCEDURES:

Delete entry and replace with ''DIA's rules for accessing records, for contesting contents and appealing initial agency determinations are published in DIA Instruction 5400.001 ''Defense Intelligence Agency Privacy Program''; or may be obtained from the system manager.''

* * * * *

[FR Doc. 2012–8869 Filed 4–12–12; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Renewal of Department of Defense Federal Advisory Committees

AGENCY: DoD.

ACTION: Charter amendment of Federal Advisory Committee.

SUMMARY: Under the provisions of the Federal Advisory Committee Act of 1972, (5 U.S.C. Appendix), the Government in the Sunshine Act of 1976 (5 U.S.C. 552b), and 41 CFR 102–3.50(d), the Department of Defense gives notice that it is amending the charter for the Defense Intelligence Agency Advisory Board (hereafter referred to as ''the Board'').

The Defense Intelligence Agency Advisory Board, pursuant to 41 CFR 102–3.50(d), is a discretionary Federal advisory committee established to provide the Secretary of Defense through the Under Secretary of Defense for Intelligence and the Director of the Defense Intelligence Agency advice on matters relating to DoD's intelligence enterprise.

The Board shall: (a) Review and evaluate progress on selected intelligence issues, programs and topics; (b) Advise on the effectiveness of intelligence sources and methods to aid the Department of Defense in establishing resource allocations among programs, consistent with national

intelligence requirements; (c) Review, evaluate and recommend initiatives to improve support to the defense intelligence enterprise; and (d) Advise on the effectiveness of various methodologies and doctrines.

The Under Secretary of Defense for Intelligence may act upon the Board's advice and recommendations.

The Board shall be comprised of no more than fifteen members appointed by the Secretary of Defense who have distinguished backgrounds in national security policy, defense intelligence, geopolitical matters, academia or the private sector. All Board member appointments must be renewed by the Secretary of Defense on an annual basis.

The Secretary of Defense, based upon the recommendation of the Under Secretary of Defense for Intelligence and the Director of Defense Intelligence Agency, shall select the Chairperson. Board members appointed by the Secretary of Defense, who are not full-time or permanent part-time federal employees, shall be appointed as experts and consultants under the authority of 5 U.S.C. 3109 and shall serve as special government employee members. With the exception of travel and per diem for official travel, Board members shall serve without compensation. All Board members are appointed to provide advice on behalf of the government on the basis of their best judgment without representing any particular point of view and in a manner that is free from conflict of interest.

With DoD approval, the Board is authorized to establish subcommittees, as necessary and consistent with its mission. These subcommittees shall operate under the provisions of the Federal Advisory Committee Act of 1972, the Government in the Sunshine Act of 1976 (5 U.S.C. § 552b), and other governing Federal regulations.

Such subcommittees shall not work independently of the chartered Board, and shall report all their recommendations and advice to the Board for full deliberation and discussion. Subcommittees have no authority to make decisions on behalf of the chartered Board; nor can they report directly to the Department of Defense or any Federal officers or employees who are not Board members.

Subcommittee members, who are not Board members, shall be appointed in the same manner as the Board members. Such individuals, if not full-time or part-time government employees, shall be appointed to serve as experts and consultants under the authority of 5 U.S.C. 3109, and serve as special government employees, whose appointments must be renewed by the Secretary of Defense on an annual basis. With the exception of travel and per diem for official travel, subcommittee members shall serve without compensation.

FOR FURTHER INFORMATION CONTACT: Jim Freeman, Deputy Advisory Committee Management Officer for the Department of Defense, 703–692–5952.

SUPPLEMENTARY INFORMATION: The Board shall meet at the call of the Board's Designated Federal Officer, in consultation with the Board's Chairperson and the Director of the Defense Intelligence Agency. The estimated number of Board meetings is four per year.

In addition, the Designated Federal Officer is required to be in attendance at all Board and subcommittee meetings for the entire duration of each and every meeting; however, in the absence of the Designated Federal Officer, the Alternate Designated Federal Officer shall attend the entire duration of the Board or subcommittee meeting.

Pursuant to 41 CFR 102–3.105(j) and 102–3.140, the public or interested organizations may submit written statements to Defense Intelligence Agency Advisory Board's membership about the Board's mission and functions. Written statements may be submitted at any time or in response to the stated agenda of planned meeting of Defense Intelligence Agency Advisory Board.

All written statements shall be submitted to the Designated Federal Officer for the Defense Intelligence Agency Advisory Board, and this individual will ensure that the written statements are provided to the membership for their consideration. Contact information for the Defense Intelligence Agency Advisory Board Designated Federal Officer can be obtained from the GSA's FACA Database—*https://www.fido.gov/facadatabase/public.asp*.

The Designated Federal Officer, pursuant to 41 CFR 102–3.150, will announce planned meetings of the Defense Intelligence Agency Advisory Board. The Designated Federal Officer, at that time, may provide additional guidance on the submission of written statements that are in response to the stated agenda for the planned meeting in question.

Dated: April 10, 2012.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2012–8888 Filed 4–12–12; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Renewal of Department of Defense Federal Advisory Committees

AGENCY: DoD.

ACTION: Renewal of Federal Advisory Committee.

SUMMARY: Under the provisions of the Federal Advisory Committee Act of 1972 (5 U.S.C. Appendix), the Government in the Sunshine Act of 1976 (5 U.S.C. 552b), and 41 CFR 102–3.50(d), the Department of Defense gives notice that it is renewing the charter for the U.S. Army Science Board (hereafter referred to as ''the Board'').

The Board shall provide independent advice and recommendations on matters relating to the Army's scientific, technical, manufacturing, acquisition, logistics, and business management functions, and other Department of the Army related matters as determined by the Secretary of the Army.

The U.S. Army Science Board, pursuant to 41 CFR 102–3.50(d), is a discretionary Federal advisory committee established to provide independent advice and recommendations to the Secretary of Defense; the Secretary of the Army; the Under Secretary of the Army and Department of the Army Chief Management Officer; the Assistant Secretary of the Army for Acquisition, Logistics and Technology; and as requested, other Army organizations as determined by the Office of the Secretary of the Army.

No matter shall be assigned to the Board for its consideration that would require any Board member to participate personally and substantially in the conduct of any specific procurement or place him or her in the position of acting as a contracting or procurement official.

The Board shall be comprised of no more than 60 members who are eminent authorities in one or more of the following disciplines: Science, technology, manufacturing, acquisition, logistics, business management functions, and other matters of special interest to the Department of the Army.

Board members shall be appointed by the Secretary of Defense, and their appointments will be renewed on an annual basis. Board members who are not full-time or permanent part-time Federal employees, shall be appointed to serve as experts and consultants under the authority of 5 U.S.C. 3109 and shall serve as special government employee members.

The Secretary of Defense may approve the appointment of Board members for three year terms of service; however, no member, unless authorized by the Secretary of Defense, may serve more than two consecutive terms of service. This same term of service limitation also applies to any DoD authorized subcommittees.

Appointments normally will be staggered among the Board membership to ensure balance and an orderly turnover of the Board's overall composition on a periodic basis. The Secretary of the Army shall designate the Board's Chairperson and Vice Chairperson from the total Board membership.

With the exception of travel and per diem for official Board related travel, Board members shall serve without compensation. The Secretary of the Army may authorize compensation for Board members when the circumstances warrant.

The Secretary of the Army, pursuant to DoD policies and procedures, may appoint, as deemed necessary, non-voting consultants to provide special expertise to the Board. However, no more than 41 experts and consultants may be appointed to advise the Board. These experts and consultants, if not full-time or part-time government employees, shall be appointed under the authority of 5 U.S.C. 3109, shall serve as special government employees, shall be appointed on an intermittent basis to work specific Board-related efforts, shall have no voting rights whatsoever on the Board or any of its subcommittees, and shall not count toward the Board's total membership. Six of the 41 experts and consultants shall be designated ''Senior Army Science Board Fellows'' and shall be former Board members. All 41 experts and consultants shall serve terms of appointments as determined by the Secretary of the Army, and those appointments shall be renewed as appropriate.

Each Board member is appointed to provide advice on behalf of the government on the basis of his or her best judgment without representing any particular point of view and in a manner that is free from conflict of interest.

The Department, when necessary, and consistent with the Board's mission and DoD policies and procedures, may establish subcommittees deemed necessary to support the Board. Establishment of subcommittees will be based upon a written determination, to include terms of reference, by the Secretary of Defense, the Deputy Secretary of Defense, or the advisory committee's sponsor. Such subcommittees shall not work independently of the chartered Board, and shall report all their recommendations and advice to the Board for full deliberation and discussion.

Subcommittees have no authority to make decisions on behalf of the chartered Board; nor can any subcommittee or its members update or report directly to the Department of Defense or any Federal officers or employees.

All subcommittee members shall be appointed in the same manner as the Board members; that is, the Secretary of Defense shall appoint subcommittee members even if the member in question is already a Board member. Subcommittee members, with the approval of the Secretary of Defense, may serve a term of service on the subcommittee of three years; however, no member shall serve more than two consecutive terms of service on the subcommittee.

Subcommittee members, if not full-time or part-time government employees, shall be appointed to serve as experts and consultants under the authority of 5 U.S.C. 3109, and shall serve as special government employees, whose appointments must be renewed by the Secretary of Defense on an annual basis. With the exception of travel and per diem for official Board related travel, subcommittee members shall serve without compensation. The Secretary of the Army may authorize compensation for Board members when the circumstances warrant. All subcommittees operate under the provisions of FACA, the Government in the Sunshine Act of 1976 (5 U.S.C. 552b), governing Federal statutes and regulations, and governing DoD policies/procedures.

FOR FURTHER INFORMATION CONTACT: Jim Freeman, Advisory Committee Management Officer for the Department of Defense, 703–692–5952.

SUPPLEMENTARY INFORMATION: The Board shall meet at the call of the Board's Designated Federal Officer, in consultation with the Board's Chairperson. The estimated number of Board meetings is four per year.

In addition, the Designated Federal Officer is required to be in attendance at all Board and subcommittee meetings for the entire duration of each and every meeting; however, in the absence of the Designated Federal Officer, a properly approved Alternate Designated Federal Officer shall attend the entire duration of the Board or subcommittee meeting.

The Designated Federal Officer, or the Alternate Designated Federal Officer, shall call all of the Board's and subcommittees' meetings; prepare and approve all meeting agendas; adjourn any meeting when the Designated Federal Officer, or the Alternate Designated Federal Officer, determines adjournment to be in the public interest or required by governing regulations or DoD policies/procedures; and chair meetings when directed to do so by the official to whom the Board reports.

Pursuant to 41 CFR 102–3.105(j) and 102–3.140, the public or interested organizations may submit written statements to U.S. Army Science Board's membership about the Board's mission and functions. Written statements may be submitted at any time or in response to the stated agenda of planned meeting of U.S. Army Science Board.

All written statements shall be submitted to the Designated Federal Officer for the U.S. Army Science Board, and this individual will ensure that the written statements are provided to the membership for their consideration. Contact information for the U.S. Army Science Board Designated Federal Officer can be obtained from the GSA's FACA Database—*https://www.fido.gov/facadatabase/public.asp.*

The Designated Federal Officer, pursuant to 41 CFR 102–3.150, will announce planned meetings of the U.S. Army Science Board. The Designated Federal Officer, at that time, may provide additional guidance on the submission of written statements that are in response to the stated agenda for the planned meeting in question.

Dated: April 10, 2012.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2012–8939 Filed 4–12–12; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Renewal of Department of Defense Federal Advisory Committees

AGENCY: DoD.

ACTION: Renewal of Federal Advisory Committee.

SUMMARY: Under the provisions of 10 U.S.C. 183, the Federal Advisory Committee Act of 1972 (5 U.S.C. Appendix), the Government in the Sunshine Act of 1976 (5 U.S.C. 552b), and 41 CFR 102–3.50(a), the Department of Defense gives notice that it is renewing the charter for the Department of Defense Board of Actuaries (hereafter referred to as ''the Board'').

The Board is a statutory federal advisory committee that shall provide independent advice and recommendations on matters relating to the Department of Defense (DoD) Military Retirement Fund, the Department of Education Benefits Fund and other funds as the Secretary of Defense shall specify.

The Board shall:

a. Review valuations of the Department of Defense Military Retirement Fund in accordance with 10 U.S.C. 1465(c) and submit to the President and Congress, not less than once every four years, a report on the status of the Fund including such recommendations for modifications to the funding or amortization of that Fund as the Board considers appropriate and necessary to maintain that Fund on a sound actuarial basis;

b. Review valuations of the Department of Defense Education Benefits Fund in accordance with 10 U.S.C. 2006(e) and make recommendations to the President and Congress on such modifications to the funding or amortization of that Fund as the Board considers appropriate to maintain that Fund on a sound actuarial basis;

c. Review valuations of such other funds as the Secretary of Defense shall specify for purposes of 10 U.S.C. 183 and make recommendations to the President and Congress on such modifications to the funding or amortization of such funds as the Board considers appropriate to maintain such funds on a sound actuarial basis; and

d. Furnish advice and opinions on matters referred to the Board by the Secretary of Defense.

The Secretary of Defense shall ensure that the Board has access to such records regarding the Department of Defense Military Retirement Fund, the Department of Defense Education Benefits Fund, and other funds specified by the Secretary of Defense for purposes of 10 U.S.C. 183 as the Board shall require to determine the actuarial status of such funds.

The Board shall report to the Secretary of Defense, through the Under Secretary of Defense for Personnel and Readiness. The Under Secretary of Defense for Personnel and Readiness, in accordance with governing DoD policies and procedures may act upon the Board's advice and recommendations.

The Board shall be comprised of not more than three members appointed by the Secretary of Defense from among qualified professional actuaries who are members of the Society of Actuaries. Board members shall be appointed by the Secretary of Defense, and their membership shall be renewed by the Secretary of Defense on an annual basis.

Board members shall serve for a term of 15 years, except that a member of the Board appointed to fill a vacancy occurring before the end of the term for which the predecessor was appointed shall serve only until the end of such term. A member may serve after the end of the term until a successor takes office. A member of the Board may be removed by the Secretary of Defense for misconduct or failure to perform functions vested in the Board.

Board members shall not be re-appointed for successive terms. The Chairperson of the Board shall be designated by the Under Secretary of Defense for Personnel and Readiness, on behalf of the Secretary of Defense, for a five-year term.

Board members, who are not full-time or permanent part-time Federal officers or employees, shall be appointed to serve as experts and consultants under the authority of 5 U.S.C. 3109 and shall serve as special government employee members, and shall, under the authority of 10 U.S.C. 183((b)(4), serve with compensation, to include travel and per diem for official travel. A member of the Board who is not an employee of the United States is entitled to receive pay at the daily equivalent of the annual rate of basic pay of the highest rate of basic pay then currently being paid under the General Schedule of subchapter III of chapter 53 of title 5, United States Code, for each day the member is engaged in the performance of the duties of the Board. In addition, each member shall receive compensation for per diem and travel for official Board travel.

The DoD shall provide non-voting technical advisors to assist the Board in execution of its duties. The following individuals shall designate one DoD employee from each fund under the Board's purview (the Department of Defense Military Retirement Fund, the Department of Defense Education Benefits Fund, and other funds specified by the Secretary of Defense for purposes of 10 U.S.C. 183) to serve as a non-voting advisor to assist the Board:

a. The Under Secretary of Defense (Comptroller)/Chief Financial Officer;

b. The Deputy Under Secretary of Defense for Military Personnel Policy;

c. The Assistant Secretary of Defense for Reserve Affairs; and

d. The Department of Defense General Counsel.

In addition, the Department of Defense Chief Actuary shall serve as a non-voting advisor and the Executive Secretary for the Board.

Each Board member is appointed to provide advice on behalf of the government on the basis of his or her best judgment without representing any particular point of view and in a manner that is free from conflict of interest.

The Department, when necessary, and consistent with the Board's mission and DoD policies and procedures, may establish subcommittees deemed necessary to support the Board. Establishment of subcommittees will be based upon a written determination, to include terms of reference, by the Secretary of Defense, the Deputy Secretary of Defense or the advisory committee's sponsor.

Such subcommittees shall not work independently of the chartered Board, and shall report all their recommendations and advice to the Board for full deliberation and discussion. Subcommittees have no authority to make decisions on behalf of the chartered Board; nor can any subcommittee or its members update or report directly to the DoD or any Federal officers or employees. Subcommittees shall comply with FACA.

All subcommittee members shall be appointed in the same manner as the Board members; that is, the Secretary of Defense shall appoint subcommittee members even if the member in question is already a Board member.

Subcommittee members, with the approval of the Secretary of Defense, may serve a term of service on the subcommittee of one to four years; however, no member shall serve more than two consecutive terms of service on the subcommittee.

Subcommittee members, if not full-time or part-time government employees, shall be appointed to serve as experts and consultants under the authority of 5 U.S.C. 3109, and shall serve as special government employees, whose appointments must be renewed by the Secretary of Defense on an annual basis. Under the authority of 10 U.S.C. 183(b)(4), these special government employee members shall serve with compensation, to include travel and per diem for official travel. In addition, each member shall receive compensation for per diem and travel for official Board travel.

All subcommittees operate under the provisions of FACA, the Government in the Sunshine Act of 1976 (5 U.S.C. 552b), governing Federal statutes and regulations, and governing DoD policies/procedures.

FOR FURTHER INFORMATION CONTACT: Jim Freeman, Advisory Committee Management Officer for the Department of Defense, 703–692–5952.

SUPPLEMENTARY INFORMATION: The Board shall meet at the call of the Board's

Designated Federal Officer, in consultation with the Board's Chairperson, and either the Secretary of Defense of the Under Secretary of Defense for Personnel and Readiness. The estimated number of Board meetings is one per year.

In addition, the Designated Federal Officer is required to be in attendance at all Board and subcommittee meetings for the entire duration of each and every meeting; however, in the absence of the Designated Federal Officer, a properly approved Alternate Designated Federal Officer shall attend the entire duration of the Board or subcommittee meeting.

The Designated Federal Officer, or the Alternate Designated Federal Officer, shall call all of the Board's and subcommittees' meetings; prepare and approve all meeting agendas; adjourn any meeting when the Designated Federal Officer, or the Alternate Designated Federal Officer, determines adjournment to be in the public interest or required by governing regulations or DoD policies/procedures; and chair meetings when directed to do so by the official to whom the Board reports.

Pursuant to 41 CFR 102–3.105(j) and 102–3.140, the public or interested organizations may submit written statements to Department of Defense Board of Actuaries' membership about the Board's mission and functions. Written statements may be submitted at any time or in response to the stated agenda of planned meeting of Department of Defense Board of Actuaries.

All written statements shall be submitted to the Designated Federal Officer for the Department of Defense Board of Actuaries, and this individual will ensure that the written statements are provided to the membership for their consideration. Contact information for the Department of Defense Board of Actuaries Designated Federal Officer can be obtained from the GSA's FACA Database—*https://www.fido.gov/facadatabase/public.asp.*

The Designated Federal Officer, pursuant to 41 CFR 102–3.150, will announce planned meetings of the Department of Defense Board of Actuaries. The Designated Federal Officer, at that time, may provide additional guidance on the submission of written statements that are in response to the stated agenda for the planned meeting in question.

Dated: April 10, 2012.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2012–8945 Filed 4–12–12; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Renewal of Department of Defense Federal Advisory Committees

AGENCY: DoD.

ACTION: Renewal of Federal Advisory Committee.

SUMMARY: Under the provisions of the Federal Advisory Committee Act of 1972 (5 U.S.C. Appendix), the Government in the Sunshine Act of 1976 (5 U.S.C. 552b), and 41 CFR 102–3.50(d), the Department of Defense (DoD) gives notice that it is renewing the charter for the U.S. Air Force Scientific Advisory Board (hereafter referred to as ''the Board'').

The Board is a discretionary Federal advisory committee and shall provide independent advice and recommendations to the Secretary of Defense, and the Secretary of the Air Force, to include the Secretary of the Air Force's senior leadership, as determined by the Office of the Secretary of the Air Force.

No matter shall be assigned to the Board for its consideration that would require any Board member to participate personally and substantially in the conduct of any specific procurement or place him or her in the position of acting as a contracting or procurement official.

The Board shall report to the Secretary of Defense, through the Secretary of the Air Force. The Secretary of the Air Force, pursuant to DoD policy, may act upon the Board's advice.

The Board shall be comprised of no more than 60 members to include no more than five Senior Fellows who are distinguished members of the science and technology communities; Federally Funded Research and Development Centers (FFRDC)/National Labs, industry, and academia. Senior Fellows shall be voting members and count toward the Board's total membership. Board members who are not full-time or permanent part-time Federal employees, shall be appointed to serve as experts and consultants under the authority of 5 U.S.C. § 3109 and shall serve as special government employee members. Board members shall be appointed by the Secretary of Defense and their appointments must be renewed by the Secretary of Defense on an annual basis.

The Secretary of the Air Force shall select the Board's Chairperson. In addition, the Secretary of the Air Force may appoint, as deemed necessary non-voting consultants to provide technical subject matter expertise to the Board. These consultants, if not full-time or part-time Federal employees, shall be appointed under the authority of 5 U.S.C. 3109, shall serve as special government employees, and shall be appointed on an intermittent basis to work specific Board-related efforts; such individuals shall have no voting rights and shall not count toward the Board's total membership.

Board members and consultants, with the exception of travel and per diem for official travel, shall serve without compensation. However, the Secretary of the Air Force, at his or her discretion, may authorize compensation to Board members and consultants according to existing statutes, Federal regulations, and DoD policies.

The Secretary of Defense may approve the appointment of Board members for one to four year terms of service, with annual renewals; however, no member, unless authorized by the Secretary of Defense, may serve more than two consecutive terms of service. This same term of service limitation also applies to any DoD authorized subcommittees.

Each Board member is appointed to provide advice on behalf of the government on the basis of his or her best judgment without representing any particular point of view and in a manner that is free from conflict of interest.

The Department, when necessary, and consistent with the Board's mission and DoD policies and procedures, may establish subcommittees deemed necessary to support the Board. Establishment of subcommittees will be based upon a written determination, to include terms of reference, by the Secretary of Defense, the Deputy Secretary of Defense, or the advisory committee's sponsor. Such subcommittees shall not work independently of the chartered Board, and shall report all their recommendations and advice to the Board for full deliberation and discussion. Subcommittees have no authority to make decisions on behalf of the chartered Board; nor can any subcommittee or its members update or report directly to the Department of Defense or any Federal officers or employees.

All subcommittee members shall be appointed in the same manner as the Board members; that is, the Secretary of Defense shall appoint subcommittee members even if the member in question is already a Board member. Subcommittee members, with the approval of the Secretary of Defense, may serve a term of service on the subcommittee of one to four years, with annual renewals; however, no member

shall serve more than two consecutive terms of service on the subcommittee.

Subcommittee members, if not full-time or part-time government employees, shall be appointed to serve as experts and consultants under the authority of 5 U.S.C. 3109, and serve as special government employee members. With the exception of travel and per diem for official Board related travel, subcommittee members shall serve without compensation.

All subcommittees operate under the provisions of FACA, the Government in the Sunshine Act of 1976 (5 U.S.C. 552b), governing Federal statutes and regulations, and governing DoD policies/procedures.

FOR FURTHER INFORMATION CONTACT: Jim Freeman, Advisory Committee Management Officer for the Department of Defense, 703–692–5952.

SUPPLEMENTARY INFORMATION: The Board shall meet at the call of the Board's Designated Federal Officer, in consultation with the Board's Chairperson, and the Office of the Secretary of the Air Force. The estimated number of Board meetings is four per year. In addition, the Designated Federal Officer is required to be in attendance at all Board and subcommittee meetings for the entire duration of each and every meeting; however, in the absence of the Designated Federal Officer, a properly approved Alternate Designated Federal Officer shall attend the entire duration of the Board or subcommittee meeting.

The Designated Federal Officer, or the Alternate Designated Federal Officer, shall call all of the Board's and subcommittees' meetings; prepare and approve all meeting agendas; adjourn any meeting when the Designated Federal Officer, or the Alternate Designated Federal Officer, determines adjournment to be in the public interest or required by governing regulations or DoD policies/procedures; and chair meetings when directed to do so by the official to whom the Board reports.

Pursuant to 41 CFR 102–3.105(j) and 102–3.140, the public or interested organizations may submit written statements to U.S. Air Force Scientific Advisory Board's membership about the Board's mission and functions. Written statements may be submitted at any time or in response to the stated agenda of planned meeting of the U.S. Air Force Scientific Advisory Board.

All written statements shall be submitted to the Designated Federal Officer for the U.S. Air Force Scientific Advisory Board, and this individual will ensure that the written statements are provided to the membership for their consideration. Contact information for the U.S. Air Force Scientific Advisory Board Designated Federal Officer can be obtained from the GSA's FACA Database—*https://www.fido.gov/facadatabase/public.asp*.

The Designated Federal Officer, pursuant to 41 CFR 102–3.150, will announce planned meetings of the U.S. Air Force Scientific Advisory Board. The Designated Federal Officer, at that time, may provide additional guidance on the submission of written statements that are in response to the stated agenda for the planned meeting in question.

Dated: April 10, 2012.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2012–8946 Filed 4–12–12; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Renewal of Department of Defense Federal Advisory Committees

AGENCY: DoD.

ACTION: Re-establishment of Federal Advisory Committee.

SUMMARY: Under the provisions of 10 U.S.C § 1746, the Federal Advisory Committee Act of 1972 (5 U.S.C. Appendix), the Government in the Sunshine Act of 1976 (5 U.S.C. 552b), and 41 CFR 102–3.50(c), the Department of Defense gives notice that it is re-establishing the charter for the Defense Acquisition University Board of Visitors (hereafter referred to as ''the Board''). The Defense Acquisition University Board of Visitors, pursuant to 41 CFR 102–3.50(a), is a non-discretionary Federal advisory committee established to provide the Secretary of Defense through the through the Under Secretary of Defense for Acquisition, Technology and Logistics, and the President of the Defense Acquisition University, independent advice and recommendations on organization management, curricula, methods of instruction, facilities, and other matters of interest to the Defense Acquisition University.

The Under Secretary of Defense for Acquisition, Technology and Logistics or a designated representative may act upon the Board's advice and recommendations.

The Board shall be composed of not more than 14 members, who are former senior Defense officials, or are eminent authorities in academia, business, and defense industry. Board members shall be appointed by the Secretary of Defense, and their appointments will be renewed on an annual basis. Board members, who are not full-time or permanent part-time federal officers or employees, shall be appointed as experts and consultants under the authority of 5 U.S.C. 3109, and serve as special government employees.

Board members appointed by the Secretary of Defense, who are not full-time or permanent part-time federal employees, shall be appointed to serve as experts and consultants under the authority of 5 U.S.C. 3109 and shall serve as special government employee members. With the exception of travel and per diem for official Board related travel, Board members shall serve without compensation.

The Under Secretary of Defense for Acquisition, Technology and Logistics shall select the Board's Chairperson from the total Board membership, and this individual shall serve at the discretion of the Secretary of Defense, through the Under Secretary of Defense for Acquisition, Technology and Logistics.

In addition, the Under Secretary of Defense for Acquisition, Technology and Logistics, may invite other distinguished Government officers to serve as non-voting observers of the Board, and appoint, pursuant to 5 U.S.C. 3109, non-voting consultants, with special expertise, to assist the Board on an ad hoc basis.

The Secretary of Defense may approve the appointment of Board members for one to four year terms of service; however, no member, unless authorized by the Secretary of Defense, may serve more than two consecutive terms of service. This same term of service limitation also applies to any DoD authorized subcommittees.

Each Board member is appointed to provide advice on behalf of the government on the basis of his or her best judgment without representing any particular point of view and in a manner that is free from conflict of interest.

The Department, when necessary, and consistent with the Board's mission and DoD policies and procedures, may establish subcommittees deemed necessary to support the Board. Establishment of subcommittees will be based upon a written determination, to include terms of reference, by the Secretary of Defense, the Deputy Secretary of Defense, or the advisory committee's sponsor. Such subcommittees shall not work independently of the chartered Board, and shall report all their recommendations and advice to the Board for full deliberation and

discussion. Subcommittees have no authority to make decisions on behalf of the chartered Board; nor can any subcommittee or its members update or report directly to the Department of Defense or any Federal officers or employees.

All subcommittee members shall be appointed in the same manner as the Board members; that is, the Secretary of Defense shall appoint subcommittee members even if the member in question is already a Board member. Subcommittee members, with the approval of the Secretary of Defense, may serve a term of service on the subcommittee of one to four years; however, no member shall serve more than two consecutive terms of service on the subcommittee. Subcommittee members, if not full-time or part-time government employees, shall be appointed to serve as experts and consultants under the authority of 5 U.S.C. 3109, and shall serve as special government employees, whose appointments must be renewed by the Secretary of Defense on an annual basis. With the exception of travel and per diem for official Board related travel, subcommittee members shall serve without compensation.

All subcommittees operate under the provisions of FACA, the Government in the Sunshine Act of 1976 (5 U.S.C. 552b), governing Federal statutes and regulations, and governing DoD policies/procedures.

FOR FURTHER INFORMATION CONTACT: Jim Freeman, Advisory Committee Management Officer for the Department of Defense, 703–692–5952.

SUPPLEMENTARY INFORMATION: The Board shall meet at the call of the Board's Designated Federal Officer, in consultation with the President of the Defense Acquisition University and the Board's Chairperson. The estimated number of Board meetings is three per year.

In addition, the Designated Federal Officer is required to be in attendance at all Board and subcommittee meetings for the entire duration of each and every meeting; however, in the absence of the Designated Federal Officer, a properly approved Alternate Designated Federal Officer shall attend the entire duration of the Board or subcommittee meeting. The Designated Federal Officer, or the Alternate Designated Federal Officer, shall call all of the Board's and subcommittees' meetings; prepare and approve all meeting agendas; adjourn any meeting when the Designated Federal Officer, or the Alternate Designated Federal Officer, determines adjournment to be in the public interest or required by governing regulations or DoD policies/procedures; and chair meetings when directed to do so by the official to whom the Board reports.

Pursuant to 41 CFR 102–3.105(j) and 102–3.140, the public or interested organizations may submit written statements to Defense Acquisition University Board of Visitors' membership about the Board's mission and functions. Written statements may be submitted at any time or in response to the stated agenda of planned meeting of Defense Acquisition University Board of Visitors.

All written statements shall be submitted to the Designated Federal Officer for the Defense Acquisition University Board of Visitors, and this individual will ensure that the written statements are provided to the membership for their consideration. Contact information for the Defense Acquisition University Board of Visitors Designated Federal Officer can be obtained from the GSA's FACA Database—*https://www.fido.gov/facadatabase/public.asp*. The Designated Federal Officer, pursuant to 41 CFR 102–3.150, will announce planned meetings of the Defense Acquisition University Board of Visitors. The Designated Federal Officer, at that time, may provide additional guidance on the submission of written statements that are in response to the stated agenda for the planned meeting in question.

Dated: April 10, 2012.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2012–8940 Filed 4–12–12; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Renewal of Department of Defense Federal Advisory Committees

AGENCY: DoD.

ACTION: Renewal of Federal Advisory Committee.

SUMMARY: Under the provisions of 10 U.S.C 5024, the Federal Advisory Committee Act of 1972 (5 U.S.C. Appendix), the Government in the Sunshine Act of 1976 (5 U.S.C. 552b), and 41 CFR 102–3.50(c), the Department of Defense gives notice that it is renewing the charter for the Naval Research Advisory Committee (hereafter referred to as ''the Committee'').

The Naval Research Advisory Committee, pursuant to 41 CFR 102–3.50(c), is a discretionary Federal advisory committee established to provide the Secretary of the Navy, the Chief of Naval Operations and the Commandant of the U.S. Marine Corps, independent advice and recommendations on scientific, technical, and research and development matters confronting the U.S. Navy and U.S. Marine Corps.

The Committee shall report to the Secretary of the Navy, through the Assistant Secretary of the Navy for Research, Development and Acquisitions. The Secretary of the Navy may act upon the Committee's advice and recommendations.

The Committee shall be comprised of no more than 15 members who are preeminent authorities in the fields of science, research, and development. Pursuant to 10 U.S.C. 5024(a), one member of the Committee shall be from the field of medicine.

Committee members appointed by the Secretary of Defense, who are not full-time or permanent part-time Federal employees, shall be appointed to serve as experts and consultants under the authority of 5 U.S.C. 3109 and shall serve as special government employee members. With the exception of travel and per diem for official Committee related travel, Committee members shall serve without compensation.

The Secretary of Defense may approve the appointment of Committee members for one to four year terms of service; however, no member, unless authorized by the Secretary of Defense, may serve more than two consecutive terms of service. This same term of service limitation also applies to any DoD authorized subcommittees.

Each Committee member is appointed to provide advice on behalf of the government on the basis of his or her best judgment without representing any particular point of view and in a manner that is free from conflict of interest.

The Department, when necessary, and consistent with the Committee's mission and DoD policies and procedures, may establish subcommittees deemed necessary to support the Committee. Establishment of subcommittees will be based upon a written determination, to include terms of reference, by the Secretary of Defense, the Deputy Secretary of Defense, or the advisory committee's sponsor.

Such subcommittees shall not work independently of the chartered Committee, and shall report all their recommendations and advice to the Committee for full deliberation and discussion. Subcommittees have no authority to make decisions on behalf of the chartered Committee; nor can any

subcommittee or its members update or report directly to the Department of Defense or any Federal officers or employees.

All subcommittee members shall be appointed in the same manner as the Committee members; that is, the Secretary of Defense shall appoint subcommittee members even if the member in question is already a Committee member. Subcommittee members, with the approval of the Secretary of Defense, may serve a term of service on the subcommittee of one to four years; however, no member shall serve more than two consecutive terms of service on the subcommittee.

Subcommittee members, if not full-time or part-time government employees, shall be appointed to serve as experts and consultants under the authority of 5 U.S.C. 3109, and shall serve as special government employees, whose appointments must be renewed by the Secretary of Defense on an annual basis. With the exception of travel and per diem for official Committee related travel, subcommittee members shall serve without compensation.

All subcommittees operate under the provisions of FACA, the Government in the Sunshine Act of 1976 (5 U.S.C. 552b), governing Federal statutes and regulations, and governing DoD policies/procedures.

FOR FURTHER INFORMATION CONTACT: Jim Freeman, Advisory Committee Management Officer for the Department of Defense, 703–692–5952.

SUPPLEMENTARY INFORMATION: The Committee shall meet at the call of the Committee's Designated Federal Officer, in consultation with the Office of the Secretary of the Navy and the Committee's Chairperson. The estimated number of Committee meetings is four per year.

In addition, the Designated Federal Officer is required to be in attendance at all Committee and subcommittee meetings for the entire duration of each and every meeting; however, in the absence of the Designated Federal Officer, a properly approved Alternate Designated Federal Officer shall attend the entire duration of the Committee or subcommittee meeting.

The Designated Federal Officer, or the Alternate Designated Federal Officer, shall call all of the Committee's and subcommittees' meetings; prepare and approve all meeting agendas; adjourn any meeting when the Designated Federal Officer, or the Alternate Designated Federal Officer, determines adjournment to be in the public interest or required by governing regulations or DoD policies/procedures; and chair meetings when directed to do so by the official to whom the Committee reports.

Pursuant to 41 CFR 102–3.105(j) and 102–3.140, the public or interested organizations may submit written statements to Naval Research Advisory Committee's membership about the Committee's mission and functions. Written statements may be submitted at any time or in response to the stated agenda of planned meeting of Naval Research Advisory Committee. All written statements shall be submitted to the Designated Federal Officer for the Naval Research Advisory Committee, and this individual will ensure that the written statements are provided to the membership for their consideration. Contact information for the Naval Research Advisory Committee Designated Federal Officer can be obtained from the GSA's FACA Database—*https://www.fido.gov/facadatabase/public.asp*.

The Designated Federal Officer, pursuant to 41 CFR 102–3.150, will announce planned meetings of the Naval Research Advisory Committee. The Designated Federal Officer, at that time, may provide additional guidance on the submission of written statements that are in response to the stated agenda for the planned meeting in question.

Dated: April 10, 2012.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2012–8938 Filed 4–12–12; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Air Force

Intent To Grant an Exclusive Patent License

Summary: Pursuant to the provisions of Part 404 of Title 37, Code of Federal Regulations, which implements Public Law 96–517, as amended; the Department of the Air Force announces its intention to grant PS Engineering, Inc., a corporation of the State of Tennessee, having a place of business at 9800 Martel Road, Lenoir City, Tennessee, an exclusive license limited to the field of aviation in any right, title and interest the Air Force has in:

U.S. Patent No. 7,391,877, issued 24 June 2008, entitled ''Spatial Processor for Enhanced Performance in Multi-Talker Speech Displays,'' by Douglas S. Brungart.

The Air Force intends to grant a license for the patent unless a written objection is received within fifteen (15) days from the date of publication of this Notice. Written objection should be sent to: Air Force Materiel Command Law Office, AFMCLO/JAZ, 2240 B Street, Rm D–14, Wright-Patterson AFB, OH 45433–7109; Facsimile: (937) 255–3733.

Henry Williams, Jr.,

DAF, Acting Air Force Federal Register Liaison Officer.

[FR Doc. 2012–8889 Filed 4–12–12; 8:45 am]

BILLING CODE 5001–10–P

DEPARTMENT OF DEFENSE

Department of the Air Force

Intent To Grant an Exclusive Patent License

Summary: Pursuant to the provisions of Part 404 of Title 37, Code of Federal Regulations, which implements Public Law 96–517, as amended; the Department of the Air Force announces its intention to grant PS Engineering, Inc., a corporation of the State of Tennessee, having a place of business at 9800 Martel Road Lenoir City, Tennessee, an exclusive license limited to the field of aviation in any right, title and interest the Air Force has in:

U.S. Patent No. 7,391,877, issued 24 June 2008, entitled ''Spatial Processor for Enhanced Performance in Multi-Talker Speech Displays,'' by Douglas S. Brungart.

The Air Force intends to grant a license for the patent unless a written objection is received within fifteen (15) days from the date of publication of this Notice. Written objection should be sent to: Air Force Materiel Command Law Office, AFMCLO/JAZ, 2240 B Street Rm D–14, Wright-Patterson AFB, OH 45433–7109; Facsimile: (937) 255–3733.

Bao-Anh Trinh,

DAF, Air Force Federal Register Liaison Officer.

[FR Doc. 2012–8906 Filed 4–12–12; 8:45 am]

BILLING CODE 5001–10–P

DEPARTMENT OF EDUCATION

Applications for New Awards: Charter Schools Program (CSP) Grants to Non-State Educational Agency (Non-SEA) Eligible Applicants for Planning, Program Design, and Initial Implementation and for Dissemination

AGENCY: Office of Innovation and Improvement, Department of Education.

ACTION: Notice.

Overview Information

CSP Grants to Non-SEA Eligible Applicants for Planning, Program Design, and Initial Implementation and for Dissemination.

Notice Inviting Applications for New Awards for Fiscal Year (FY) 2012.

Catalog of Federal Domestic Assistance (CFDA) Numbers: 84.282B and 84.282C.

DATES: *Applications Available:* April 13, 2012.

Dates of Pre-Application Webinars:

1. April 24, 2012, 3 p.m. to 4:30 p.m.;
2. April 26, 2012, 11 a.m. to 12:30 p.m.;
3. May 3, 2012, 3 p.m. to 4:30 p.m.; and
4. May 9, 2012, 11 a.m. to 12:30 p.m. (all times are Washington, DC time).

Deadline for Transmittal of Applications: June 6, 2012.

Deadline for Intergovernmental Review: August 5, 2012.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The purposes of the CSP are to increase national understanding of the charter school model by expanding the number of high-quality charter schools available to students across the Nation; providing financial assistance for the planning, program design, and initial implementation of charter schools; and evaluating the effects of charter schools, including their effects on students, student academic achievement, staff, and parents.

Non-SEA eligible applicants in States in which the SEA does not have an approved application under the CSP may receive grants directly from the Secretary for planning, program design, and initial implementation of charter schools, and to carry out dissemination activities. States with approved CSP applications are Arizona, Arkansas, California, Colorado, District of Columbia, Florida, Georgia, Indiana, Massachusetts, Michigan, Minnesota, Missouri, New Hampshire, New Jersey, New York, Ohio, Rhode Island, South Carolina, Tennessee, Texas, and Wisconsin.

Non-SEA eligible applicants that propose to use grant funds for planning, program design, and initial implementation of charter schools must apply under CFDA number 84.282B. Non-SEA eligible applicants that request funds for dissemination activities must apply under CFDA number 84.282C.

Priorities: This notice includes four competitive preference priorities and one invitational priority. The competitive preference priorities are from the notice of final supplemental priorities and definitions for discretionary grant programs published in the **Federal Register** on December 15, 2010 (75 FR 78486), and corrected on May 12, 2011 (76 FR 27637).

Competitive Preference Priorities: For FY 2012 and any subsequent year in which we make awards from the list of unfunded applicants from this competition, these priorities are competitive preference priorities. Under 34 CFR 75.105(c)(2)(i) we will award up to an additional six points to an application depending on how well the application meets *Competitive Preference Priority 1,* up to an additional two points to an application depending on how well the application meets *Competitive Preference Priority 2,* up to an additional two points to an application depending on how well the application meets *Competitive Preference Priority 3,* and up to an additional five points to an application depending on how well the application meets *Competitive Preference Priority 4.* The maximum number of points an application can receive under these priorities is 15.

Note: In order to be eligible to receive preference under these competitive preference priorities, the applicant must identify the priority or priorities that it believes it meets and provide documentation supporting its claims.

These priorities are:

Competitive Preference Priority 1—Improving Achievement and High School Graduation Rates (up to 6 points).

This priority is for projects that are designed to address one or more of the following priority areas:

(a) Accelerating learning and helping to improve high school graduation rates (as defined in this notice) and college enrollment rates for students in rural local educational agencies (as defined in this notice).

(b) Accelerating learning and helping to improve high school graduation rates and college enrollment rates for students with disabilities.

(c) Accelerating learning and helping to improve high school graduation rates and college enrollment rates for English learners.

(d) Accelerating learning and helping to improve high school graduation rates and college enrollment rates for high-need students (as defined in this notice).

(e) Accelerating learning and helping to improve high school graduation rates and college enrollment rates in high-poverty schools (as defined in this notice).

(f) Accelerating learning and helping to improve high school graduation rates and college enrollment rates for all students in an inclusive manner that ensures that the specific needs of high-need students participating in the project are addressed.

Note: Applicants will receive one point for each priority area they address satisfactorily under this priority.

Competitive Preference Priority 2—Promoting Diversity (up to 2 points).

This priority is for projects that are designed to promote student diversity, including racial and ethnic diversity, or avoid racial isolation.

Note: An applicant addressing *Competitive Preference Priority 2—Promoting Diversity* is invited to discuss how the proposed design of its project would help bring together students from different backgrounds, including students from different racial and ethnic backgrounds, to attain the benefits that flow from a diverse student body, or to avoid racial isolation.

Note: For additional information on permissible ways to address this priority, please refer to the joint guidance issued by the Department of Education and the Department of Justice entitled, ''Guidance on the Voluntary Use of Race to Achieve Diversity and Avoid Racial Isolation in Elementary and Secondary Schools'' at *http://www2.ed.gov/about/offices/list/ocr/docs/guidance-ese-201111.pdf.*

Competitive Preference Priority 3—Improving Productivity (up to 2 points).

This priority is for projects that are designed to significantly increase efficiency in the use of time, staff, money, or other resources while improving student learning or other educational outcomes (i.e., outcome per unit of resource). Such projects may include innovative and sustainable uses of technology, modification of school schedules and teacher compensation systems, use of open educational resources (as defined in this notice), or other strategies.

Competitive Preference Priority 4—Support for Military Families (up to 5 points).

This priority is for projects that are designed to address the needs of military-connected students (as defined in this notice).

Note: For purposes of this competition, projects meeting this priority must target military-connected students who are current or prospective public charter school students.

Invitational Priority: For FY 2012 and any subsequent year in which we make awards from the list of unfunded applicants from this competition, this priority is an invitational priority. Under 34 CFR 75.105(c)(1) we do not give an application that meets this invitational priority a competitive or

absolute preference over other applications.

This priority is: *Serving Students From Persistently Low-Performing Schools.*

The Secretary is particularly interested in projects that support turning around persistently low-performing schools. To meet this invitational priority, the proposed project should engage in one or both of the following types of activities: (1) The creation of a new charter school in the vicinity of one or more public schools identified for restructuring under section 1116(b)(8) of the Elementary and Secondary Education Act, as amended (ESEA), provided that this is done in coordination with the LEA's restructuring plan for the school(s); or (2) the creation of a new charter school under the restart model of intervention described under the Department's School Improvement Grants program. (See Final Requirements for School Improvement Grants, 75 FR 66363 (Oct. 28, 2010) at *http://www2.ed.gov/programs/sif/2010-27313.pdf.*) Under this model, an LEA converts a school or closes and reopens a school under a charter school operator, a charter management organization, or an education management organization that has been selected through a rigorous review process.

Note: For purposes of the first activity described in the priority, applicants in States operating under ESEA Flexibility may partner with LEAs to create new charter schools that serve students attending ''priority schools'' (see the September 23, 2011 ''ESEA Flexibility'' document at *http://www.ed.gov/esea/flexibility/documents/esea-flexibility.doc*). The term ''priority school'' means a school that has been identified by the State as a priority school pursuant to the State's approved request for ESEA flexibility.

Definitions

The following definitions are taken from the notice of final supplemental priorities and definitions for discretionary grant programs, published in the **Federal Register** on December 15, 2010 (75 FR 78486), and corrected on May 12, 2011 (76 FR 27637), and apply to this competition.

1. *Graduation rate* means a four-year adjusted cohort graduation rate consistent with 34 CFR 200.19(b)(1) and may also include an extended-year adjusted cohort graduation rate consistent with 34 CFR 200.19(b)(1)(v) if the State in which the proposed project is implemented has been approved by the Secretary to use such a rate under Title I of the ESEA.

2. *High-need children and high-need students* means children and students at risk of educational failure, such as children and students who are living in poverty, who are English learners, who are far below grade level or who are not on track to becoming college- or career-ready by graduation, who have left school or college before receiving, respectively, a regular high school diploma or a college degree or certificate, who are at risk of not graduating with a diploma on time, who are homeless, who are in foster care, who are pregnant or parenting teenagers, who have been incarcerated, who are new immigrants, who are migrant, or who have disabilities.

3. *High-poverty school* means a school in which at least 50 percent of students are eligible for free or reduced-price lunches under the Richard B. Russell National School Lunch Act or in which at least 50 percent of students are from low-income families as determined using one of the criteria specified under section 1113(a)(5) of the ESEA. For middle and high schools, eligibility may be calculated on the basis of comparable data from feeder schools. Eligibility as a high-poverty school under this definition is determined on the basis of the most currently available data.

4. *Military-connected student* means (a) a child participating in an early learning program, a student in preschool through grade 12, or a student enrolled in postsecondary education or training who has a parent or guardian on active duty in the uniformed services (as defined by 37 U.S.C. 101, in the Army, Navy, Air Force, Marine Corps, Coast Guard, National Guard, or the reserve component of any of the aforementioned services) or (b) a student who is a veteran of the uniformed services, who is on active duty, or who is the spouse of an active-duty service member.

5. *Open educational resources* means teaching, learning, and research resources that reside in the public domain or have been released under an intellectual property license that permits their free use or repurposing by others.

6. *Rural local educational agency* means a local educational agency (LEA) that is eligible under the Small Rural School Achievement (SRSA) program or the Rural and Low-Income School (RLIS) program authorized under Title VI, Part B of the ESEA. Eligible applicants may determine whether a particular LEA is eligible for these programs by referring to information on the Department's Web site at *http://www2.ed.gov/nclb/freedom/local/reap.html.*

Requirements: Applicants approved for funding under this competition must attend an in-person, two-day meeting for project directors during each year of the project.

Note: Applicants are encouraged to include the cost of attending this meeting in their proposed budgets.

Program Authority: 20 U.S.C. 7221–7221i; Consolidated Appropriations Act, 2012, Division F, Title III, Public Law 112–74.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 76, 77, 79, 80, 81, 82, 84, 85, 86, 97, 98, and 99.

(b) The notice of final supplemental priorities and definitions for discretionary grant programs published in the **Federal Register** on December 15, 2010 (75 FR 78486), and corrected on May 12, 2011 (76 FR 27637).

Note: The regulations in 34 CFR part 79 apply to all applicants except federally recognized Indian tribes.

Note: The regulations in 34 CFR part 86 apply only to institutions of higher education.

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds: The FY 2012 appropriation for the CSP is $255,036,069, of which we intend to use an estimated $3,000,000 for this competition for non-SEA eligible applicants.

Contingent upon the availability of funds and quality of applications, we may make additional awards in FY 2013 from the list of unfunded applications from this competition.

Estimated Range of Awards: $140,000 to $200,000 per year.

Estimated Average Size of Awards: $175,000 per year.

Estimated Number of Awards: 15–19.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 36 months for planning, program design, and initial implementation grants under CFDA number 84.282B. Up to 24 months for dissemination grants under CFDA number 84.282C.

Note: For planning, program design, and initial implementation grants awarded by the Secretary to non-SEA eligible applicants under CFDA number 84.282B, no more than 18 months may be used for planning and program design and no more than two years may be used for the initial implementation of a charter school.

III. Eligibility Information

1. *Eligible Applicants:*

(a) *Planning, Program Design, and Initial Implementation grants (CFDA number 84.282B):* A developer that has (1) applied to an authorized public chartering authority to operate a charter school; and (2) provided adequate and timely notice to that authority under section 5203(d)(3) of the ESEA (20 U.S.C. 7221b(d)(3)). In accordance with section 5203(d)(3) of the ESEA, an applicant for a pre-charter planning grant may include, in section V of its application, a request for a waiver from the Secretary of the requirement that the eligible applicant provide its authorized public chartering authority timely notice, and a copy, of its application for CSP funds (20 U.S.C. 7221b(d)(3)).

Note: Section 5210 of the ESEA (20 U.S.C. 7221i(2)) defines a ''Developer'' as an individual or group of individuals (including a public or private nonprofit organization), which may include teachers, administrators and other school staff, parents, or other members of the local community in which a charter school project will be carried out. The charter school must be located in a State with a State statute specifically authorizing the establishment of charter schools and in which the SEA elects not to participate in the CSP or does not have an application approved under the CSP.

(b) *Dissemination grants (CFDA number 84.282C):* Charter schools, as defined in section 5210(1) of the ESEA (20 U.S.C. 7221i(1)), that have been in operation for at least three consecutive years and have demonstrated overall success, including—

(1) Substantial progress in improving student academic achievement;

(2) High levels of parent satisfaction; and

(3) The management and leadership necessary to overcome initial start-up problems and establish a thriving, financially viable charter school.

Note: Consistent with section 5204(f)(6) of the ESEA (20 U.S.C. 7221c(f)(6)), a charter school may apply for funds to carry out dissemination activities, whether or not the charter school previously applied for or received funds under the CSP for planning, program design, or implementation.

Note: These competitions (CFDA numbers 84.282B and 84.282C) are limited to eligible applicants in States in which the SEA does not have an approved application under the CSP (or will not have an approved application as of October 1, 2012). The following States currently have approved applications under the CSP: Arizona, Arkansas, California, Colorado, District of Columbia, Florida, Georgia, Indiana, Massachusetts, Michigan, Minnesota, Missouri, New Hampshire, New Jersey, New York, Ohio, Rhode Island, South Carolina, Tennessee, Texas, and Wisconsin.

Eligible applicants, including charter schools, located in States with currently approved CSP applications that are interested in participating in the CSP should contact the SEA for information related to the State's CSP subgrant competition. Further information is available at *http://www2.ed.gov/about/offices/list/oii/csp/funding.html.*

2. *Cost Sharing or Matching:* This program does not require cost sharing or matching.

IV. Application and Submission Information

1. *Address to Request Application Package:* LaShawndra Thornton, U.S. Department of Education, 400 Maryland Avenue SW., room 4W257, Washington, DC 20202–5970. Telephone: (202) 453–5617 or by email: *lashawndra.thornton@ed.gov.*

If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

Individuals with disabilities can obtain a copy of the application package in an accessible format (e.g., braille, large print, audiotape, or compact disc) by contacting the program contact person listed in this section.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this competition. Page Limit: The application narrative (Part III of the application) is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. The Secretary strongly encourages applicants to limit Part III to the equivalent of no more than 50 pages, using the following standards:

- A ''page'' is 8.5'' x 11'', on one side only, with 1'' margins at the top, bottom, and both sides.
- Double space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.
- Use a font that is either 12 point or larger or no smaller than 10 pitch (characters per inch).
- Use one of the following fonts: Times New Roman, Courier, Courier New, or Arial.

The page limit does not apply to Part I, the cover sheet; Part II, the budget section, including the narrative budget justification; Part IV, the assurances and certifications; or the one-page abstract, the resumes, the bibliography, or the letters of support. However, you must include all of the application narrative in Part III.

3. *Submission Dates and Times:*

Applications Available: April 13, 2012.

Date of Pre-Application Webinar: The Department will hold a pre-application webinar for prospective applicants on the following dates:

1. April 24, 2012, 3 p.m. to 4:30 p.m.;
2. April 26, 2012, 11 a.m. to 12:30 p.m.;
3. May 3, 2012, 3 p.m. to 4:30 p.m.; and
4. May 9, 2012, 11 a.m. to 12:30 p.m. (all times are Washington, DC time).

Individuals interested in attending one of the webinars are encouraged to pre-register by emailing their name, organization, contact information, and preferred webinar date and time with the subject heading NON–SEA PRE–APPLICATION MEETING to *Charterschools@ed.gov.* There is no registration fee for attending this webinar.

For further information about the pre-application webinar, contact LaShawndra Thornton, U.S. Department of Education, 400 Maryland Avenue SW., room 4W257, Washington, DC 20202–5970. Telephone: (202) 453–5617 or by email: *lashawndra.thornton@ed.gov.*

Deadline for Transmittal of Applications: June 6, 2012.

Applications for grants under this program must be submitted electronically using the Grants.gov Apply site (Grants.gov). For information (including dates and times) about how to submit your application electronically, or in paper format by mail or hand delivery if you qualify for an exception to the electronic submission requirement, please refer to section IV. 7. *Other Submission Requirements* of this notice.

We do not consider an application that does not comply with the deadline requirements.

Individuals with disabilities who need an accommodation or auxiliary aid in connection with the application process should contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice. If the Department provides an accommodation or auxiliary aid to an individual with a disability in connection with the application process, the individual's application remains subject to all other requirements and limitations in this notice.

Deadline for Intergovernmental Review: August 5, 2012.

4. *Intergovernmental Review:* This competition is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this program.

5. *Funding Restrictions:*

Use of Funds for Post-Award Planning and Design of the Educational Program and Initial Implementation of the Charter School. A non-SEA eligible applicant receiving a grant under CFDA number 84.282B may use the grant funds only for—

(a) Post-award planning and design of the educational program, which may include (i) refinement of the desired educational results and of the methods for measuring progress toward achieving those results; and (ii) professional development of teachers and other staff who will work in the charter school; and

(b) Initial implementation of the charter school, which may include (i) Informing the community about the school; (ii) acquiring necessary equipment and educational materials and supplies; (iii) acquiring or developing curriculum materials; and (iv) other initial operational costs that cannot be met from State or local sources. (20 U.S.C. 7221c(f)(3))

Note: CSP funds may be used only for the planning and initial implementation of a charter school. As a general matter, the Secretary considers charter schools that have been in operation for more than three years to be past the initial implementation phase and, therefore, ineligible to receive CSP funds to support the initial implementation of a charter school.

Use of Funds for Dissemination Activities. A charter school receiving a grant under CFDA number 84.282C may use grant funds to assist other schools in adapting the charter school's program (or certain aspects of the charter school's program), or to disseminate information about the charter school, through such activities as—

(a) Assisting other individuals with the planning and start-up of one or more new public schools, including charter schools, that are independent of the assisting charter school and the assisting charter school's developers, and that agree to be held to at least as high a level of accountability as the assisting charter school;

(b) Developing partnerships with other public schools, including charter schools, designed to improve student academic achievement in each of the schools participating in the partnership;

(c) Developing curriculum materials, assessments, and other materials that promote increased student achievement and are based on successful practices within the assisting charter school; and

(d) Conducting evaluations and developing materials that document the successful practices of the assisting charter school and that are designed to improve student performance in other schools. (20 U.S.C. 7221c(f)(6))

We reference additional regulations outlining funding restrictions in the *Applicable Regulations* section in this notice.

6. *Data Universal Numbering System Number, Taxpayer Identification Number, and Central Contractor Registry:* To do business with the Department of Education, you must—

a. Have a Data Universal Numbering System (DUNS) number and a Taxpayer Identification Number (TIN);

b. Register both your DUNS number and TIN with the Central Contractor Registry (CCR), the Government's primary registrant database;

c. Provide your DUNS number and TIN on your application; and

d. Maintain an active CCR registration with current information while your application is under review by the Department and, if you are awarded a grant, during the project period.

You can obtain a DUNS number from Dun and Bradstreet. A DUNS number can be created within one business day.

If you are a corporate entity, agency, institution, or organization, you can obtain a TIN from the Internal Revenue Service. If you are an individual, you can obtain a TIN from the Internal Revenue Service or the Social Security Administration. If you need a new TIN, please allow 2–5 weeks for your TIN to become active.

The CCR registration process may take five or more business days to complete. If you are currently registered with the CCR, you may not need to make any changes. However, please make certain that the TIN associated with your DUNS number is correct. Also note that you will need to update your CCR registration on an annual basis. This may take three or more business days to complete.

In addition, if you are submitting your application via Grants.gov, you must (1) be designated by your organization as an Authorized Organization Representative (AOR); and (2) register yourself with Grants.gov as an AOR. Details on these steps are outlined in the Grants.gov 3-Step Registration Guide (see *www.grants.gov/section910/Grants.govRegistrationBrochure.pdf*).

7. *Other Submission Requirements:* Applications for grants under this competition must be submitted electronically unless you qualify for an exception to this requirement in accordance with the instructions in this section.

a. *Electronic Submission of Applications.*

Applications for grants under the CSP, CFDA Numbers 84.282B and 84.282C, must be submitted electronically using the Governmentwide Grants.gov Apply site at *www.Grants.gov.* Through this site, you will be able to download a copy of the application package, complete it offline, and then upload and submit your application. You may not email an electronic copy of a grant application to us.

We will reject your application if you submit it in paper format unless, as described elsewhere in this section, you qualify for one of the exceptions to the electronic submission requirement *and* submit, no later than two weeks before the application deadline date, a written statement to the Department that you qualify for one of these exceptions. Further information regarding calculation of the date that is two weeks before the application deadline date is provided later in this section under *Exception to Electronic Submission Requirement.*

You may access the electronic grant application for the CSP at *www.Grants.gov.* You must search for the downloadable application package for this program by the CFDA number. Do not include the CFDA number's alpha suffix in your search (e.g., search for 84.282, not 84.282B or 282C).

Please note the following:

- When you enter the Grants.gov site, you will find information about submitting an application electronically through the site, as well as the hours of operation.
- Applications received by Grants.gov are date and time stamped. Your application must be fully uploaded and submitted and must be date and time stamped by the Grants.gov system no later than 4:30:00 p.m., Washington, DC time, on the application deadline date. Except as otherwise noted in this section, we will not accept your application if it is received—that is, date and time stamped by the Grants.gov system—after 4:30:00 p.m., Washington, DC time, on the application deadline date. We do not consider an application that does not comply with the deadline requirements. When we retrieve your application from Grants.gov, we will notify you if we are rejecting your application because it was date and time stamped by the Grants.gov system after 4:30:00 p.m., Washington, DC time, on the application deadline date.

• The amount of time it can take to upload an application will vary depending on a variety of factors, including the size of the application and the speed of your Internet connection. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the submission process through Grants.gov.

• You should review and follow the Education Submission Procedures for submitting an application through Grants.gov that are included in the application package for this program to ensure that you submit your application in a timely manner to the Grants.gov system. You can also find the Education Submission Procedures pertaining to Grants.gov under News and Events on the Department's G5 system home page at *http://www.G5.gov.*

• You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you qualify for an exception to the electronic submission requirement, as described elsewhere in this section, and submit your application in paper format.

• You must submit all documents electronically, including all information you typically provide on the following forms: the Application for Federal Assistance (SF 424), the Department of Education Supplemental Information for SF 424, Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications.

• You must upload any narrative sections and all other attachments to your application as files in a .PDF (Portable Document) read-only, non-modifiable format. Do not upload an interactive or fillable .PDF file. If you upload a file type other than a read-only, non-modifiable .PDF or submit a password-protected file, we will not review that material.

• Your electronic application must comply with any page-limit requirements described in this notice.

• After you electronically submit your application, you will receive from Grants.gov an automatic notification of receipt that contains a Grants.gov tracking number. (This notification indicates receipt by Grants.gov only, not receipt by the Department.) The Department then will retrieve your application from Grants.gov and send a second notification to you by email. This second notification indicates that the Department has received your application and has assigned your application a PR/Award number (an ED-specified identifying number unique to your application).

• We may request that you provide us original signatures on forms at a later date.

Application Deadline Date Extension in Case of Technical Issues with the Grants.gov System: If you are experiencing problems submitting your application through Grants.gov, please contact the Grants.gov Support Desk, toll free, at 1–800–518–4726. You must obtain a Grants.gov Support Desk Case Number and must keep a record of it.

If you are prevented from electronically submitting your application on the application deadline date because of technical problems with the Grants.gov system, we will grant you an extension until 4:30:00 p.m., Washington, DC time, the following business day to enable you to transmit your application electronically or by hand delivery. You also may mail your application by following the mailing instructions described elsewhere in this notice.

If you submit an application after 4:30:00 p.m., Washington, DC time, on the application deadline date, please contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice and provide an explanation of the technical problem you experienced with Grants.gov, along with the Grants.gov Support Desk Case Number. We will accept your application if we can confirm that a technical problem occurred with the Grants.gov system and that that problem affected your ability to submit your application by 4:30:00 p.m., Washington, DC time, on the application deadline date. The Department will contact you after a determination is made on whether your application will be accepted.

Note: The extensions to which we refer in this section apply only to the unavailability of, or technical problems with, the Grants.gov system. We will not grant you an extension if you failed to fully register to submit your application to Grants.gov before the application deadline date and time or if the technical problem you experienced is unrelated to the Grants.gov system.

Exception to Electronic Submission Requirement: You qualify for an exception to the electronic submission requirement, and may submit your application in paper format, if you are unable to submit an application through the Grants.gov system because—

• You do not have access to the Internet; or

• You do not have the capacity to upload large documents to the Grants.gov system; *and*

• No later than two weeks before the application deadline date (14 calendar days or, if the fourteenth calendar day before the application deadline date falls on a Federal holiday, the next business day following the Federal holiday), you mail or fax a written statement to the Department, explaining which of the two grounds for an exception prevent you from using the Internet to submit your application.

If you mail your written statement to the Department, it must be postmarked no later than two weeks before the application deadline date. If you fax your written statement to the Department, we must receive the faxed statement no later than two weeks before the application deadline date.

Address and mail or fax your statement to: LaShawndra Thornton, U.S. Department of Education, 400 Maryland Avenue SW., Room 4W257, Washington, DC 20202–5970. Fax: (202) 205–5630.

Your paper application must be submitted in accordance with the mail or hand delivery instructions described in this notice.

b. *Submission of Paper Applications by Mail.*

If you qualify for an exception to the electronic submission requirement, you may mail (through the U.S. Postal Service or a commercial carrier) your application to the Department. You must mail the original and two copies of your application, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.282B or 84.282C), LBJ Basement Level 1, 400 Maryland Avenue SW., Washington, DC 20202–4260.

You must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

If your application is postmarked after the application deadline date, we will not consider your application.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before

relying on this method, you should check with your local post office.

c. *Submission of Paper Applications by Hand Delivery.*

If you qualify for an exception to the electronic submission requirement, you (or a courier service) may deliver your paper application to the Department by hand. You must deliver the original and two copies of your application by hand, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.282B or 84.282C), 550 12th Street SW., Room 7041, Potomac Center Plaza, Washington, DC 20202–4260.

The Application Control Center accepts hand deliveries daily between 8 a.m. and 4:30:00 p.m., Washington, DC time, except Saturdays, Sundays, and Federal holidays. **Note for Mail or Hand Delivery of Paper Applications:** If you mail or hand deliver your application to the Department—

(1) You must indicate on the envelope and—if not provided by the Department—in Item 11 of the SF 424 the CFDA number, including suffix letter, if any, of the competition under which you are submitting your application; and

(2) The Application Control Center will mail to you a notification of receipt of your grant application. If you do not receive this notification within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245–6288.

V. Application Review Information

1. *Application Requirements.* An applicant applying for CSP grant funds, under either CFDA number 84.282B or 84.282C, must address the following application requirements, which are based on 20 U.S.C. 7221b(b), as well as the applicable selection criteria in this notice, and may choose to respond to the application requirements in the context of its responses to the selection criteria.

(i) Describe the educational program to be implemented by the proposed charter school, including how the program will enable all students to meet challenging State student academic achievement standards, the grade levels or ages of children to be served, and the curriculum and instructional practices to be used;

(ii) Describe how the charter school will be managed;

(iii) Describe the objectives of the charter school and the methods by which the charter school will determine its progress toward achieving those objectives;

(iv) Describe the administrative relationship between the charter school and the authorized public chartering agency;

(v) Describe how parents and other members of the community will be involved in the planning, program design, and implementation of the charter school;

(vi) Describe how the authorized public chartering agency will provide for continued operation of the charter school once the Federal grant has expired, if that agency determines that the charter school has met its objectives as described in paragraph (iii) of this section;

(vii) If the charter school desires the Secretary to consider waivers under the authority of the CSP, include a request and justification for waivers of any Federal statutory or regulatory provisions that the applicant believes are necessary for the successful operation of the charter school, and a description of any State or local rules, generally applicable to public schools, that will be waived for, or otherwise not apply to, the school. Each applicant for a pre-charter planning grant that is requesting a waiver of the requirement under section 5203(d)(3) of the ESEA (20 U.S.C. 7221b(d)(3)) that an eligible applicant provide its authorized public chartering agency with notice, and a copy, of its CSP application should indicate whether it has applied for a charter previously and, if so, the name of the authorized public chartering authority and the disposition of the charter application;

(viii) Describe how the grant funds will be used, including a description of how these funds will be used in conjunction with other Federal programs administered by the Secretary;

(ix) Describe how students in the community will be informed about the charter school and be given an equal opportunity to attend the charter school;

(x) Describe how a charter school that is considered an LEA under State law, or an LEA in which a charter school is located, will comply with sections 613(a)(5) and 613(e)(1)(B) of the Individuals with Disabilities Education Act (IDEA); and

Note: For more information on IDEA, please see *http://idea.ed.gov/explore/view/p/%2Croot%2Cstatute%2CI%2CB%2C613%2C.*

(xi) If the eligible applicant desires to use grant funds for dissemination activities under section 5202(c)(2)(c) of the ESEA (20 U.S.C. 7221a(c)(2)(C)), describe those activities and how those activities will involve charter schools and other public schools, LEAs, developers, and potential developers.

2. *Selection Criteria:* The selection criteria for this competition are from 20 U.S.C. 7221b and 7221c and 34 CFR 75.210 of EDGAR.

The selection criteria for applicants submitting applications under CFDA number 84.282B are listed in paragraph (a) of this section, and the selection criteria for applicants submitting applications under CFDA number 84.282C are listed in paragraph (b) of this section.

(a) *Selection Criteria for Planning, Program Design, and Initial Implementation Grants (CFDA number 84.282B).* The following selection criteria are based on sections 5203, 5204, and 5210 of the ESEA (20 U.S.C. 7221b, 7221c, and 7221i) and from 34 CFR 75.210 of EDGAR. The maximum possible score for addressing all of the criteria in this section is 100 points. The maximum possible score for addressing each criterion is indicated in parentheses following the criterion. In evaluating an application for a planning, program design, and implementation grant, the Secretary considers the following criteria:

(i) *Quality of the proposed curriculum and instructional practices (20 U.S.C. 7221c(b)(1)) (15 points).*

Note: The Secretary encourages the applicant to describe the quality of the educational program to be implemented by the proposed charter school, including how the program will enable all students to meet challenging State student academic achievement standards, the grade levels or ages of students to be served, and the curriculum and instructional practices to be used. If the curriculum and instructional practices have been successfully used in other schools operated or managed by the applicant, the Secretary encourages the applicant to describe the implementation of such practices and the academic results achieved.

(ii) *The extent to which the proposed project will assist educationally disadvantaged students in meeting State academic content standards and State student academic achievement standards (20 U.S.C. 7221c(a)(1)) (3 points).*

(iii) *The quality of the strategy for assessing achievement of the charter school's objectives (20 U.S.C. 7221c(a)(4)) (15 points).*

(iv) *The extent of community support for the application (20 U.S.C. 7221c(b)(3)) (8 points).*

Note: The Secretary encourages the applicant to describe how parents and other members of the community will be informed about the charter school and how students

will be given an equal opportunity to attend the charter school.

The applicant is also encouraged to describe and provide evidence of community support for the proposed project.

(v) *The extent to which the proposed project encourages parental and community involvement (20 U.S.C. 7221b(b)(3)(E)) (3 points).*

Note: The Secretary encourages the applicant to describe how parents and other members of the community will be involved in the planning, program design, and implementation of the charter school.

(vi) *Quality of project personnel (34 CFR 75.210(e)(1), (e)(2), and (e)(3)(ii)) (22 points).*

The Secretary considers the quality of the personnel who will carry out the proposed project. In determining the quality of project personnel, the Secretary considers—

(1) The extent to which the applicant encourages applications for employment from persons who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability (2 points); and

(2) The qualifications, including relevant training and experience, of key project personnel (20 points).

Note: The applicant is encouraged to provide evidence of its skills and experience in the following areas: successfully launching a high-quality charter school; developing an innovative school design; relevant non-profit organization management and leadership; sound board governance; effective curriculum development and implementation; and strong fiscal management.

(vii) *Quality of the management plan (34 CFR 75.210(g)(1) and (g)(2)(i)) (16 points).* The Secretary considers the quality of the management plan for the proposed project. In determining the quality of the management plan for the proposed project, the Secretary considers the adequacy of the management plan to achieve the objectives of the proposed project on time and within budget, including clearly defined responsibilities, timelines, and milestones for accomplishing project tasks.

(viii) *Existence and quality of a charter or performance contract between the charter school and its authorized public chartering agency (20 U.S.C. 7221i(1)(L)) (15 points).* The existence of a charter or performance contract between the charter school and its authorized public chartering agency and the extent to which the charter or performance contract describes how student performance will be measured in the charter school pursuant to State assessments that are required of public schools and pursuant to any other assessments mutually agreeable to the authorized public chartering agency and the charter school.

Note: The Secretary encourages the applicant to discuss whether its proposed project has been denied a charter from its authorizing agency and, if so, how the applicant plans to revise its charter application before resubmitting its charter application to the authorizing agency. The applicant is also encouraged to submit a copy of its approved charter contract, if applicable.

(ix) *The degree of flexibility afforded by the SEA and, if applicable, the LEA to the charter school (20 U.S.C. 7721c(b)(2)) (3 points).*

Note: The Secretary encourages the applicant to include a description of the flexibility afforded under its State's law in terms of establishing an administrative relationship between the charter school and the authorized public chartering agency and in terms of whether charter schools are exempt from significant State or local rules that inhibit the flexible operation and management of public schools.

The Secretary also encourages the applicant to include a description of the degree of autonomy the charter school will have over such matters as the charter school's budget, expenditures, daily operation, and personnel in accordance with its State's charter school law.

(b) *Selection Criteria for Dissemination Grants (CFDA number 84.282C).* The following selection criteria are based on sections 5204 and 5210(1)(L) of the ESEA (20 U.S.C. 7221c and 7221i(1)(L)) and from 34 CFR 75.210 of EDGAR. The maximum possible score for addressing all the criteria in this section is 100 points. The maximum possible score for addressing each criterion is indicated in parentheses following the criterion. In evaluating an application for a dissemination grant, the Secretary considers the following criteria:

(i) *The quality of the proposed dissemination activities and the likelihood that those activities will improve student achievement (20 U.S.C. 7221c(b)(7)) (15 points).*

Note: The Secretary encourages the applicant to describe the objectives for the proposed dissemination activities and the methods by which the charter school will determine its progress toward achieving those objectives.

(ii) *Existence of a charter or performance contract between the charter school and its authorized public chartering agency (20 U.S.C. 7221i(1)(L)) (1 point).* The existence of a charter or performance contract between the charter school and its authorized public chartering agency and the extent to which the charter or performance contract describes how student performance will be measured in the charter school pursuant to State assessments that are required of other schools and pursuant to any other assessments mutually agreeable to the authorized public chartering agency and the charter school.

(iii) *Demonstration of success (20 U.S.C. 7221c(f)(6)(A)) (40 points).* The extent to which the school has demonstrated overall success, including—

(1) Substantial progress in improving student achievement (25 points);

(2) High levels of parent satisfaction (5 points); and

(3) The management and leadership necessary to overcome initial start-up problems and establish a thriving, financially viable charter school (10 points).

(iv) *Dissemination strategy (34 CFR 75.210(b)(2)(xii)) (15 points).* The Secretary considers the significance of the proposed project. In determining the significance of the proposed project, the Secretary considers the extent to which the results of the proposed project are to be disseminated in ways that will enable others to use the information or strategies.

(v) *Quality of project personnel (34 CFR 75.210(e)(1), (e)(2), and (e)(3)(i)) (14 points).* The Secretary considers the quality of the personnel who will carry out the proposed project. In determining the quality of project personnel, the Secretary considers—

(1) The extent to which the applicant encourages applications for employment from persons who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability (3 points); and

(2) The qualifications, including relevant training and experience, of the project director or principal investigator (11 points).

(vi) *Quality of the management plan (34 CFR 75.210 (g)(1) and (g)(2)(i)) (15 points).* The Secretary considers the quality of the management plan for the proposed project. In determining the quality of the management plan for the proposed project, the Secretary considers the adequacy of the management plan to achieve the objectives of the proposed project on time and within budget, including clearly defined responsibilities, timelines, and milestones for accomplishing project tasks.

4. *Review and Selection Process:* We remind potential applicants that in reviewing applications in any discretionary grant competition, the Secretary may consider, under 34 CFR 75.217(d)(3), the past performance of the applicant in carrying out a previous award, such as the applicant's use of funds, achievement of project objectives, and compliance with grant conditions. The Secretary may also consider whether the applicant failed to submit a timely performance report or submitted a report of unacceptable quality.

In addition, in making a competitive grant award, the Secretary also requires various assurances, including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department of Education (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

5. *Special Conditions:* Under 34 CFR 74.14 and 80.12, the Secretary may impose special conditions on a grant if the applicant or grantee is not financially stable; has a history of unsatisfactory performance; has a financial or other management system that does not meet the standards in 34 CFR parts 74 or 80, as applicable; has not fulfilled the conditions of a prior grant; or is otherwise not responsible.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN). We may notify you informally, also.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* (a) If you apply for a grant under this competition, you must ensure that you have in place the necessary processes and systems to comply with the reporting requirements in 2 CFR part 170 should you receive funding under the competition. This does not apply if you have an exception under 2 CFR 170.110(b).

(b) At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multi-year award, you must submit an annual performance report that provides the most current performance and financial expenditure information as directed by the Secretary under 34 CFR 75.118. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to *www.ed.gov/fund/grant/apply/appforms/appforms.html.*

4. *Performance Measures:* The goal of the CSP is to support the creation and development of a large number of high-quality charter schools that are free from State or local rules that inhibit flexible operation, are held accountable for enabling students to reach challenging State performance standards, and are open to all students. The Secretary has two performance indicators to measure progress toward this goal: (1) The number of high-quality charter schools in operation around the Nation, and (2) the percentage of fourth- and eighth-grade charter school students who are achieving at or above the proficient level on State examinations in mathematics and reading/language arts. Additionally, the Secretary has established the following measure to examine the efficiency of the CSP: Federal cost per student in implementing a successful school (defined as a school in operation for three or more consecutive years).

All grantees must submit an annual performance report with information that is responsive to these performance measures.

5. *Continuation Awards:* In making a continuation award, the Secretary may consider, under 34 CFR 75.253, the extent to which a grantee has made ''substantial progress toward meeting the objectives in its approved application.'' This consideration includes the review of a grantee's progress in meeting the targets and projected outcomes in its approved application, and whether the grantee has expended funds in a manner that is consistent with its approved application and budget. In making a continuation award, the Secretary also considers whether the grantee is operating in compliance with the assurances in its approved application, including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

VII. Agency Contact

FOR FURTHER INFORMATION CONTACT: LaShawndra Thornton, U.S. Department of Education, 400 Maryland Avenue SW., room 4W257, Washington, DC 20202–5970. Telephone: (202) 453–5617 or by email: *lashawndra.thornton@ed.gov.*

If you use a TDD, call the FRS, toll free, at 1–800–877–8339.

VIII. Other Information

Accessible Format: Individuals with disabilities can obtain this document and a copy of the application package in an accessible format (e.g., braille, large print, audiotape, or compact disc) on request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice.

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: *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: *www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Dated: April 10, 2012.

James H. Shelton, III,

Assistant Deputy Secretary for Innovation and Improvement.

[FR Doc. 2012–8980 Filed 4–12–12; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

State Personnel Development Grants; Proposed Priorities and Definitions; CFDA Number 84.323A

AGENCY: Office of Special Education and Rehabilitative Services, Department of Education.

ACTION: Notice.

SUMMARY: The Assistant Secretary for Special Education and Rehabilitative Services proposes priorities and definitions under the State Personnel Development Grants (SPDG) program. The Assistant Secretary may use one or

more of these priorities and definitions for competitions in fiscal year (FY) 2012 and later years. We take this action to assist State educational agencies (SEAs) to make their systems of professional development more effective and efficient through the provision of evidence-based, ongoing professional development that uses technology to support the implementation of evidence-based practices.

DATES: We must receive your comments on or before May 14, 2012.

ADDRESSES: Address all comments about this notice to Jennifer Coffey, U.S. Department of Education, 400 Maryland Avenue SW., Room 4097, Potomac Center Plaza (PCP), Washington, DC 20202–2600.

If you prefer to send your comments by email, use the following address: *jennifer.coffey@ed.gov.* You must include the term ''SPDG Priorities and Definitions'' in the subject line of your electronic message.

FOR FURTHER INFORMATION CONTACT: Jennifer Coffey. Telephone: (202) 245–6673.

If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

Invitation to Comment

We invite you to submit comments regarding this notice. To ensure that your comments have maximum effect in developing the notice of final priorities and definitions, we urge you to identify clearly the specific topic that each comment addresses.

We invite you to assist us in complying with the specific requirements of Executive Orders 12866 and 13563 and their overall requirement of reducing regulatory burden that might result from these proposed priorities and definitions. Please let us know of any further ways we could reduce potential costs or increase potential benefits while preserving the effective and efficient administration of the program.

During and after the comment period, you may inspect all public comments about this notice in room 4097, 550 12th Street SW., PCP, Washington, DC, between the hours of 8:30 a.m. and 4 p.m., Washington, DC time, Monday through Friday of each week except Federal holidays.

Assistance to Individuals With Disabilities in Reviewing the Rulemaking Record: On request, we will provide an appropriate accommodation or auxiliary aid to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for this notice. If you want to schedule an appointment for this type of accommodation or auxiliary aid, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

Purpose of Program: The purpose of this program is to assist SEAs in reforming and improving their systems for personnel preparation and professional development in early intervention, educational, and transition services in order to improve results for children with disabilities.

Statutory Requirements: Applicants under the SPDG program must meet the statutory requirements in sections 651 through 654 of the Individuals with Disabilities Education Act (IDEA), including the application requirements in section 653 and the use of funds requirements in section 654. Because the priorities and definitions proposed in this notice would supplement these statutory requirements, applicants should familiarize themselves with the statutory requirements they must also meet to receive funding under this program.

In addition, section 651(b) of the IDEA defines the term ''personnel,'' as it is used in connection with the SPDG program. This definition would apply to the priorities in this notice as well. Under section 651(b) of the IDEA, the term ''personnel'' means special education teachers, regular education teachers, principals, administrators, related services personnel, paraprofessionals, and early intervention personnel serving infants, toddlers, preschoolers, or children with disabilities, except where a particular category of personnel, such as related services personnel, is identified.

Program Authority: 20 U.S.C. 1451–1455.

Proposed Priorities

This notice contains two proposed priorities.

Proposed Priority 1—Effective and Efficient Delivery of Professional Development

Background

The purpose of the SPDG program is to assist SEAs in reforming and improving their systems for personnel preparation and professional development of individuals providing early intervention, educational, and transition services in order to improve results for children with disabilities. High-quality, comprehensive professional development programs are essential to ensure that the persons responsible for the early intervention of infants and toddlers, and the education, or transition of children with disabilities possess the skills and knowledge necessary to address the early intervention, educational, and related services needs of those infants and toddlers or children. Through this priority, we seek to support (a) Evidence-based (as defined in this notice) professional development for personnel serving infants, toddlers, preschoolers, or children with disabilities, (b) ongoing assistance to personnel in early intervention programs and local educational agencies (LEAs) receiving SPDG-supported professional development to implement evidence-based practices, and (c) using technology to more efficiently and effectively provide ongoing professional development to personnel.

Evidence-Based Professional Development

Professional development enables teachers to learn new and evidence-based practices and to master new skills (Wei, Darling-Hammond, & Adamson, 2010). Professional development that emphasizes skill building and classroom practices can help teachers build competence that leads to the continued use of new and evidence-based practices (American Educational Research Association, 2005). There is evidence indicating that the following components of effective professional development can lead to more successful implementation of new practices: (1) Professional development participants, trainers, and coaches who have the prerequisite knowledge and skills; (2) effective training practices that are based on adult learning principles and that focus on building the skills of the participants; (3) ongoing coaching; (4) performance assessments; and (5) administrative support for implementation of the new practices (Boudah, Logan, & Greenwood, 2001; Fixsen, Naoom, Blase, Friedman, & Wallace, 2005; Fullan, 2005). For more information on these critical components of professional development, please visit *www.signetwork.org/content_pages/205.* In this priority, therefore, we propose to require SPDG projects to use evidence-based professional development practices, consistent with these components.

Ongoing Assistance That Supports Implementation

A great deal of professional development may be necessary for personnel to feel competent in implementing a new practice—

especially a practice that is complex (Cook et al., 2003; Gersten & Dimino, 2001; Slavin, 2004). Studies suggest that the more time teachers spend developing their knowledge and skills through evidence-based professional development, the more significantly they change their practices (Louis & Marks, 1998; U.S. Department of Education, 2001). Ongoing training, coaching, and other types of support are necessary for teachers to implement new evidence-based practices because although teachers receiving training may initially implement at least some of these practices, implementation rates can drop by 20 percent to 60 percent one year after training (Wei, Darling-Hammond, & Adamson, 2010). In addition, when schools have high rates of staff turnover (as high as 50 percent for new teachers), ongoing professional development is a critical means of ensuring new staff have the necessary knowledge and skills to effectively implement educational programs (Elias, Zins, Graczyk, & Weissberg, 2003). Accordingly, through this proposed priority, we require SPDG projects to provide personnel receiving SPDG-supported professional development with ongoing assistance to support these personnel in implementing evidence-based practices in the manner in which the practices are designed to be delivered.

Use of Technology

Training and coaching for professional development participants is expensive; however, use of technology (e.g., bug-in-ear technology for coaching) has the potential to significantly reduce these costs (National Center for Academic Transformation, n.d.; Schlager, Farooq, Fusco, Schank, & Dwyer, 2009) and to reach more people more efficiently (Ludlow & Brannan, 2010). The use of technology to provide professional development is especially critical in rural areas, where attrition among personnel is high and there are limited training opportunities and resources (Johnson, Humphrey, & Allred, 2009; Menlove & Lignugaris/Kraft, 2004). As professional development providers attempt to provide ongoing technical assistance instead of one-time training sessions and to reach personnel in rural areas, it will be critical for these professional development providers to capitalize on the capabilities offered by these newer technologies (Williams, Martin, & Hess, 2010). For this reason, this proposed priority requires SPDG projects to use technology to more efficiently and effectively provide ongoing professional development to personnel, including those in rural areas.

Proposed Priority

The Assistant Secretary for Special Education and Rehabilitative Services proposes a priority to assist SEAs in reforming and improving their systems for personnel (as that term is defined in section 651(b) of the IDEA) preparation and professional development of individuals providing early intervention, educational, and transition services in order to improve results for children with disabilities.

In order to meet this priority an applicant must demonstrate in the SPDG State Plan it submits as part of its application under section 653(a)(2) of the IDEA that its proposed project will—

(1) Use evidence-based (as defined in this notice) professional development practices that will increase implementation of evidence-based practices and result in improved outcomes for children with disabilities;

(2) Provide ongoing assistance to personnel receiving SPDG-supported professional development that supports the implementation of evidence-based practices with fidelity (as defined in this notice); and

(3) Use technology to more efficiently and effectively provide ongoing professional development to personnel, including to personnel in rural areas and to other populations, such as personnel in urban or high-need LEAs (as defined in this notice).

Proposed Priority 2—Targeting Teachers' Professional Development Needs Based on Student Growth

Background

Effective teaching is a cornerstone of education reform (Whitehurst, 2002). To evaluate teacher effectiveness, an increasing number of SEAs and LEAs have begun examining data on growth in student achievement (Hanushek & Rivkin, 2010; Taylor & Tyler, 2011). In addition, these data are increasingly being used to identify professional development needs (Torgeson, Meadows, & Howard, 2011). Using student outcome data to identify the professional development needs of teachers can be a useful first step in helping teachers meet the needs of their students. This is important because many schools continue to struggle to meet their academic goals for children with disabilities, with little improvement nationally in the performance of students with disabilities on statewide assessments (Altman, Thurlow, & Vang, 2010). For this reason, we propose a priority for projects that are designed to provide teachers professional development that is targeted to meet their specific needs, as those needs are identified by teacher evaluation systems that take into account student growth (as defined in this notice) in determining performance levels. In FY 2012, we intend to use this proposed priority as a competitive preference priority.

Proposed Priority

The Assistant Secretary for Special Education and Rehabilitative Services proposes a priority for projects that are designed to provide teachers professional development that is targeted to meet their specific needs, as those needs are identified by teacher evaluation systems that take into account student growth (as defined in this notice) in determining performance levels.

Types of Priorities

When inviting applications for a competition using one or more priorities, we designate the type of each priority as absolute, competitive preference, or invitational through a notice in the **Federal Register**. The effect of each type of priority follows:

Absolute priority: Under an absolute priority, we consider only applications that meet the priority (34 CFR 75.105(c)(3)).

Competitive preference priority: Under a competitive preference priority, we give competitive preference to an application by (1) awarding additional points, depending on the extent to which the application meets the competitive preference priority (34 CFR 75.105(c)(2)(i)); or (2) selecting an application that meets the priority over an application of comparable merit that does not meet the priority (34 CFR 75.105(c)(2)(ii)).

Invitational priority: Under an invitational priority, we are particularly interested in applications that meet the priority. However, we do not give an application that meets the priority a preference over other applications (34 CFR 75.105(c)(1)).

Proposed Definitions

Background

We propose the following definitions of the terms *evidence-based, fidelity, high-need local educational agency (LEA), student achievement,* and *student growth* for use in the SPDG program. We propose these definitions to ensure that applicants have a clear understanding of how we are using these terms in the proposed priorities.

To the extent appropriate, we propose to use definitions that we have used in other similar priorities. For example, the definitions of *evidence-based, student achievement,* and *student growth* are based on the definitions of terms defined in the Department's notice of final supplemental priorities and definitions for discretionary grant programs, published in the **Federal Register** on December 15, 2010 (75 FR 78486), and corrected on May 12, 2011 (76 FR 27637). In addition, we propose to adopt the definition of *high-need LEA* that is used in the Elementary and Secondary Education Act of 1965, as amended (ESEA). Finally, we have based the proposed definition of the term *fidelity* on a definition that is widely accepted in the field (Gresham, MacMillan, Boebe-Frankenberger, & Bocian, 2000).

Proposed Definitions: The Assistant Secretary proposes the following definitions for this program. We may apply one or more of these definitions in any year in which this program is in effect.

Evidence-based refers to practices for which there is strong evidence or moderate evidence of effectiveness.

Fidelity means the delivery of instruction in the way in which it was designed to be delivered.

High-need LEA means, in accordance with section 2102(3) of the Elementary and Secondary Education Act of 1965, as amended (ESEA), an LEA—

(a) That serves not fewer than 10,000 children from families with incomes below the poverty line (as that term is defined in section 9101(33) of the ESEA), or for which not less than 20 percent of the children served by the LEA are from families with incomes below the poverty line; and

(b) For which there is (1) a high percentage of teachers not teaching in the academic subjects or grade levels that the teachers were trained to teach, or (2) a high percentage of teachers with emergency, provisional, or temporary certification or licensing.

Student achievement means—

(a) For tested grades and subjects: (1) A student's score on the State's assessments under the ESEA; and, as appropriate, (2) other measures of student learning, such as those described in paragraph (b) of this definition, provided they are rigorous and comparable across schools.

(b) For non-tested grades and subjects: alternative measures of student learning and performance, such as student scores on pre-tests and end-of-course tests; student performance on English language proficiency assessments; and other measures of student achievement that are rigorous and comparable across schools.

Student growth means the change in student achievement (as defined in this notice) for an individual student between two or more points in time.

Final Priorities and Definitions

We will announce the final priorities and definitions in a notice in the **Federal Register**. We will determine the final priorities and definitions after considering responses to this notice and other information available to the Department. This notice does not preclude us from proposing additional priorities, requirements, definitions, or selection criteria, subject to meeting applicable rulemaking requirements.

Note: This notice does *not* solicit applications. In any year in which we choose to use one or more of these priorities, we invite applications through a notice in the **Federal Register**.

Executive Orders 12866 and 13563

Regulatory Impact Analysis

Under Executive Order 12866, the Secretary must determine whether this regulatory action is ''significant'' and, therefore, subject to the requirements of the Executive order and subject to review by the Office of Management and Budget (OMB). Section 3(f) of Executive Order 12866 defines a ''significant regulatory action'' as an action likely to result in a rule that may—

(1) Have an annual effect on the economy of $100 million or more, or adversely affect a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or Tribal governments or communities in a material way (also referred to as an ''economically significant'' rule);

(2) Create serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impacts of entitlement 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 stated in the Executive order.

This proposed regulatory action is not a significant regulatory action subject to review by OMB under section 3(f) of Executive Order 12866.

We have also reviewed this regulatory action under Executive Order 13563, which supplements and explicitly reaffirms the principles, structures, and definitions governing regulatory review established in Executive Order 12866. To the extent permitted by law, Executive Order 13563 requires that an agency—

(1) Propose or adopt regulations only on a reasoned determination that their benefits justify their costs (recognizing that some benefits and costs are difficult to quantify);

(2) Tailor its regulations to impose the least burden on society, consistent with obtaining regulatory objectives and taking into account— among other things and to the extent practicable—the costs of cumulative regulations;

(3) In choosing among alternative regulatory approaches, select those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity);

(4) To the extent feasible, specify performance objectives, rather than the behavior or manner of compliance a regulated entity must adopt; and

(5) Identify and assess available alternatives to direct regulation, including economic incentives—such as user fees or marketable permits—to encourage the desired behavior, or provide information that enables the public to make choices.

Executive Order 13563 also requires an agency ''to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible.'' The Office of Information and Regulatory Affairs of OMB has emphasized that these techniques may include ''identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes.''

We are taking this regulatory action only on a reasoned determination that its benefits justify its costs. In choosing among alternative regulatory approaches, we selected those approaches that maximize net benefits. Based on the analysis that follows, the Department believes that this regulatory action is consistent with the principles in Executive Order 13563.

In accordance with both Executive orders, the Department has assessed the potential costs and benefits of this regulatory action. The potential costs associated with this regulatory action are those resulting from statutory requirements and those we have determined as necessary for administering the Department's programs and activities.

We have also determined that this regulatory action does not unduly interfere with State, local, and Tribal governments in the exercise of their governmental functions.

Intergovernmental Review: This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. One of the objectives of the Executive order is to foster an intergovernmental partnership and a strengthened federalism. The Executive order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

This document provides early notification of our specific plans and actions for this program.

Accessible Format: Individuals with disabilities can obtain this document in an accessible format (e.g., braille, large print, audiotape, or compact disc) on request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**.

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: *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: *www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Dated: April 10, 2012.

Alexa Posny,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 2012–8974 Filed 4–12–12; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC12–92–000.

Applicants: Noble Americas Gas & Power Corp., Eagle Point Power Generation LLC.

Description: Application for Approval Pursuant to Section 203 of the Federal Power Act, Request for Expedited Consideration and Request for Privileged Treatment of Eagle Point Power Generation LLC, *et al.*

Filed Date: 4/4/12.

Accession Number: 20120404–5227.

Comments Due: 5 p.m. ET 4/25/12.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER12–1120–001.

Applicants: ITC Midwest LLC.

Description: Amendment Filing to be effective 4/19/2012.

Filed Date: 4/4/12.

Accession Number: 20120404–5177.

Comments Due: 5 p.m. ET 4/25/12.

Docket Numbers: ER12–1445–000.

Applicants: PJM Interconnection, L.L.C.

Description: Ministerial Clean-Up Filing due to Overlapping Filings to be effective 2/18/2012.

Filed Date: 4/4/12.

Accession Number: 20120404–5195.

Comments Due: 5 p.m. ET 4/25/12.

Docket Numbers: ER12–1446–000.

Applicants: PacifiCorp.

Description: Tariff Volume 4—Compliance Filing to be effective 4/4/2012.

Filed Date: 4/4/12.

Accession Number: 20120404–5204.

Comments Due: 5 p.m. ET 4/25/12.

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: April 5, 2012.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2012–8955 Filed 4–12–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #2

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER12–845–001.
Applicants: Bishop Hill Interconnection LLC.
Description: Compliance Filing of Common Facilities Agreement to be effective 3/29/2012.
Filed Date: 4/5/12.
Accession Number: 20120405–5046.
Comments Due: 5 p.m. ET 4/26/12.

Docket Numbers: ER12–846–001.
Applicants: Bishop Hill Energy II LLC.
Description: Compliance Filing of Common Facilities Agreement to be effective 3/29/2012.
Filed Date: 4/5/12.
Accession Number: 20120405–5051.
Comments Due: 5 p.m. ET 4/26/12.

Docket Numbers: ER12–847–001.
Applicants: Bishop Hill Energy LLC.
Description: Compliance Filing of Amended Shared Facilities Agreement to be effective 3/29/2012.
Filed Date: 4/5/12.
Accession Number: 20120405–5043.
Comments Due: 5 p.m. ET 4/26/12.

Docket Numbers: ER12–848–001.
Applicants: Bishop Hill Energy II LLC.
Description: Cancellation of Shared Facilities Agreement Compliance Filing to be effective 3/29/2012.
Filed Date: 4/5/12.
Accession Number: 20120405–5052.
Comments Due: 5 p.m. ET 4/26/12.

Docket Numbers: ER12–849–001.
Applicants: Bishop Hill Energy III LLC.
Description: Cancellation of Shared Facilities Agreement Compliance Filing to be effective 3/29/2012.
Filed Date: 4/5/12.
Accession Number: 20120405–5044.
Comments Due: 5 p.m. ET 4/26/12.

Docket Numbers: ER12–850–001.
Applicants: Bishop Hill Interconnection LLC.
Description: Compliance Filing of Amended Shared Facilities Agreement to be effective 3/29/2012.
Filed Date: 4/5/12.
Accession Number: 20120405–5045.
Comments Due: 5 p.m. ET 4/26/12.

Docket Numbers: ER12–1418–001.
Applicants: TC Ravenswood, LLC.
Description: Rate Schedule to be effective 3/30/2012.
Filed Date: 4/5/12.

Accession Number: 20120405–5086.

Comments Due: 5 p.m. ET 4/12/12.

Docket Numbers: ER12–1447–000.

Applicants: Southern California Edison Company.

Description: Notice of Cancellation SGIA SERVAG SCE–GBU 17300 Slover Fontana Roof Top Solar to be effective 8/29/2011.

Filed Date: 4/5/12.

Accession Number: 20120405–5000.

Comments Due: 5 p.m. ET 4/26/12.

Docket Numbers: ER12–1448–000.

Applicants: Southern California Edison Company.

Description: Amended SGIA with SCE and Littlerock for Littlerock SGF1 Project to be effective 4/6/2012.

Filed Date: 4/5/12.

Accession Number: 20120405–5001.

Comments Due: 5 p.m. ET 4/26/12.

Docket Numbers: ER12–1449–000.

Applicants: NorthWestern Corporation.

Description: Notice of Cancellation of FERC Rate Schedule Nos. 545 and 550, Martinsdale LGIAs to be effective 5/23/2012.

Filed Date: 4/5/12.

Accession Number: 20120405–5082.

Comments Due: 5 p.m. ET 4/26/12.

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: April 5, 2012.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2012–8956 Filed 4–12–12; 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: RP12–584–000.
Applicants: Gulf South Pipeline Company, LP.
Description: HK 37731 to Texla 39774 Capacity Release Negotiated Rate Agreement filing to be effective 4/1/2012.
Filed Date: 4/2/12.
Accession Number: 20120402–5159.
Comments Due: 5 p.m. ET 4/16/12.

Docket Numbers: RP12–585–000.
Applicants: Gulf Crossing Pipeline Company LLC.
Description: Newfield 18 to Tenaska 458 Capacity Release Negotiated Rate Agreement filing to be effective 4/1/2012.
Filed Date: 4/2/12.
Accession Number: 20120402–5228.
Comments Due: 5 p.m. ET 4/16/12.

Docket Numbers: RP12–586–000.
Applicants: Gulf South Pipeline Company, LP.
Description: UMDG Non-conforming Agreements Filing to be effective 4/1/2012.
Filed Date: 4/2/12.
Accession Number: 20120402–5290.
Comments Due: 5 p.m. ET 4/16/12.

Docket Numbers: RP12–587–000.
Applicants: Golden Triangle Storage, Inc.
Description: Administrative Revisions to Contact Information in FERC Gas Tariff to be effective 4/6/2012.
Filed Date: 4/3/12.
Accession Number: 20120403–5109.
Comments Due: 5 p.m. ET 4/16/12.

Docket Numbers: RP12–588–000.
Applicants: Dominion Transmission, Inc.
Description: DTI—April 3, 2012 Negotiated Rate Agreements Clarification and Admin. Update to be effective 4/4/2012.
Filed Date: 4/3/12.
Accession Number: 20120403–5166.
Comments Due: 5 p.m. ET 4/16/12.

Docket Numbers: RP12–589–000.
Applicants: Iroquois Gas Transmission System, L.P.
Description: 04/04/12 Negotiated Rates—United Energy Trading, LLC (RTS) to be effective 4/5/2012.
Filed Date: 4/4/12.
Accession Number: 20120404–5179.
Comments Due: 5 p.m. ET 4/16/12.

Docket Numbers: RP12–590–000.
Applicants: Rockies Express Pipeline LLC.
Description: Negotiated Rate 2012–04–04 Encana to be effective 4/5/2012.
Filed Date: 4/4/12.
Accession Number: 20120404–5184.
Comments Due: 5 p.m. ET 4/16/12.

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: April 5, 2012.

Nathaniel J. Davis, Sr.

Deputy Secretary.

[FR Doc. 2012–8957 Filed 4–12–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL12–51–000]

Southwest Power Pool, Inc.; Notice of Initiation of Proceeding and Refund Effective Date

On April 6, 2012, the Commission issued an order that initiated a proceeding in Docket No. EL12–51–000, pursuant to section 206 of the Federal Power Act (FPA), 16 U.S.C. 824e (2006), to determine the justness and reasonableness of the proposed rate reduction by Southwest Power Pool, Inc. *Southwest Power Pool, Inc.,* 139 FERC ¶ 61,016 (2012).

The refund effective date in Docket No. EL12–51–000, established pursuant to section 206(b) of the FPA, will be the date of publication of this notice in the **Federal Register**.

Dated: April 6, 2012.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2012–8958 Filed 4–12–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No., 14376–000]

Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

On March 23, 2012, Cave Run Energy, LLC filed an application for a preliminary permit, pursuant to section 4(f) of the Federal Power Act (FPA), proposing to study the feasibility of a hydropower project located at the U.S. Army Corps of Engineers' (Corps) Cave Run Dam, located on the Licking River in Rowan and Bath Counties, Kentucky. The sole purpose of a preliminary permit, if issued, is to grant the permit holder priority to file a license application during the permit term. A preliminary permit does not authorize the permit holder to perform any land-disturbing activities or otherwise enter upon lands or waters owned by others without the owners' express permission.

The proposed project would consist of the following: (1) A bifurcation structure constructed at the end of the dam's outlet conduit; (2) a powerhouse containing two turbine/generating units with a total capacity of 6.0 megawatts; (3) a 70-foot-long, 150 inch-diameter steel penstock; (4) a 1,200-foot-long, 12.7-kilovolt (kV) transmission line. The proposed project would have an average annual generation of 34,164 megawatt-hours (MWh), and operate utilizing surplus water from the Cave Run Dam, as directed by the Corps.

Applicant Contact: Mr. Mark Boumansour, Cave Run Energy, LLC, 1035 Pearl Street 4th Floor, Boulder, CO 80302. (720) 295–3317.

FERC Contact: Christiane Casey, *christiane.casey@ferc.gov,* (202) 502–8577.

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications: 60 days from the issuance of this notice. Competing applications and notices of intent must meet the requirements of 18 CFR 4.36. Comments, motions to intervene, notices of intent, and competing applications may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site *http://www.ferc.gov/docs-filing/efiling.asp*. Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp*. You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at 1–866–208–3676, or for TTY, (202) 502–8659. Although the Commission strongly encourages electronic filing, documents may also be paper-filed. To paper-file, mail an original and seven copies to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

More information about this project, including a copy of the application, can be viewed or printed on the ''eLibrary'' link of Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp*. Enter the docket number (P–14376–000) in the docket number field to access the document. For assistance, contact FERC Online Support.

Dated: April 6, 2012.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2012–8953 Filed 4–12–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. AD12–13–000]

Geomagnetic Disturbances to the Bulk-Power System; Notice of Technical Conference

Take notice that the Federal Energy Regulatory Commission staff will hold a Staff Technical Conference on Geomagnetic Disturbances to the Bulk-Power System on Monday, April 30, 2012, from 11 a.m. to 4 p.m. This staff-led conference will be held in the Commission Meeting Room at the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426. The conference will be open for the public to attend, and advance registration is not required.

The purpose of the conference is to discuss issues related to reliability of the Bulk-Power System as affected by geomagnetic disturbances. The conference will explore the risks and impacts from geomagnetically induced currents to transformers and other equipment on the Bulk-Power System, as well as, options for addressing or mitigating the risks and impacts.

The agenda for this conference will be issued at a later date. Information on this event will be posted on the Calendar of Events on the Commission's Web site, *www.ferc.gov,* prior to the event.

Advance registration is not required, but is encouraged. You may register at the following Web page: *https://www.ferc.gov/whats-new/registration/geomagnetic-bulk-4-30-12-form.asp*.

This conference will be transcribed. Transcripts of the conference will be immediately available for a fee from Ace-Federal Reporters, Inc. (202–347–3700 or 1–800–336–6646). A free webcast of the meeting/conference is also available through *www.ferc.gov*. Anyone with Internet access who desires to listen to this event can do so by navigating to *www.ferc.gov* Calendar of Events and locating this event in the Calendar. The event will contain a link to its webcast. The Capitol Connection provides technical support for the webcasts and offers the option of listening to the meeting via phone-bridge for a fee. If you have any questions, visit *www.CapitolConnection.org* or call 703–993–3100.

Commission conferences are accessible under section 508 of the Rehabilitation Act of 1973. For accessibility accommodations, please send an email to *accessibility@ferc.gov* or call toll free 1–866–208–3372 (voice) or 202–208–1659 (TTY), or send a Fax to 202–208–2106 with the required accommodations.

For more information about this conference, please contact: Sarah McKinley, Office of External Affairs, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, (202) 502–8368, *sarah.mckinley@ferc.gov*.

Dated: April 6, 2012.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2012–8954 Filed 4–12–12; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2011–0621; FRL–9659–6]

Access by EPA Contractors to Confidential Business Information Related to the Greenhouse Gas Reporting Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA's Office of Atmospheric Programs plans to authorize the contractors named in this notice to access information submitted to EPA under the Greenhouse Gas Reporting

Program that may be designated or claimed as confidential business information. Contractor access to this information will begin no sooner than April 19, 2012.

DATES: EPA will accept comments on this Notice through April 18, 2012.

ADDRESSES: You may submit your comments, identified by Docket ID No. EPA–HQ–OAR–2011–0621 by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Email: MRR_Corrections@epa.gov.* Include Docket ID No. EPA–HQ–OAR–2011–0621 in the subject line of the message.
- *Fax:* (202) 566–9744.
- *Mail:* Environmental Protection Agency, EPA Docket Center (EPA/DC), Mailcode 2822T, Attention Docket ID No. EPA–HQ–OAR–2011–0621, 1200 Pennsylvania Avenue NW., Washington, DC 20004.
- *Hand/Courier Delivery:* EPA Docket Center, Public Reading Room, EPA West Building, Room 3334, 1301 Constitution Avenue NW., Washington, DC 20004. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–HQ–OAR–2011–0621. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be confidential business information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or email. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through *http://www.regulations.gov* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

FOR FURTHER INFORMATION CONTACT: Carole Cook, Climate Change Division, Office of Atmospheric Programs (MC–6207J), Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460; telephone number: (202) 343–9263; fax number: (202) 343–2342; email address: *GHGReportingRule@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background and Comment Information

A. Does this notice apply to me?

This notice is directed to the general public. However, this action may be of particular interest to parties subject to the requirements of 40 CFR part 98. If you have further questions regarding the applicability of this action to a particular party, please contact the person listed in **FOR FURTHER INFORMATION CONTACT**.

B. How can I get copies of this document and other related information?

1. Electronically

EPA has included a public docket for this **Federal Register** notice under Docket EPA–HQ–OAR–2011–0621.

All documents in the docket are identified in the docket index available at *http://www.regulations.gov.* Although listed in the index, some information is not publicly available, such as confidential business information (CBI) or other information for which disclosure is restricted by statute. Certain materials, such as copyrighted material, will only be available in hard copy at the EPA Docket Center.

2. EPA Docket Center

Materials listed under Docket EPA–HQ–OAR–2011–0621 will be available for public viewing at the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Avenue NW., Washington, DC 20460. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Air Docket is (202) 566–1742.

B. What should I consider as I prepare my comments to EPA?

1. Submitting CBI in Response to This Notice

Clearly mark the part or all of the comments that you claim to be CBI submitted in response to this notice. For CBI information in a disk or CD ROM that you mail to EPA, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information marked as CBI will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2.

If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

2. Tips for Preparing Your Comments

When submitting comments, remember to:

Identify this Notice by docket number and other identifying information (e.g., subject heading, **Federal Register** date and page number).

Follow directions. EPA may ask you to respond to specific questions or organize comments by referencing a CFR part or section number.

Describe any assumptions and provide any technical information and/or data that you used.

Provide specific examples to illustrate your concerns and suggest alternatives. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

Make sure to submit your comments by the deadline identified in the preceding section titled **DATES**. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. Description of Programs and Potential Disclosure of Information Claimed as Confidential Business Information to Contractors

EPA's Office of Atmospheric Programs (OAP) has responsibility for protecting public health and the environment by addressing climate change, protecting the ozone layer, and improving regional air quality. In response to the FY2008 Consolidated

Appropriations Act (H.R. 2764; Pub. L. 110–161), EPA created the Greenhouse Gas Reporting Program (GHGRP), 40 CFR part 98 (Part 98), which requires reporting of greenhouse gas (GHG) data and other relevant information from large sources and suppliers in the United States. The purpose of Part 98 is to collect accurate and timely GHG data to inform future policy decisions. Some of the information submitted is designated or claimed to be CBI. Such information is handled in accordance with EPA's regulations in 40 CFR part 2, subpart B and in accordance with EPA procedures that are consistent with those regulations.

EPA has, at times, determined that it is necessary to disclose to EPA contractors certain information that has been designated or claimed as CBI. When this occurs, the corresponding contract must address the appropriate use and handling of the information by the contractor. In every instance, the contractor must require its personnel who need access to information designated or claimed as CBI to sign written agreements before they are granted access to the data. In addition to contractors' requirement to sign written agreements prior to being granted access to CBI, EPA is also required to give notice in accordance with 40 CFR 2.301(h)(2)(iii). EPA has determined that the contractors, subcontractors, and grantees (collectively referred to as ''contractors'') listed below may require access to data submitted to EPA under the GHGRP that is designated or claimed as CBI. EPA is providing notice and an opportunity to comment and is issuing this **Federal Register** notice to inform all reporters of information under Part 98 that EPA may grant access to material that may be designated or claimed as CBI to the contractors identified below, as needed. EPA may also grant access to materials that may be designated or claimed as CBI to any of the listed subcontractors, as needed, but does not necessarily anticipate granting access to all of the listed subcontractors.

Under Contract Number EP–W–11–052, Science Applications International Corporation (SAIC), 1710 SAIC Drive, McLean, VA 22102, and its subcontractor, Federal Working Group, 4620 Lee Highway, Suite 210, Arlington, VA 22207, provide technical support that requires access to information designated or claimed as CBI related to the GHGRP. Access to data, including information designated or claimed as CBI, will commence no sooner than April 19, 2012 and will continue until the termination of this contract. If the contract is extended, this access will continue for the remainder of the contract and any further extensions without further notice.

Under Contract Number EP–W–11–053, Eastern Research Group (ERG), 110 Hartwell Avenue, Lexington, MA 02421, provides, and any of the subcontractors listed below may provide, technical support that requires access to information designated or claimed as CBI related to the GHGRP. Access to data, including information designated or claimed as CBI, will commence no sooner than April 19, 2012 and will continue until the termination of this contract. If the contract is extended, this access will continue for the remainder of the contract and any further extensions without further notice. These provisions also apply to the following ERG subcontractors: AEA Technology PLC, 6, New Street Square, London, EC4A 3BF, England; Clearstone Engineering, Ltd., #700, 900—6th Avenue SW., Calgary, Alberta, Canada, T2P 3K2; Earth Resources Technology, Inc., 6100 Frost Place, Suite A, Laurel, MD 20707; First Environment, Inc., 91 Fulton Street, Boonton, NJ 07005; HCD International, 4390 Parliament Place, Suite A, Lanham, MD 20706; LRQA Americas Sustainability, 1216 State Street, 5th Floor, Santa Barbara, CA, 93101–2601; National Opinion Research Center, 1155 East 60th Street, 3rd Floor, Chicago, IL 60637; Project Performance Corporation, 1760 Old Meadow Road, McLean, Virginia 22102; Ruby Canyon Engineering, Inc., 743 Horizon Court, Suite 385, Grand Junction, CO 81506; Serafina Technical Consulting, LLC, P.O. Box 77, 41 Rodeo Drive, Serafina, NM 87569; Sierra Research, Inc., 1801 J Street, Sacramento, CA 95811; Stratus Consulting, Inc., 1881 Ninth Street, Suite 201, Boulder, CO 80302; Windsor Solutions, Inc., 4386 SW Macadam Avenue, Suite 101, Portland, OR 97239; Dr. Rick Chalaturnyk, 18 Oakmont Drive, St. Albert, AB, Canada T8N 6K6; Dr. Lincoln Pratson, 203 Old Chem, Box 90227, Durham, NC 27708; Dr. Sebastien Raoux, 361 West 36th Street, New York, NY 10018; and Dr. Christina Schwerdtfeger, 42 Sawgrass, Coto De Caza, CA 92679.

Under Contract Number EP–W–07–067 Task Order 85, Eastern Research Group (ERG), 110 Hartwell Avenue, Lexington, MA 02421, provides technical support that requires access to information designated or claimed as CBI related to the GHGRP, including, but not limited to, 40 CFR part 98. Access to data, including information designated or claimed as CBI, will commence no sooner than April 19, 2012 and will continue until the termination of this contract. If the contract is extended, this access will continue for the remainder of the contract and any further extensions without further notice.

Under Contract Number EP–W–11–054, RTI International, PO Box 12194, 3040 Cornwallis Road, Research Triangle Park, NC 27709, provides, and any of the subcontractors listed below may provide, technical support that requires access to information designated or claimed as CBI related to the GHGRP. Access to data, including information designated or claimed as CBI, will commence no sooner than April 19, 2012 and will continue until the termination of this contract. If the contract is extended, this access will continue for the remainder of the contract and any further extensions without further notice. These provisions also apply to the following RTI International subcontractors: Accenture Federal Services, LLC, 800 North Glebe Road, Suite 300, Arlington, VA 22203; Adasphere Inc., PO Box 81, 11 East Beverley Street, Suite 1, Staunton, VA 24402–0081; Carbon Disclosure Project, 6 West 48th Street, 10th Floor, New York, NY, 10036; EnDyna, Inc., 7926 Jones Branch Drive, Suite 620, McLean, VA 22102; LMI Government Consulting, 2000 Corporate Ridge #160, McLean, VA 22102; Quasars, Inc., 955 L'Enfant Plaza North SW., Suite 1201, Washington, DC 20024; and VEETech PC, 113 Centrewest Court, Cary, NC 27513.

Under Contract Number EP–W–11–055, SRA International, Inc., 4300 Fair Lakes Court, Fairfax, Virginia 22033, and its subcontractor, Rabbit Software, LLC, 1657 Old Brook Road, Charlottesville, VA 22901, provide, and any of the additional subcontractors listed below may provide, technical support that requires access to information designated or claimed as CBI related to the GHGRP. Access to data, including information designated or claimed as CBI, will commence no sooner than April 19, 2012 and will continue until the termination of this contract. If the contract is extended, this access will continue for the remainder of the contract and any further extensions without further notice. These provisions also apply to the following SRA International subcontractors: Abt Associates, 55 Wheeler Street, Cambridge, MA 02138–1168; AMEC, 4021 Stirrup Creek Drive, Suite 100, Durham, NC 27703; AXIS Management Group, LLC, 17311 Quail Creek Circle, Hamilton, VA 20158; Booz Allen Hamilton, Hamilton Building, 8283 Greensboro Drive, McLean, VA 22102; Center for Climate Strategies, 1800 K Street NW., Suite 714, Washington, DC

20006; E C/R Inc., 501 Eastowne Drive, Suite 250, Chapel Hill, NC 27514; Emission Monitoring, Inc., 8901 Glenwood Avenue, Raleigh, NC 27617; Noblis, 3150 Fairview Park Drive, Falls Church, VA 22042; Powersolv, Inc., 1801 Robert Fulton Drive, Reston, VA 20191; V3 Technical Services, 2210 Award Winning Way, Suite 202, Knoxville, TN 37932; Melanie LaCount, 9511 Kingsley Avenue, Bethesda, MD 20814; and Quarles Consulting LLC, 1280 Inglecress Drive, Charlottesville, VA 22901.

Under Contract Number EP–W–07–068 Task Order 108, ICF International, 9300 Lee Highway, Fairfax, VA 22031, provides technical support that requires access to information designated or claimed as CBI related to the GHGRP, including, but not limited to, 40 CFR part 98, subpart W. Access to data, including information designated or claimed as CBI, will commence no sooner than April 19, 2012 and will continue until the termination of this contract. If the contract is extended, this access will continue for the remainder of the contract and any further extensions without further notice.

Under Contract Number EP–W–07–068 Task Order 91, the subcontractors, Transcarbon International, 1 Penn Plaza Suite 6110, New York, NY 10119, and Dr. C. Shepherd Burton, 2047 Huckleberry Rd., San Rafael, CA 94903, provide technical support that requires access to information designated or claimed as CBI related to the GHGRP, including, but not limited to, 40 CFR part 98 subpart I. Access to data, including information designated or claimed as CBI, will commence no sooner than April 19, 2012 and will continue until the termination of this contract. If the contract is extended, this access will continue for the remainder of the contract and any further extensions without further notice.

Under Contract Number GS–10F–0036K, the subcontractor Transcarbon International, 1 Penn Plaza Suite 6110, New York, NY 10119, provides technical support that requires access to information designated or claimed as CBI related to the GHGRP, including, but not limited to, 40 CFR part 98 subpart I. Access to data, including information designated or claimed as CBI, will commence no sooner than April 19, 2012 and will continue until the termination of this contract. If the contract is extended, this access will continue for the remainder of the contract and any further extensions without further notice.

Under Contract Number GS–10F–0124J Delivery Order EP11H000308, ICF International, 9300 Lee Highway, Fairfax, VA 22031, provides technical support that requires access to information designated or claimed as CBI related to the GHGRP, including, but not limited to, 40 CFR part 98, subparts L, O, OO and QQ. Access to data, including information designated or claimed as CBI, will commence no sooner than April 19, 2012 and will continue until the termination of this contract. If the contract is extended, this access will continue for the remainder of the contract and any further extensions without further notice.

Parties who wish further information about this **Federal Register** notice or about OAP's disclosure of information designated or claimed as CBI to contactors may contact the person listed under **FOR FURTHER INFORMATION CONTACT.**

Dated: April 5, 2012.

Sarah Dunham,

Director, Office of Atmospheric Programs.

[FR Doc. 2012–8923 Filed 4–12–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–9002–5]

Environmental Impacts Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–7146 or *http://www.epa.gov/compliance/nepa/.*

Weekly receipt of Environmental Impact Statements

Filed 04/02/2012 Through 04/06/2012

Pursuant to 40 CFR 1506.9

Notice

Section 309(a) of the Clean Air Act requires that EPA make public its comments on EISs issued by other Federal agencies. EPA's comment letters on EISs are available at:*http://www.epa.gov/compliance/nepa/eisdata.html.*

EIS No. 20120098, Draft EIS, USAF, 00, F–35A Operational Basing, Beddown and Operation of F–35A Aircraft for the Combat Air Forces at One or More Locations throughout the Contiguous U.S. from 2015 through 2020, *Comment Period Ends:* 06/04/2012, *Contact:* Nicholas Germanos 757–764–5994.

EIS No. 20120099, Draft EIS, BLM, CA, Desert Harvest Solar Project, Construction, Operation, Maintenance, and Decommissioning of a 150-megawatt Photovoltaic Solar Energy Facility and Generation-Intertie Transmission Line, Consideration of Issuance of a Right-of-Way Grant, Riverside County, CA, *Comment Period Ends:* 07/13/2012, *Contact:* Lynnette Elser 951–697–5233.

EIS No. 20120100, Final EIS, NRC, WA, Generic—License Renewal of Nuclear Plants, Supplement 47 Regarding Columbia Generating Station (NUREG–1437), Issuance of a Renewed Operating License for an Additional 20 Years, Benton County, WA, *Review Period Ends:* 05/14/2012, *Contact:* Paula Cooper 301–415–2323.

EIS No. 20120101, Draft EIS, USACE, MS, Pascagoula Lower Sound/Bayou Casotte Channel Widening, Issuance of a Permit to Dredge or Excavate Adjacent to a Federal Navigation Channel in or Affecting Navigable Waters of the U.S., Jackson County, MS, *Comment Period Ends:* 05/29/2012, *Contact:* Philip Hegji 251–690–3222.

EIS No. 20120102, Final Supplement, USFS, MT, Young Dodge Project, Proposed Timber Harvest and Associate Activities, Updated Information on the First 3 Alternatives, Prescribed Burning, Road and Recreation Management, Kootenai National Forest, Rexford Ranger District, Lincoln County, MT, *Review Period Ends:* 05/14/2012, *Contact:* Moira McKelvey 406–296–2536.

Amended Notices

EIS No. 20120078, Second Draft Supplement, FHWA, TX, Trinity Parkway Project, Construction of a Six-Lane Controlled Access Toll Facility from IH–35 E/TX–183 to US–175/TX–310, Additional Information on the Compatibility with Levee Remediation Plans for the Dallas Floodway and New Information on Historic Resources, U.S. Army COE Section 10 and 404 Permits, Dallas County, TX, *Comment Period Ends:* 05/18/2012, *Contact:* Salvador Deocampo 512–536–5950 Revision to FR Notice Published 03/23/2012: Extending Comment Period from 5/7/2012 to 5/18/2012.

Dated: April 10, 2012.

Cliff Rader,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 2012–8929 Filed 4–12–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9659–5]

Notification of a Public Teleconference of the Science Advisory Board Ecological Processes and Effects Committee

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA or Agency) Science Advisory Board (SAB) Staff Office announces a public teleconference of the SAB Ecological Processes and Effects Committee (EPEC) to discuss the Committee's draft advisory report on the EPA Risk Assessment Forum (RAF) document, ''Integrating Ecological Assessment and Decision-Making at EPA, 2011 RAF Ecological Assessment Action Plan (August, 11, 2011).''

DATES: The SAB Ecological Processes and Effects Committee will conduct a public teleconference on Wednesday, May 16, 2012. The teleconference will begin at 12:00 noon and end at 3 p.m. (Eastern Daylight Time).

ADDRESSES: The public teleconference will be conducted by telephone only.

FOR FURTHER INFORMATION CONTACT: Any member of the public wishing further information regarding the public teleconference may contact Dr. Thomas Armitage, Designated Federal Officer (DFO), SAB Staff Office, by telephone/voice mail at (202) 564–2155 or via email at *armitage.thomas@epa.gov*. General information concerning the EPA Science Advisory Board can be found at the EPA SAB Web site at *http://www.epa.gov/sab.*

SUPPLEMENTARY INFORMATION: *Background:* The SAB was established pursuant to the Environmental Research, Development, and Demonstration Authorization Act (ERDAA) codified at 42 U.S.C. 4365, to provide independent scientific and technical peer review, advice, consultation, and recommendations to the EPA Administrator on the technical basis for EPA actions. As a Federal Advisory Committee, the SAB conducts business in accordance with the Federal Advisory Committee Act (FACA) (5 U.S.C. App. 2) and related regulations. Pursuant to FACA and EPA policy, notice is hereby given that the SAB EPEC, augmented with other experts, will hold a public teleconference to discuss its draft report on the EPA RAF document, ''Integrating Ecological Assessment and Decision-Making at EPA, 2011 RAF Ecological Assessment Action Plan (August, 11, 2011).'' The SAB Committee will comply with the provisions of FACA and all appropriate SAB Staff Office procedural policies.

EPA's Office of the Science Advisor has requested that the SAB EPEC review the Agency's Ecological Assessment Action Plan and related background documents, and provide advice on the technical merit and implementation of proposed initiatives. The SAB EPEC augmented with other experts previously held public teleconferences on February 22 and 23, 2012 to discuss its review comments on the EPA RAF draft document ''Integrating Ecological Assessment and Decision-Making at EPA, 2011 RAF Ecological Assessment Action Plan (August, 11, 2011).'' Background information about this SAB review can be found on the SAB Web site at: *http://yosemite.epa.gov/sab/sabproduct.nsf/fedrgstr_activites/RAF%20Eco%20Action%20Plan?OpenDocument.* The purpose of the upcoming teleconference is for the SAB EPEC to discuss its draft review report.

Availability of the review materials: The agenda and material in support of this meeting will be available on the SAB Web site at *http://www.epa.gov/sab.* For technical questions and information concerning the EPA document, ''Integrating Ecological Assessment and Decision-Making at EPA, 2011 RAF Ecological Assessment Action Plan (August, 11, 2011),'' please contact Mr. Lawrence Martin of EPA's Risk Assessment Forum by phone (202) 564–6497 or via email at *martin.lawrence@epa.gov.*

Procedures for Providing Public Input: Public comment for consideration by EPA's federal advisory committees and panels has a different purpose from public comment provided to EPA program offices. Therefore, the process for submitting comments to a federal advisory committee is different from the process used to submit comments to an EPA program office. Federal advisory committees and panels, including scientific advisory committees, provide independent advice to EPA. Members of the public can submit comments for a federal advisory committee to consider as it develops advice for EPA. Input from the public to the SAB will have the most impact if it consists of comments that provide specific scientific or technical information or analysis for the SAB Committee to consider or if it relates to the clarity or accuracy of the technical information.

Oral Statements: In general, individuals or groups requesting an oral presentation will be limited to three minutes per speaker. Interested parties should contact Dr. Thomas Armitage, DFO, in writing (preferably via email), at the contact information noted above, by May 9, 2012 to be placed on the list of public speakers for the May 16, 2012 teleconference. *Written Statements:* Written statements should be received in the SAB Staff Office by May 9, 2012 so that the information may be made available to the SAB Committee for their consideration. Written statements should be supplied to the DFO in electronic format via email (acceptable file formats: Adobe Acrobat PDF, WordPerfect, MS Word, MS PowerPoint, or Rich Text files in IBM-PC/Windows 98/2000/XP format). It is the SAB Staff Office general policy to post written comments on the Web page for the advisory meeting or teleconference. Submitters are requested to provide an unsigned version of each document because the SAB Staff Office does not publish documents with signatures on its Web sites. Members of the public should be aware that their personal contact information, if included in any written comments, may be posted to the SAB Web site. Copyrighted material will not be posted without explicit permission of the copyright holder.

Accessibility: For information on access or services for individuals with disabilities, please contact Dr. Thomas Armitage at the phone number or email address noted above, preferably at least ten days prior to the teleconference, to give EPA as much time as possible to process your request.

Dated: April 6, 2012.

Thomas H. Brennan,

Deputy Director, EPA Science Advisory Board Staff Office.

[FR Doc. 2012–8987 Filed 4–12–12; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL HOUSING FINANCE AGENCY

[No. 2012–N–04]

Proposed Collection; Comment Request

AGENCY: Federal Housing Finance Agency.

ACTION: 60-Day notice of submission of information collection for approval from Office of Management and Budget.

SUMMARY: In accordance with the requirements of the Paperwork Reduction Act of 1995, the Federal Housing Finance Agency (FHFA) is seeking public comments concerning the information collection known as ''Advances to Housing Associates,'' which has been assigned control number 2590–0001 by the Office of

Management and Budget (OMB). FHFA intends to submit the information collection to OMB for review and approval of a three-year extension of the control number, which is due to expire on July 31, 2012.

DATES: Interested persons may submit comments on or before June 12, 2012.

ADDRESSES: Submit comments to the FHFA using any one of the following methods:

- *Email: RegComments@fhfa.gov.* Please include Proposed Collection; Comment Request: Comment Request: ''Advances to Housing Associates, (No. 2012–N–04)'' in the subject line of the message.
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments. If you submit your comment to the Federal *eRulemaking Portal,* please also send it by *email* to FHFA at *RegComments@fhfa.gov* to ensure timely receipt by the agency.
- *Mail/Hand Delivery:* Federal Housing Finance Agency, Eighth Floor, 400 Seventh Street SW., Washington, DC 20024, ATTENTION: Public Comments/Proposed Collection; Comment Request: ''Advances to Housing Associates, (No. 2012–N–04)''. The package should be logged at the Seventh Street entrance Guard Desk, First Floor, on business days between 9 a.m. and 5 p.m.

We will post all public comments we receive without change, including any personal information you provide, such as your name, phone number, and address, on the FHFA Web site at *http://www.fhfa.gov.* In addition, copies of all comments received will be available for examination by the public on business days between the hours of 10 a.m. and 3 p.m., at the Federal Housing Finance Agency, Eighth Floor, 400 Seventh Street SW., Washington, DC 20024. To make an appointment to inspect comments, please call the Office of General Counsel at (202) 649–3804.

FOR FURTHER INFORMATION CONTACT: Jonathan F. Curtis, Financial Analyst, by email at *jonathan.curtis@fhfa.gov,* by telephone at (202) 649–3321, or Eric M. Raudenbush, Assistant General Counsel, *eric.raudenbush@fhfa.gov,* (202) 649–3084, (these are not toll-free numbers), Federal Housing Finance Agency, 400 Seventh Street SW., Washington DC 20024. The Telecommunications Device for the Hearing Impaired is (800) 877–8339.

SUPPLEMENTARY INFORMATION:

A. Need For and Use of the Information Collection

Section 10b of the Federal Home Loan Bank Act (Bank Act) (12 U.S.C. 1430b) authorizes the Federal Home Loan Banks (Banks) to make advances under certain circumstances to certified nonmember mortgagees. FHFA refers to nonmember mortgagees as ''housing associates.'' In order to be certified as a housing associate, an applicant must meet the eligibility requirements set forth in section 10b of the Bank Act. Part 1264 of FHFA's regulations implements the statutory eligibility requirements and establishes uniform review criteria an applicant must meet in order to be certified as a housing associate by a Bank.[1] More specifically, §§ 1264.3 and 1264.4 (12 CFR 1264.3–1264.4) implement the statutory eligibility requirements and provide guidance to an applicant on how it may satisfy those requirements.[2] Section 1264.5 authorizes the Banks to approve or deny all applications for certification as a housing associate, subject to the statutory and regulatory requirements.[3] Section 1264.6 permits an applicant to appeal a Bank decision to deny certification to the FHFA.[4]

Section 1266.17 of FHFA's regulations establishes the terms and conditions under which a Bank may make advances to an housing associate and also imposes a continuing obligation on each housing associate to provide information necessary to determine if it remains in compliance with applicable statutory and regulatory requirements.[5]

The information collection contained in §§ 1266.1 through 1266.6 and § 1266.17 of the regulations is necessary to enable the Banks to determine whether an applicant satisfies the statutory and regulatory requirements to be certified initially and maintain its status as a housing associate eligible to receive Bank advances. The FHFA requires and uses the information collection to determine whether to uphold or overrule a Bank decision to deny housing associate certification to an applicant.

The OMB control number for the information collection, which expires on July 31, 2012, is 2590–0001. The likely respondents include applicants for housing associate certification and current housing associates.

[1] *See* 12 CFR part 1264.
[2] *See* 12 CFR 1264.3, .4.
[3] *See* 12 CFR 1264.5.
[4] *See* 12 CFR 1264.6.
[5] *See* 12 CFR 1266.17.

B. Burden Estimate

FHFA estimates the total annual average number of applicants at one, with one response per applicant. The estimate for the average hours per application is 15 hours. The estimate for the annual hour burden for applicants is 15 hours (1 applicant × 1 response per applicant × 15 hours).

FHFA estimates the total annual average number of maintenance respondents—that is, current housing associates—at 68, with 1 response per housing associate. The estimate for the average hours per maintenance response is one hour. The estimate for the annual hour burden for current housing associates is 68 hours (68 certified housing associates × 1 response per associate × 1 hour).

The estimate for the total annual hour burden is 83 hours (68 housing associates × 1 response per associate × 1 hour + 1 applicant × 1 response per applicant × 15 hours).

C. Comment Request

FHFA requests written comments on the following: (1) Whether the collection of information is necessary for the proper performance of FHFA functions, including whether the information has practical utility; (2) The accuracy of FHFA's estimates of the burdens of the collection of information; (3) Ways to enhance the quality, utility, and clarity of the information collected; and (4) Ways to minimize the burden of the collection of information on applicants and housing associates, including through the use of automated collection techniques or other forms of information technology.

Dated: April 9, 2012.

Edward J. DeMarco,

Acting Director, Federal Housing Finance Agency.

[FR Doc. 2012–8871 Filed 4–12–12; 8:45 am]

BILLING CODE 8070–01–P

FEDERAL MARITIME COMMISSION

Notice of Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Federal Maritime Commission.

TIME AND DATE: April 18, 2012—10 a.m.

PLACE: 800 North Capitol Street NW., First Floor Hearing Room, Washington, DC.

STATUS: A part of the meeting will be in Open Session and the remainder of the meeting will be in Closed Session.

MATTERS TO BE CONSIDERED:

Open Session

1. Staff Briefing on Economic and Trade Conditions.

2. FMC Docket No. 11–22, *Non-Vessel-Operating Common Carrier Negotiated Rate Arrangements; Tariff Filing Exemption—NOTICE OF INQUIRY*—Staff Briefing and Status Report, and Commission Discussion regarding NVOCC Negotiated Rate Arrangements (NRAs) and NVOCC Service Arrangements (NSAs) (46 CFR part 531).

3. Staff Briefing on Administrative Conference of the United States, Recommendation No. 2011–6, *International Regulatory Cooperation.*

Closed Session

1. September 2, 2011 Commission Order Amending Special Reporting Requirements for the Transpacific Stabilization Agreement and the Westbound Transpacific Stabilization Agreement.

CONTACT PERSON FOR MORE INFORMATION: Karen V. Gregory, Secretary, (202) 523–5725.

Rachel E. Dickon,

Assistant Secretary.

[FR Doc. 2012–9098 Filed 4–11–12; 4:15 pm]

BILLING CODE 6730–01–P

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

Sunshine Act Meeting Notice

TIME AND DATE: 1 p.m., Tuesday, April 17, 2012.

PLACE: The Richard V. Backley Hearing Room, 9th Floor, 601 New Jersey Avenue NW., Washington, DC

STATUS: Closed.

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following in closed session: *Long Branch Energy* v. *Secretary of Labor,* Docket Nos. WEVA 2009–1492–R, *et al.* (Issues include whether the judge erred in granting motions to dismiss late-filed petitions for assessment of civil penalties.).

Any person attending this meeting who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs. Subject to 29 CFR 2706.150(a)(3) and 2706.160(d).

CONTACT PERSON FOR MORE INFO: Jean Ellen (202) 434–9950/(202) 708–9300 for TDD Relay/1–800–877–8339 for toll free.

Dated: April 9, 2012.

Emogene Johnson,

Administrative Assistant.

[FR Doc. 2012–9025 Filed 4–11–12; 11:15 am]

BILLING CODE 6735–01–P

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

[BAC 6735–01]

Sunshine Act Meeting Notice

April 9, 2012.

TIME AND DATE: 1 p.m., Tuesday, April 17, 2012.

PLACE: The Richard V. Backley Hearing Room, 9th Floor, 601 New Jersey Avenue NW., Washington, DC

STATUS: Closed.

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following in closed session: *Secretary of Labor* v. *Webster County Coal, LLC,* Docket Nos. KENT 2009–422, et al. (Issues include whether the judge erred in denying motions to dismiss late-filed petitions for assessment of civil penalties.)

Any person attending this meeting who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs. Subject to 29 CFR 2706.150(a)(3) and 2706.160(d).

CONTACT PERSON FOR MORE INFO: Jean Ellen (202) 434–9950/(202) 708–9300 for TDD Relay/1–800–877–8339 for toll free.

Emogene Johnson,

Administrative Assistant.

[FR Doc. 2012–9026 Filed 4–11–12; 11:15 am]

BILLING CODE P

FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-ScottRodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register**.

The following transactions were granted early termination—on the dates indicated—of the waiting period provided by law and the premerger notification rules. The listing for each transaction includes the transaction number and the parties to the transaction. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period.

EARLY TERMINATIONS GRANTED
MARCH 1, 2012 THRU MARCH 31, 2012

03/01/2012		
20120495	G	Deutsche Telekom AG; AT&T Inc.; Deutsche Telekom AG.
20120525	G	Nisshin Seifun Group Inc.; MMMT Holdings Corporation; Nisshin Seifun Group Inc.
20120528	G	H.I.G. Capital Partners IV. L.P. Compass Group PLC; H.I.G. Capital Partners IV, L.P.
20120535	G	J.P. Morgan Chase & Co.; Sun Capital Partners IV, LP; J.P. Morgan Chase & Co.
03/02/2012		
20120398	G	Akamai Technologies, Inc.; Cotendo, Inc.; Akamai Technologies, Inc.
20120526	G	Mr. Aloke Lohia and Mrs. Suchitra Lohia; J. Thomas Hurvis; Mr. Aloke Lohia and Mrs. Suchitra Lohia.
20120532	G	Nautic Partners VI, L.P.; Superior Vision Holdings, Inc.; Nautic Partners VI, L.P.
20120537	G	DSW Group Holdings, LLC; The Standard Companies, Inc.; DSW Group Holdings, LLC.
20120539	G	AltaGas Ltd.; LG Continental LLC; AltaGas Ltd.
20120541	G	General Atlantic Partners 90, L.P.; Bazaarvoice, Inc.; General Atlantic Partners 90, L.P.

EARLY TERMINATIONS GRANTED—Continued
MARCH 1, 2012 THRU MARCH 31, 2012

20120544	G	Wells Fargo & Company; My Alarm Center, LLC; Wells Fargo & Company.
20120547	G	Aegis Group plc; Geoffrey Cubitt; Aegis Group plc.
20120556	G	Algonquin Power & Utilities Corp.; National Grid plc; Algonquin Power & Utilities Corp.
20120558	G	Spartan Parent Holdings Inc.; MDCPVI TU Holdings, LLC; Spartan Parent Holdings Inc.
20120563	G	Exterran Partners, L.P.; Exterran Holdings, Inc.; Exterran Partners, L.P.
20120564	G	TPG Partners VI–AIV, L.P.; GlobeOp Financial Services S.A.; TPG Partners VI–AIV, L.P.
03/05/2012		
20110692	S	Western Digital Corporation; Hitachi Ltd.; Western Digital Corporation.
20120548	G	Aegis Group plc; Jeffrey Maling; Aegis Group plc.
03/06/2012		
20120517	G	Walgreen Co.; BioScrip, Inc.; Walgreen Co.
20120520	G	BB&T Corporation; C. G. JCF, L.P.; BB&T Corporation.
20120559	G	Mount Kellett Capital Partners (Cayman), L.P.; The Great Atlantic & Pacific Tea Company; Mount Kellett Capital Partners (Cayman), L.P.
20120571	G	PPL Corporation; The AES Corporation; PPL Corporation.
03/09/2012		
20120540	G	Elon Musk; SolarCity Corporation; Elon Musk.
20120572	G	Grupo Elelctra, S.A.B. de C.V.; Advance America, Cash Advance Centers, Inc.; Grupo Elektra, S.A.B. de C.V.
20120578	G	Linn Energy, LLC; BP p.l.c.; Linn Energy, LLC.
20120580	G	SandRidge Energy, Inc.; Riverstone/Carlyle Global Energy and Power Fund IV (FT), L.P; SandRidge Energy, Inc.
20120588	G	George A. Steiner Trust; Palace Laundry, Inc.; George A. Steiner Trust.
03/12/2012		
20120565	G	Energy Capital Partners II–A, LP; The AES Corporation Energy Capital Partners II–A, LP.
20120585	G	Brazos Equity Fund 11, L.P.; Road Infrastructure Investment Holdings, Inc.; Brazos Equity Fund II, L.P.
20120589	G	Advanced Micro Devices, Inc.; SeaMicro, Inc.; Advanced Micro Devices, Inc.
20120593	G	Arkansas Electric Cooperative Corporation; GDF Suez S.A.; Arkansas Electric Cooperative Corporation.
20120596	G	First Reserve Fund XI, L.P.; Antero Resources LLC; First Reserve Fund XI, L.P.
03/15/2012		
20120587	G	SEACOR Holdings Inc.; Superior Energy Services, Inc.; SEACOR Holdings Inc.
20120590	G	Warburg Pincus Private Equity X, L.P.; Wicks Communications & Media Partners III, L.P.; Warburg Pincus Private Equity X, L.P.
03/16/2012		
20120591	G	Park-Ohio Holdings Corp.; Sun Capital Partners IV, L.P.; Park-Ohio Holdings Corp.
20120598	G	Park-Ohio Holdings Corp.; Sun Capital Partners V. L.P.; Park-Ohio Holdings Corp.
20120600	G	SS&C Technologies Holdings, Inc.; Thomson Reuters Corporation; SS&C Technologies Holdings, Inc.
20120603	G	Kellogg Company; The Procter & Gamble Company; Kellogg Company.
20120608	G	DCP Midstream Partners, LP; ConocoPhillips; DCP Midstream Partners, LP.
20120609	G	DCP Midstream Partners, LP; Spectra Energy Corp.; DCP Midstream Partners, LP.
20120611	G	Arlon Food and Agriculture Partners LP; Edward Billington and Son, Limited; Arlon Food and Agriculture Partners LP.
20120612	G	Kelso Investment Associates VIII, L.P.; Quad-C Partners VII, L.P.; Kelso Investment Associates VIII, L.P.
20120613	G	Arlon Food and Agriculture Partners LP; Imperial Sugar Company; Arlon Food and Agriculture Partners LP.
03/21/2012		
20120538	G	Snow Phipps Group MV, L.P.; Paresh Ghelani; Snow Phipps Group MV, L.P.
20120576	G	URS Corporation; Flint Energy Services Ltd.; URS Corporation.
20120617	G	The Andersons, Inc.; Arnaizing Energy Holding Company, LLC; The Andersons, Inc.
20120618	G	Heckmann Corporation; Goldman Sachs Group, Inc.; Heckmann Corporation.
20120621	G	EPE Acquisition, LLC; El Paso Corporation; EPE Acquisition, LLC.
03/22/2012		
20120602	G	TA XI L.P.; CyOptics, Inc.; TA XI L.P.
20120610	G	TowerBrook Investors III, L.P.; HDS Investment Holding, Inc.; TowerBrook Investors III, L.P.
20120623	G	Levine Leichtman Capital Partners IV, L.P.; Gridiron Capital Fund, L.P.; Levine Leichtman Capital Partners IV, L.P.
03/23/2012		
20120494	G	CCMP Capital Investors II, L.P.; Willis Stein & Partners III, L.P.; CCMP Capital Investors II, L.P.
20120583	G	eBay Inc.; WHI Solutions, Inc.; eBay Inc.
20120614	G	Berkshire Hathaway Inc.; Sager Electrical Supply Company, Inc.; Berkshire Hathaway Inc.
20120626	G	The Bank of Nova Scotia; Poydras Capital, LLC; The Bank of Nova Scotia.

EARLY TERMINATIONS GRANTED—Continued
MARCH 1, 2012 THRU MARCH 31, 2012

20120627	G	Wendel SA; Loma International Corporation; Wendel SA.
20120628	G	Mercer International Inc.; Fibrek Inc.; Mercer International Inc.
20120629	G	Precision Castparts Corp.; RathGibson Holding Co. LLC; Precision Castparts Corp.
20120630	G	Audax Private Equity Fund III, L.P.; Brazos Equity Fund III, L.P.; Audax Private Equity Fund III, L.P.
20120632	G	Ocwen Financial Corporation; Morgan Stanley; Ocwen Financial Corporation.
20120636	G	Wynnchurch Capital Partners III, L.P.; Mueller Water Products, Inc.; Wynnchurch Capital Partners III, L.P.
20120638	G	Fertitta Investment LLC; Station Holdco LLC; Fertitta Investment LLC.
03/26/2012		
20120569	G	Glory Limited; Carlyle Europe Partners III, L.P.; Glory Limited.
20120631	G	Nuance Communications, Inc.; Transcend Services, Inc.; Nuance Communications, Inc.
03/27/2012		
20120586	G	Franz Haniel & Cie. GmbH; G. Thomas Patton, III; Christopher N. Patton; Franz Haniel & Cie. GmbH.
20120649	G	Howard Midstream Energy Partners, LLC; EnCap Energy Infrastructure Fund, L.P.; Howard Midstream Energy Partners, LLC.
03/28/2012		
20120620	G	Golden Gate Capital Opportunity Fund, L.P.; Infor Enterprise Applications Ltd.; Golden Gate Capital Opportunity Fund, L.P.
03/29/2012		
20120648	G	Mr. Mark Zuckerberg; Mr. Mark Zuckerberg; Mr. Mark Zuckerberg.
03/30/2012		
20111374	G	Humana Inc.; Arcadian Management Services, Inc.; Humana Inc.
20120633	G	OHI Parent, Inc.; Osmose Holdings, Inc.; OHI Parent, Inc.
20120637	G	Wellspring Capital Partners V, L.P.; Industrial Growth Partners III, L.P.; L.P.
20120644	G	MDCP VI–A Global Investments, LP; Pinafore Investment Cooperatief U.A.; MDCP VI–A Global Investments, LP.
20120653	G	Riverside Capital Appreciation Fund V LP; The Riverstone Group, LLC; Fund V LP.
20120655	G	Sumitomo Corporation; Midas, Inc.; Sumitomo Corporation.
20120657	G	The Procter & Gamble Company; New Chapter, Inc.; The Procter & Gamble Company.

For Further Information Contact: Renee Chapman, Contact Representative, or Theresa Kingsberry,

Legal Assistant, Federal Trade Commission, Premerger Notification Office, Bureau Of Competition, Room H–303, Washington, DC 20580, (202) 326–3100.

By Direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 2012–8734 Filed 4–12–12; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Findings of Research Misconduct

AGENCY: Office of the Secretary, HHS.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Office of Research Integrity (ORI) has taken final action in the following case:

Peter J. Francis, M.D., Ph.D., Oregon Health Sciences University: Based on the report of an investigation conducted by Oregon Health Sciences University (OHSU) and additional analysis conducted by ORI in its oversight review, ORI found that Dr. Peter J. Francis, Associate Professor, Casey Eye Institute, OHSU, engaged in research misconduct in research reported in two grant applications, R01 EY021214–01 and resubmitted as R01 EY021214–01A1, that he submitted to the National Eye Institute (NEI), National Institutes of Health (NIH).

Specifically, ORI finds that the Respondent fabricated results of a pilot experiment in which he claimed to have injected retinal pigment epithelial (RPE) cells obtained from Rhesus monkey embryonic stem cells (ECS) into a strain of rats (RCS) that develops retinal degeneration.

Respondent claimed that after the injection of ECS-derived RPE cells 21 days postnatal, the rats were tested at day 60 postnatal for optomotor acuity, and that the retinal histology of eyes receiving ECS-derived RPE cells, compared to mock-injected controls, showed enhanced photoreceptor preservation and no adverse effects. Respondent admitted that this experiment had not been conducted either by the time the original grant application had been submitted or by the time the later R01 EY021214–01A1 application was submitted.

Dr. Francis has entered into a Voluntary Settlement Agreement (Agreement) and has voluntarily agreed for a period of two (2) years, beginning on March 29, 2012:

(1) To have his research supervised; Respondent agrees to ensure that prior to the submission of an application for U.S. Public Health Service (PHS) support for a research project on which the Respondent's participation is proposed and prior to Respondent's participation in any capacity on PHS-supported research, the institution employing him must submit a plan for supervision of Respondent's duties to ORI for approval; the plan for supervision must be designed to ensure the scientific integrity of Respondent's research contribution; Respondent agrees that he shall not participate in any PHS-supported research after sixty

(60) days from the effective date of this Agreement until such a supervision plan is submitted to and approved by ORI; Respondent agrees to maintain responsibility for compliance with the agreed upon supervision plan;

(2) that this supervisory plan provided by any institution employing him shall provide assurance that each application for PHS funds, or report, manuscript, or abstract involving PHS supported research in which Respondent was involved was based on actual experiments or was otherwise legitimately derived, that the data, procedures, and methodology were accurately reported in the application, report, manuscript, or abstract, and that the text in such submissions was his own or properly cited the source of copied language and ideas; and

(3) to exclude himself from serving in any advisory capacity to PHS including, but not limited to, service on any PHS advisory committee, board, and/or peer review committee, or as a consultant.

FOR FURTHER INFORMATION CONTACT: Director, Division of Investigative Oversight, Office of Research Integrity, 1101 Wootton Parkway, Suite 750, Rockville, MD 20852, (240) 453–8800.

John Dahlberg,

Director, Division of Investigative Oversight, Office of Research Integrity.

[FR Doc. 2012–8903 Filed 4–12–12; 8:45 am]

BILLING CODE 4150–31–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Meeting of the President's Council on Fitness, Sports, and Nutrition

AGENCY: Department of Health and Human Services, Office of the Secretary, Office of the Assistant Secretary for Health, Office of the President's Council on Fitness, Sports, and Nutrition.

ACTION: Notice of meeting.

SUMMARY: As stipulated by the Federal Advisory Committee Act, the U.S. Department of Health and Human Services (DHHS) is hereby giving notice that the President's Council on Fitness, Sports, and Nutrition (PCFSN) will hold a meeting. The meeting will be open to the public.

DATES: The meeting will be held on May 1, 2012, from 10 a.m. to 3 p.m.

ADDRESSES: Department of Health and Human Services, 200 Independence Ave. SW., Room 800, Washington, DC 20201.

FOR FURTHER INFORMATION CONTACT: Ms. Shellie Pfohl, Executive Director, President's Council on Fitness, Sports, and Nutrition, Tower Building, 1101 Wootton Parkway, Suite 560, Rockville, MD 20852, (240) 276–9866. Information about PCFSN, including details about the upcoming meeting, can be obtained at *www.fitness.gov* and/or by calling (240) 276–9567.

SUPPLEMENTARY INFORMATION: On June 23, 2010, the President established Executive Order 13545 to amend Executive Order 13265, dated June 6, 2002. Under Executive Order 13545, direction is given for the scope of the President's Council on Physical Fitness and Sports to be expanded to recognize that good nutrition goes hand in hand with fitness and sports participation. Executive Order 13545 gives authority for the title of the Council to be revised to include nutrition.

The primary functions of the PCFSN include (1) Advising the President, through the Secretary, concerning progress made in carrying out the provisions of Executive Order 13545 and shall recommend to the President, through the Secretary, actions to accelerate progress; (2) advising the Secretary on ways to promote regular physical activity, fitness, sports participation, and good nutrition. Recommendations may address, but are not necessarily limited to, public awareness campaigns; Federal, State, and local physical activity; fitness, sports participation, and nutrition initiatives; and partnership opportunities between public- and private-sector health promotion entities; (3) functioning as a liaison to relevant State, local, and private entities in order to advise the Secretary regarding opportunities to extend and improve physical activity, fitness, sports, and nutrition programs and services at the local, State, and national levels; and (4) monitoring the need to enhance programs and educational and promotional materials sponsored, overseen, or disseminated by the Council, and shall advise the Secretary, as necessary, concerning such need. In performing its functions, the Council shall take into account the Federal Dietary Guidelines for Americans and the Physical Activity Guidelines for Americans.

The PCFSN will hold, at a minimum, one meeting in a calendar year. The meeting will be held to (1) assess ongoing Council activities and (2) discuss and plan future projects and programs. The agenda for the planned meeting is being developed and will be posted at *www.fitness.gov* when it has been finalized.

The meeting that is scheduled to be held May 1, 2012 is open to the public. Every effort will be made to provide reasonable accommodations for persons with disabilities and/or special needs who wish to attend the meeting. Persons with disabilities and/or special needs should call (240) 276–9567 no later than close of business on April 23, 2012, to request accommodations. Members of the public who wish to attend the meeting are asked to pre-register by calling (240) 276–9567. Registration for public attendance must be completed before close of business on April 23, 2012.

Dated: March 9, 2012.

Shellie Y. Pfohl,

Executive Director, President's Council on Fitness, Sports, and Nutrition.

[FR Doc. 2012–8900 Filed 4–12–12; 8:45 am]

BILLING CODE 4150–35–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Toxicology Program (NTP) Interagency Center for the Evaluation of Alternative Toxicological Methods: Call for Nominations of High Throughput Screening (HTS) Assays for the Tox21 Initiative

AGENCY: Division of the National Toxicology Program (DNTP), National Institute of Environmental Health Sciences (NIEHS), National Institutes of Health (NIH).

ACTION: Call for nominations.

SUMMARY: The multiagency Tox21 Initiative aims to improve hazard assessment of compounds potentially harmful to humans and the environment. This will be accomplished through the use of integrated high throughput screens that provide information on the ability of a substance to perturb biological pathways related to toxicity. On behalf of the Tox21 Consortium and its Assays and Pathways Working Group, the NTP Interagency Center for the Evaluation of Alternative Toxicological Methods (NICEATM) is accepting nominations for HTS biochemical- or cell-based assays. Assays selected for further evaluation and found to be compatible with the HTS program will support Tox21 by providing data on endpoints that serve as markers for initiating or downstream events in toxicity pathways.

DATES: The nomination of HTS assays to Tox21 is an ongoing process and will continue to remain open. Periodic updates to this notice may be posted to reflect new focus areas of the Tox21 HTS program.

FOR FURTHER INFORMATION CONTACT: Nominations of assays should be submitted online at *http://iccvam.niehs.nih.gov/contact/Tox21-nomination.htm* (preferred means) or to Dr. Warren Casey, Deputy Director, NICEATM, NIEHS, P.O. Box 12233, Mail Stop: K2–16, Research Triangle Park, NC 27709, (telephone) 919–541–2384, (fax) 919–541–0947, (email) *niceatm@niehs.nih.gov.* Courier address: NICEATM, NIEHS, Room 2034, 530 Davis Drive, Morrisville, NC 27560.

SUPPLEMENTARY INFORMATION:

Background

The Tox21 Consortium is a collaboration of the NIH Center for Translational Therapeutics (NCTT),[1] NIEHS/NTP,[2] U.S. Environmental Protection Agency (EPA),[3] and U.S. Food and Drug Administration (FDA).[4] The goal of Tox21 is to develop, validate, and translate innovative HTS methods to characterize the impact of chemicals on key steps in toxicity pathways and ultimately to provide tools to risk assessors to protect human health and the environment.

The Tox21 HTS Initiative aims to prioritize substances for in-depth toxicological evaluation, identify mechanisms of action for further investigation, and develop predictive models for *in vivo* biological responses using efficient, high throughput *in vitro* assays. Tox21 also aims to expand the ability to screen environmental compounds for organ-specific toxicity, focusing in particular on the liver, kidney, and nervous system.

The current Tox21 inventory of 10,000 chemicals covers a variety of classifications, including consumer products, food additives, human and veterinary drugs, manufacturing intermediates, and pesticides. These 10,000 chemicals are being profiled using HTS assays designed to estimate toxicity potential and identify the specific perturbations they induce in biological pathways.

Request for Nominations of HTS Assays

NICEATM requests nominations of *in vitro* HTS toxicity assays that might be used in the Tox21 testing program. Tox21 intends to develop a systematic view of how chemicals interact with and affect biological systems using its collection of 10,000 chemicals. To achieve this goal, assays, which target all pathways relevant to toxicity, are needed to assess chemicals' effects. Nominated assays will be assessed for their overall applicability to the Tox21 HTS program in terms of biological relevance, cost, and potential for adaption to a HTS format. Suitable assays will then be prioritized for use by the NCTT. Protocol information and test data submitted in response to this notice may be incorporated into future NCTT and NICEATM reports and publications as appropriate.

Nominations should consider the following general criteria: (1) Relevance to the goals of the Tox21 Initiative (*http://nctt.nih.gov/27543703*), (2) high throughput capability of the assay (96-well format or higher, with no obvious impediments to miniaturization to a 1536-well format), (3) evaluation of preliminary assay performance using appropriate reference compounds, (4) validation status of the assay, (5) availability of complete detailed protocols, and (6) efficiency and cost of the assay. A list of compatibility criteria for 1536-well biochemical and cell-based assays is available at *http://nctt.nih.gov/27545107.*

Assay nominations should be submitted electronically using the online form (*http://iccvam.niehs.nih.gov/contact/Tox21-nomination.htm*). When submitting HTS assay nominations and protocol information, please reference this **Federal Register** notice and provide appropriate contact information (name, affiliation, mailing address, phone, fax, email, and sponsoring organization as applicable). NICEATM prefers submission of the nominations via the Web site identified above; however, submissions by mail, fax, or email are acceptable. Questions about the submission process should be directed to Dr. Warren Casey (see **FOR FURTHER INFORMATION CONTACT**).

Background Information on NICEATM

NICEATM was established in 1998 to administer and provide scientific support for the Interagency Coordinating Committee on the Validation of Alternative Methods (ICCVAM), which is composed of 15 member Federal agencies and includes the EPA, FDA, NIEHS, and NIH. The ICCVAM Authorization Act of 2000 (42 U.S.C. 285*l*–2, 285*l*-5, available at *http://iccvam.niehs.nih.gov/about/PL106545.htm*) established ICCVAM as a permanent interagency committee of the NIEHS under NICEATM. NICEATM and ICCVAM conduct technical evaluations of new, revised, and alternative safety testing methods with regulatory applicability and promote the scientific validation and regulatory acceptance of safety-testing methods that more accurately assess the safety and hazards of chemicals and products and that will reduce, refine (enhance animal well-being and decrease or eliminate pain and distress), or replace animal use. NICEATM also conducts independent validation studies to assess the usefulness and limitations of new, revised, and alternative test methods and strategies applicable to the safety-testing needs of Federal agencies. In 2012, NICEATM began providing support to Tox21 regarding HTS assay nomination and review.

NICEATM and ICCVAM welcome the public nomination of new, revised, and alternative test methods and strategies applicable to the needs of Federal agencies. Additional information about NICEATM can be found on the NICEATM–ICCVAM Web site (*http://iccvam.niehs.nih.gov*).

Dated: April 5, 2012.

John R. Bucher,

Associate Director, National Toxicology Program.

[FR Doc. 2012–8942 Filed 4–12–12; 8:45 am]

BILLING CODE 4140–01–P

[1] *http://nctt.nih.gov/27543703.*

[2] *http://ntp.niehs.nih.gov/go/28213.*

[3] *http://www.epa.gov/ncct/Tox21/.*

[4] *http://www.fda.gov/.*

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Common Formats for Patient Safety Data Collection and Event Reporting

AGENCY: Agency for Healthcare Research and Quality (AHRQ), HHS.

ACTION: Notice of Availability—New Common Format.

SUMMARY: As authorized by the Secretary of HHS, AHRQ coordinates the development of a set of common definitions and reporting formats (Common Formats) for reporting patient safety events to Patient Safety Organizations (PS0s). The purpose of this notice is to announce the availability of new Common Formats—Hospital Version 1.2 for public review and comment.

DATES: Ongoing public input.

ADDRESSES: The new Common Formats—Hospital Version 1.2, version dated April 2012, and the remaining Common Formats can be accessed electronically at the following HHS Web site: *http://www.PSO.AHRQ.gov/index.html.*

FOR FURTHER INFORMATION CONTACT: Cathryn Niane, Center for Quality Improvement and Patient Safety, AHRQ, 540 Gaither Road, Rockville, MD 20850; Telephone (toll free): (866) 403–3697;

Telephone (local): (301) 427–1111; TTY (toll free): (866) 438–7231; TTY (local): (301) 427–1130; Email: *PSO.AHRQ.hhs.gov.*

SUPPLEMENTARY INFORMATION:

Background

The Patient Safety and Quality Improvement Act of 2005, 42 U.S.C. 299b–21 to b–26, (Patient Safety Act) provides for the formation of PS0s, which collect, aggregate, and analyze confidential information regarding the quality and safety of healthcare delivery. The Patient Safety Act (at 42 U.S.C. 299b–23) authorizes healthcare providers to voluntarily collect and submit in a standardized manner, as explained in the related Patient Safety and Quality Improvement Final Rule, 42 CFR part 3 (Patient Safety Rule), published in the **Federal Register** on November 21, 2008: 73 FR 70731–70814. The collection of patient safety work product allows the aggregation of sufficient data to identify and address underlying causal factors of patient safety problems.

The Patient Safety Act and Patient Safety Rule establish a framework by which doctors, hospitals, skilled nursing facilities, and other healthcare providers may assemble information regarding patient safety events and quality of care. Information that is assembled and developed by providers for reporting to PSOs and the information received and analyzed by PSOs—called ''patient safety work product''—is privileged and confidential. Patient safety work product is used to identify events, patterns of care, and unsafe conditions that increase risks and hazards to patients. Definitions and other details about PSOs and patient safety work product are included in the Patient Safety Act and Patient Safety Rule which can be accessed electronically at: *http://www.PSO.AHRQ.gov/REGULATIONS/REGULATIONS.htm.*

Definition of Common Formats

The term ''Common Formats'' refers to the common definitions and reporting formats, specified by AHRQ, that allow health care providers to collect and submit standardized information regarding patient safety events. The Common Formats are not intended to replace any current mandatory reporting system, collaborative/voluntary reporting system, research-related reporting system, or other reporting/recording system; rather the formats are intended to enhance the ability of health care providers to report information that is standardized both clinically and electronically.

In collaboration with the interagency Federal Patient Safety Workgroup (PSWG), the National Quality Forum (NQF) and the public, AHRQ has developed Common Formats for two settings of care—acute care hospitals and skilled nursing facilities—in order to facilitate standardized data collection. The scope of Common Formats applies to all patient safety concerns including: Incidents—patient safety events that reached the patient, whether or not there was harm; near misses or close calls—patient safety events that did not reach the patient; and unsafe conditions—circumstances that increase the probability of a patient safety event.

AHRQ's Common Formats include:

- Event descriptions (descriptions of patient safety events and unsafe conditions to be reported);
- Specifications for patient safety aggregate reports and individual event summaries;
- Delineation of data elements to be collected for different types of events to populate the reports;
- A user's guide and quick guide, and
- Technical specifications for electronic data collection and reporting.

The technical specifications promote standardization of collected patient safety event information by specifying rules for data collection and submission, as well 'as by providing guidance for how and when to create data elements, their valid values, conditional and go-to logic, and reports. These specifications will ensure that data collected by PSOs and other entities have comparable clinical meaning. They also provide direction to software developers, so that the Common Formats can be implemented electronically, and to PS0s, so that the Common Formats can be submitted electronically to the PSO Privacy Protection Center (PPC) for data de-identification and transmission to the Network of Patient Safety Databases (NPSD).

The Common Formats include two general types of formats, generic and event-specific. The generic Common Formats pertain to all patient safety concerns. The three generic formats are: Healthcare Event Reporting Form, Patient Information Form, and Summary of Initial Report. The event-specific Common Formats pertain to frequently-occurring and/or serious patient safety events.

Since the initial release of the Common Formats in August 2008, AHRQ regularly revises the formats based upon public comment. The Common Formats—Hospital Version 1.2 features new content to incorporate the event specific formats entitled Venous Thromboembolism (VTE) and Device or Medical/Surgical Supply including Health Information Technology (HIT) Device. Common Formats—Hospital Version 1.2, which also includes minor changes to existing modules and technical specifications, is available at the PSO PPC Web site: *https://www.PSOPPC.ORG/web/patientsafety.*

Common Formats Development

In anticipation of the need for Common Formats, AHRQ began their development by creating an inventory of functioning private and public sector patient safety reporting systems. This inventory provides an evidence base that informs construction of the Common Formats. The inventory includes many systems from the private sector, including prominent academic settings, hospital systems, and international reporting systems (e.g., from the United Kingdom and the Commonwealth of Australia). In addition, virtually all major Federal patient safety reporting systems are included, such as those from the Centers for Disease Control and Prevention (CDC), the Food and Drug Administration (FDA), the Department of Defense (DoD), and the Department of Veterans Affairs (VA).

Since February 2005, AHRQ has convened the PSWG to assist AHRQ with developing and maintaining the Common Formats. The PSWG includes major health agencies within HHS—CDC, Centers for Medicare & Medicaid Services, FDA, Health Resources and Services Administration, Indian Health Service, National Institutes of Health, National Library of Medicine, Office of the National Coordinator for Health Information Technology, Office of Public Health and Science, and Substance Abuse and Mental Health Services Administration—as well as the DoD and VA.

When developing Common Formats, AHRQ first reviews existing patient safety event reporting systems from a variety of health care organizations. In collaboration with the PSWG and Federal subject matter experts, AHRQ drafts and releases beta versions of the Common Formats for public review and comment. The PSWG assists AHRQ with assuring the consistency of definitions/formats with those of relevant government agencies as refinement of the Common Formats continues. To the extent practicable, the Common Formats are also aligned with World Health Organization (WHO) concepts, framework, and definitions

contained in their draft International Classification for Patient Safety (ICPS).

Commenting on Common Formats Hospital 1.2

To allow for greater participation by the private sector in the subsequent development of the Common Formats, AHRQ engaged the NQF, a non-profit organization focused on health care quality, to solicit comments and advice to guide the further refinement of the Common Formats. The NQF then convenes an expert panel to review the comments received and provide feedback. The NQF began this process with feedback on AHRQ's 0.1 Beta release of the Common Formats in 2008. Based upon the expert panel's feedback, AHRQ, in conjunction with the PSWG, revises and refines the Common Formats.

The Agency is specifically interested in obtaining feedback from both the private and public sectors on the new Common Formats—Hospital Version 1.2 to guide the improvement of the formats. Information on how to comment and provide feedback on the Common Formats—Hospital Version 1.2, is available at the NQF Web site for Common Formats: *http://www.Quality.forum.ORG/projects/commonformats.aspx.*

The process for updating and refining the formats will continue to be an iterative one. Future versions of the Common Formats will be developed for ambulatory settings, such as ambulatory surgery centers and physician and practitioner offices. More information on the Common Formats can be obtained through AHRQ's PSO Web site: *http://www.PSO.AHRQ.gov/index.html.*

Dated: April 5, 2012.

Carolyn M. Clancy,

Director.

[FR Doc. 2012–8743 Filed 4–12–12; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Correction—Solicitation for Nominations for Members of the U.S. Preventive Services Task Force (USPSTF)

The original date of publication for this **Federal Register** notice was March 28, 2012, Volume 77, Number 60, pages 18823–18825. On this publication, Gloria Washington's email address is incorrect in two places of page 18824 under subheadings **ADDRESSES:** and **FOR FURTHER INFORMATION CONTACT:**. The correct email address for Gloria Washington is: *USPSTFmember nominations@AHRQ.HHS.GOV*

Dated: April 4, 2012.

Carolyn M. Clancy,

Director.

[FR Doc. 2012–8737 Filed 4–12–12; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Scientific Information Request on Treatment of Tinnitus

AGENCY: Agency for Healthcare Research and Quality (AHRQ), HHS.

ACTION: Request for scientific information submissions.

SUMMARY: The Agency for Healthcare Research and Quality (AHRQ) is seeking scientific information submissions from manufacturers of cochlear implants, sound masking devices, hearing aids, and transcranial magnetic stimulation medical devices. Scientific information is being solicited to inform our Comparative Effectiveness Review of Evaluation and Treatment of Tinnitus, which is currently being conducted by the Evidence-based Practice Centers for the AHRQ Effective Health Care Program. Access to published and unpublished pertinent scientific information on this device will improve the quality of this comparative effectiveness review. AHRQ is requesting this scientific information and conducting this comparative effectiveness review pursuant to Section 1013 of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003, Public Law 108–173.

DATES: Submission Deadline on or before May 14, 2012.

ADDRESSES: *Online submissions: http://effectivehealthcare.AHRQ.gov/index.cfm/submitscientific-information-packets/.* Please select the study for which you are submitting information from the list of current studies and complete the form to upload your documents.

Email submissions: ehcsrc@ohsu.edu (please do not send zipped files—they are automatically deleted for security reasons).

Print submissions: Robin Paynter, Oregon Health and Science University, Oregon Evidence-based Practice Center, 3181 SW Sam Jackson Park Road, Mail Code: BICC, Portland, OR 97239–3098.

FOR FURTHER INFORMATION CONTACT: Robin Paynter, Research Librarian, Telephone: 503–494–0147 or Email: *ehcsrc@ohsu.edu.*

SUPPLEMENTARY INFORMATION: In accordance with Section 1013 of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003, Public Law 108–173, the Agency for Healthcare Research and Quality has commissioned the Effective Health Care (EHC) Program Evidence-based Practice Centers to complete a comparative effectiveness review of the evidence for evaluation and treatment of tinnitus.

The EHC Program is dedicated to identifying as many studies as possible that are relevant to the questions for each of its reviews. In order to do so, we are supplementing the usual manual and electronic database searches of the literature by systematically requesting information (e.g., details of studies conducted) from medical device industry stakeholders through public information requests, including via the **Federal Register** and direct postal and/or online solicitations. We are looking for studies that report on treatment of tinnitus, including those that describe adverse events, as specified in the key questions detailed below. The entire research protocol, including the key questions, is also available online at: *http://www.effectivehealthcare.AHRQ.gov/index.cfm/search-for-guides-reviews-and-reports/?pageaction=displayproduct&productid=811#4755.*

This notice is a request for industry stakeholders to submit the following:

- A current product label, if applicable (preferably an electronic PDF file).
- Information identifying published randomized controlled trials and observational studies relevant to the clinical outcomes. Please provide both a list of citations and reprints if possible.
- Information identifying unpublished randomized controlled trials and observational studies relevant to the clinical outcomes. If possible, please provide a summary that includes the following elements: study number, study period, design, methodology, indication and diagnosis, proper use instructions, inclusion and exclusion criteria, primary and secondary outcomes, baseline characteristics, number of patients screened/eligible/enrolled/lost to withdrawn/follow-up/analyzed, and effectiveness/efficacy and safety results.
- Registered *ClinicalTrials.gov* studies. Please provide a list including the *ClinicalTrials.gov* identifier, condition, and intervention.

Your contribution is very beneficial to this program. AHRQ is not requesting

and will not consider marketing material, health economics information, or information on other indications. This is a voluntary request for information, and all costs for complying with this request must be borne by the submitter. In addition to your scientific information please submit an index document outlining the relevant information in each file along with a statement regarding whether or not the submission comprises all of the complete information available.

Please Note: The contents of all submissions, regardless of format, will be available to the public upon request unless prohibited by law.

The draft of this review will be posted on AHRQ's EHC program Web site and available for public comment for a period of 4 weeks. If you would like to be notified when the draft is posted, please sign up for the email list at: *http://effectivehealthcare.AHRQ.gov/index.cfm/join-the-email-list1/*.

Key Question (KQ) 1 and PICOTS (Populations, Interventions, Comparators, Outcomes, Timing, and Setting)

In patients with symptoms of tinnitus (e.g., ringing in the ears, whooshing sounds, etc.) what is the comparative effectiveness of methods used to identify patients for further evaluation or treatment?

Population(s)

Adult patients presenting with symptoms of tinnitus (e.g., ringing in the ears, whooshing sounds, etc.)

Note: ''Adults'' for all KQs will include individuals 18 years of age and older.

Interventions

Direct observation or observation of sound with stethoscope; referral to a health professional with expertise on managing tinnitus (i.e., otolaryngologist, audiologist, neurologist, mental health professional; administration of scales/questionnaires to assess severity [e.g., Tinnitus Handicap Inventory, Tinnitus Reaction Questionnaire, Tinnitus Functional Index, Visual Analog Scale, and Tinnitus Severity Index, etc.])

Comparators

Different clinical evaluation methods used to characterize a diagnosis and measure severity of subjective idiopathic tinnitus.

Outcomes

Final outcome: No treatment; need for specialized treatment (e.g., audiology, otolaryngology, neurology, mental health care); extent of intervention.

Timing or followup

No restrictions.

Setting

Primary care; specialty care (audiology, otolaryngology, neurology, mental health care).

Key Question 2 and PICOTS

In adults with subjective idiopathic (non-pulsatile) tinnitus, what is the comparative effectiveness (and/or potential harms) of medical/surgical, sound treatment/technological, or psychological/behavioral intervention (including combinations of interventions)?

Population(s)

Adult patients with a diagnosis of subjective idiopathic (non-pulsatile) tinnitus (who are sufficiently bothered by tinnitus that they seek a treatment intervention)

Note: For KQs 2 and 3, adults diagnosed with unilateral and/or pulsatile tinnitus need to be evaluated for other medical conditions (such as acoustic neuromas). Our review will include only those cases in which a medically serious underlying pathology as the source of the tinnitus has already been ruled out.

Interventions

Any treatment/therapy used to reduce/help cope with tinnitus including but not limited to:

- Medical/Surgical
  - Pharmacological treatments
  - Tricyclic antidepressants (e.g., amitriptyline, nortriptyline, and trimipramine)
  - Selective serotonin-reuptake inhibitors: Fluoxetine and paroxetine
  - Other: Trazodone; anxiolytics (e.g., alprazolam); vasodilators and vasoactive substances (e.g., prostaglandin El); intravenous lidocaine; gabapentin; Botox (botulinum toxin type A); and pramipexole)
- Laser treatments
- TMJ treatment: Dental orthotics and self-care; surgery
- Transcranial magnetic stimulation
- Complementary and alternative medicine therapies: G. biloba extracts; acupuncture; hyperbaric oxygen therapy; and diet, lifestyle, and sleep modifications (caffeine avoidance, exercise)
- Sound Treatments/Technologies
  - Hearing aids
  - Cochlear implants
  - Sound generators/maskers (both wearable and stationary)
  - Neuromonics
  - Tinnitus Retraining Therapy
- Psychological/Behavioral
  - Cognitive behavioral therapy
  - Biofeedback
  - Education
  - Relaxation therapies
  - Progressive Tinnitus Management
- Combination therapies
  - Any combination of tinnitus interventions (e.g., pharmacological treatment with cognitive behavioral therapy)

Comparators

Placebo; no treatment; wait list; treatment as usual; other intervention/treatment.

Outcomes

- Final outcomes
  1. Sleep disturbance
  2. Discomfort
  3. Anxiety
  4. Depression
  5. Self-reported loudness
  6. Quality of life
- Adverse effects
  1. Worsening of tinnitus
  2. Sedation
  3. Surgical complications

Timing or followup

No restrictions.

Setting

Primary care; specialty care (audiology, otolaryngology, neurology, and mental health care).

Key Question 3 and PICOTS

For adults with subjective idiopathic tinnitus, what prognostic factors, patient characteristics, and/or symptom characteristics affect final treatment outcomes?

Population(s)

Adults with a diagnosis of subjective idiopathic tinnitus (sufficiently bothered by tinnitus that they are seeking a treatment intervention).

Interventions

Any treatment/therapy used to reduce/help cope with tinnitus including but not limited to those described in KQ 2.

Comparators

- Prognostic factors: Length of time to treatment after onset, audiological factors (degree and type of hearing loss, hyperacusis, loudness tolerance, masking criteria, etc.), head injury, anxiety, mental health disorders, and duration of tinnitus
- Patient characteristics: Age, gender, race, medical or mental health

comorbidities, socioeconomic factors, noise exposure (environmental, recreational and work-related [including active and past military duty, and occupational hazards), involvement in litigation, third-party coverage
- Symptom characteristics: Origin/presumed etiology of tinnitus, ototoxicity, tinnitus duration since onset, subcategory of tinnitus, severity of tinnitus

Outcomes

- Final outcomes
  1. Time until improvement
  2. Sleep disturbance
  3. Discomfort
  4. Anxiety
  5. Depression
  6. Self-reported loudness
  7. Quality of life
  8. Return to ''normal'' work
- Adverse effects
  1. Worsening of tinnitus
  2. Sedation
  3. Surgical complications

Timing or Followup

No restrictions.

Setting

Primary care; specialty care (audiology, otolaryngology, neurology, mental health).

Dated: April 4, 2012

Carolyn M. Clancy,

Director, AHRQ.

[FR Doc. 2012–8740 Filed 4–12–12; 8:45 am]

BILLING CODE 4160–90–M

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 Extension of the World Trade Center Health Registry (U50) Request for Applications (RFA), OH12–001, 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.–2 p.m., May 16, 2012 (Closed).

Place: National Institute of Occupational Safety and Health (NIOSH), 2400 Century Parkway, NE., Atlanta, Georgia 30345, Telephone: (866) 918–5441.

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 ''Extension of the World Trade Center Health Registry (U50) RFA OH12–001''

Contact Person for More Information: George Bockosh, M.S., Scientific Review Officer, CDC/NIOSH, 626 Cochrans Mill Road, Mailstop P–05, Pittsburgh, Pennsylvania 15236, Telephone: (412) 386–6465 AND Joan Karr, Ph.D., Scientific Review Officer, CDC/NIOSH 1600 Clifton Road, NE., Mailstop E–74, Atlanta, Georgia 30333, Telephone: (404) 498–2506.

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: April 5, 2012.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 2012–8886 Filed 4–12–12; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Board of Scientific Counselors, National Center for Health Statistics, (BSC, NCHS)

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), National Center for Health Statistics (NCHS) announces the following meeting of the aforementioned committee:

Times and Dates: 11 a.m.–5:30 p.m., May 17, 2012.
8:30 a.m.–1 p.m., May 18, 2012.

Place: NCHS Headquarters, 3311 Toledo Road, Hyattsville, Maryland 20782.

Status: This meeting is open to the public; however, visitors must be processed in accordance with established federal policies and procedures. For foreign nationals or non-US citizens, pre-approval is required (please contact Gwen Mustaf, (301) 458–4500, *glm4@cdc.gov* or Virginia Cain, *vcain@cdc.gov* at least 10 days in advance for requirements). All visitors are required to present a valid form of picture identification issued by a state, federal or international government. As required by the Federal Property Management Regulations, Title 41, Code of Federal Regulation, Subpart 101–20.301, all persons entering in or on Federal controlled property and their packages, briefcases, and other containers in their immediate possession are subject to being x-rayed and inspected. Federal law prohibits the knowing possession or the causing to be present of firearms, explosives and other dangerous weapons and illegal substances. The meeting room accommodates approximately 100 people.

Purpose: This committee is charged with providing advice and making recommendations to the Secretary, Department of Health and Human Services; the Director, CDC; and the Director, NCHS, regarding the scientific and technical program goals and objectives, strategies, and priorities of NCHS.

Matters To Be Discussed: The agenda will include welcome remarks by the Director, NCHS; the initiation of the review of the Office of Research and Methodology; a discussion of vital statistics and an open session for comments from the public.

Requests to make oral presentations should be submitted in writing to the contact person listed below. All requests must contain the name, address, telephone number, and organizational affiliation of the presenter.

Written comments should not exceed five single-spaced typed pages in length and must be received by April 30, 2012.

The agenda items are subject to change as priorities dictate.

Contact Person for More Information: Virginia S. Cain, Ph.D., Director of Extramural Research, NCHS/CDC, 3311 Toledo Road, Room 7208, Hyattsville, Maryland 20782, telephone (301) 458–4500, fax (301) 458–4020.

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: April 5, 2012.

Elaine L. Baker,

Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 2012–8887 Filed 4–12–12; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Privacy Act of 1974, as Amended by Public Law 100–503; Notice of a Computer Matching Program

AGENCY: Office of Financial Services (OFS), Office of Administration (OA), ACF, HHS.

ACTION: Request for public comment on the Public Assistance Reporting Information System (PARIS) notice of a computer matching program between the Department of Veterans Affairs and

State Public Assistance Agencies (SPAAs).

C.F.D.A. Number: 93.647

Statutory Authority: Privacy Act of 1974, as amended by Public Law 100–503.

SUMMARY: In compliance with the Privacy Act of 1974, as amended by Public Law 100–503, the Computer Matching and Privacy Protection Act of 1988, ACF is publishing a notice of a computer matching program. The purpose of this computer match is to identify specific individuals who receive benefits from the Department of Veterans Affairs (VA) and also receive payments pursuant to various benefit programs administered by both the Department of Health and Human Services (HHS) and the Department of Agriculture. ACF will facilitate this program on behalf of SPAAs that participate in PARIS for verification of continued eligibility for public assistance. The match will utilize VA and SPAA records.

DATES: Submit written comments on or before May 14, 2012

ACF will file a report of the subject matching program with the Committee on Homeland Security and Governmental Affairs of the Senate and the Committee on Oversight and Government Reform of the House of Representatives and the Office of Information and Regulatory Affairs within the Office of Management and Budget (OMB). The dates for the matching program will be effective as indicated in ''*E. Inclusive Dates of the Matching Program*'' in this notice.

ADDRESSES: Interested parties may comment on this notice by writing to the Director, Office of Financial Services, Office of Administration, 370 L'Enfant Promenade SW., Washington, DC 20047. All comments received will be available for public inspection at this address.

FOR FURTHER INFORMATION CONTACT: Director, Office of Financial Services, Office of Administration, 370 L'Enfant Promenade SW., Washington, DC 20047. Telephone: (202) 401–7237.

SUPPLEMENTARY INFORMATION: The Privacy Act of 1974, as amended by Public Law 100–503, the Computer Matching and Privacy Protection Act of 1988, (5 U.S.C. 552a), adds certain protections for individuals applying for and receiving Federal benefits. The law regulates the use of computer matching by Federal agencies when records in a system of records are matched with other Federal, State, and local government records.

Federal agencies that provide or receive records in computer matching programs must:

1. Negotiate written agreements with source agencies;
2. Provide notification to applicants and beneficiaries that their records are subject to matching;
3. Verify match findings before reducing, suspending, or terminating an individual's benefits or payments;
4. Furnish detailed reports to Congress and OMB; and
5. Establish a Data Integrity Board that must approve matching agreements.

This computer matching program meets the requirements of Public Law 100–503.

Jason Donaldson,

Deputy Assistant Secretary for Administration, ACF.

Notice of Computer Matching Program

A. Participating Agencies

VA and SPAAs.

B. Purpose of the Match

To identify specific individuals who receive benefits from the VA and also receive payments pursuant to HHS and Department of Agriculture benefit programs, and to verify their continued eligibility for such benefits. SPAAs will contact affected individuals and seek to verify the information resulting from the match before initiating any adverse actions based on the match results.

C. Authority for Conducting the Match

The authority for conducting the matching program is contained in section 402(a)(6) of the Social Security Act [42 U.S.C. 602(a)(6)].

D. Records To Be Matched

VA will disclose information from the system of records identified as Compensation, Pension, Education, and Vocational Rehabilitation and Employment Records—VA (58VA21/22/28) published at 74 FR 29275, (June 19, 2009), last amended at 75 FR 22187, (April 27, 2010). VA's disclosure of information for use in this computer match is listed as a routine use in this system of records.

VA, as the source agency, will prepare electronic files containing the names and other personal identifying data of eligible veterans receiving benefits. These records are matched electronically against SPAA files consisting of data regarding monthly Medicaid, Temporary Assistance for Needy Families, general assistance, and Supplemental Nutrition Assistance Program beneficiaries.

1. The electronic files provided by the SPAAs will contain client names and Social Security numbers (SSNs).
2. The resulting output returned to SPAAs will contain personal identifiers, including names, SSNs, employers, current work or home addresses, etc.

E. Inclusive Dates of the Matching Program

The effective date of the matching agreement and date when matching may actually begin shall be at the expiration of the 40-day review period for OMB and Congress, or 30 days after publication of the matching notice in the **Federal Register**, whichever date is later. The matching program will be in effect for 18 months from the effective date, with an option to renew for 12 additional months, unless one of the parties to the agreement advises the others by written request to terminate or modify the agreement.

[FR Doc. 2012–8901 Filed 4–12–12; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2011–D–0889]

Draft Guidance for Industry on New Animal Drugs and New Animal Drug Combination Products Administered in or on Medicated Feed or Drinking Water of Food-Producing Animals: Recommendations for Drug Sponsors for Voluntarily Aligning Product Use Conditions With GFI #209; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft guidance for industry (draft GFI #213) entitled ''New Animal Drugs and New Animal Drug Combination Products Administered in or on Medicated Feed or Drinking Water of Food-Producing Animals: Recommendations for Drug Sponsors for Voluntarily Aligning Product Use Conditions With GFI #209.'' The purpose of this document is to provide information to sponsors of certain new animal drug products who are interested in developing revised conditions of use for those products consistent with FDA's GFI #209, ''The Judicious Use of Medically Important Antimicrobial Drugs in Food-Producing Animals'' and to set timelines for stakeholders wishing to comply voluntarily with this guidance.

DATES: Although you can comment on any guidance at any time (see 21 CFR 10.115(g)(5)), to ensure that the Agency considers your comment on this draft guidance before it begins work on the final version of the guidance, submit either electronic or written comments on the draft guidance by July 12, 2012.

ADDRESSES: Submit written requests for single copies of the guidance to the Communications Staff (HFV–12), Center for Veterinary Medicine, Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855. Send one self-addressed adhesive label to assist that office in processing your request. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

Submit electronic comments on the draft guidance to *http://www.regulations.gov*. Submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: William T. Flynn, Center for Veterinary Medicine (HVF–1), Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855, 240–276–9084, *william.flynn@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

This document is related to two documents published elsewhere in this issue of the **Federal Register**, wherein FDA is announcing: (1) The availability of a final guidance entitled ''The Judicious Use of Medically Important Antimicrobial Drugs in Food-Producing Animals'' (GFI #209) and (2) the availability of a draft proposed regulation for veterinary feed directives.

FDA is announcing the availability of a draft guidance for industry entitled ''New Animal Drugs and New Animal Drug Combination Products Administered in or on Medicated Feed or Drinking Water of Food-Producing Animals: Recommendations for Drug Sponsors for Voluntarily Aligning Product Use Conditions With GFI #209'' (draft GFI #213). The audience for this draft guidance is sponsors of approved applications for new animal drug products containing medically important antimicrobial new animal drugs for use in or on medicated feed or in drinking water of food-producing animals. The purpose of this draft guidance is to provide sponsors of the affected new animal drug products with more specific information on how to supplement their approved new animal drug applications to align with FDA's recommendations in GFI #209.

Final GFI #209, published elsewhere in this edition of the **Federal Register,** discusses FDA's concerns regarding the development of antimicrobial resistance in human and animal bacterial pathogens when medically important antimicrobial drugs are used in food-producing animals in an injudicious manner. GFI #209 recommends that the use of medically important antimicrobial drugs be limited to uses in animals that are considered necessary for assuring animal health and include veterinary oversight or consultation (namely through the use of prescription or veterinary feed directive products).

FDA encourages all sponsors of new animal drug products covered by draft GFI #213 to participate in the voluntary program outlined in the draft guidance. FDA believes a voluntary approach, conducted in a cooperative and timely manner, will be a far faster and less burdensome route to achieving the common goal of more judicious use of medically important antimicrobials in animal agriculture. However, FDA also believes it is critical to see meaningful progress toward reaching this goal. Therefore, in order to ensure an orderly, equitable, and timely transition, draft GFI #213 also includes clear timelines for sponsors of affected products wishing to revise their approved applications.

II. Significance of Guidance

This level 1 draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the Agency's current thinking on this topic. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

III. Paperwork Reduction Act of 1995

This draft guidance refers to previously approved collections of information found in FDA regulations. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collections of information in 21 CFR part 514 have been approved under OMB control numbers 0910–0032 and 0910–0669.

IV. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) either electronic or written comments regarding this document. It is only necessary to send one set of comments. Identify comments with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

V. Electronic Access

Persons with access to the Internet may obtain the draft guidance at either *http://www.fda.gov/AnimalVeterinary/GuidanceComplianceEnforcement/GuidanceforIndustry/default.htm* or *http://www.regulations.gov*.

Dated: April 5, 2012.

David Dorsey,

Acting Associate Commissioner for Policy and Planning.

[FR Doc. 2012–8845 Filed 4–11–12; 11:15 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2010–D–0094]

Guidance for Industry on the Judicious Use of Medically Important Antimicrobial Drugs in Food-Producing Animals; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a guidance for industry (GFI #209) entitled ''The Judicious Use of Medically Important Antimicrobial Drugs in Food-Producing Animals.'' This guidance is intended to inform the public of FDA's current thinking on the use of medically important antimicrobial drugs in animal agriculture.

DATES: Submit either electronic or written comments on Agency guidances at any time.

ADDRESSES: Submit written requests for single copies of the guidance to the Communications Staff (HFV–12), Center for Veterinary Medicine, Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

Submit electronic comments on the guidance to *http://www.regulations.gov*. Submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration,

5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: William T. Flynn, Center for Veterinary Medicine (HVF–1), Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855, 240–276–9084, *William.flynn@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

This document is related to two documents published elsewhere in this issue of the **Federal Register**, wherein FDA is announcing: (1) The availability of a draft guidance entitled ''New Animal Drugs and New Animal Drug Combination Products Administered in or on Medicated Feed or Drinking Water of Food-Producing Animals: Recommendations for Drug Sponsors for Voluntarily Aligning Product Use Conditions With GFI #209'' (draft GFI #213); and (2) the availability of a draft proposed regulation for veterinary feed directives.

In the **Federal Register** of June 29, 2010 (75 FR 37450), FDA published the notice of availability for a draft guidance entitled ''The Judicious Use of Medically Important Antimicrobial Drugs in Food-Producing Animals,'' giving interested persons until August 30, 2010, to comment on the draft guidance. FDA received numerous comments on the draft guidance, and those comments were considered as the guidance was finalized. Minor editorial changes were made to improve clarity.

The Agency was pleased to receive a number of comments that were generally supportive of the concepts outlined in draft GFI #209. However, other comments were more critical, based largely on the guidance's lack of specificity related to implementation issues. FDA decided not to make any substantive changes to GFI #209 but rather to address specific issues related to implementation through issuance of a separate draft guidance document, draft GFI #213, that would afford additional opportunity for public comment. As noted earlier, a notice of availability for draft GFI #213 is published elsewhere in this issue of the **Federal Register**.

The guidance announced in this notice finalizes the draft guidance dated June 28, 2010.

II. Significance of Guidance

This level 1 guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidance represents the Agency's current thinking on the topic. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

III. Paperwork Reduction Act of 1995

FDA concludes that there are no collections of information under the Paperwork Reduction Act of 1995.

IV. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) either electronic or written comments regarding this document. It is only necessary to send one set of comments. Identify comments with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

V. Electronic Access

Persons with access to the Internet may obtain the guidance at either *http://www.fda.gov/AnimalVeterinary/GuidanceComplianceEnforcement/GuidanceforIndustry/default.htm* or *http://www.regulations.gov*.

Dated: April 5, 2012.

David Dorsey,

Acting Associate Commissioner for Policy and Planning.

[FR Doc. 2012–8846 Filed 4–11–12; 11:15 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Recruitment of Sites for Assignment of Corps Personnel Obligated Under the National Health Service Corps Scholarship Program

AGENCY: Health Resources and Services Administration, HHS.

ACTION: General notice.

SUMMARY: The Health Resources and Services Administration (HRSA) announces that the listing of entities, and their Health Professional Shortage Area (HPSA) scores, that will receive priority for the assignment of National Health Service Corps (NHSC) scholarship recipients (Corps Personnel, Corps members) during the period July 1, 2012, through June 30, 2013, is posted on the NHSC Web site at *http://datawarehouse.hrsa.gov/HGDWReports/OneClickRptFilter.aspx?rptName=NHSCAppSiteList&rptFormat=HTML3.2*. This searchable database specifies all currently approved NHSC service sites, by State, and can be utilized to determine which entities are eligible to receive assignment of Corps members who are participating in the NHSC Scholarship Program based on the threshold HPSA score set forth below. Please note that entities on this list may or may not have current job opportunities for NHSC scholars. Furthermore, not all vacancies associated with sites on the list described below will be for Corps members, but could be for NHSC Scholarship Program participants serving their obligation through the Private Practice Option.

Eligible HPSAs and Entities

To be eligible to receive assignment of Corps personnel, entities must: (1) Have a current HPSA designation by the Office of Shortage Designation, Bureau of Health Professions, HRSA; (2) not deny requested health care services, or discriminate in the provision of services to an individual because the individual is unable to pay for the services or because payment for the services would be made under Medicare, Medicaid, or the Children's Health Insurance Program (CHIP); (3) enter into an agreement with the State agency that administers Medicaid and CHIP, accept assignment under Medicare, see all patients regardless of their ability to pay and post such policy, and use and post a discounted fee plan; and (4) be determined by the Secretary to have: (a) A need and demand for health manpower in the area; (b) appropriately and efficiently used Corps members assigned to the entity in the past; (c) general community support for the assignment of Corps members; (d) made unsuccessful efforts to recruit; (e) a reasonable prospect for sound fiscal management by the entity with respect to Corps members assigned there; and (f) demonstrated a willingness to support and facilitate mentorship, professional development, and training opportunities for Corps members.

Priority in approving applications for assignment of Corps members goes to sites that (1) provide primary medical care, mental health, and/or oral health services to a primary medical care, mental health, or dental HPSA of greatest shortage, respectively; (2) are part of a system of care that provides a continuum of services, including comprehensive primary health care and appropriate referrals or arrangements for secondary and tertiary care; (3) have a documented record of sound fiscal management; and (4) will experience a negative impact on its capacity to provide primary health services if a

Corps member is not assigned to the entity. Sites that provide specialized care, or a limited set of services may not receive approval as NHSC service sites. This may include clinics that focus on one disease or disorder or offer limited services, such as a clinic that only provides immunizations or a substance abuse clinic.

Entities that receive assignment of Corps personnel must assure that: (1) The position will permit the full scope of practice and that the clinician meets the credentialing requirements of the State and site; and (2) the Corps member assigned to the entity is engaged in the requisite amount of clinical practice, as defined below, to meet his or her service obligation:

Full-Time Clinical Practice

''Full-time clinical practice'' is defined as a minimum of 40 hours per week for at least 45 weeks per service year. The 40 hours per week may be compressed into no less than 4 work days per week, with no more than 12 hours of work to be performed in any 24-hour period. Time spent on-call does not count toward the full-time service obligation, except to the extent the provider is directly treating patients during that period.

For all health professionals, except as noted below, at least 32 of the minimum 40 hours per week must be spent providing direct patient care or teaching in the outpatient ambulatory care setting(s) at the NHSC-approved service site(s) during normally scheduled office hours. The remaining 8 hours per week must be spent providing clinical services for patients or teaching in the approved practice site(s), providing clinical services in alternative settings as directed by the approved practice site(s), or performing practice-related administrative activities. Teaching activities at the approved service site shall not exceed 8 hours of the minimum 40 hours per week, unless the teaching takes place in a HRSA-funded Teaching Health Center (see Sec. 340H of the U.S. Public Health Service Act, 42 United States Code Sec. 256h). Teaching activities in a HRSA-funded Teaching Health Center shall not exceed 20 hours of the minimum 40 hours per week.

For obstetrician/gynecologists, certified nurse midwives (CNMs), family medicine physicians who practice obstetrics on a regular basis, providers of geriatric services, pediatric dentists, and behavioral/mental health providers, at least 21 of the minimum 40 hours per week must be spent providing direct patient care or teaching in the outpatient ambulatory care setting(s) at the NHSC-approved service site(s), during normally scheduled office hours. The remaining 19 hours per week must be spent providing clinical services for patients or teaching in the approved practice site(s), providing clinical services in alternative settings as directed by the approved practice site(s), or performing practice-related administrative activities. No more than 8 hours per week can be spent performing practice-related administrative activities. Teaching activities at the approved service site shall not exceed 8 hours of the minimum 40 hours per week, unless the teaching takes place in a HRSA-funded Teaching Health Center. Teaching activities in a HRSA-funded Teaching Health Center shall not exceed 20 hours of the minimum 40 hours per week.

For physicians (including psychiatrists), physician assistants, nurse practitioners (including those specializing in psychiatry or mental health), and certified nurse midwives serving in a Critical Access Hospital (CAH)—defined as a nonprofit facility that is: (a) Located in a State that has established with the Centers for Medicare and Medicaid Services (CMS) a Medicare rural hospital flexibility program; (b) designated by the State as a CAH; (c) certified by the CMS as a CAH; and (d) in compliance with all applicable CAH conditions of participation—at least 16 of the minimum 40 hours per week must be spent providing direct patient care or teaching in the CAH-affiliated outpatient ambulatory care setting(s) specified in the NHSC's Customer Service Portal, during normally scheduled office hours. The remaining 24 hours of the minimum 40 hours per week must be spent providing direct patient care for patients or teaching at the CAH(s) or the CAH-affiliated outpatient ambulatory care setting specified in the Customer Service Portal, providing direct patient care in the CAH's skilled nursing facility or swing bed unit, or performing practice-related administrative activities. No more than 8 hours per week can be spent on practice-related administrative activities. Teaching activities at the approved service site(s) shall not exceed 8 hours of the minimum 40 hours per week, unless the teaching takes place in a HRSA-funded Teaching Health Center (THC) (see Sec. 340H of the U.S. Public Health Service Act, 42 United States Code Sec. 256h). Teaching activities in a HRSA-funded THC shall not exceed 20 hours of the minimum 40 hours per week.

Half-Time Clinical Practice

''Half-time clinical practice'' is defined as a minimum of 20 hours per week (not to exceed 39 hours per week), for at least 45 weeks per service year. The 20 hours per week may be compressed into no less than 2 work days per week, with no more than 12 hours of work to be performed in any 24-hour period. Time spent on-call does not count toward the half-time service obligation, except to the extent the provider is directly serving patients during that period.

For all health professionals, except as noted below, at least 16 of the minimum 20 hours per week must be spent providing direct patient care in the outpatient ambulatory care setting(s) at the NHSC-approved service site(s), during normally scheduled office hours. The remaining 4 hours per week must be spent providing clinical services for patients or teaching in the approved practice site(s), providing clinical services in alternative settings as directed by the approved practice site(s), or performing practice-related administrative activities. Teaching and practice-related administrative activities shall not exceed a total of 4 hours of the minimum 20 hours per week.

For obstetrician/gynecologists, certified nurse midwives (CNMs), family medicine physicians who practice obstetrics on a regular basis, providers of geriatric services, pediatric dentists, and behavioral/mental health providers, at least 11 of the minimum 20 hours per week must be spent providing direct patient care in the outpatient ambulatory care setting(s) at the NHSC-approved service site(s), during normally scheduled office hours. The remaining 9 hours per week must be spent providing clinical services for patients or teaching in the approved practice site(s), providing clinical services in alternative settings as directed by the approved practice site(s), or performing practice-related administrative activities. Teaching and practice-related administrative activities shall not exceed 4 hours of the minimum 20 hours per week.

For physicians (including psychiatrists), physician assistants, nurse practitioners (including those specializing in psychiatry or mental health), and certified nurse midwives serving in a Critical Access Hospital (CAH), at least 8 of the minimum 20 hours per week must be spent providing direct patient care or teaching in the CAH-affiliated outpatient ambulatory care setting(s) specified in the Customer Service Portal, during normally scheduled office hours. The remaining 12 hours of the minimum 20 hours per week must be spent providing direct patient care for patients or teaching at the CAH(s) or the CAH-affiliated outpatient ambulatory care setting specified in the Practice Agreement, providing direct patient care in the CAH's skilled nursing facility or swing bed unit, or performing practice-related administrative activities. Teaching and practice-related administrative activities shall not exceed 4 hours of the minimum 20 hours per week.

Half-time clinical service is not an option for scholars serving their obligation through the Private Practice Option.

In addition to utilizing NHSC assignees in accordance with their full-time or half-time service obligation (as defined above), sites receiving assignment of Corps personnel are expected to: (1) Report to the NHSC all absences, including those in excess of the authorized number of days (up to 35 full-time days per service year in the case of full-time service and up to 35 half-time days per service year in the case of half-time service); (2) report to the NHSC any change in the status of an NHSC clinician at the site; (3) provide the time and leave records, schedules, and any related personnel documents for NHSC assignees (including documentation, if applicable, of the reason(s) for the termination of an NHSC clinician's employment at the site prior to his or her obligated service end date); and (4) submit an NHSC Site Survey, or a Uniform Data System (UDS) report in the case of entities receiving HRSA grant support under Sec. 330 of the Public Health Service Act. The Site Survey or UDS report, as applicable, require the site to assess the age, sex, race/ethnicity of, and provider encounter records for its user population and are site specific. Providers fulfilling NHSC commitments are assigned to a specific site or, in some cases, more than one site. The scope of activity to be reported in the survey includes all activity at the

site(s) to which the Corps member is assigned.

Evaluation and Selection Process

In order for a site to be eligible for placement of NHSC personnel, it must be approved by the NHSC following the site's submission of a Site Application. The processing of Site Applications from solo or group practices may involve additional screening, including a site visit by NHSC representatives. The Site Application approval is good for a period of 3 years from the date of approval.

In approving applications for the assignment of Corps members, the Secretary shall give priority to any such application that is made regarding the provision of primary health services to a HPSA with the greatest shortage. For the program year July 1, 2012, through

June 30, 2013, HPSAs of greatest shortage for determination of priority for assignment of NHSC scholarship-obligated Corps personnel will be defined as follows: (1) Primary medical care HPSAs with scores of 16 and above are authorized for the assignment of NHSC scholarship recipients who are primary care physicians, family nurse practitioners (NPs), physician assistants (PAs) or CNMs; (2) mental health HPSAs with scores of 16 and above are authorized for the assignment of NHSC scholarship recipients who are psychiatrists or mental health nurse practitioners; and (3) dental HPSAs with scores of 16 and above are authorized for the assignment of NHSC scholarship recipients who are dentists. The NHSC has determined that a minimum HPSA score of 16 for all eligible clinicians will enable it to meet its statutory obligation to identify a number of entities eligible for placement at least equal to, but not greater than, twice the number of NHSC scholars available to serve in the 2012–2013 placement cycle.

The number of new NHSC placements through the Scholarship Program allowed at any one site is limited to one (1) of the following provider types: Physician (MD/DO), NP, PA, CNM, or dentist. The NHSC will consider requests for up to two (2) scholar placements at any one site on a case-by-case basis. Factors that are taken into consideration include community need, as measured by demand for services, patient outcomes and other similar factors, and how the additional scholar will impact retention of other clinicians. Sites wishing to request an additional scholar must complete an Additional Scholar Request form available at *http://nhsc.hrsa.gov/scholarship/pdf/additionalscholarrequestform.pdf.*

Sites that do not meet the authorized HPSA score threshold indicated above may post job openings, however, scholars seeking placement between July 1, 2012 and June 30, 2013 will be advised that they can only compete for open positions at sites that meet the threshold placement HPSA score of 16. While not eligible for scholar placements in 2012–2013, vacancies in HPSAs scoring less than 16 will be used by the NHSC in evaluating the HPSA threshold score for the next scholarship placement cycle.

Application Requests, Dates and Address

The list of HPSAs and entities that are eligible to receive priority for the placement of Corps personnel may be updated periodically. Entities that no longer meet eligibility criteria, including those sites whose 3-year approval as an NHSC service site has lapsed or whose HPSA designation has been withdrawn or proposed for withdrawal, will be removed from the priority listing. New entities interested in being added to the high priority list must submit a Site Application to the National Health Service Corps by visiting *http://nhsc.hrsa.gov/communities/apply.htm* to apply online. A searchable database of HPSAs and their scores, by State and county, is posted at *http://hpsafind.hrsa.gov/.*

Additional Information

Entities wishing to provide additional data and information in support of their inclusion on the proposed list of HPSAs and entities that would receive priority in assignment of scholarship-obligated Corps members, must do so in writing no later than May 14, 2012. This information should be submitted to: Sonya Bayone, Chief, Site Branch, Division of the National Health Service Corps, Bureau of Clinician Recruitment and Service, 5600 Fishers Lane, Room 8–37, Rockville, MD 20857. This information will be considered in preparing the final list of HPSAs and entities that are receiving priority for the assignment of scholarship-obligated Corps personnel.

The program is not subject to the provisions of Executive Order 12372, Intergovernmental Review of Federal Programs (as implemented through 45 CFR Part 100).

Dated: April 9, 2012.

Mary K. Wakefield,

Administrator.

[FR Doc. 2012–8928 Filed 4–12–12; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Submission for OMB Review; Comment Request; Solar Cell: A Mobile UV Manager for Smart Phones Phase II (NCI)

Summary: Under the provisions of Section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995, the National Cancer Institute (NCI), the National Institutes of Health (NIH), has submitted to the Office of Management and Budget (OMB) a request to review and approve the information collection listed below. This proposed information collection was previously published in the **Federal Register** on January 27, 2012 (77 FR 4334) and allowed 60-days for public comment. No public comments were received. The purpose of this notice is to allow an additional 30 days for public comment. The National Institutes of Health may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

Proposed Collection: Title: Solar Cell: A Mobile UV Manager for Smart Phones Phase II (NCI). *Type of Information Collection Request:* New. *Need and Use of Information Collection:* The overall goal of the study is to design a smart phone application, *Solar Cell,* which uses smart phone technology to aid users in protecting their skin from damaging ultraviolet radiation (UV) in sunlight, a primary cause of skin cancer. The purpose of this part of the study is to produce, deploy, and evaluate the effectiveness of a state-of-the-art software application for smart phones (i.e., mobile application), ''*Solar Cell.''* This software application supports decision-making related to sun protection and exposure by Americans to reduce the risk of developing skin cancer attributable to chronic and severe UV exposure and developing other cancers attributable to vitamin D deficiency. The *Solar Cell* mobile smart phone application combines personal and behavior data with geo-spatial data (i.e., UV Index forecast, time, and location) and delivers actionable sun protection advice to reduce risk of skin cancer. *Frequency of Response:* Once. *Affected Public:* Individuals. *Type of Respondents:* Adults (18 and over) from the U.S. population who own Android smart phones. The annual reporting burden is estimated at 308 hours (see Table below). There are no Capital

Costs, Operating Costs, and/or Maintenance Costs to report.

A.12–1—ESTIMATES OF ANNUAL BURDEN HOURS

Type of respondents	Instrument	Number of respondents	Frequency of response	Average time per response (min/hour)	Annual burden hours
Adults	Screener (Appendix G)	1,875	1	2/60	63
	Pre-test (Appendix A)	245	1	20/60	82
	Post-test (Appendix B)	245	1	40/60	163
Totals					308

Request for Comments: Written comments and/or suggestions from the public and affected agencies should address one or more of the following points: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the function 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 the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Direct Comments to OMB: Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Attention: NIH Desk Officer, Office of Management and Budget, at *OIRA_submission@omb.eop.gov* or by fax to 202–395–6974. To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact Patricia Weber, DrPH, Program Director, NCI/NIH, SBIR Development Center, 6116 Executive Blvd., Suite 402, Rockville, MD 20852 or call non-toll-free number 301–594–8106 or email your request, including your address to: *weberpa@mail.nih.gov.*

Comments Due Date: Comments regarding this information collection are best assured of having their full effect if received within 30 days of the date of this publication.

Dated: April 9, 2012.

Vivian Horovitch-Kelley,

NCI Project Clearance Liaison, National Institutes of Health.

[FR Doc. 2012–8930 Filed 4–12–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of a meeting of the Center for Scientific Review Advisory Council.

The meeting will be open to the public with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

Name of Committee: Center for Scientific Review Advisory Council.

Date: May 14, 2012.

Time: 8 a.m. to 4:30 p.m.

Agenda: Provide advice to the Acting Director, Center for Scientific Review (CSR), on matters related to planning, execution, conduct, support, review, evaluation, and receipt and referral of grant applications at CSR.

Place: Health and Human Services Building, 5635 Fishers Lane, Rockville, MD 20852.

Contact Person: Donald L Schneider, Ph.D., Senior Advisor to the Director, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3030, MSC 7776, Bethesda, MD 20892, (301) 435–1111, *schneidd@csr.nih.gov.*

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

(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: April 6, 2012.

Anna P. Snouffer,

Deputy Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–8919 Filed 4–12–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Human Genome Research Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Human Genome Research Institute Special Emphasis Panel, H3Africa Biorepository Teleconference SEP.

Date: April 18, 2012.

Time: 12 p.m. to 1:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Human Genome Research Institute, 5635 Fishers Lane, 4076, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Rudy O. Pozzatti, Ph.D., Scientific Review Officer, Scientific Review Branch, National Human Genome Research Institute, 5635 Fishers Lane, Suite 4076, MSC 9306, Rockville, MD 20852, (301) 402–0838, *pozzattr@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing

limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.172, Human Genome Research, National Institutes of Health, HHS)

Dated: April 9, 2012.

Anna P. Snouffer,

Deputy Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–8943 Filed 4–12–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Prospective Grant of Exclusive License: Development of Oncolytic Viral Cancer Therapies

AGENCY: National Institutes of Health, Public Health Service, HHS.

ACTION: Notice.

SUMMARY: This is notice, in accordance with 35 U.S.C. 209(c)(1) and 37 CFR Part 404.7(a)(1)(i), that the National Institutes of Health, Department of Health and Human Services, is contemplating the grant of an exclusive patent license to practice the inventions embodied in the following U.S. Patents to Jennerex Biotherapeutics (''Jennerex'') located in San Francisco, CA, USA.

Intellectual Property:

1. U.S. Patent No. 7,045,313 issued May 16, 2006 entitled, ''Recombinant Vaccinia Virus Containing a Chimeric Gene Having Foreign DNA Flanked by Vaccinia Regulatory DNA'' [HHS Ref. No. E–552–1982/2–US–03];
2. U.S. Patent No. 7,015,024 issued March 21, 2006 entitled, ''Compositions Containing Recombinant Poxviruses Having Foreign DNA Expressed under the Control of Poxvirus Regulatory Sequence'' [HHS Ref. No. E–552–1982/2–US–04];
3. U.S. Patent No. 7,045,136 issued May 16, 2006 entitled, ''Methods of Immunization Using Recombinant Poxviruses Having Foreign DNA Expressed under the Control of Poxvirus Regulatory Sequence'' [HHS Ref. No. E–552–1982/2–US–05]; and
4. U.S. Patent No. 6,998,252 issued February 14, 2006 entitled, ''Recombinant Poxviruses Having Foreign DNA Expressed under the Control of Poxvirus Regulatory Sequence'' [HHS Ref. No. E–552–1982/2–US–06].

The patent rights in these inventions have been assigned to the United States of America.

The prospective exclusive license territory may be the U.S. and the field of use may be the ''development and use of Licensed Patent Rights in combination with Licensee's proprietary or in-licensed technologies for the treatment of human cancers''.

DATES: Only written comments and/or applications for a license which are received by the NIH Office of Technology Transfer on or before May 14, 2012 will be considered.

ADDRESSES: Requests for copies of the patent application, inquiries, comments, and other materials relating to the contemplated exclusive license should be directed to: Jennifer Wong, Senior Licensing and Patenting Manager, Cancer Branch, Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, MD 20852–3804; Telephone: (301) 435–4633; Facsimile: (301) 402–0220; Email: *wongje@mail.nih.gov.*

SUPPLEMENTARY INFORMATION: The instant technology relates to recombinant poxviruses, and in particular the vaccinia virus, as a backbone that carries a foreign DNA. The virus has been modified by inserting a chimeric gene containing foreign DNA adjacent to poxvirus transcriptional regulatory sequence. The recombinant virus is subsequently transfected into a host and the foreign gene is expressed. For example, the foreign DNA can be related to a viral pathogen, tumor-associated antigen, or therapeutic transgenes. Upon administration of the recombinant virus to a human or animal subject, the foreign gene is expressed *in vivo* to elicit an immune response or express the therapeutic genes. The technology takes advantage of the unique properties of poxviruses as a delivering vehicle and of the ease of preparation of such constructs.

The prospective exclusive license will be royalty bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR Part 404.7. The prospective exclusive license may be granted unless within thirty (30) days from the date of this published notice, the NIH receives written evidence and argument that establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR Part 404.7.

Applications for a license in the field of use filed in response to this notice will be treated as objections to the grant of the contemplated exclusive license. Comments and objections submitted to this notice will not be made available for public inspection and, to the extent permitted by law, will not be released under the Freedom of Information Act, 5 U.S.C. 552.

Dated: April 10, 2012.

Richard U. Rodriguez,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 2012–8891 Filed 4–12–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

Agency Information Collection Activities: USCIS Case Status Online, Extension of a Currently Approved Information Collection; Comment Request

ACTION: 30-Day notice of information collection under review: USCIS case status online.

The Department of Homeland Security, U.S. Citizenship and Immigration Services (USCIS) is submitting the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in the **Federal Register** on January 30, 2012, at 77 FR 4574, allowing for a 60-day public comment period. USCIS did not receive any comments for this information collection.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until May 14, 2012. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Department of Homeland Security (DHS), and to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), USCIS Desk Officer. Comments may be submitted to: Chief, Regulatory Coordination Division, Office of Policy and Strategy, USCIS, DHS, 20 Massachusetts Avenue NW., Suite 5012, Washington, DC 20529–2210. Comments may also be submitted to DHS via facsimile to 202–272–8352 or via email at *USCISFRComment@dhs.gov,* and to the OMB USCIS Desk Officer via facsimile at 202–395–6974 or via email at *oira_submission@omb.eop.gov.*

Note: The address listed in this notice should only be used to submit comments concerning this information collection. Please do not submit requests for individual case status inquiries to this address. If you are seeking information about the status of your individual case, please check ''My Case Status'' online at: *https://egov.uscis.gov/cris/Dashboard.do,* or call the USCIS National Customer Service Center at 1–800–375–5283.

When submitting comments by email please make sure to add OMB Control Number 1615–0080 in the subject box. Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the 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 submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of an existing information collection.

(2) *Title of the Form/Collection:* USCIS Case Status Online.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* No Agency Form Number (File No. OMB–33); U.S. Citizenship and Immigration Services.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary: Individuals or households, for-profit organizations, and not-for-profit organizations.* This system allows individuals and their representatives to request case status of pending applications through USCIS' Web site.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 20,000,000 responses at 0.075 hours (4½ minutes) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 1,500,000 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please visit *http://www.regulations.gov.*

If additional information is required contact: USCIS, Regulatory Coordination Division, 20 Massachusetts Avenue NW., Suite 5012, Washington, DC 20529–2210, (202) 272–8377.

Dated: April 10, 2012.

Sunday Aigbe,

Acting Chief, Regulatory Coordination Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services.

[FR Doc. 2012–8985 Filed 4–12–12; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5629–N–01]

Authority To Accept Unsolicited Research Proposals

AGENCY: Office of the Assistant Secretary for Policy Development and Research, HUD.

ACTION: Notice: Authority to accept unsolicited proposals for research partnerships.

SUMMARY: This notice announces that HUD's Office of Policy Development and Research has the authority to accept unsolicited research proposals that address one of the following research priorities: (1) HUD demonstrations, (2) using housing as a platform for improving quality of life, (3) the American Housing Survey data, or (4) housing technology. In accordance with statutory requirements, the research projects must be funded at least 50 percent by philanthropic entities and/or federal, state or local government agencies.

DATES: Proposals may be submitted at any time and will be evaluated as they are received.

FOR FURTHER INFORMATION CONTACT: Questions should be directed by email to *ResearchPartnerships@hud.gov,* by telephone to Sarah Schaefer, Office of Policy Development at (202) 402–6846 (this number is not toll-free), or by mail to the Department of Housing and Urban Development, Office of Policy Development and Research, 451 Seventh Street SW., Room 8114, Washington, DC 20410, ATTENTION: Research Partnerships. Persons with speech or hearing impairments may call the Federal Relay Service TTY at 800–877–8339.

SUPPLEMENTARY INFORMATION: The Consolidated and Further Continuing Appropriations Act, 2012 (Pub. L. 112–55, approved November 18, 2011) (2012 Appropriations Act) authorizes the Office of Policy Development and Research (PD&R) to enter into non-competitive cooperative agreements for projects that are aligned with PD&R's research priorities and where HUD can gain value by having substantial involvement in the research activity.

Research Priorities

HUD may enter into noncompetitive cooperative agreements for research proposals that inform important policy and program objectives of HUD that are not otherwise being addressed and that focus on one of HUD's research priorities. For 2012, HUD's four research priorities all focus on projects in the United States. The research priorities are:

(1) *HUD demonstrations.* HUD values demonstrations as a method for evaluating new policy and program initiatives. HUD is interested in research opportunities that take advantage of its demonstrations, including completed, current, and future demonstrations. For example, the Moving to Opportunity demonstration was completed in 2011, but additional policy questions remain that could be answered using the existing data. In addition, the Choice Neighborhoods demonstration is currently under way and the Rental Assistance Demonstration and Small Area FMR Demonstration will both begin in 2012, all of which provide further opportunities for research.

(2) *Using housing as a platform to improve quality of life.* For the first time, HUD identified using housing as a platform for improving quality of life as a goal in its Strategic Plan. Specifically, HUD is interested in how HUD assistance can be used to improve educational outcomes and early learning and development; improve health outcomes; increase economic security and self sufficiency; improve housing stability through supportive services for vulnerable populations, including the elderly, people with disabilities, homeless people, and those individuals and families at risk of becoming homeless; and improve public safety. To evaluate the ability of housing assistance to positively affect these various outcomes requires reaching beyond the sphere of housing to health, education, and other areas.

(3) *Use of American Housing Survey data.* One of HUD's largest research

investments is the American Housing Survey (AHS). The AHS provides a wealth of data on size and composition of the nation's housing inventory, which could be more effectively used by researchers to address questions about housing market dynamics.

(4) *Housing technology for construction and rehabilitation work for HUD-funded clients.* Public and private housing providers are increasingly using housing technology to improve energy efficiency or to introduce green or sustainable housing rehabilitation, construction, or products in the HUD-funded housing. HUD is interested in research that explores the successful efforts and knowledge of the private building sector that carries out construction and rehabilitation work for HUD-funded clients. This would be accomplished by examining products and systems, the decision-making process by private and public parties, and strategies pursued by private and philanthropic parties producing and promoting products and systems. HUD's interest is in encouraging replication of successful efforts by both private builders and HUD clients.

Cost Sharing

Cost sharing is required for research projects to be eligible for funding through HUD's non-competitive cooperative agreement authority. In accordance with the 2012 Appropriations Act, at least 50 percent of the total estimated cost of the project must come from a philanthropic entity, other federal agency, or state or local government agency, or any combination of these partners. For the purposes of the cost-sharing requirement, HUD defines a philanthropic entity as the subset of 501(c)(3) organizations that directly fund research activities. These include private foundations, public charities, and operating foundations. An educational institution may have a separate foundation, which would be considered a philanthropic entity for these purposes. Philanthropic entities may include foreign entities. Contributions do not include waiver of overhead or similar costs.

Proposals

Proposals should contain sufficient information for PD&R to identify whether the research would meet statutory requirements for cost sharing and alignment with the research priorities identified above. Additionally, proposals should include the name, title, and telephone number of an individual that PD&R may contact in the event of any questions about the proposal. Proposals for research partnerships that have already been submitted to HUD as part of a grant competition are ineligible as the subject of a non-competitive cooperative agreement.

Proposal Review

Proposals will be reviewed by a person or persons within HUD who are knowledgeable in the field of endeavor related to the substance of the research proposal. An Advisory Committee that includes the Deputy Assistant Secretary (DAS) for the Office of Research, Evaluation and Monitoring, the DAS for the Office of Policy Development, the DAS for the Office of Economic Affairs, the DAS for the Office of International and Philanthropic Innovation, and the DAS for the Office of University Partnerships, or any delegate asked to act on his or her behalf, will review proposals and make recommendations to the Assistant Secretary of PD&R. That recommendation will be documented and sent to the Office of the General Counsel and PD&R's Budget office concurrent with submission to the Assistant Secretary. As required by the statutory authority within the appropriations bill, HUD will report each award provided through a cooperative agreement in the Federal Funding Accountability and Transparency Act Sub-award Reporting System created under the Federal Funding Accountability and Transparency Act of 2006.

Dated: April 9, 2012.

Raphael W. Bostic,

Assistant Secretary for Policy, Development and Research.

[FR Doc. 2012–8972 Filed 4–12–12; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5601–N–15]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for use to assist the homeless.

FOR FURTHER INFORMATION CONTACT: Juanita Perry, Department of Housing and Urban Development, 451 Seventh Street SW., Room 7266, Washington, DC 20410; telephone (202) 708–1234; TTY number for the hearing- and speech-impaired (202) 708–2565 (these telephone numbers are not toll-free), or call the toll-free Title V information line at 800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with 24 CFR part 581 and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this Notice to identify Federal buildings and other real property that HUD has reviewed for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property. This Notice is also published in order to comply with the December 12, 1988 Court Order in *National Coalition for the Homeless* v. *Veterans Administration,* No. 88–2503–OG (D.D.C.). On April 6, 2012, HUD published an announcement in the **Federal Register** that stated that the notice of unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for use to assist the homeless would not be published in the **Federal Register** on April 6, 2012, but would be published on April 20, 2012. The April 6, 2012, announcement only pertained to the properties that would have been published on April 6, 2012. Because of the length of the April 6, 2012, report, the **Federal Register** could not accommodate publication until April 20, 2012. Today's publication, however, is the report intended to be published on April 13, 2012.

Properties reviewed are listed in this Notice according to the following categories: Suitable/available, suitable/unavailable, suitable/to be excess, and unsuitable. The properties listed in the three suitable categories have been reviewed by the landholding agencies, and each agency has transmitted to HUD: (1) Its intention to make the property available for use to assist the homeless, (2) its intention to declare the property excess to the agency's needs, or (3) a statement of the reasons that the property cannot be declared excess or made available for use as facilities to assist the homeless.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days from the date of this Notice. Where property is described as for ''off-site use only'' recipients of the property will be required to relocate the building to their own site at their own expense.

Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to Theresa Ritta, Division of Property Management, Program Support Center, HHS, room 5B–17, 5600 Fishers Lane, Rockville, MD 20857; (301) 443–2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 24 CFR part 581.

For properties listed as suitable/to be excess, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law, subject to screening for other Federal use. At the appropriate time, HUD will publish the property in a Notice showing it as either suitable/available or suitable/unavailable.

For properties listed as suitable/unavailable, the landholding agency has decided that the property cannot be declared excess or made available for use to assist the homeless, and the property will not be available.

Properties listed as unsuitable will not be made available for any other purpose for 20 days from the date of this Notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll free information line at 1–800–927–7588 for detailed instructions or write a letter to Mark Johnston at the address listed at the beginning of this Notice. Included in the request for review should be the property address (including zip code), the date of publication in the **Federal Register**, the landholding agency, and the property number.

For more information regarding particular properties identified in this Notice (i.e., acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: *Air Force:* Mr. Robert Moore, Air Force Real Property Agency, 143 Billy Mitchell Blvd., San Antonio, TX 78226, (210) 925–3047; *Coast Guard:* Commandant, United States Coast Guard, Attn: Jennifer Stomber, 2100 Second St. SW., Stop 7901, Washington, DC 20593–0001; (202) 475–5609; *GSA:* Mr. Gordon Creed, Acting Deputy Assistant Commissioner, General Services Administration, Office of Property Disposal, 18th & F Streets NW., Washington, DC 20405; (202) 501–0084; *Navy:* Mr. Steve Matteo, Department of the Navy, Asset Management Division, Naval Facilities Engineering Command, Washington Navy Yard, 1330 Patterson Ave. SW., Suite 1000, Washington, DC 20374; (202)685–9426 (These are not toll-free numbers).

Dated: April 5, 2012.

Mark R. Johnston,

Deputy Assistant Secretary for Special Needs.

TITLE V, FEDERAL SURPLUS PROPERTY PROGRAM FEDERAL REGISTER REPORT FOR 04/13/2012

Suitable/Available Properties

Building

Georgia

5 Acres
Former CB7 Radio Communication
Townsend GA 31331
Landholding Agency: GSA
Property Number: 54201210008
Status: Excess
GSA Number: 4–U–GA–885AA
Comments: 5.0 acres; current use: unknown; property located in 100-yr. floodplain—not in floodway however, no impact on utilizing property; contact GSA for more details

Montana

James F. Battin & Courthouse
316 North 26th Street
Billings MT 59101
Landholding Agency: GSA
Property Number: 54201210005
Status: Excess
GSA Number: 7–G–MT–0621–AB
Comments: 116,865 sf.; current use: office; extensive asbestos contamination; needs remediation

Nevada

Alan Bible Federal Bldg.
600 S. Las Vegas Blvd.
Las Vegas NV 89101
Landholding Agency: GSA
Property Number: 54201210009
Status: Excess
GSA Number: 9–G–NV–565
Comments: 81,247 sf.; current use: federal bldg.; extensive structural issues; needs major repairs; contact GSA for further details

New Mexico

Bldg. 310
103 West Street
Cannon NM 88103
Landholding Agency: Air Force
Property Number: 18201210114
Status: Unutilized
Comments: ''Off-site removal only'' is available; however, it may be difficult to relocate due to size and location; 20,000 sf.; current use: maint. shop; lead base paint identified

Oregon

2 Bldgs.
Group North Bend
North Bend OR 97459
Landholding Agency: Coast Guard
Property Number: 88201210005
Status: Excess
Directions: Bldg. and Rec. Deck
Comments: off-site removal only; 3,842 sf. for bldg.; 1,650 sf. for rec. deck; current use; office and training room; poor conditions-need repairs

Land

California

Seal Beach RR Right of Way
Seal Beach
Seal Beach CA 90740
Landholding Agency: GSA
Property Number: 54201210006
Status: Surplus
GSA Number: 9–N–CA–1508–AH
Comments: 4,721.90 sf.; current use: vacant lot between residential bldg.
Seal Beach RR Right of Way
Seal Beach
Seal Beach CA 90740
Landholding Agency: GSA
Property Number: 54201210007
Status: Surplus
GSA Number: 9–N–CA–1508–AJ
Comments: 6,028.70 sf.; current use: vacant lot between residential bldgs.

Unsuitable Properties

Building

California

Bldg. 6739
Marine Corps Air Station
San Diego CA
Landholding Agency: Navy
Property Number: 77201210008
Status: Excess
Comments: Nat'l security concerns; public access is denied due to anti-terrorism/force protection and no alternative method to gain access
Reasons: Secured Area

Texas

USCG Station Sabine
7034 South 1st Ave.
Sabine TX 77655
Landholding Agency: Coast Guard
Property Number: 88201210006
Status: Unutilized
Comments: Nat'l security concerns; no public access and no alternative method to gain access without comprising nat'l security
Reasons: Secured Area

Land

California

Parcel L1
George AFB
Victorville CA 92394
Landholding Agency: GSA
Property Number: 54200910005
Status: Surplus
GSA Number: 9–D–CA–06283
Comments: Change in reason for unsuitability; property is no longer landlocked; however, the property remains 100% in a runway clear zone.
Reasons: Within airport runway clear zone

[FR Doc. 2012–8572 Filed 4–9–12; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5613–N–01]

Privacy Act of 1974; Amendment to an Existing System of Records, Inventory Management System Also Known as the Public and Indian Housing Information Center

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notification of an amendment to an existing Privacy Act System of Records, Inventory Management System (IMS), also known as the Public and Indian Housing (PIH) Information Center (PIC), HUD/PIH.01.

SUMMARY: HUD is amending HUD/PIH.01 to reflect changes in the following sections, which involve participants and PIH program administrators of the Public Housing, Section 8 Certificate, Section 8 Tenant-Based Assistance (Housing Choice Voucher (HCV)), Section 8 Project-Based, and Section 8 Moderate Rehabilitation programs: Categories of Individuals Covered by the System, Categories of Records in the System, Purposes of the System, and Routine Uses of Records Maintained in the System, including Categories of Users and purposes of such use. These sections are revised to reflect the present status of the information contained in the system. The existing scope, objectives, and business processes in place for this program remain unchanged. A more detailed description of the present system is contained in this notice. This notice supersedes the previously published notice on October 6, 2008, at 73 FR 58256.

DATES: *Effective Date:* This proposal shall become effective, without further notice, May 14, 2012, unless comments are received during or before this period which would result in a contrary determination.

Comments Due Date: May 14, 2012.

ADDRESSES: Interested persons are invited to submit comments regarding this notice to the Rules Docket Clerk, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street SW., Room 10276, Washington, DC 20410–3000. Communications should refer to the above docket number and title. FAX comments are not acceptable. A copy of each communication submitted will be available for public inspection and copying between 8 a.m. and 5 p.m. weekdays at the above address.

FOR FURTHER INFORMATION CONTACT: Inquiries pertaining to Privacy Act records: contact Harold Williams, Acting Chief Privacy Officer, telephone number (202) 402–8087, 451 Seventh Street SW. Room Number 4156, Washington, DC 20410. Regarding program-related inquiries: contact Nicole Faison, Program Advisor, telephone number (202) 475–7963, Washington, DC 20410, for the Office of Public and Indian Housing (PIH). [The above telephone numbers are not toll free numbers.] A telecommunications device for hearing and speech-impaired persons (TTY) is available by calling the Federal Information Relay Service's toll-free telephone number (800) 877–8339.

SUPPLEMENTARY INFORMATION: HUD intends to modify an existing Privacy Act system of records notice to create a new routine use exception to permit information sharing with the U.S. Department of Veterans Affairs for the purpose of advancing the goals of the nation's federal strategic plan to prevent and end homelessness among veterans through the collection, analysis, and reporting of quality and timely data on homelessness. Pursuant to the Privacy Act of 1974, as amended (5 U.S.C. 552a(e)(4)(11), the system report was submitted to the Office of Management and Budget (OMB), the Senate Committee on Homeland Security and Governmental Affairs, and the House Committee on Government Reform pursuant to Paragraph 4c of Appendix l to OMB Circular No. A–130, ''Federal Agencies Responsibilities for Maintaining Records About Individuals,'' July 25, 1994 (59 FR 37914). This notice supersedes the previously published notice on October 6, 2008 at 73 FR 58256.

Authority: 5 U.S.C. 552a; 88 Stat. 1896; 42 U.S.C. 3535(d).

Dated: April 5, 2012.

Kevin R. Cooke,

Deputy Chief Information Officer.

HUD/PIH.01

SYSTEM NAME:

Inventory Management System (IMS), also known as the Public and Indian Housing (PIH) Information Center (PIC), HUD/PIH.01. Note: This system was previously enumerated as HUD/PIH–4. With the publication of this notice, HUD will now reference the system number of HUD/PIH.01 to IMS/PIC.

SYSTEM LOCATIONS:

The files are maintained at the following locations: U.S. Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; and IMS/PIC servers are located in Charleston, WV; and are accessed through the Internet. The servers are maintained by HUD Information Technology Services (HITS) contractor, and HUD's information technology partners: Electronic Data Services (EDS) and Lockheed Martin.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The U.S. Housing Act of 1937, as amended, 42 U.S.C. 1437; Title VI of the Civil Rights Act of 1962 (42 U.S.C. 2000d); The Fair Housing Act (42 U.S.C. 3601–3619); The Housing Community Development Act of 1981, Public Law 97–35, 85 stat., 348,408; and The Housing and Community Development Act of 1987, 42 U.S.C. 3543.

PURPOSES:

IMS/PIC serves as a national repository of information related to Public Housing Authorities (PHAs), HUD-assisted families, HUD-assisted properties for the purpose of monitoring and evaluating the effectiveness of PIH rental housing assistance programs. IMS/PIC allows PHAs and PHA-hired management agents to electronically submit information to HUD that is related to the administration of HUD's PIH programs. It collects data for PIH operations, including data submitted via the Internet from HUD's field offices, and accurately tracks activities and processes. IMS/PIC also helps to increase sharing of information throughout PIH and HUD, which improves staff awareness of activities related to the administration of HUD-subsidized housing programs. IMS/PIC is a flexible, scalable, internet-based integrated system, which enables PHA users and HUD personnel to access a common database of PHA information via their web browser. IMS/PIC aids HUD and entities that administer HUD's assisted housing programs in: (a) Increasing the effective distribution of rental assistance to individuals that meet the requirements of federal rental assistance programs; (b) detecting abuses in assisted housing programs; (c) taking administrative or legal actions to resolve past and current abuses of assisted housing programs; (d) monitoring compliance with HUD program requirements (e) deterring abuses by verifying the employment and income of tenants at the time of annual and interim reexaminations of family income and composition via the PIH Enterprise Income Verification (EIV) system; (f) evaluating program effectiveness; (g) improving PHA IMS/PIC reporting rate; (h) forecasting budgets; (i) controlling funds; (j) updating tenant information; and (k) updating building and unit data.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Families residing in a HUD-assisted property and/or receiving rental housing assistance via programs administered by the Department of Housing and Urban Development, Public Housing Agencies (PHAs) and PHA-hired management agents.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records consist of the following information as reported to HUD by PHAs and PHA-hired management agents:

1. PHA information: agency name, HUD-assigned PHA Code, HUD program type family participates in; project number, building number, building entrance number, and unit number (applicable to only the Public Housing program).

2. PHA point of contact information for individuals that work for, and access IMS/PIC and oversee the PHA's administration (i.e. Mayors, board members, managers, directors, etc.: individual's name, agency's physical address, agency's mailing address, agency's telephone numbers, email addresses for point of contacts.

3. Action information: type of action (new admission, annual reexamination, interim reexamination, portability move-in, portability move-out, end of participation, other change of unit, FSS/WTW addendum only, annual reexamination searching (Section 8 program only), issuance of voucher (Section 8 program only), expiration of voucher (Section 8 program only), flat rent annual updated (Public Housing program only), annual HQS inspection (Section 8 program only), historical adjustment, and void); effective date of action, indication of correction of previous submitted information, type of correction, date family was admitted into a PIH rental assistance program, projected effective date of next reexamination of family income and/or composition, projected date of next flat rent annual updated (applicable only to the Public Housing program), indication of whether or not the family is or has participated in the Family Self-sufficiency (FSS) program within the last year, identification of special Section 8 program (applicable only to the Section 8 program), identification of other special HUD rental program(s) the family is participating in, and ''PHA Use Only'' fields which are used by PHAs for general administrative purposes or other uses as prescribed by HUD.

4. Family composition (which includes the following personally identifiable information) as reported by the family and verified by PHAs and PHA-hired management agents: Last name, first name, middle initial, date of birth, age on effective date of action, sex, relationship to head of household, citizenship status, disability status, race, ethnicity, social security number, alien registration number, compliance with community service or self-sufficiency requirement for public housing tenants, total number of household members, family subsidy status under the noncitizens rule, eligibility effective date, and former head of household's social security number.

5. Geographical and unit information:

a. Background at admission information as reported by the family: date family entered the waiting list, zip code before admission, whether or not the family was homeless at time of admission, whether or not the family qualifies for admission over the very low-income limit, whether or not the family is continuously assisted under the 1937 Housing Act, whether or not there is a HUD-approved income targeting disregard.

b. Subsidized Unit information: unit number and street address, city, state and zip code in which the subsidized unit is located, whether or not the family's mailing address is the same address of the unit to be occupied by the family, family's mailing address (unit number and street address, city, state, and zip code) if different from the address of the subsidized unit, number of bedrooms, whether or not the unit is an accessible unit (applicable to the Public Housing program only), whether or not the family has requested accessibility features (applicable to the Public Housing program only), whether or not the family has received the requested accessibility features (applicable to the Public Housing program only), date the unit last passed Housing Quality Standards (HQS) inspection (applicable to the Section 8 program only, except Homeownership and Project-Based Vouchers programs), date of last annual HQS inspection (applicable to the Section 8 program only, except Homeownership and Project-Based Vouchers programs), year the unit was built (applicable to the Section 8 program only), and the structure type of the unit (applicable to the Section 8 program only).

6. Family assets information, as reported by the family and verified by PHAs and PHA-hired management agents, which includes the type of asset, cash value of the asset, anticipated annual income derived from the asset, passbook rate, imputed asset income, and final asset income.

7. Family income information, as reported by the family and verified by PHAs and PHA-hired management agents, which includes the income source, PHA income calculations, annual income derived from the income source, income exclusion amount in accordance with HUD program requirements and annual income amount after deducting allowable income exclusion for each household member of the family, total household annual income, amounts of permissible deductions and other deductions to annual income in accordance with HUD program requirements, and amount of family adjusted annual income.

8. Total tenant payment (TTP), minimum rent amount, most recent TTP amount, and tenant rent calculation information in accordance with HUD requirements for the specific PIH rental assistance program the family is currently participating in.

9. Family Self-Sufficiency (FSS) and Welfare-to-Work (WTW) program information: type of self-sufficiency program the family is participating in, FSS report category, FSS effective date, PHA code of PHA administering FSS contract, WTW report category, WTW effective date of action, PHA code of PHA that issued the WTW voucher, PHA code of PHA counting the family as enrolled in its WTW voucher program if different than the PHA Code of PHA that issued the WTW voucher; and general information pertaining to the employment status of the head of household, date current employment began, type of employment benefits head of household receives from employer, number of years of school completed by the head of household, type of other federal assistance received by the family, number of children receiving childcare services, and optional information related to the type of family services the family needs, whether or not the need was met during participation in the FSS or WTW program, and the name of the service provider; FSS contract, account and exit information; and WTW voucher program information.

10. PHA IMS/PIC system user's information: Name, telephone number, fax number, email address, mailing address, agency Web site address.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted pursuant to 5 U.S.C. 552a(b) of the Privacy Act, other routine uses include: Categories of users and routine uses of information contained in IMS/PIC may include:

1. To a Congressional office from the record of an individual in response to

an inquiry from that Congressional office made at the request of the individual to whom the records pertain;

2. To the National Archives and Records Administration (NARA) for use in its records management inspections and its role as an Archivist;

3. To the Department of Justice (DOJ) when seeking legal advice or for use in any proceeding, or in preparation for any proceeding, when HUD or any component thereof disclose information to DOJ during the course of an investigation to the extent necessary to obtain information pertinent to the investigation under applicable HUD administered rental housing assistance programs;

4. To third parties during the course of law enforcement investigation to the extent necessary to obtain information pertinent to the investigation;

5. To GEO Coding Service Center system to obtain GEO coding for all HUD-subsidized units;

6. To any federal, state, and local agency pursuant to an approved computer matching agreement (e.g., state agencies administering the state's unemployment compensation laws, state welfare and food stamp agencies, U.S. Department of Health and Human Services, and U.S. Social Security Administration): To verify the accuracy and completeness of the data provided, to verify eligibility or continued eligibility in HUD's rental assistance programs, to identify and recover improper payments in accordance with the Improper Payments Elimination and Recovery Act of 2010 (Pub. L. 111–204, 31 U.S.C. 3301 note and 31 U.S.C. 3321 note), and to aid in the identification of tenant errors, fraud, and abuse in assisted housing programs through HUD's tenant income computer matching programs in accordance with the Federal Privacy Act and Computer Matching and Privacy Protection Act;

7. To individuals under contract to HUD or under contract to another agency with funds provided by HUD: For the preparation of studies and statistical reports directly related to the management of HUD's rental assistance programs, to support quality control for tenant eligibility efforts requiring a random sampling of tenant files to determine the extent of administrative errors in making rent calculations, eligibility determinations, etc., and for processing re-examinations (individuals provided information under this routine use is subject to Privacy Act requirements and limitation on disclosures as are applicable to HUD officials and employees);

8. To PHAs and PHA-hired management agents, and auditors of HUD rental housing assistance programs: To verify the accuracy and completeness of tenant data used in determining eligibility and continued eligibility and the amount of housing assistance received;

9. To PHAs and PHA-hired management agents of HUD rental housing assistance programs: To identify and resolve discrepancies in tenant data;

10. To researchers affiliated with academic institutions, with not-for-profit organizations, or with federal, state or local governments, or to policy researchers: Without personally identifiable information: For the performance of research and statistical activities on housing and community development issues (individuals provided information under this routine use is subject to Privacy Act requirements and limitation on disclosures as are applicable to HUD officials and employees);

11. To HUD contractors, independent public auditors and accountants, and PHAs: For the purpose of conducting oversight and monitoring of program operations to determine compliance with applicable laws and regulations, and financial reporting requirements (individuals provided information under this routine use is subject to Privacy Act requirements and limitation on disclosures as are applicable to HUD officials and employees);

12. To the U.S. Department of Veterans Affairs (VA) for statistical analysis to advance the goals of the nation's federal strategic plan to prevent and end homelessness through the collection, analysis, and reporting of quality and timely data on veterans homelessness to assist VA with the establishment and/or verification of the following: Reducing homelessness among our nation's veterans; identify and understand the needs of homeless veterans and to develop programs and services to address those needs; effective administration of the HUD–Veterans Affairs Supportive Housing (VASH) program by HUD and VA business partners; HUD–VASH program monitoring and evaluation; and the production of aggregate statistical data without any personal identifiers, which will not be used to make decisions concerning the rights, benefits, or privileges of specific individuals, or providers of services with respect to assistance provided under the HUD–VASH program;

13. To the U.S. Department of Veterans Affairs (VA), under approved computer matching agreement, or data sharing agreement pursuant to a Presidential Executive Order (EO) mandate and in accordance with the Federal Privacy Act and Computer Matching and Privacy Protection Act: To identify and recover overpayments (improper payments) of rental assistance, determine compliance with program requirements by program administrators and participants of HUD rental housing assistance programs, deter future abuses in rental housing assistance programs, reduce administrative costs associated with manual program evaluation and monitoring efforts, and ensure that only eligible participants receive rental assistance in the correct amount;

14. To the Federal Emergency Management Agency (FEMA), under an approved computer matching agreement, or data sharing agreement pursuant to a Presidential EO mandate in accordance with the Federal Privacy Act and Computer Matching and Privacy Protection Act: To identify existing families which participate in a HUD rental assistance program and are currently receiving housing assistance;

15. To any Federal agency pursuant to statutory or regulatory authority in accordance with the provisions of the U.S. Federal Privacy Act (5 U.S.C. 552a) and Computer Matching and Privacy Protection Act; and

16. To appropriate agencies, entities, and persons when: (a) HUD suspects or has confirmed that the security or confidentiality of information in a system of records has been compromised; (b) HUD has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of systems or programs (whether maintained by HUD or another agency or entity) that rely upon the compromised information; and (c) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with HUD's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm for purposes of facilitating responses and remediation efforts in the event of a data breach.

POLICIES FOR STORING, RETRIEVING, AND DISPOSING OF SYSTEM RECORDS

STORAGE:

Records are stored manually and electronically in PHA office automation equipment and paper files, respectively. Records are stored on HUD computer servers for HUD and PHA staff to access via the Internet. HUD's information technology partners, Electronic Data Services (EDS) and Lockheed Martin

maintain disk and backup files of IMS/PIC data.

RETRIEVABILITY:

Tenant records may be retrieved by computer search of indices by the Head of Household's or household member's name, date of birth, and/or SSN of an existing or form HUD program participant. PHA records may be retrieved by PHA Code, User ID, and/or IMS/PIC user's last name. **Note:** A user's search capability is limited to only those program participants within the user's jurisdiction and assigned to his or her User ID.

SAFEGUARDS:

Records are maintained at the U.S. Department of Housing and Urban Development in Washington, DC with limited access to those persons whose official duties require the use of such records. Computer files and printed listings are maintained in locked cabinets. Background screening, limited authorization and access with access limited to authorize personnel and authorize users. User's access, updates access, read-only access, and approval access based on the user's role and security access level.

RETENTION AND DISPOSAL:

Electronic records are maintained and destroyed in accordance with requirements of the HUD Records Disposition Schedule, 2225–6. In accordance with 24 CFR 908.101 and HUD record retention requirements at 24 CFR 85.42, PHAs are required to retain at least three years' worth of IMS/PIC data either electronically or in paper form.

SYSTEM MANAGERS AND ADDRESSES:

Office of Public and Indian Housing (PIH), Real Estate Assessment Center (REAC) Nicole Faison, IMS/PIC System Business Owner. Department of Housing and Urban Development, 451 Seventh Street SW., Room PCFL1, Washington, DC 20410; Eugene Chen, PIC/IMS System Project Manager, Department of Housing and Urban Development, 451 Seventh Street SW., Room PCFL2, Washington, DC 20410.

NOTIFICATION AND RECORD ACCESS PROCEDURES:

Individuals seeking to determine whether this system of records contains information about them, or those seeking access to such records, should address inquiries to Harold Williams, Acting Chief Privacy Officer, Department of Housing and Urban Development, 451 Seventh Street SW., Room 4156, Washington, DC 20410. Provide verification of your identity by providing two proofs of identification. Your verification of identity must include your original signature and must be notarized.

CONTESTING RECORD PROCEDURES:

Since tenant information reported in IMS/PIC is submitted to HUD by PHAs based on information collected directly from the individual, tenants must contact the PHA to request correction of any tenant-supplied information reported incorrectly by the PHA. HUD does not have the ability to modify PHA-reported data within IMS/PIC. With respect to any HUD determination based on IMS/PIC data, the procedures for appealing HUD's initial determination records are outlined in 24 CFR part 16. If additional information is needed, contact:

(i) *Contesting content of records:* The Acting Chief Privacy Officer, Department of Housing and Urban Development, 451 Seventh Street SW., Room 4156, Washington, DC 20410, if contesting the content of records; or

(ii) *Appeals of initial HUD determinations:* The Departmental Privacy Appeals Office, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410 for appeals of initial denials.

RECORD SOURCE CATEGORIES:

IMS/PIC receives data from HUD staff, HUD contractors, PHAs, PHA-hired management agents, the Social Security Administration, the Department of Veteran Affairs, the Federal Emergency Management Agency, other federal, state and local agencies. The IMS/PIC data reported by PHAs and PHA-hired management agents is electronically transmitted to IMS/PIC using PHA-owned software or via HUD's Family Reporting Software (FRS).

EXEMPTIONS FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 2012–8968 Filed 4–12–12; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5620–N–01]

Section 8 Housing Assistance Payments Program-Annual Adjustment Factors, Fiscal Year 2012

AGENCY: Office of the Secretary, HUD.

ACTION: Notice of Fiscal Year (FY) 2012 Annual Adjustment Factors (AAFs).

SUMMARY: The United States Housing Act of 1937 requires that assistance contracts signed by owners participating in the Department's Section 8 housing assistance payment programs provide annual adjustments to monthly rentals for units covered by the contracts. This notice announces FY 2012 AAFs for adjustment of contract rents on assistance contract anniversaries. The factors are based on a formula using residential rent and utility cost changes from the most recent annual Bureau of Labor Statistics Consumer Price Index (CPI) survey. These factors are applied at Housing Assistance Payment (HAP) contract anniversaries for those calendar months commencing after the effective date of this notice. For FY 2011 and FY 2010, these AAFs were designated as ''Contract Rent'' AAFs, to differentiate them from ''Renewal Funding'' AAFs that were used exclusively for renewal funding of tenant-based rental assistance. Renewal Funding AAFs are being replaced by an inflation factor established by the Secretary, so there is no need to differentiate the AAF by use. A separate **Federal Register** Notice will be published that will identify the inflation factors that will be used to adjust tenant-based rental assistance funding for FY 2012.

DATES: *Effective Date:* April 13, 2012.

FOR FURTHER INFORMATION CONTACT: Michael S. Dennis, Director, Housing Voucher Programs, Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, 202–708–1380, for questions relating to the Project-Based Certificate and Moderate Rehabilitation programs (non Single Room Occupancy); Ann Oliva, Director, Office of Special Needs Assistance Programs, Office of Community Planning and Development, 202–708–4300, for questions regarding the Single Room Occupancy (SRO) Moderate Rehabilitation program; Catherine Brennan, Acting Director, Office of Housing Assistance and Grant Administration, Office of Housing, 202–708–3000, for questions relating to all other Section 8 programs; and Geoffrey Newton, Economist, Economic and Market Analysis Division, Office of Policy Development and Research, 202–402–6058, for technical information regarding the development of the schedules for specific areas or the methods used for calculating the AAFs. The mailing address for these individuals is: Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410. Hearing- or speech-impaired persons may contact the Federal Information Relay Service at 800–877–8339 (TTY). (Other than the ''800'' TTY number, the above-listed telephone numbers are not toll free.)

SUPPLEMENTARY INFORMATION: The tables showing AAFs are available electronically from the HUD data information page at *http://www.huduser.org/portal/datasets/aaf/FY2012_tables.pdf.*

I. Applying AAFs to Various Section 8 Programs

AAFs established by this Notice are used to adjust contract rents for units assisted in certain Section 8 housing assistance payment programs during the initial (i.e., pre-renewal) term of the HAP contract and for all units in the Project-Based Certificate program. There are three categories of Section 8 programs that use the AAFs:

Category 1—The Section 8 New Construction, Substantial Rehabilitation, and Moderate Rehabilitation programs.

Category 2—The Section 8 Loan Management (LM) and Property Disposition (PD) programs.

Category 3—The Section 8 Project-Based Certificate (PBC) program.

Each Section 8 program category uses the AAFs differently. The specific application of the AAFs is determined by the law, the HAP contract, and appropriate program regulations or requirements.

AAFs are not used in the following cases:

Renewal Rents. With the exception of the Project-Based Certificate program, AAFs are not used to determine renewal rents after expiration of the original Section 8 HAP contract (either for projects where the Section 8 HAP contract is renewed under a restructuring plan adopted under 24 CFR part 401; or renewed without restructuring under 24 CFR part 402). In general, renewal rents are based on the applicable state-by-state operating cost adjustment factor (OCAF) published by HUD; the OCAF is applied to the previous year's contract rent minus debt service.

Budget-based Rents. AAFs are not used for budget-based rent adjustments. For projects receiving Section 8 subsidies under the LM program (24 CFR part 886, subpart A) and for projects receiving Section 8 subsidies under the PD program (24 CFR part 886, subpart C), contract rents are adjusted, at HUD's option, either by applying the AAFs or by budget-based adjustments in accordance with 24 CFR 886.112(b) and 24 CFR 886.312(b). Budget-based adjustments are used for most Section 8/202 projects.

Tenant-based Certificate Program. In the past, AAFs were used to adjust the contract rent (including manufactured home space rentals) in both the tenant-based and project-based certificate programs. The tenant-based certificate program has been terminated and all tenancies in the tenant-based certificate program have been converted to the Housing Choice Voucher Program, which does not use AAFs to adjust rents. All tenancies remaining in the project-based certificate program continue to use AAFs to adjust contract rent for outstanding HAP contracts.

Voucher Program. AAFs are not used to adjust rents in the Tenant-Based or the Project-Based Voucher programs.

II. Adjustment Procedures

This section of the notice provides a broad description of procedures for adjusting the contract rent. Technical details and requirements are described in HUD notices H 2002–10 (Section 8 New Construction and Substantial Rehabilitation, Loan Management, and Property Disposition) and PIH 97–57 (Moderate Rehabilitation and Project-Based Certificates).

Because of statutory and structural distinctions among the various Section 8 programs, there are separate rent adjustment procedures for the three program categories:

Category 1: Section 8 New Construction, Substantial Rehabilitation, and Moderate Rehabilitation Programs

In the Section 8 New Construction and Substantial Rehabilitation programs, the published AAF is applied to the pre-adjustment contract rent (the contract rent in effect prior to the application of the AAF). In the Section 8 Moderate Rehabilitation program (both the regular program and the single room occupancy program) the published AAF is applied to the pre-adjustment base rent (the base rent in effect prior to the application of the AAF).

For Category 1 programs, the Table 1 AAF is applied before determining comparability (for purposes of determining rent reasonableness). Comparability applies if the pre-adjustment gross rent (pre-adjustment contract rent plus any allowance for tenant-paid utilities) is above the published Fair Market Rent (FMR).

If the comparable rent level (plus any initial difference) is lower than the contract rent as adjusted by application of the Table 1 AAF, the comparable rent level (plus any initial difference) will be the new contract rent. However, the pre-adjustment contract rent will not be decreased by application of comparability.

In all other cases (*i.e.,* unless the contract rent is reduced by comparability):

- The Table 1 AAF is used for a unit occupied by a new family since the last annual contract anniversary.
- The Table 2 AAF is used for a unit occupied by the same family as at the time of the last annual contract anniversary.

Category 2: Section 8 Loan Management Program (24 CFR Part 886, Subpart A) and Property Disposition Program (24 CFR Part 886, Subpart C)

At this time Category 2 programs are not subject to comparability. (Comparability will again apply if HUD establishes regulations for conducting comparability studies under 42 U.S.C. 1437f(c)(2)(C).)

The applicable AAF is determined as follows:

- The Table 1 AAF is used for a unit occupied by a new family since the last annual contract anniversary.
- The Table 2 AAF is used for a unit occupied by the same family as at the time of the last annual contract anniversary.

Category 3: Section 8 Project-Based Certificate Program

The following procedures are used to adjust contract rent for outstanding HAP contracts in the Section 8 PBC program:

- The Table 2 AAF is always used. The Table 1 AAF is not used.
- The Table 2 AAF is always applied before determining comparability (rent reasonableness).
- Comparability always applies. If the comparable rent level is lower than the rent to owner (contract rent) as adjusted by application of the Table 2 AAF, the comparable rent level will be the new rent to owner.
- The new rent to owner will not be reduced below the contract rent on the effective date of the HAP contract.

III. When To Use Reduced AAFs (From AAF Table 2)

In accordance with Section 8(c)(2)(A) of the United States Housing Act of 1937 (42 U.S.C. 1437f(c)(2)(A)), the AAF is reduced by 0.01:

- For all tenancies assisted in the Section 8 Project-Based Certificate program.
- In other Section 8 programs, for a unit occupied by the same family at the time of the last annual rent adjustment (and where the rent is not reduced by application of comparability (rent reasonableness)).

The law provides that:

> Except for assistance under the certificate program, for any unit occupied by the same family at the time of the last annual rental adjustment, where the assistance contract provides for the adjustment of the maximum

monthly rent by applying an annual adjustment factor and where the rent for a unit is otherwise eligible for an adjustment based on the full amount of the factor, 0.01 shall be subtracted from the amount of the factor, except that the factor shall not be reduced to less than 1.0. In the case of assistance under the certificate program, 0.01 shall be subtracted from the amount of the annual adjustment factor (except that the factor shall not be reduced to less than 1.0), and the adjusted rent shall not exceed the rent for a comparable unassisted unit of similar quality, type and age in the market area. 42 U.S.C. 1437f(c)(2)(A).

Legislative history for this statutory provision states that ''the rationale [for lower AAFs for non-turnover units is] that operating costs are less if tenant turnover is less * * *'' (see Department of Veteran Affairs and Housing and Urban Development, and Independent Agencies Appropriations for 1995, Hearings Before a Subcommittee of the Committee on Appropriations 103d Cong., 2d Sess. 591 (1994)). The Congressional Record also states the following:

Because the cost to owners of turnover-related vacancies, maintenance, and marketing are lower for long-term stable tenants, these tenants are typically charged less than recent movers in the unassisted market. Since HUD pays the full amount of any rent increases for assisted tenants in section 8 projects and under the Certificate program, HUD should expect to benefit from this 'tenure discount.' Turnover is lower in assisted properties than in the unassisted market, so the effect of the current inconsistency with market-based rent increases is exacerbated. (140 Cong. Rec. 8659, 8693 (1994)).

To implement the law, HUD publishes two separate AAF Tables, Tables 1 and 2. The difference between Table 1 and Table 2 is that each AAF in Table 2 is 0.01 less than the corresponding AAF in Table 1. Where an AAF in Table 1 would otherwise be less than 1.0, it is set at 1.0, as required by statute; the corresponding AAF in Table 2 will also be set at 1.0, as required by statute.

IV. How To Find the AAF

AAF Tables 1 and 2 are posted on the HUD User Web site at *http://www.huduser.org/portal/datasets/aaf/FY2012_tables.pdf*. There are two columns in each AAF table. The first column is used to adjust contract rent for rental units where the highest cost utility is included in the contract rent, i.e., where the owner pays for the highest cost utility. The second column is used where the highest cost utility is not included in the contract rent, *i.e.,* where the tenant pays for the highest cost utility.

The applicable AAF is selected as follows:

- Determine whether Table 1 or Table 2 is applicable. In Table 1 or Table 2, locate the AAF for the geographic area where the contract unit is located.
- Determine whether the highest cost utility is or is not included in contract rent for the contract unit.
- If highest cost utility is included, select the AAF from the column for ''Highest Cost Utility Included.'' If highest cost utility is not included, select the AAF from the column for ''Highest Cost Utility Excluded.''

V. Methodology

AAFs are rent inflation factors. Two types of rent inflation factors are calculated for AAFs: gross rent factors and shelter rent factors. The gross rent factor accounts for inflation in the cost of both the rent of the residence and the utilities used by the unit; the shelter rent factor accounts for the inflation in the rent of the residence, but does not reflect any change in the cost of utilities. The gross rent inflation factor is designated as ''Highest Cost Utility Included'' and the shelter rent inflation factor is designated as ''Highest Cost Utility Excluded.''

AAFs are calculated using CPI data on ''rent of primary residence'' and ''fuels and utilities.'' [1] The CPI inflation index for rent of primary residence measures the inflation of all surveyed units regardless of whether utilities are included in the rent of the unit or not. In other words, it measures the inflation of the ''contract rent'' which includes units with all utilities included in the rent, units with some utilities included in the rent, and units with no utilities included in the rent. In producing a gross rent inflation factor and a shelter rent inflation factor, HUD decomposes the contract rent CPI inflation factor into parts to represent the gross rent change and the shelter rent change. This is done by applying data from the Consumer Expenditure Survey (CEX) on the percentage of renters who pay for heat (a proxy for the percentage of renters who pay shelter rent) and also American Community Survey (ACS) data on the ratio of utilities to rents.[2]

Survey Data Used To Produce AAFs

The rent and fuel and utilities inflation factors for large metropolitan areas and Census regions are based on changes in the rent of primary residence and fuels and utilities CPI indices from 2009 to 2010. The CEX data used to decompose the contract rent inflation factor into gross rent and shelter rent inflation factors come from a special tabulation of 2009 CEX survey data produced for HUD for the purpose of computing AAFs. The utility-to-rent ratio used to produce AAFs comes from 2009 ACS median rent and utility costs.

Geographic Areas

AAFs are produced for all Class A CPI cities (CPI cities with a population of 1.5 million or more) and for the four Census Regions. They are applied to core-based statistical areas (CBSAs), as defined by the Office of Management and Budget (OMB), according to how much of the CBSA is covered by the CPI city-survey. If more than 75 percent of the CBSA is covered by the CPI city-survey, the AAF that is based on that CPI survey is applied to the whole CBSA and to any HUD-defined metropolitan area, called the ''HUD Metro FMR Area'' (HMFA), within that CBSA. If the CBSA is not covered by a CPI city-survey, the CBSA uses the relevant regional CPI factor. Almost all non-metropolitan counties use regional CPI factors.[3] For areas assigned the Census Region CPI factor, both metropolitan and non-metropolitan areas receive the same factor.

Each metropolitan area that uses a local CPI update factor is listed alphabetically in the tables and each HMFA is listed alphabetically within its respective CBSA. Each AAF applies to a specific geographic area and to units of all bedroom sizes. AAFs are provided:

- For separate metropolitan areas, including HMFAs and counties that are currently designated as non-metropolitan, but are part of the metropolitan area defined in the local CPI survey.
- For the four Census Regions (to be used for those metropolitan and non-metropolitan areas that are not covered by a CPI city-survey).

AAFs use the same OMB metropolitan area definitions, as revised by HUD, that are used for the FY 2012 FMRs.

[1] CPI indexes CUUSA103SEHA and CUSR0000SAH2 respectively.

[2] The formulas used to produce these factors can be found in the Annual Adjustment Factors overview and in the FMR documentation at *www.HUDUSER.org.*

[3] There are four non-metropolitan counties that continue to use CPI city updates: Ashtabula County, OH, Henderson County, TX, Island County, WA, and Lenawee County, MI. BLS has not updated the geography underlying its survey for new OMB metropolitan area definitions and these counties, are no longer in metropolitan areas, but they are included as parts of CPI surveys because they meet the 75 percent standard HUD imposes on survey coverage. These four counties are treated the same as metropolitan areas using CPI city data.

Area Definitions

To make certain that they are using the correct AAFs, users should refer to the Area Definitions Table section at *http://www.huduser.org/portal/datasets/aaf/FY2012_AreaDef.pdf.* The Area Definitions Table lists CPI areas in alphabetical order by state, and the associated Census region is shown next to each state name. Areas whose AAFs are determined by local CPI surveys are listed first. All metropolitan areas with local CPI surveys have separate AAF schedules and are shown with their corresponding county definitions or as metropolitan counties. In the six New England states, the listings are for counties or parts of counties as defined by towns or cities. The remaining counties use the CPI for the Census Region and are not specifically listed in the Area Definitions Table at *http://www.huduser.org/portal/datasets/aaf/FY2012_AreaDef.pdf.*

Puerto Rico and the Virgin Islands use the South Region AAFs. All areas in Hawaii use the AAFs listed next to ''Hawaii'' in the Tables which are based on the CPI survey for the Honolulu metropolitan area. The Pacific Islands use the West Region AAFs.

Dated: April 3, 2012.

Raphael W. Bostic,

Assistant Secretary for Policy Development and Research.

[FR Doc. 2012–8971 Filed 4–12–12; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NRNHL–0412–9961; 2200–3200–665]

National Register of Historic Places; Notification of Pending Nominations and Related Actions

Nominations for the following properties being considered for listing or related actions in the National Register were received by the National Park Service before March 24, 2012. Pursuant to section 60.13 of 36 CFR part 60, written comments are being accepted concerning the significance of the nominated properties under the National Register criteria for evaluation. Comments may be forwarded by United States Postal Service, to the National Register of Historic Places, National Park Service, 1849 C St. NW., MS 2280, Washington, DC 20240; by all other carriers, National Register of Historic Places, National Park Service, 1201 Eye St. NW., 8th floor, Washington DC 20005; or by fax, 202–371–6447. Written or faxed comments should be submitted by April 30, 2012. 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 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.

J. Paul Loether,

Chief, National Register of Historic Places/National Historic Landmarks Program.

MICHIGAN

Alger County

Grand Marais Harbor of Refuge Inner and Outer Lights, (Light Stations of the United States MPS) W. pier at entry to Grand Marais Harbor of Refuge (Burt Township), Grand Marais, 12000254.

MISSOURI

St. Louis Independent City

Yeatman Square Historic District, Parts of Glasgow, Leffingwell, Madison, Magazine, & N. Market Sts., St. Louis (Independent City), 12000255.

NEW YORK

Oneida County

Wright Settlement Cemetery, Cemetery Rd., Wright Settlement, 12000256.

Orange County

Denniston—Steidle House, 575 Jackson Ave., New Windsor, 12000257.

Orleans County

Clarendon General Store, 16301 E. Lee Rd., Clarendon, 12000258.

Payjack Chevrolet Building, 320 N. Main St., Medina, 12000259.

Saratoga County

Smith's Grain and Feed Store, 857 Main St., Elnora, 12000260.

Schoharie County

Stewart House and Howard—Stewart Family Cemetery, 583 NY 10, South Jefferson, 12000261.

Westchester County

St. George's Church, 1715 E. Main St., Mohegan Lake, 12000262.

NORTH CAROLINA

Forsyth County

Pepper Building, 100–106 W. 4th St., Winston-Salem, 12000263.

[FR Doc. 2012–8867 Filed 4–12–12; 8:45 am]

BILLING CODE 4312–51–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–1089 (Review)]

Certain Orange Juice From Brazil

Determination

On the basis of the record [1] developed in the subject five-year review, the United States International Trade Commission (Commission) determines, pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)), that revocation of the antidumping duty order on certain orange juice from Brazil would not be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.

Background

The Commission instituted this review on February 1, 2011 (76 FR 5822, February 2, 2011) and determined on May 9, 2011 that it would conduct a full review (76 FR 30197, May 24, 2011). Notice of the scheduling of the Commission's review and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** on July 14, 2011 (76 FR 43344, July 20, 2012). The hearing was held in Washington, DC, on January 24, 2012, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in this review to the Secretary of Commerce on April 9, 2012. The views of the Commission are contained in USITC Publication 4311 (April 2012), entitled *Certain Orange Juice from Brazil: Investigation No. 731–TA–1089 (Review).*

Issued: April 10, 2012.

By order of the Commission.

James R. Holbein,

Secretary to the Commission.

[FR Doc. 2012–8898 Filed 4–12–12; 8:45 am]

BILLING CODE 7020–02–P

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

INTERNATIONAL TRADE COMMISSION

[USITC SE–12–012]

Government in the Sunshine Act Meeting Notice

AGENCY HOLDING THE MEETING: International Trade Commission.

TIME AND DATE: April 19, 2012 at 11 a.m.

PLACE: Room 101, 500 E Street SW., Washington, DC 20436, Telephone: (202) 205–2000.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agendas for future meetings: none.
2. Minutes.
3. Ratification List.
4. Vote in Inv. No. 731–TA–1185 (Final) (Certain Steel Nails from the United Arab Emirates). The Commission is currently scheduled to transmit its determination and Commissioners' opinions to the Secretary of Commerce on or before May 2, 2012.
5. Vote in Inv. Nos. 731–TA–1186 and 1187 (Final) (Certain Stilbenic Optical Brightening Agents from China and Taiwan). The Commission is currently scheduled to transmit its determinations and Commissioners' opinions to the Secretary of Commerce on or before May 2, 2012.
6. Outstanding action jackets: none.

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

By Order of the Commission.

Issued: April 10, 2012.

James R. Holbein,

Secretary to the Commission.

[FR Doc. 2012–9020 Filed 4–11–12; 11:15 am]

BILLING CODE P

INTERNATIONAL TRADE COMMISSION

[USITC SE–12–011]

Government in the Sunshine Act Meeting Notice

AGENCY HOLDING THE MEETING: International Trade Commission.

TIME AND DATE: April 17, 2012 at 9:30 a.m.

PLACE: Room 101, 500 E Street SW., Washington, DC 20436, Telephone: (202) 205–2000.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agendas for future meetings: none.
2. Minutes.
3. Ratification List.
4. Vote in Inv. Nos. 701–TA–477 and 731–TA–1180–1181 (Final) (Bottom Mount Combination Refrigerator-Freezers from Korea and Mexico). The Commission is currently scheduled to transmit its determinations and Commissioners' opinions to the Secretary of Commerce on or before April 30, 2012.
5. Vote in Inv. Nos. 701–TA–478 and 731–TA–1182 (Final) (Certain Steel Wheels from China). The Commission is currently scheduled to transmit its determinations and Commissioners' opinions to the Secretary of Commerce on or before April 30, 2012.
6. Outstanding action jackets: none.

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

By order of the Commission.

Issued: April 10, 2012.

James R. Holbein,

Secretary to the Commission.

[FR Doc. 2012–9021 Filed 4–11–12; 11:15 am]

BILLING CODE P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–671–673 (Third Review)]

Silicomanganese From Brazil, China, and Ukraine; Scheduling of a Full Five-Year Review

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice of the scheduling of a full review pursuant to section 751(c)(5) of the Tariff Act of 1930 (19 U.S.C. 1675(c)(5)) (the Act) to determine whether revocation of the antidumping duty order on silicomanganese from Brazil, China, and Ukraine would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. The Commission has determined to exercise its authority to extend the review period by up to 90 days pursuant to 19 U.S.C. 1675(c)(5)(B). For further information concerning the conduct of this review and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

DATES: *Effective Date:* April 4, 2012.

FOR FURTHER INFORMATION CONTACT: Russell Duncan (202–708–4727, *russell.duncan@usitc.gov*), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*http://www.usitc.gov*). The public record for this review may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background.—On November 4, 2011, the Commission determined that responses to its notice of institution of the subject five-year review were such that a full review pursuant to section 751(c)(5) of the Act should proceed (76 FR 72212, November 22, 2011). A record of the Commissioners' votes, the Commission's statement on adequacy, and any individual Commissioner's statements are available from the Office of the Secretary and at the Commission's Web site.

Participation in the review and public service list.—Persons, including industrial users of the subject merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in this review as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11 of the Commission's rules, by 45 days after publication of this notice. A party that filed a notice of appearance following publication of the Commission's notice of institution of the review need not file an additional notice of appearance. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the review.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list.—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in this review available to authorized applicants under the APO issued in the review, provided that the application is made by 45 days after publication of this notice. Authorized applicants must represent interested parties, as defined by 19 U.S.C. 1677(9), who are parties to the review. A party granted access to BPI following

publication of the Commission's notice of institution of the review need not reapply for such access. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Staff report.—The prehearing staff report in the review will be placed in the nonpublic record on August 15, 2012, and a public version will be issued thereafter, pursuant to section 207.64 of the Commission's rules.

Hearing.—The Commission will hold a hearing in connection with the review beginning at 9:30 a.m. on September 5, 2012, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before August 30, 2012. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 9:30 a.m. on September 4, 2012, at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the public hearing are governed by sections 201.6(b)(2), 201.13(f), 207.24, and 207.66 of the Commission's rules. Parties must submit any request to present a portion of their hearing testimony *in camera* no later than 7 business days prior to the date of the hearing.

Written submissions.—Each party to the review may submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of section 207.65 of the Commission's rules; the deadline for filing is August 24, 2012. Parties may also file written testimony in connection with their presentation at the hearing, as provided in section 207.24 of the Commission's rules, and posthearing briefs, which must conform with the provisions of section 207.67 of the Commission's rules. The deadline for filing posthearing briefs is September 14, 2012; witness testimony must be filed no later than three days before the hearing. In addition, any person who has not entered an appearance as a party to the review may submit a written statement of information pertinent to the subject of the review on or before September 14, 2012. On October 2, 2012, the Commission will make available to parties all information on which they have not had an opportunity to comment. Parties may submit final comments on this information on or before October 4, 2012, but such final comments must not contain new factual information and must otherwise comply with section 207.68 of the Commission's rules. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. Please be aware that the Commission's rules with respect to electronic filing have been amended. The amendments took effect on November 7, 2011. See 76 FR 61937 (Oct. 6, 2011) and the newly revised Commission's Handbook on E-Filing, available on the Commission's Web site at *http://edis.usitc.gov.*

Additional written submissions to the Commission, including requests pursuant to section 201.12 of the Commission's rules, shall not be accepted unless good cause is shown for accepting such submissions, or unless the submission is pursuant to a specific request by a Commissioner or Commission staff.

In accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the review must be served on all other parties to the review (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: This review is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.62 of the Commission's rules.

By order of the Commission.

Issued: April 10, 2012.

James R. Holbein,

Secretary to the Commission.

[FR Doc. 2012–8897 Filed 4–12–12; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

[OMB Number 1121—NEW]

Agency Information Collection Activities: Proposed Collection; Comments Requested; Body Armor in Correctional Institutions Survey

ACTION: 60-day notice of information collection under review.

The Department of Justice (DOJ), National Institute of Justice (NIJ), will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for ''sixty days'' until June 12, 2012. This process is conducted in accordance with 5 CFR 1320.10.

Written comments concerning this information collection should be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attn: DOJ Desk Officer. The best way to ensure your comments are received is to email them to *oira_submission@omb.eop.gov* or fax them to 202–395–7285. All comments should reference the 8 digit OMB number for the collection or the title of the collection. If you have questions concerning the collection, please call Mark E. Greene at 202–307–3384.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Enhance the quality, utility, and clarity of the information to be collected; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Establishment survey and initial approval of collection.

(2) *Title of Form/Collection:* Body Armor in Correctional Institutions Survey. The collections include the forms Body Armor Administrative Agency-Level Survey and Body Armor Individual-level Correctional Officer Survey.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: Form Number:* None. National Institute of Justice, Office of Justice Programs, Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Federal and State correctional facility administrators and correctional officers. This collection is the only effort that provides an ability to assess the use of body armor by correctional officers to mitigate the risks associated with prison environments. There is little data on body armor use by correctional officers, such as the proportion who have body armor, the rate of use, the decision-making factors which inform use, and the effects of institutional policies on use rates. This will be the first nationally representative survey of corrections officers to understand the context of using armor in correctional settings and establish a prioritized list of factors affecting the use of armor. This collection will enable Federal and State corrections officers; Federal and State corrections administrators; local and tribal corrections personnel; legislators; researchers; and government agencies to understand the risks faced by corrections officers, to identify key barriers to the use of body armor, and to develop approaches to overcome those barriers.

(a) For the Body Armor Administrative Agency-Level Survey, the chief executive officer from 130 correctional facilities selected from a census directory of all Federal and State prisons will be asked to select one administrator to respond.

(b) For the Body Armor Individual-level Correctional Officer Survey, cross-sectional random samples of correctional officers of all ranks will be asked to respond from each of the 130 facilities queried in the Administrative Survey to obtain a representative sample of 1,089 correctional officers from across the nation's Federal and State prisons.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* For the Body Armor Administrative Agency-Level Survey, the chief executive officer from 130 correctional facilities selected from a census directory of all Federal and State prisons will be asked to select one administrator to respond to a survey that will require an estimated maximum of 45 minutes to complete. For the Body Armor Individual-level Correctional Officer Survey, 1,089 correctional officers of all ranks from the 130 facilities from the Administrative Survey will be asked to respond to a survey that will require an estimated maximum of 45 minutes to complete. The officers will be selected from cross-sectional random samples to obtain a representative sample from across the nation's Federal and State prisons.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 915 total burden hours associated with this collection.

If additional information is required contact: Jerri Murray Murray, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE., Room 2E–508, Washington, DC 20530.

Jerri Murray,

Department Clearance Officer, PRA, U.S. Department of Justice.

[FR Doc. 2012–8932 Filed 4–12–12; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF JUSTICE

[OMB Number 1105–NEW]

Agency Information Collection Activities: Proposed Collection; Comments Requested: Leased/Charter Flight Personnel Expedited Clearance Request

ACTION: 60-day notice of information collection under review.

The Department of Justice (DOJ), U.S. Marshals Service, will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for ''sixty days'' until [The **Federal Register** will insert the date 60 days from the date this notice is published in the **Federal Register**]. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Nicole Feuerstein, U.S. Marshals Service, CS–3, 10th Fl., 2604 Jefferson Davis Hwy., Alexandria, VA 22301 (Phone: 202–307–5168).

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Enhance the quality, utility, and clarity of the information to be collected; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* New collection.

(2) *Title of the Form/Collection:* Leased/Charter Flight Personnel Expedited Clearance Request.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: USM–271. U.S. Marshals Service.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or households. This form is to be completed by people applying to become contract flight crew members. It is required so that USMS can perform an expedited background check before workers may be hired to transport USMS and Bureau of Prisons prisoners.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that 80 respondents will complete a 5 minute form.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 7 annual total burden hours associated with this collection.

If additional information is required contact: Jerri Murray, Department Clearance Officer, Policy and Planning Staff, Justice Management Division, Department of Justice, Two Constitution Square, 145 N Street NE., Washington, DC 20530.

Jerri Murray,

Department Clearance Officer, PRA, U.S. Department of Justice.

[FR Doc. 2012–8934 Filed 4–12–12; 8:45 am]

BILLING CODE 4410–04–P

DEPARTMENT OF JUSTICE

[OMB Number 1121–0240]

Agency Information Collection Agencies: Proposed Collection; Comments Requested Reinstatement, With Change, of a Previously Approved Collection for Which Approval Has Expired: Survey of General Purpose Law Enforcement Agencies, 2012

ACTION: 60-Day notice of information collection under review.

The Department of Justice, Office of Justice Programs, Bureau of Justice Statistics, will be submitting the following information collection request for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for ''sixty days'' until June 12, 2012. This process is conducted in accordance with 5 CFR 1320.10.

If you have additional comments, especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact: Joel Garner, Statistician, Bureau of Justice Statistics, Office of Justice Programs, U.S. Department of Justice, 810 Seventh Street NW., Washington, DC 20531 (phone: 202–307–0765).

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

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 collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information

1. *Type of information collection:* Reinstatement of previously approved data collection, Survey of General Purpose Law Enforcement Agencies (SGPLEA), 2012.
2. *The title of the form/collection:* Survey of General Purpose Law Enforcement Agencies (SGPLEA), 2012.
3. *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* The form labels are SGPLEA, Bureau of Justice Statistics, Office of Justice Programs, U.S. Department of Justice.
4. *Affected Public Who Will be Asked or Required to Respond, as well as a Brief Abstract:* Respondents will be general purpose state and local law enforcement agencies, including police departments, sheriffs, and constables at the state, county and municipal level, including tribal law enforcement agencies. *Abstract:* The Bureau of Justice Statistics (BJS) proposes to implement a Survey of General Purpose Law Enforcement Agencies (SGPLEA). This content of the survey builds upon the previous eight waves of the BJS-sponsored surveys in the Law Enforcement Management and Administrative Statistics (LEMAS) Program. Like LEMAS, the SGPLEA will continue to generate nationally-representative estimates of the nature of law enforcement agencies and personnel by focusing on a smaller set of core issues in contemporary policing. However, beginning with SGPLEA, BJS will produce law enforcement statistics on a regular two-year cycle. SGPLEA will include a consistent set of core items and topical supplements that will vary from wave to wave. In addition to core issues concerning the number and type of agencies, the nature and diversity of law enforcement personnel, employee wages and benefits, agency budgets and organizational responses to contemporary law enforcement issues, the 2012 SGPLEA supplemental components will collect information on the following topics:
   a. Recruitment and Retention of Staff;
   b. Community Policing;
   c. Information Systems;
   d. Officer Safety;
   e. Uses of Force.
5. *An Estimate of the Total Number of Respondents and the Amount of Time Estimated for an Average Respondent to Respond:* Based on the testing experience with the 2007 LEMAS survey, the reduction in the total number of variables included in SGPLEA form compared to the 2007 LEMAS forms, and the increased burden on smaller law enforcement agencies, BJS estimates that 3,000 respondents will complete the SGPLEA survey form with an average burden per respondent of 2.5 hours.
6. *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 7,500 total annual burden hours associated with this collection.

If additional information is required contact: Jerri Murray, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE., Suite 2E–508, Washington, DC 20530.

Jerri Murray,

Department Clearance Officer, PRA, U.S. Department of Justice.

[FR Doc. 2012–8935 Filed 4–12–12; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Sematech, Inc. d/b/a International Sematech

Notice is hereby given that, on March 16, 2012, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Sematech, Inc. d/b/a International Sematech (''SEMATECH'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Centrotherm Photovoltaics AG, Blaubeuren, GERMANY; Fujifilm Holdings Corporation, Tokyo, JAPAN; Inpria Corporation, Corvallis, OR; and Invensas Corporation, San Jose, CA, have been added as parties to this venture.

Also, United Microelectronics Corporation, Inc., Hsinchu City, TAIWAN; and Asahi Glass Corporation, Chiyodaku, Tokyo, JAPAN, have withdrawn as parties to this venture.

In addition, the following have been added as members to International SEMATECH Manufacturing Initiative, Inc. (''ISMI''): Winbond Electronics Corporation, Taichung City, TAIWAN; Macronix International Co. Ltd., Hsinchu, TAIWAN; and Renesas Electronics Corporation, Santa Clara, CA.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and SEMATECH intends to file additional written notifications disclosing all changes in membership.

On April 22, 1988, SEMATECH filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on May 19, 1988 (53 FR 17987).

The last notification was filed with the Department on November 18, 2011. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on December 21, 2011 (76 FR 79219).

Patricia A. Brink,

Director of Civil Enforcement, Antitrust Division.

[FR Doc. 2012–8936 Filed 4–12–12; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Connected Media Experience, Inc.

Notice is hereby given that, on March 16, 2012, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Connected Media Experience, Inc. (''CMX'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Xertive, Tel Aviv, ISRAEL, has withdrawn as a party to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and CMX intends to file additional written notifications disclosing all changes in membership.

On March 12, 2010, CMX filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on April 16, 2010 (75 FR 20003).

The last notification was filed with the Department on December 21, 2011. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on January 11, 2012 (77 FR 1727).

Patricia A. Brink,

Director of Civil Enforcement, Antitrust Division.

[FR Doc. 2012–8941 Filed 4–12–12; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Federal Bureau of Investigation

[OMB Number 1110–0048]

Agency Information Collection Activities: Proposed Collection, Comments Requested Revision of a Currently Approved Collection; Cargo Theft Incident Report

ACTION: 60-day Notice of Information Collection Under Review.

The Department of Justice, Federal Bureau of Investigation, Criminal Justice Information Services Division (CJIS) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with established review procedures of the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted until June 12, 2012. This process is conducted in accordance with 5 CFR 1320.10.

All comments, suggestions, or questions regarding additional information, to include obtaining a copy of the proposed information collection instrument with instructions, should be directed to Mr. Gregory E. Scarbro, Unit Chief, Federal Bureau of Investigation, CJIS Division, Module E–3, 1000 Custer Hollow Road, Clarksburg, West Virginia 26306, or facsimile to (304) 625–3566.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Comments should address one or more 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, 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 of other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of information collection:* Revision of a currently approved collection.

(2) *The title of the form/collection:* Cargo Theft Incident Report.

(3) *The agency form number, if any, and the applicable component of the department sponsoring the collection:* Form Number: None; Sponsor: Criminal Justice Information Services Division, Federal Bureau of Investigation, Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: City, county, state, federal, and tribal law enforcement agencies. Brief Abstract: This collection is needed to collect information on cargo theft incidents committed throughout the United States.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* There are approximately 18,108 law enforcement agency respondents that submit monthly for a total of 217,296 responses with an estimated response time of 5 minutes per response.

(6) *An estimate of the total public burden (in hours) associated with this collection:* There are approximately 18,108 hours, annual burden, associated with this information collection.

If additional information is required contact: Jerri Murray, Department Clearance Officer, Policy and Planning Staff, Justice Management Division, United States Department of Justice, Two Constitution Square, 145 N Street NE., Room 2E–508, Washington, DC 20530.

Jerri Murray,

Department Clearance Officer, PRA, United States Department of Justice.

[FR Doc. 2012–8933 Filed 4–12–12; 8:45 am]

BILLING CODE 4410–02–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

OSHA Training Institute Education Center; Notice of Competition and Request for Applications

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Notice of competition and request for applications for the OSHA Training Institute Education Centers Program.

SUMMARY: This notice announces the opportunity for interested non-profit organizations, including qualifying trade associations, labor unions, and community-based and faith-based organizations that are not an agency of a state or local government to submit applications to become an OSHA Training Institute Education Center and deliver standard classroom instruction on a regional basis. State or local government-supported institutions of higher education are eligible to apply. Eligible organizations can apply independently or in partnership with other eligible organizations, but in such a case, a lead organization must be identified along with a list of any consortium partners. Current OSHA-authorized OSHA Training Institute Education Centers must submit a new application in order to maintain their OSHA Training Institute Education Center status. Applications will only be accepted during the solicitation period and will be rated on a competitive basis. Complete application instructions are contained in this notice.

Please note that all applicants selected to be OSHA Training Institute Education Centers must attend a mandatory orientation meeting at the OSHA Directorate of Training and Education, 2020 South Arlington Heights Rd., Arlington Heights, Illinois 60005–4102, at a time and date to be determined.

This notice also contains information on a proposal conference designed to provide potential applicants with information about the OSHA Training Institute Education Centers Program. The conference will clarify OSHA expectations for OSHA Training Institute Education Centers, courses and methods of instruction, as well as administrative and program requirements for OSHA Training Institute Education Centers and the OSHA Outreach Training Program. Applicants are strongly encouraged to attend the proposal conference.

OSHA will enter into five-year, non-financial cooperative agreements with successful applicants. These authorization agreements are intended solely to facilitate the ongoing monitoring and evaluation of safety training provided by authorized OSHA Training Institute Education Centers. These cooperative agreements will not constitute a grant or financial assistance instrument, and OSHA will provide no compensation to authorized OSHA Training Institute Education Centers.

DATES: Applications (three copies) must be received no later than 4:30 p.m. Central Time on Friday, June 15, 2012. Requests for extension of this application deadline will not be granted.

A proposal conference will be held on Wednesday, May 2, 2012, at the OSHA Directorate of Training and Education, 2020 South Arlington Heights Rd., Arlington Heights, Illinois 60005–4102. Attendees are required to pre-register for this conference. Specific details are discussed in the Proposal Conference section of this notice.

ADDRESSES: Submit applications (three copies) to the OSHA Directorate of Training and Education, Office of Training and Educational Programs, Attn: Kimberly Newell, 2020 South Arlington Heights Rd., Arlington Heights, Illinois 60005–4102.

Applicants selected to be OSHA Training Institute Education Centers must attend a mandatory orientation meeting to be held at the OSHA Directorate of Training and Education, 2020 South Arlington Heights Rd., Arlington Heights, Illinois 60005–4102 at a time and date to be determined.

FOR FURTHER INFORMATION CONTACT: Any questions regarding this opportunity should be directed to Kimberly Newell, OSHA Training Institute Education Centers Program Manager, email address *newell.kimberly@dol.gov*, or James Barnes, Director, Office of Training and Educational Programs, OSHA Directorate of Training and Education, email address *barnes.james@dol.gov*. Both can be reached at (847) 759–7700.

SUPPLEMENTARY INFORMATION: The supplemental information contains details concerning the following:

- Background Information
  - Overview of the OSHA Directorate of Training and Education (DTE)
  - Overview of the OSHA Training Institute (OTI)
  - Overview of the OTI Education Centers
  - Overview of the OSHA Outreach Training Program
- Organizational Responsibilities
  - OTI Education Centers Responsibilities
  - OSHA DTE Responsibilities
- OSHA Jurisdiction
- Geographic Distribution
- Application Submission Requirements
- Selection Guidelines
- Selection Criteria
- Consortia and Partnerships
- Funding Provisions
- Cooperative Agreement Duration
- Proposal Conference
- Application Submission
- Application Deadline
- Application Evaluation and Selection Process
- Notification and Selection
- Freedom of Information Act
- Transparency
- Notification of Non-Selection
- Non-Selection Appeal
- Appendix A—Current List of Required, Elective, and Optional Courses

Background Information

Overview of the OSHA Directorate of Training and Education (DTE)

DTE, located in Arlington Heights, Illinois, supports the Agency's mission and performance goals of securing safe and healthy workplaces and increasing workers' voice in the workplace through the development and delivery of training courses and educational programs. The Directorate has four distinct functional areas: the OSHA Training Institute (OTI), the Office of Training and Educational Programs, the Office of Training and Educational Development, and the Office of Administration and Training Information.

The Directorate provides training for federal and state compliance officers and State consultants. The Directorate administers three distinct external training programs including the OTI Education Centers Program, the Outreach Training Program, and the Susan Harwood Training Grants Program. The Resource Center Loan Program supports safety and health training through the loan of educational materials to authorized borrowers. The Directorate also develops training and educational materials that support OTI courses and the Agency's compliance assistance initiatives.

Overview of the OSHA Training Institute (OTI)

OTI, located in Arlington Heights, Illinois, is OSHA's primary training provider. OTI conducts over 50 unique course offerings on an annual basis. Training includes job hazard recognition as well as OSHA standards, policies, and procedures for persons responsible for enforcing or directly supporting the Occupational Safety and Health Act of 1970. Courses include practical exercises that utilize the industrial hygiene, safety and construction laboratories in addition to field sites. The OTI's primary responsibility is to federal and state

compliance officers and state consultation program staff. Private sector personnel and federal personnel from agencies other than OSHA may receive training from OTI when space is available. However, the OTI Education Centers are the primary training providers for private sector personnel and federal personnel from agencies other than OSHA.

Overview of OTI Education Centers

The OTI Education Centers are a national network of non-profit organizations authorized by OSHA to deliver occupational safety and health training to private sector workers, supervisors, and employers on behalf of OSHA. The OTI Education Centers Program was initiated in 1992 when OSHA began partnering with other training and educational institutions to conduct OTI courses for private sector personnel, federal personnel from agencies other than OSHA, and state and municipal employees. The OTI Education Centers Program support OSHA's training and education mission through a variety of safety and health programs.

OTI Education Center courses include OSHA standards and Outreach Training Program trainer and update courses. Additional course offerings include topics such as recordkeeping, machine guarding, confined space, electrical standards, and fall arrest systems. Information regarding the OTI Education Centers Program background, including a complete list of current organizations, course offerings, and descriptions can be found on the OSHA Web site at: *http://www.osha.gov/dte/training/edcenters/index.html*.

OTI Education Centers are selected through a national competitive process and receive no funding from OSHA; they support their OSHA training through their normal tuition and fee structures. OTI Education Centers are located in all OSHA Regions and work closely with OSHA Regional and Area offices to meet the needs of the regional constituency. OTI Education Centers are encouraged to conduct courses at host-sites other than their own facilities and in other states within their Region. Host-site organizations must be non-profit organizations. OTI Education Centers are also responsible for authorizing trainers, processing trainer card requests, and conducting monitoring activity for the OSHA Outreach Training Program.

Overview of the OSHA Outreach Training Program

The OSHA Outreach Training Program was established during the early years of the Agency to provide an overview of OSHA and to rapidly disseminate basic occupational safety and health workplace hazard information to workers using independent authorized trainers. Courses are intended to provide information on worker rights, employer responsibilities, and how to file a complaint as well as focusing on work-related hazards. Outreach Training Program courses do not focus on or teach OSHA standards. Workers who complete the construction industry, general industry, maritime industry, or disaster site worker courses receive OSHA course completion cards from the authorized trainer who conducted the training. OSHA Outreach Trainers are authorized exclusively through the OTI Education Centers. OTI Education Centers are responsible for administering the Outreach Training Program, including issuing course completion cards to authorized Outreach trainers and conducting monitoring activity such as record audits and training observations.

The Outreach Training Program is a voluntary program. OSHA recommends Outreach Training Program courses as an introduction to worker rights, employer responsibilities, how to file a complaint and occupational safety and health hazard recognition for workers. However, some states have enacted laws mandating the training. In addition, some employers, unions, organizations or other jurisdictions may also require this training. Please note that Outreach Training Program courses do not meet specific training requirements contained in OSHA standards. Employers are responsible for training their workers on specific hazards of their job, as noted in many OSHA standards. A list of standards requiring training is found in OSHA Publication 2254 *Training Requirements in OSHA Standards and Training Guidelines* located at: *www.osha.gov/pls/publications/publication.athruz?pType=Types&pID=1.*

The OSHA Outreach Training Program requirements and procedures contain instructions and assistance information for Outreach Trainers. Among the issues addressed in the requirements and procedures are course topic requirements, minimum lengths for course topics, advertising restrictions, records retention, and reporting requirements. OSHA Outreach Training Program guidelines are located at: *http://www.osha.gov/dte/outreach/index.html*.

Organizational Responsibilities

OTI Education Centers Responsibilities

OTI Education Centers are responsible for the following:

(1) Develop and update course curriculum to support learning objectives provided by the OSHA/DTE.

(2) Ensure that instructors are qualified in the courses/subjects they will be teaching.

(3) Meet annual program goals that include the following:

(a) Conduct a minimum number of courses per month and achieve annual student training goals and objectives as established by OSHA/DTE. Please note that program goals are revised on an annual basis.

(b) Provide adequate coverage throughout the Region and target underserved areas identified by OSHA/DTE.

(c) Conduct courses on a year-round basis with each required, elective, and optional course being offered in accordance with annual program goals. Required, elective, and optional courses are subject to change.

(4) Publicize and promote the availability of courses to ensure attendance and the delivery of the scheduled courses.

(5) Register students, provide course materials for students, and issue course completion certificates to students. This includes:

(a) Ensuring that students have met all prerequisites prior to registration.

(b) Collecting student registration and attendance records in accordance with OSHA/DTE guidelines.

(6) Comply with reporting requirements as identified by OSHA/DTE. This includes:

(a) Providing OSHA/DTE with training summary reports.

(b) Collecting student surveys from students in accordance with OSHA procedures and providing that data to OSHA within established timelines.

(7) Administer Outreach Training Program activities. This includes:

(a) Distributing student cards to authorized Outreach Training Program trainers.

(b) Monitoring OSHA Outreach trainers including record audits and training observations.

(8) Attend the bi-annual OSHA Training Institute Education Centers Directors' Meetings.

OSHA DTE Responsibilities

DTE is responsible for the following:

(1) Develop program policy.

(2) Provide answers and technical assistance on questions regarding OSHA policy and program requirements.

(3) Provide OTI Education Centers with learning objectives for courses to be presented.

(4) For select courses, provide curriculum and test questions.

(5) Coordinate the development of new OTI Education Center courses.

(6) Monitor the performance of the OTI Education Centers through on-site program visits, training observations and examination of course reports and attendance records.

(7) Provide quarterly summaries of student evaluation results.

(8) Coordinate the efforts of the Executive Committee.

(9) Evaluate the effectiveness of the OTI Education Centers and provide each organization with an annual performance appraisal.

OSHA Jurisdiction

OSHA is a federal agency within the United States. The Agency covers workers and employers in the 50 United States and certain territories and jurisdictions under federal authority. Those jurisdictions include the District of Columbia, Puerto Rico, the Virgin Islands, American Samoa, Guam, Northern Mariana Islands, Wake Island, Johnston Island, the Panama Canal Zone, and the Outer Continental Shelf Lands as defined in the Outer Continental Shelf Lands Act.

Geographic Distribution

There is currently at least one OTI Education Center in each OSHA Region. However, OSHA may elect to select more than one OTI Education Center in some or all OSHA Regions. The OSHA Regions contain the following states:

Region I: Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont.

Region II: New Jersey, New York, Puerto Rico, and Virgin Islands.

Region III: Delaware, District of Columbia, Maryland, Pennsylvania, Virginia, and West Virginia.

Region IV: Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, and Tennessee.

Region V: Illinois, Indiana, Michigan, Minnesota, Ohio, and Wisconsin.

Region VI: Arkansas, Louisiana, New Mexico, Oklahoma, and Texas.

Region VII: Iowa, Kansas, Missouri, and Nebraska.

Region VIII: Colorado, Montana, North Dakota, South Dakota, Utah, and Wyoming.

Region IX: American Samoa, Arizona, California, Guam, Hawaii, Nevada, and Trust Territories of the Pacific.

Region X: Alaska, Idaho, Oregon, and Washington.

For this notice of competition, special consideration will be given to applicant organizations with physical locations in the following major metropolitan areas (the list is in alpha order, not order of preference):

1. Boston-Cambridge-Quincy, MA–NH.
2. Charlotte-Gastonia-Concord, NC–SC.
3. Chicago-Naperville-Joliet, IL–IN–WI.
4. Cincinnati-Middletown, OH–KY–IN.
5. Cleveland-Elyria-Mentor, OH.
6. Columbus, OH.
7. Detroit-Warren-Livonia, MI.
8. Indianapolis, IN.
9. Jacksonville, FL.
10. Los Angeles-Long Beach-Santa Ana, CA.
11. Memphis, TN–MS–AR.
12. Miami-Fort Lauderdale-Miami Beach, FL.
13. Milwaukee-Waukesha-West Allis, WI.
14. Minneapolis-St. Paul-Bloomington, MN–WI.
15. Nashville-Davidson-Murfreesboro, TN.
16. New Orleans-Metairie-Kenner, LA.
17. New York-Northern New Jersey-Long Island, NY–NJ–PA.
18. Philadelphia-Camden-Wilmington, PA–NJ–DE–MD.
19. Phoenix-Mesa-Scottsdale, AZ.
20. Pittsburgh, PA.
21. Portland-Vancouver-Beaverton, OR–WA.
22. Providence-New Bedford-Fall River, RI–MA.
23. Riverside-San Bernardino-Ontario, CA.
24. San Jose-Sunnyvale-Santa Clara, CA.
25. Virginia Beach-Norfolk-Newport News, VA–NC.
26. Washington-Arlington-Alexandria, DC–VA–MD–WV MSA.

Application Submission Requirements

Submissions that are not in accordance with the application submission requirements listed below will not be considered. The application must include the following.

(1) Program Summary. The program summary is a one-to-two page double-spaced abstract that succinctly summarizes the applicant organization(s) and any consortium partners' background, experience and qualifications. The program summary must also provide:

(a) Contact information including the following:

- The name, address, and phone number of the lead organization and all consortium partners. A post office box will not be accepted.
- The name, title, address, telephone number, and email address of the program director who can answer questions regarding the application.

(b) Information on which OTI Education Center courses may be offered and any relevant language or target audience information.

(2) Program Narrative. The program narrative must be numbered and not exceed 30 double-spaced pages. Attachments will not be included in the page count.

(3) Applicant Eligibility. In order to be eligible, each organization must document the following. Organizations that do not address the following will not be given further consideration.

(a) Non-Profit Status. Include evidence of non-profit status of the lead organization and each member organization if applying as a consortium. A letter from the Internal Revenue Service, State, or a statement included in a recent audit report is preferred. In the absence of either of these, a copy of the articles of incorporation showing the non-profit status will be accepted.

(b) Authority to Apply. Provide a copy of the resolution by the Board of Directors, Board of Regents, company president, Chief Executive Officer or other governing body of the organization approving the submittal of an application to OSHA to become an OTI Education Center.

(c) Occupational Safety and Health Training Experience. Demonstrate previous experience delivering occupational safety and health training to adults.

(d) Status as a Training Organization. (This applies only to applicants that are not colleges or universities.) Document that training or education is a principal activity of the organization. Through audit reports, annual reports, or other documentation, the applicant must clearly demonstrate that for the last two years more than 50% of the organization's funds have been used for training and education activities and more than 50% of staff resources have also been used for this purpose.

(e) Curriculum Development. Explain the organization's process for developing and updating occupational safety and health curriculum to learning objectives provided by OSHA.

(f) Training Facilities. Provide detail regarding classrooms, laboratories, and testing facilities available; and organization's ability to provide standard classroom training across the OSHA Region in which the organization is physically located.

(g) Nondiscrimination. Provide copies of the organization's nondiscrimination

policies covering staff and students. In the absence of a written policy, explain how the organization will ensure that staff and students are selected without regard to race, color, religion, national origin, sex, age, or disability.

Selection Guidelines

OSHA does not have a predetermined number of organizations to be selected to act as authorized OTI Education Centers. The number of organizations selected will be determined by a competitive basis using the selection criteria contained in this announcement.

Selection Criteria

Applications that meet the factors listed in the ''Applicant Eligibility'' section above will be reviewed by a technical panel based on the criteria listed below.

(1) Organizational Experience and Qualifications (25 Points)

(a) Experience delivering occupational safety and health training in construction *and* general industry.

(b) Experience training adults.

(c) Ability to deliver required, elective, and optional OTI Education Center courses; (See Appendix A for a current list of required, elective and optional OTI Education Center courses).

(d) Provision for a systematic process for developing and updating occupational safety and health curriculum to support learning objectives provided by OSHA.

(e) Resources for supporting a large-scale occupational safety and health training program, such as appropriate management, instructional staff, and administrative staff to fulfill all program requirements, including marketing, registration, handouts, instruction, reporting, and Outreach card administration.

(f) *To fully address this element, the proposal must:*

(i) Describe experience delivering occupational safety and health training including the number of classes offered, number of trainees taught in each class, and number of trainee contact hours for each course during the last three years.

(ii) Include copies of catalogs and other recruitment materials that provide descriptive material about the courses.

(iii) Describe ability to deliver OTI Education Center courses including required, elective, and optional courses. Please note the required, elective and optional course offerings are subject to change. A current list of required, elective and optional courses may be found at Appendix A. The complete list of courses and descriptions are available online at *http://www.osha.gov/dte/edcenters/course_description.html.*

(iv) Indicate the number of occupational safety and health courses for which your organization has developed curriculum, including the title and student contact hours for each course, within the last three years.

(v) Indicate the number of occupational safety and health courses your organization has conducted live training, including title, student contact hours, and number of trainees within the last three years.

(vi) Demonstrate that your organization is capable of providing training throughout the OSHA Region in which the lead organization and consortium partner(s) are physically located.

(2) Staff Experience and Qualifications (15 Points).

(a) Staff experience in delivering training courses for adults in occupational safety and health in construction and general industry.

(b) Staff experience in occupational safety and health subjects with the application of OSHA standards to the recognition, avoidance, abatement, and prevention of workplace hazards.

(c) Professional certifications related to occupational safety and health held by staff such as such as Certified Safety Professional, Professional Engineer, or Certified Industrial Hygienist.

(d) *To fully address this element, the proposal must:*

(i) Include an organizational chart of the department responsible for training.

(ii) Describe staff knowledge of and experience with OSHA standards and their application to hazard recognition and hazard abatement.

(iii) For instructors responsible for conducting OSHA courses, include resumes for current staff and position descriptions for positions to be filled.

(3) Location and Training Facilities (15 Points).

(a) Ability to conduct standard classroom instruction training in multiple locations within the OSHA Region.

(b) Classroom facilities available for presentation of the courses, including room capacity, availability of audiovisual equipment, and appropriate laboratories and other facilities available for hands-on exercises.

(c) Availability of testing center or comparable facility.

(d) Provisions for accessibility for persons with disabilities.

(e) Accessibility of the training facility to population centers, including such factors as distance from a major airport, number of airlines serving the airport, transportation from the airport to hotels, and distance from the interstate system.

(f) Availability and affordability of lodging and accommodations, food service and restaurants available both in the area in which the classes will be held and in the area where the hotels are located.

(g) Availability and affordability of local transportation, including how students will be transported between the hotels and classes using hotel shuttles, public transportation, or other means.

(h) *To fully address this element, the proposal must:*

(i) Describe the accessibility of the training facility for students within local commuting area.

(ii) Clearly identify that your organization has classrooms, laboratories, and testing facilities available. Floor plans are encouraged and may be included as an attachment.

(iii) Include such items as distance from a major airport, number of airlines serving the airport, transportation from the airport to hotels, and distance from the interstate system.

(iv) Provide a representative listing of hotels available for student accommodation and give sample room rates. Explain how students will be transported between the hotels and classes. Describe the food service and restaurants available both in the area in which the classes will be held and in the area where the hotels are located.

(v) Describe the organization's ability and plan to provide off-site host-site training within their respective Region including procedures to assure that classroom facilities and accommodations are adequate. Off-site training includes the ability to conduct courses at sites other than your own facility and in other states within your OSHA region. Host-site training organizations must be non-profit organizations and proof of non-profit status is required.

(4) Marketing and Recruitment (15 Points).

(a) Experience in marketing training to adults.

(b) Ability to effectively market occupational safety and health training programs.

(c) Utilization of various media to support marketing efforts.

(d) Ability to solicit and deliver training on a contract basis.

(e) Resources sufficient to support participation in national industry conferences in order to market training programs.

(f) *To fully address this element, the proposal must:*

(i) Explain the procedures for marketing your organization's training courses and recruiting trainees.

(ii) Include examples of current course marketing materials such as catalogs, flyers, brochures, emails, Web site urls and screen shots, postcards, use of social media, and any other associated relevant materials.

(iii) Explain how your organization will promote its status as an OTI Education Center.

(iv) Describe your organization's experience in exhibiting at conferences and trade shows.

(5) Administrative Capabilities (20 Points).

(a) Ability to administer a large-scale occupational safety and health training program, including clerical and support staff, customer service capabilities, to fulfill all program requirements and meet customer needs.

(b) Ability to administer the Outreach Training Program, including processing card requests for trainers and conducting monitoring activity such as record audits and training observations.

(c) Ability to compile and submit reports and other training data.

(d) Applicants must be capable of providing mandatory reports consistent with current OSHA guidelines, including the capability to submit reports in Excel format on a template provided by OSHA/DTE. Please note OSHA periodically revises reporting requirements.

(e) Ability to respond to inquiries from OSHA and the public.

(f) Ability to manage student records.

(g) *To fully address this element, the proposal must:*

(i) Describe registration procedures including provisions for course cancellation, furnishing students with course materials, verifying course prerequisites are met in advance of registration, and tuition or fee collection.

(ii) Describe capabilities to process and issue course completion documents to students and collect related fees.

(iii) Describe personnel and resources available to conduct monitoring activity, including record audits and training observations.

(iv) Include information about organization's record retention policy and ability to issue replacement course completion documents, and collect related fees. Please note OSHA requires records must be maintained for a minimum of five years. OTI Education Centers may establish a longer retention policy.

(v) Explain what procedures will be put in place for reporting to OSHA/DTE.

(vi) Provide specific details regarding the organization's full-time customer service staff, capabilities, and/or planned approach for responding to questions from students; handling questions and concerns related to occupational safety and health; resolving problems associated with a course, whether receiving them via student satisfaction surveys or direct communication from a student; and issuing replacement course complete certificates in a timely manner including verification of student identity and training completion.

(vii) Provide a copy of the organization's tuition and fee schedule; explain how tuition or fees will be computed for each OTI numbered course, referencing the organization's tuition and fee schedule; and describe tuition and fee procedures including provisions for the collection of tuition, cancellation fees, and issuing refunds.

(6) Evaluation (10 Points).

OSHA utilizes Kirkpatrick's Levels of Evaluation as described below. Each OTI Education Center is responsible for collecting and submitting student surveys.

Satisfaction Survey (Level I Evaluation) to Measure Reaction. Each student must receive a satisfaction survey to assess the students' reactions and perceptions of the quality of the training.

Testing (Level II Evaluation) to Measure Learning. Learning assessments measure the skills and knowledge that the trainee retains as a result of the training. Testing is mandatory at the end of some courses.

Follow-up Impact Survey (Level III Evaluation) to Measure Results. Each student must receive a follow-up impact survey to assess the effectiveness of the training after a 6-month period, using survey questions provided by OSHA.

(a) Ability to administer student surveys in a classroom setting.

(b) Ability to administer exams and ensure test integrity.

(c) Ability to assess the effectiveness of the training after a 6-month period using a follow-up impact survey.

(d) Ability to summarize and report evaluation results.

(e) *To fully address this element, the proposal must:*

(i) Describe the organization's experience in conducting evaluation of training programs.

(ii) Describe organization's experience in administering student surveys.

(iii) Describe organization's experience in administering classroom exams and its process for ensuring test integrity.

(iv) Describe organization's experience conducting follow-up evaluations that measure behavior and/or results.

Consortia and Partnerships

Applicants may join with one or more other non-profit organizations in their Region to apply as a consortium. A training or education institution may elect to apply for this program in partnership with a safety and health organization that is not primarily a training organization. For example, a university could enter into an agreement with a labor union that provides for the use of university classrooms and faculty supplemented by union safety and health professionals. All consortium partners must be physically located in the same OSHA region. Partners must designate a lead organization that will be responsible for program reporting and Outreach Training Program administration including Outreach card distribution.

Funding Provisions

OSHA provides no funding to OTI Education Centers. OTI Education Centers Program participants are expected to support their training through their normal tuition and fee structures.

Cooperative Agreement Duration

Selected applicants will sign five-year non-financial cooperative agreements with OSHA. With satisfactory performance by the OTI Education Center, agreements may be renewed without additional competition for an additional five years. The agency reserves the right to revoke the authorization of an OTI Education Center. Either party may terminate the cooperative agreement with advance written notice.

Proposal Conference

A proposal conference will be held to provide potential applicants with information about the OTI Education Centers Program. The conference will also clarify OSHA expectations for OTI Education Centers, courses and methods of instruction, as well as administrative and program requirements for OTI Education Centers and the OSHA Outreach Training Program. Attendance at the proposal conference is not mandatory, but applicants are strongly encouraged to attend.

The proposal conference is scheduled for Wednesday, May 2, 2012, at the OSHA Directorate of Training and Education, 2020 S. Arlington Heights Rd., Arlington Heights, Illinois 60005 4102.

It is necessary for all attendees to register for this proposal conference. Applicants interested in attending this conference must contact Kimberly Newell, Program Manager,

(*newell.kimberly@dol.gov*), or Jim Barnes, (*barnes.james@dol.gov*), Director, Office of Training and Educational Programs, OSHA Directorate of Training and Education, 2020 S. Arlington Heights Rd., Arlington Heights, Illinois 60005–4102; telephone (847) 759–7700. Required registration information includes:

(1) Name and street address of the organization;

(2) Name, title, telephone number, and email address of the attendees Registration information must be submitted no later than Friday, April 27, 2012.

Application Submission

Applications must be submitted to the attention of Kimberly Newell, Program Manager, Office of Training and Educational Programs, OSHA Directorate of Training and Education, 2020 S. Arlington Heights Rd., Arlington Heights, Illinois 60005–4102.

The submission is to consist of three copies of the application. Applications may be bound. The program narrative must not exceed 30 double-spaced pages. Attachments will not be included in the page count. Applications must be double-spaced, in 12-point font, with all pages numbered including any attachments. Attachments must only include essential documents that are relevant to this program.

Application Deadline

Applications must be received by the OSHA Directorate of Training and Education no later than 4:30 p.m., Central Time, on Friday, June 15, 2012. Requests for extension to this application deadline will not be granted.

Application Evaluation and Selection Process

Applications will be reviewed by technical panels comprised of OSHA staff. The technical panels will review applications based on criteria listed in this notice to determine which applicants best meet the stated requirements. As part of the evaluation and selection process, OSHA may request additional information from applicants. This may include written requests for clarification, phone or in-person interviews, access to existing programs, and on-site visits of applicant facilities. The panels' recommendations to the Assistant Secretary are advisory in nature. The final decision will be made by the Assistant Secretary of Labor for Occupational Safety and Health.

Notification of Selection

Applicants will be notified by a representative of the Assistant Secretary of Labor for Occupational Safety and Health if their organization is selected as an OSHA Training Institute Education Center. Applicants selected to be OSHA Training Institute Education Centers must attend a mandatory orientation meeting at the Directorate of Training and Education in Arlington Heights, Illinois at a time and date to be provided.

An organization may not conduct OSHA Training Institute Education Center courses until the program has been authorized, the organization has signed a non-financial cooperative agreement with OSHA, and the organization has participated in the Orientation meeting.

Freedom of Information Act

Information submitted in the respondent's application is not considered confidential. Organization applications data may be releasable under the Freedom of Information Act.

Transparency

The Department of Labor is committed to conducting a transparent selection process and publicizing information about program outcomes. Applications or abstracts may be posted on public Web sites as a means of promoting and sharing innovative ideas.

Notification of Non-Selection

Applicants will be notified in writing if their organization is not selected to be an OSHA Training Institute Education Center.

Non-Selection Appeal

All decisions by the Assistant Secretary of Labor for Occupational Safety and Health are final. The Department of Labor does not provide an appeal procedure for applicants that are not selected.

Authority and Signature

Section 21 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 670).

Signed at Washington, DC, on April 9, 2012.

David Michaels,

Assistant Secretary of Labor for Occupational Safety and Health.

Appendix A—Current List of Required, Elective and Optional Courses [1]

(1) Present OTI Courses:

(a) FY 2012 rating criterion is 60 courses conducted annually with a minimum of five in-person courses per month.

(b) Present all OTI Courses as follows:

(i) *OTI Education Centers are required to present the following eight courses:*

(1) #500 Trainer Course for the Construction Industry
(2) #501 Trainer Course for General Industry
(3) #502 Update for Construction Industry Outreach Trainers
(4) #503 Update for General Industry Outreach Trainers
(5) #510 Occupational Safety and Health Standards for Construction
(6) #511 Occupational Safety and Health Standards for General Industry
(7) #7500 Introduction to Safety and Health Management
(8) #7845 Recordkeeping Rule Seminar

(ii) *OTI Education Centers are required to present at least five of the following elective courses:*

(1) #521 OSHA Guide to Industrial Hygiene
(2) #2015 Hazardous Materials
(3) #2045 Machinery and Machine Guarding Standards
(4) #2225 Respiratory Protection
(5) #2250 Principles of Ergonomics
(6) #2264 Permit-Required Confined Space Entry
(7) #3095 Electrical Standards
(8) #3010 Excavation, Trenching, and Soil Mechanics
(9) #3110 Fall Arrest Systems
(10) #5400 Trainer Course for the Maritime Industry
(11) #5402 Update for Maritime Industry Trainers
(12) #5600 Disaster Site Worker Trainer Course
(13) #5602 Update for Disaster Site Worker Trainers
(14) #6000 Collateral Duty Course for Other Federal Agencies

(iii) *OTI Education Centers may present any of the following optional courses:*

(1) #5109 Occupational Safety and Health Standards for the Construction Industry including Cal/OSHA Requirements
(2) #5119 Occupational Safety and Health Standards for General Industry including Cal/OSHA Requirements
(3) #7000 OSHA Ergonomic Guidelines for Nursing Homes
(4) #7005 Public Warehousing and Storage
(5) #7100 Introduction to Machinery and Machine Safeguarding
(6) #7105 Evacuation and Emergency Preparedness
(7) #7110 Safe Bolting: Principles and Practices
(8) #7115 Lockout/Tagout
(9) #7120 Introduction to Combustible Dust Hazards (2 days)
(10) #7125 Seminar on Combustible Dust Hazards (1 day)
(11) #7200 Bloodborne Pathogen Exposure Control for Healthcare Facilities
(12) #7205 Health Hazard Awareness
(13) #7210 Pandemic Influenza Workplace Preparedness
(14) #7300 OSHA's Permit-Required Confined Space Standard

[1] Subject to change based on Agency initiatives, yearly annual performance criteria and national emphasis programs.

(15) #7400 Trainer Course in Construction Noise
(16) #7405 Fall Hazard Awareness for the Construction Industry
(17) #7410 Managing Excavation Hazards
(18) #7415 OSHA Construction Industry Requirements Awareness of Major Hazards and Prevention Strategies
(19) #7505 Introduction to Accident Investigation
(20) #7510 Introduction to OSHA for Small Business
(21) #7515 Writing Material Safety Data Sheets (MSDS)

[FR Doc. 2012–8884 Filed 4–12–12; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA–2012–0006]

Federal Advisory Council on Occupational Safety and Health (FACOSH)

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Announcement of FACOSH meeting and member appointments.

SUMMARY: The Federal Advisory Council on Occupational Safety and Health (FACOSH) will meet May 3, 2012, in Washington, DC. This **Federal Register** notice also announces the appointment of seven individuals to serve on FACOSH.

DATES: *FACOSH meeting:* FACOSH will meet from 1 to 4:30 p.m., Thursday, May 3, 2012.

Submission of comments, requests to speak, speaker presentations, and requests for special accommodations: You must submit (postmark, send, transmit) comments, requests to speak at the FACOSH meeting, speaker presentations, and requests for special accommodations to attend the meeting by April 23, 2012.

ADDRESSES:

FACOSH meeting: FACOSH will meet in Room N–4437 A–D, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210.

Submission of comments, requests to speak, and speaker presentations: You may submit comments, requests to speak at the FACOSH meeting, and speaker presentations using one of the following methods:

Electronically: You may submit materials, including attachments, electronically at *http://www.regulations.gov*, the Federal eRulemaking Portal. Follow the online instructions for making submissions;

Facsimile: If your submission, including attachments, does not exceed 10 pages, you may fax it to the OSHA Docket Office at (202) 693–1648; or

Mail, express delivery, hand delivery, or messenger/courier service: You may submit materials to the OSHA Docket Office, Docket No. OSHA–2012–0006, Room N–2625, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210; telephone (202) 693–2350 (TTY (877) 889–5627). Deliveries (hand, express mail, messenger or courier service) are accepted during the Department's and the OSHA Docket Office's normal business hours, 8:15 a.m.–4:45 p.m., e.t.

Requests for special accommodations to attend the FACOSH meeting: You may submit requests for special accommodations by telephone, email, or hard copy to Ms. Veneta Chatmon, OSHA Office of Communications, Room N–3647, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210; telephone (202) 693–1999; email *chatmon.veneta@dol.gov.*

Instructions: All submissions must include the agency name and docket number for this **Federal Register** notice (Docket No. OSHA–2012–0006). Because of security-related procedures, submissions by regular mail may result in a significant delay in their receipt. Please contact the OSHA Docket Office for information about security procedures for making submissions by hand delivery, express delivery, and messenger or courier service. For additional information on submitting comments, requests to speak, and speaker presentations, see the **SUPPLEMENTARY INFORMATION** section below.

OSHA will post comments, requests to speak, and speaker presentations, including any personal information provided, without change at *http://www.regulations.gov*. Therefore, OSHA cautions interested parties about submitting certain personal information, such as Social Security numbers and birthdates.

FOR FURTHER INFORMATION CONTACT:

For press inquiries: Mr. Frank Meilinger, Director, OSHA Office of Communications, U.S. Department of Labor, Room N–3647, 200 Constitution Avenue NW., Washington, DC 20210; telephone (202) 693–1999; email *meilinger.francis2@dol.gov*.

For general information: Mr. Francis Yebesi, OSHA, Office of Federal Agency Programs, U.S. Department of Labor, Room N–3622, 200 Constitution Avenue NW., Washington, DC 20210; telephone (202) 693–2122; email *ofap@dol.gov*.

SUPPLEMENTARY INFORMATION:

FACOSH Meeting

FACOSH will meet May 3, 2012, in Washington, DC. FACOSH meetings are open to the public. The tentative agenda for the FACOSH meeting includes:

- Revised recommendations on permissible exposure limits (PELs) from FACOSH's Emerging Issues—PELs Work Group;
- Proposed changes to the Federal Agency Recordkeeping rule; and
- H1N1 recommendations the Secretary of Labor (Secretary) recently approved.

FACOSH is authorized by 5 U.S.C. 7902, section 19 of the Occupational Safety and Health Act of 1970 (OSH Act) (29 U.S.C. 668), and Executive Order 11612, as amended, to advise the Secretary on all matters relating to the occupational safety and health of federal employees. This includes providing advice on how to reduce and keep to a minimum the number of injuries and illnesses in the federal workforce and how to encourage each Federal Executive Branch department and agency to establish and maintain effective occupational safety and health programs.

OSHA transcribes and prepares detailed minutes of FACOSH meetings. The Agency puts transcripts, minutes, and other materials presented at the meeting in the public record of the FACOSH meeting, which is posted at *http://www.regulations.gov*.

Public Participation, Submissions, and Access to Public Record

FACOSH meetings: FACOSH meetings are open to the public. Individuals attending meetings at the U.S. Department of Labor must enter the building at the Visitors' Entrance, 3rd and C Streets, NW., and pass through building security. Attendees must have valid government-issued photo identification to enter the building. For additional information about building security measures for attending the FACOSH meeting, please contact Ms. Chatmon (see **ADDRESSES** section).

Please submit your request for special accommodations to attend the FACOSH meeting to Ms. Chatmon.

Submission of requests to speak and speaker presentations. You may submit a request to speak to FACOSH about the topics of the meeting and speaker presentations by one of the methods listed in the **ADDRESSES** section. Your request must state:

- The amount of time you request to speak;
- The interest you represent (e.g., organization name), if any; and,
- A brief outline of your presentation.

PowerPoint speaker presentations and other electronic materials must be compatible with PowerPoint 2003 and other Microsoft Office 2003 formats.

The FACOSH chair may grant requests to address FACOSH at his discretion and as time and circumstances permits.

Submission of written comments. You also may submit written comments, including data and other information, using any of the methods listed in the **ADDRESSES** section. Your submissions, including attachments and other materials, must identify the agency name and the OSHA docket number for this notice (Docket No. OSHA–2012–0006). You may supplement electronic submissions by uploading documents electronically. If you wish to submit hard copies of supplementary documents instead, you must submit them to the OSHA Docket Office using the instructions in the **ADDRESSES** section. The additional materials must clearly identify your electronic submission by name, date, and docket number.

Because of security-related procedures, submitting comments, requests to speak, and speaker presentations by regular mail may cause a significant delay in their receipt. For information about security procedures concerning submissions by hand, express delivery, and messenger or courier service, please contact the OSHA Docket Office (see **ADDRESSES** section).

OSHA will provide copies of your submissions to FACOSH members prior to the meeting.

Access to submissions and public record. OSHA places comments, requests to speak, and speaker presentations, including any personal information you provide, in the FACOSH public docket without change and those documents may be available online at *http://www.regulations.gov*. Therefore, OSHA cautions interested parties about submitting certain personal information, such as Social Security numbers and birthdates.

OSHA also puts meeting transcripts, minutes, work group reports, and documents presented at the FACOSH meeting in the public record of the FACOSH meeting.

To read or download documents in the public record, go to Docket No. OSHA–2012–0006 at *http://www.regulations.gov*. Although all meeting documents are listed in the *http://www.regulations.gov* index, some documents (e.g., copyrighted material) are not publicly available to read or download through that Web page. All meeting documents, including copyrighted material, are available for inspection and copying at the OSHA Docket Office.

Information on using the *http://www.regualtions.gov* to make submissions and to access the public record of the FACOSH meeting is available at that Web page. Please contact the OSHA Docket Office for information about materials not available through that Web page and for assistance for making submissions and obtaining documents in the public record. Electronic copies of this **Federal Register** notice are available at *http://www.regulations.gov*. This notice, as well as news releases and other relevant information about FACOSH, also is available at OSHA's Web page at *http://www.osha.gov*.

Announcement of FACOSH Appointments

FACOSH is comprised of 16 members; eight representing federal agency management and eight from labor organizations representing federal employees. The Secretary has appointed the following individuals to a three-year term on FACOSH:

Federal employee representatives:

- Gregory Junemann, International Federation of Professional and Technical Engineers; and
- Milagro Rodriguez, American Federation of Government Employees.

Federal agency management representatives:

- Catherine V. Emerson, U.S. Department of Homeland Security;
- Rhea S. Suh, U.S. Department of the Interior; and
- Richard S. Williams, National Aeronautics and Space Administration.

In addition, the Secretary has appointed Dennis Bushta, U.S. Environmental Protection Agency, to complete the unexpired term of a federal agency management representative who was no longer able to serve on FACOSH.

Authority and Signature

David Michaels, Ph.D., MPH, Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice under the authority granted by section 19 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 668), 5 U.S.C. 7902, the Federal Advisory Committee Act (FACA) (5 U.S.C. App. 2), 41 CFR part 102–3, section 1–5 of Executive Order 12196 (45 CFR 12729 (7/27/1980)), and Secretary of Labor's Order No. 1–2012 (77 FR 3912 (1/25/2012)).

Signed at Washington, DC, on April 9, 2012.

David Michaels,

Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2012–8872 Filed 4–12–12; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA–2012–0011]

Advisory Committee on Construction Safety and Health (ACCSH)

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Announcement of meetings of ACCSH and ACCSH Work Groups.

SUMMARY: ACCSH will meet May 10–11, 2012, in Washington, DC. In conjunction with the ACCSH meeting, ACCSH Work Groups will meet May 8–9, 2012.

DATES: *ACCSH meeting:* ACCSH will meet from 8 a.m. to 4:15 p.m., Thursday, May 10, 2012, and from 8 a.m. to noon, Friday, May 11, 2012.

ACCSH Work Group meetings: ACCSH Work Groups will meet Tuesday and Wednesday, May 8–9, 2012. (For Work Group meeting times, see the Work Group schedule in the **SUPPLEMENTARY INFORMATION** section of this notice.)

Written comments, requests to speak, speaker presentations, and requests for special accommodation: You must submit (postmark, send, transmit) comments, requests to address the ACCSH meeting, speaker presentations (written or electronic) and requests for special accommodations for the ACCSH and ACCSH Work Group meetings by April 27, 2012.

ADDRESSES:

ACCSH and ACCSH Work Group meetings: ACCSH and ACCSH Work Groups will meet in Room N–3437 A–C, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210.

Submission of comments, requests to speak, and speaker presentations: You may submit comments, requests to speak at the ACCSH meeting, and speaker presentations using one of the following methods:

Electronically: You may submit materials, including attachments, electronically at *http://www.regulations.gov,* which is the Federal eRulemaking Portal. Follow the on-line instructions for submissions.

Facsimile (Fax): If your submission, including attachments, does not exceed 10 pages, you may fax it to the OSHA Docket Office at (202) 693–1648.

Mail, hand delivery, express mail, messenger, or courier service: You may submit your materials to the OSHA Docket Office, Docket No. OSHA–2012–0011, Room N–2625, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210; telephone: (202) 693–2350 (TTY (877) 889–5627). OSHA's Docket Office accepts deliveries (hand deliveries, express mail, and messenger or courier service) during normal business hours, 8:15 a.m.–4:45 p.m., E.T., weekdays.

Requests for special accommodations: Please submit your request for special accommodations to attend the ACCSH and ACCSH Work Group meetings to Ms. Veneta Chatmon, OSHA, Office of Communications, Room N–3647, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210; telephone: (202) 693–1999; email: *chatmon.veneta@dol.gov.*

Instructions: Your submissions must include the agency name and docket number for this **Federal Register** notice (Docket No. OSHA–2012–0011). Due to security-related procedures, submissions by regular mail may experience significant delays. Please contact the OSHA Docket Office for information about security procedures for making submissions. For additional information on submitting comments, requests to speak, and speaker presentations, see the **SUPPLEMENTARY INFORMATION** section of this notice.

OSHA will post comments, requests to speak, and speaker presentations, including any personal information you provide, without change, at *http://www.regulations.gov.* Therefore, OSHA cautions you about submitting personal information such as Social Security numbers and birthdates.

FOR FURTHER INFORMATION CONTACT:

For press inquiries: Mr. Frank Meilinger, Director, OSHA Office of Communications, Room N–3647, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210; telephone: (202) 693–1999; email: *meilinger.francis2@dol.gov.*

For general information about ACCSH and ACCSH meetings: Mr. Damon Bonneau, OSHA, Directorate of Construction, Room N–3468, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210; telephone: (202) 693–2020; email: *bonneau.damon@dol.gov.*

SUPPLEMENTARY INFORMATION:

ACCSH Meeting

ACCSH will meet May 10–11, 2012, in Washington, DC. The meeting is open to the public.

ACCSH advises the Secretary of Labor and Assistant Secretary of Labor for Occupational Safety and Health (Assistant Secretary) in the formulation of standards affecting the construction industry, and on policy matters arising in the administration of the safety and health provisions under the Contract Work Hours and Safety Standards Act (Construction Safety Act) (40 U.S.C. 3701 *et seq.*) and the Occupational Safety and Health Act of 1970 (29 U.S.C. 651 *et seq.*) (see also 29 CFR 1911.10 and 1912.3).

The tentative agenda for this meeting includes:

- Assistant Secretary's Agency update and remarks;
- Directorate of Construction update on rulemaking projects;
- Directorate of Cooperative and State Programs update;
- Directorate of Standards and Guidance update;
- Standards Improvement Project (SIP) IV rulemaking discussion;
- Presentation on the ANSI–ASSE A10.33—Safety and Health Program Requirements for Multi-Employer Projects Overview;
- Presentation on Targeting and Surveillance in the Construction Industry;
- Committee and Work Group reports and administration; and
- Public comment period.

OSHA transcribes ACCSH meetings and prepares detailed minutes of meetings. OSHA places the transcript and minutes in the public docket for the meeting. The docket also includes ACCSH Work Group reports, speaker presentations, comments, and other materials submitted to ACCSH.

ACCSH Work Group Meetings

In conjunction with the ACCSH meeting, the following ACCSH Work Groups will meet May 8, 2012:

- Backing Operations—1:15 to 3 p.m.
- Health Hazards, Emerging Issues and Prevention Through Design—3:15 to 5 p.m.

The following ACCSH Work Groups will meet May 9, 2012:

- Injury and Illness Prevention Programs—8:15 to 10 a.m.
- Diversity—10:15 a.m. to noon
- Training and Outreach (including a discussion of the 2012 Fall Prevention Campaign)—1 to 2:45 p.m.

ACCSH Work Group meetings are open to the public. For additional information on ACCSH Work Group meetings or participating in them, please contact Mr. Bonneau or look on the ACCSH page on OSHA's Web page at *http://www.osha.gov.*

Public Participation, Submissions, and Access to Public Record

ACCSH and ACCSH Work Group meetings: All ACCSH and ACCSH Work Group meetings are open to the public. Individuals attending meetings at the U.S. Department of Labor must enter the building at the visitors' entrance, 3rd and C Streets NW., and pass through building security. Attendees must have valid government-issued photo identification to enter the building. For additional information about building security measures for attending the ACCSH and ACCSH Work Group meetings, please contact Ms. Chatmon (see **ADDRESSES** section). Please submit your request for special accommodations to attend the ACCSH and ACCSH Work Group meetings to Ms. Chatmon.

Submission of written comments: You may submit comments using one of the methods in the **ADDRESSES** section. Your submissions must include the agency name and docket number for this ACCSH meeting (Docket No. OSHA–2012–0011). OSHA will provide copies of submissions to ACCSH members.

Because of security-related procedures, submissions by regular mail may experience significant delays. For information about security procedures for submitting materials by hand delivery, express mail, and messenger or courier service, contact the OSHA Docket Office (see **ADDRESSES** section).

Requests to speak and speaker presentations: If you want to address ACCSH at the meeting you must submit your request to speak, as well as written or electronic presentation (e.g., PowerPoint), by April 27, 2012, using one of the methods listed in the **ADDRESSES** section. Your request must state:

- The amount of time requested to speak;
- The interest you represent (e.g., business, organization, affiliation), if any; and
- A brief outline of the presentation.

PowerPoint presentations and other electronic materials must be compatible with PowerPoint 2003 and other Microsoft Office 2003 formats.

Alternatively, at the ACCSH meeting, you may request to address ACCSH briefly by signing the public-comment request sheet and listing the topic(s) you will address. You also must provide 20 hard copies of any materials, written or electronic, you want to present to ACCSH.

The ACCSH Chair may grant requests to address ACCSH as time and circumstances permit. The Chair will give preference to individuals who submitted speaker requests and presentations by April 27, 2012.

Public docket of the ACCSH meeting: OSHA places comments, requests to speak, and speaker presentations, including any personal information you provide, in the public docket of this ACCSH meeting without change, and those documents may be available online at *http://www.regulations.gov.* Therefore, OSHA cautions you about submitting personal information such as Social Security numbers and birthdates.

OSHA also places the meeting transcript, meeting minutes, documents presented at the ACCSH meeting, Work Group reports, and other documents pertaining to the ACCSH meeting in the public docket. These documents also are available online at *http://www.regulations.gov.*

Access to the public record of ACCSH meetings: To read or download documents in the public docket of this ACCSH meeting, go to Docket No. OSHA–2012–0011 at *http://www.regulations.gov.* All documents in the public record for this meeting are listed in the *http://www.regulations.gov* index; however, some documents (e.g., copyrighted materials) are not publicly available through that Web page. All documents in the public record, including materials not available through *http://www.regulations.gov,* are available for inspection and copying in the OSHA Docket Office (see **ADDRESSES** section). Please contact the OSHA Docket Office for assistance in making submissions to, or obtaining materials from, the public docket.

Electronic copies of this **Federal Register** notice are available at *http://www.regulations.gov.* This notice, as well as news releases and other relevant information, also are available on the OSHA Web page at *http://www.osha.gov.*

Authority and Signature

David Michaels, Ph.D., MPH, Assistant Secretary of Labor for Occupational Safety and Health, authorized the preparation of this notice under the authority granted by Section 7 of 29 U.S.C. 656, Section 107 of the Contract Work Hours and Safety Standards Act (Construction Safety Act) 40 U.S.C. 3704, 5 U.S.C. App. 2, 29 CFR parts 1911 and 1912, 41 CFR part 102, and Secretary of Labor's Order No. 1–2012 (77 FR 3912).

Signed at Washington, DC, on April 9, 2012.

David Michaels,

Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2012–8883 Filed 4–12–12; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

Preparations for the 23rd Session of the UN Sub-Committee of Experts on the Globally Harmonized System of Classification and Labelling of Chemicals (GHS) and Stakeholder Input for the Regulatory Coordination Council (RCC)

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Notice of public meeting.

SUMMARY: OSHA invites interested parties to participate in an open, informal public meeting in Washington, DC to discuss proposals in preparation for the 23rd session of the United Nations Sub-committee of Experts on the Globally Harmonized System of Classification and Labelling of Chemicals (UNSCEGHS). The UNSCEGHS meeting will be held July 4–6, 2012, in Geneva, Switzerland. OSHA, along with the U.S. Interagency Coordinating Group, plans to consider the comments and information gathered at this public meeting when developing the U.S. Government positions for the UNSCEGHS meeting. OSHA is also requesting stakeholder input on behalf of the Regulatory Coordination Council (RCC).

DATES: The date for the public meeting is as follows: May 11, 2012, beginning at 10 a.m., in Washington, DC.

ADDRESSES: The location for the public meeting is as follows: The U.S. Department of Labor, Francis Perkins Building, 200 Constitution Avenue NW., Washington, DC 20210, Room C5515, Conference Room #2.

Conference Call Information: Conference call-in capability will be provided for this meeting. To participate by telephone, dial 1–888–456–0281, and enter participant passcode 10935. During the call, please press *6 to mute/unmute your individual lines.

FOR FURTHER INFORMATION CONTACT: Maureen Ruskin, Director, Office of Chemical Hazards—Metals, OSHA Directorate of Standards and Guidance, Room N–3718, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210; telephone: (202) 693–1950.

Copies of this **Federal Register** notice can be obtained as follows: Electronic copies are available at *http://www.regulations.gov.* This **Federal Register** notice, as well as other relevant information, is available also on the OSHA Web page at *http://www.osha.gov.*

SUPPLEMENTARY INFORMATION:

I. Meeting

OSHA is hosting an open informal public meeting of the U.S. Interagency GHS Coordinating Group to provide interested groups and individuals with an update on GHS-related issues and an opportunity to express their views orally and in writing for consideration in developing U.S. Government positions for the upcoming UNSCEGHS meeting. Interested stakeholders may also provide input on issues related to the RCC at the meeting. The public is invited to attend without prior notification. The meeting agenda, in general, is as follows:

- Discussion of working papers for the 23rd Session of the UNSCEGHS,
- Update on UNSCEGHS correspondence group activity, and
- Update of RCC activity and discussion of issues.

OSHA does not seek stakeholder consensus in this meeting, but rather to learn stakeholders' individual views on these issues and receive any relevant information they may have.

II. Background

The GHS was formally adopted by the United Nations Committee of Experts on the Transport of Dangerous Goods and on the Globally Harmonized System of Classification and Labelling of Chemicals in December 2002. The GHS is a single, harmonized system for classification of chemicals according to their health, physical, and environmental effects. It also provides harmonized communication elements, including labels and safety data sheets. The GHS is considered to be a living document and is regularly revised and updated as necessary to reflect new technology and scientific developments or to provide additional explanatory text.

The UNSCEGHS is responsible for maintaining and updating the GHS. The U.S. has been an active member of the UNSCEGHS for many years, and OSHA currently serves as the head of the U.S. delegation for this Sub-committee.

In preparation for the biannual meetings of the UNSCEGHS, the U.S. Interagency GHS Coordinating Group

meets to discuss issues related to the GHS and to develop a coordinated U.S. position on issues and proposals regarding the GHS. The U.S. Interagency Coordinating Group consists of U.S. agencies that regulate in the areas of chemical hazard communication and include the Department of Transportation (DOT), the Environmental Protection Agency (EPA), the Consumer Product Safety Commission (CPSC), and OSHA.

Information on the work of the UNSCEGHS including meeting agendas, reports, and documents from previous sessions, can be found on the United Nations Economic Commission for Europe (UNECE) Transport Division Web site located at the following web address: *http://www.unece.org/trans/welcome.html*. The UNSCEGHS bases its decisions on Working Papers. The Working Papers for the 23rd session of the UNSCEGHS are located at *http://www.unece.org/trans/main/dgdb/dgsubc4/c42012.html*. Informal Papers submitted to the UNSCEGHS provide information for the subcommittee and are used either as a mechanism to provide information to the subcommittee or as the basis for future Working Papers. Informal Papers for the 23rd session of the UNSCEGHS are located at *http://www.unece.org/trans/main/dgdb/dgsubc4/c4inf23.html*.

Authority and Signature

This document was prepared under the direction of David Michaels, Ph.D., MPH, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, pursuant to sections 4, 6, and 8 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657), 29 CFR part 1911, and Secretary's Order 1–2012 (77 FR 3912).

Signed at Washington, DC, on April 9, 2012.

David Michaels,

Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2012–8882 Filed 4–12–12; 8:45 am]

BILLING CODE 4510–26–P

THE NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Meetings of Humanities Panel

AGENCY: The National Endowment for the Humanities.

ACTION: Notice of Meetings.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, as amended), notice is hereby given that the following meetings of Humanities Panels will be held at the Old Post Office, 1100 Pennsylvania Avenue NW., Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: Lisette Voyatzis, Advisory Committee Management Officer, National Endowment for the Humanities, Washington, DC 20506; telephone (202) 606–8322. Hearing-impaired individuals are advised that information on this matter may be obtained by contacting the Endowment's TDD terminal on (202) 606–8282.

SUPPLEMENTARY INFORMATION: The proposed meetings are for the purpose of panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by the grant applicants. Because the proposed meetings will consider information that is likely to disclose trade secrets and commercial or financial information obtained from a person and privileged or confidential and/or information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, pursuant to authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee meetings, dated July 19, 1993, I have determined that these meetings will be closed to the public pursuant to subsections (c)(4), and (6) of section 552b of Title 5, United States Code.

1. Date: May 1, 2012.
Time: 9 a.m. to 5 p.m.
Room: 315.
Program: This meeting will review applications for The Summer Seminars and Institutes grant program, submitted to the Division of Education Programs, at the March 1, 2012 deadline.

2. Date: May 2, 2012.
Time: 9 a.m. to 5 p.m.
Room: 315.
Program: This meeting will review applications for The Summer Seminars and Institutes grant program, submitted to the Division of Education Programs, at the March 1, 2012 deadline.

3. Date: May 3, 2012.
Time: 9 a.m. to 5 p.m.
Room: 315.
Program: This meeting will review applications for The Summer Seminars and Institutes grant program, submitted to the Division of Education Programs, at the March 1, 2012 deadline.

4. Date: May 7, 2012.
Time: 9 a.m. to 5 p.m.
Room: 315.
Program: This meeting will review applications for The Summer Seminars and Institutes grant program, submitted to the Division of Education Programs, at the March 1, 2012 deadline.

5. Date: May 7, 2012.
Time: 9 a.m. to 5 p.m.
Room: 402.
Program: This meeting will review applications for The Institutes for Advanced Topics in the Digital Humanities grant program, submitted to the Office of Digital Humanities at the March 6, 2012 deadline.

6. Date: May 8, 2012.
Time: 9 a.m. to 5 p.m.
Room: 402.
Program: This meeting will review applications for The Institutes for Advanced Topics in the Digital Humanities grant program, submitted to the Office of Digital Humanities at the March 6, 2012 deadline.

Lisette Voyatzis,

Advisory Committee Management Officer.

[FR Doc. 2012–8982 Filed 4–12–12; 8:45 am]

BILLING CODE 7536–01–P

NATIONAL SCIENCE FOUNDATION

Innovative Technology Experiences for Students and Teachers (ITEST) Program; Comment Request

AGENCY: National Science Foundation.

ACTION: Notice.

SUMMARY: Under the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)), and as part of its continuing effort to reduce paperwork and respondent burden, the National Science Foundation invites the general public and other Federal agencies to take this opportunity to comment on this information collection. This is the second notice for public comment; the first was published in the **Federal Register** at 74 FR 68637 and one comment was received regarding the materials provided. NSF is forwarding the proposed submission to the Office of Management and Budget (OMB) for clearance simultaneously with the publication of this second notice. The full submission may be found at: *http://www.reginfo.gov/public/do/PRAMain*.

DATES: Comments regarding these information collections are best assured of having their full effect if received by OMB within 30 days of publication in the **Federal Register**.

ADDRESSES: Written comments regarding the information collection and requests for copies of the proposed information collection request should be addressed to Suzanne Plimpton, Reports Clearance Officer, National Science

Foundation, 4201 Wilson Blvd., Rm. 295, Arlington, VA 22230, or by email to *splimpto@nsf.gov*. Copies of the submission may be obtained by calling (703) 292–7556.

FOR FURTHER INFORMATION CONTACT: Contact Suzanne Plimpton, the NSF Reports Clearance Officer, phone (703) 292–7556, or send email to *splimpto@nsf.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339, which is accessible 24 hours a day, 7 days a week, 365 days a year (including Federal holidays).

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.

SUPPLEMENTARY INFORMATION:

Title of Collection: Innovative Technology Experiences for Students and Teachers (ITEST) Program.

Evaluation for the National Science Foundation

OMB Number: 3145–New.

Expiration Date of Approval: Not applicable.

Type of request: Initial clearance.

Abstract: Innovative Technology Experiences for Students and Teachers (ITEST) is a National Science Foundation program that responds to current concerns and projections about the growing demand for professionals and information technology workers in the U.S. and seeks solutions to help ensure the breadth and depth of the STEM workforce. Information technologies are integral to both the workplace and everyday activities of most Americans. They are part of how people learn, how they interact with each other and information, and how they represent and understand their world. Attaining a basic understanding of these technologies and mastery of essential technical skills is a requirement for anyone to benefit from innovation in the modern world. The technological growth of the nation depends on a technologically literate citizenry. ITEST is designed to increase the opportunities for students and teachers to learn about, experience, and use information technologies within the context of science, technology, engineering, and mathematics (STEM), including Information Technology (IT) courses. Supported projects are intended to provide opportunities for K–12 children and teachers to build the skills and knowledge needed to advance their study, and to function and to contribute in a technologically rich society. Additionally, exposure to engaging applications of IT is a means to stimulate student interest in the field and an important precursor to the academic preparation needed to pursue IT careers.

The ITEST program evaluation will characterize the variety of ITEST projects, measure the rigor of individual project evaluations, estimate outcomes for students and teachers involved in a sample of projects, and identify exemplary project models. In order to accomplish these tasks, the ITEST program evaluation will employ a mixed-method approach including case studies, quasi-experiments, and extensive document review. This information collection request will include a series of protocols to be used while conducting site visit interviews, a list of documents to be requested during visits, and a student-survey instrument to measure project outcomes.

Estimate of Burden:

Respondents: Individuals.

Frequency: Annual.

Estimated Number of Respondents: 984.

Estimated Burden Hours on Respondents: 984 hours.

Comments: Comments are invited on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information shall have practical utility; (b) the accuracy of the Agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

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: April 10, 2012.

Suzanne H. Plimpton,

Reports Clearance Officer, National Science Foundation.

[FR Doc. 2012–8894 Filed 4–12–12; 8:45 am]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

Advisory Committee for Geosciences; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Advisory Committee for Geosciences (1755).

Dates: April 18–April 19, 2012; 8:30 a.m.–2 p.m.

Place: Stafford I, Room 1235, National Science Foundation, 4201 Wilson Blvd. Arlington, Virginia 22230.

Type of Meeting: Open.

Contact Person: Melissa Lane, National Science Foundation, Suite 705, 4201 Wilson Blvd., Arlington, Virginia 22230. Phone 703–292–8500.

Minutes: May be obtained from the contact person listed above.

Purpose of Meeting: To provide advice, recommendations, and oversight concerning support for geosciences.

Reason for Late Notice: Scheduling complications and last minute changes to the agenda.

Agenda

April 18, 2012 8:30 am–5:30pm

- Update on Directorate Activities and Plans
- Updates on FY 2013 Budget Requests
- Meeting with the Director and Deputy Director
- Division Subcommittee Meetings

April 19, 2012 8:30 am–2:00pm

- Division Subcommittee Reports
- Updates on the U.S. Global Change Research Program, Education Program Planning, and International Activities
- Action Items/Planning for Fall Meeting

Dated: April 10, 2012.

Susanne Bolton,

Committee Management Officer.

[FR Doc. 2012–8899 Filed 4–12–12; 8:45 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. NRC–2012–0073]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of pending NRC action to submit an information collection request to the Office of Management and Budget (OMB) and solicitation of public comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) invites public comment about our intention to request the OMB's approval for renewal of an existing information collection that is summarized below. We are required to publish this notice in the **Federal Register** under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

Information pertaining to the requirement to be submitted:

1. *The title of the information collection:* Generic Customer Satisfaction Surveys and NRC Form 671, Request for Review of a Customer Satisfaction Survey under Generic Clearance.

2. *Current OMB approval number:* 3150–0197.

3. *How often the collection is required:* On occasion.

4. *Who is required or asked to report:* NRC licensees and the public will be asked to report voluntarily.

5. *The number of annual respondents:* 3,384.

6. *The number of hours needed annually to complete the requirement or request:* 1,529.5 hours.

7. *Abstract:* Voluntary customer satisfaction surveys will be used to contact users of NRC services and products to determine how the Commission can improve its services and products to better meet their needs. In addition, focus groups will be conducted to discuss questions concerning those services and products. Results from the surveys will provide insight into how NRC can make its services and products cost effective, efficient and responsive to customer needs. Each survey will be submitted to OMB for its review.

Submit, by June 12, 2012, comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?

2. Is the burden estimate accurate?

3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?

4. How can the burden of the information collection be minimized, including the use of automated collection techniques or other forms of information technology?

The public may examine and have copied for a fee publicly available documents, including the draft supporting statement, at the NRC's Public Document Room, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852. OMB clearance requests are available at the NRC's Web site: *http://www.nrc.gov/public-involve/doc-comment/omb/.*

The document will be available on the NRC home page site for 60 days after the signature date of this notice. Comments submitted in writing or in electronic form will be made available for public inspection. 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. Comments submitted should reference Docket No. NRC–2012–0073.

You may submit your comments by any of the following methods. Electronic comments: Go to *http://www.regulations.gov* and search for Docket No. NRC–2012–0073. Mail comments to NRC Clearance Officer, Tremaine Donnell (T–5 F53), U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

Questions about the information collection requirements may be directed to the NRC Clearance Officer, Tremaine Donnell (T–5 F53), U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, by telephone at 301–415–6258, or by email to *INFOCOLLECTS.Resource@NRC.GOV.*

Dated at Rockville, Maryland, this 10th day of April 2012.

For the Nuclear Regulatory Commission.

Tremaine Donnell,

NRC Clearance Officer, Office of Information Services.

[FR Doc. 2012–8909 Filed 4–12–12; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–247–LR and 50–286–LR; ASLBP No. 07–858–03–LR–BD01]

Entergy Nuclear Operations, Inc., (Indian Point Nuclear Generating Units 2 and 3); Notice of Atomic Safety and Licensing Board Reconstitution

Pursuant to 10 CFR 2.313(c) and 2.321(b), the Atomic Safety and Licensing Board (Board) in the above-captioned *Indian Point* proceeding is hereby reconstituted by appointing Administrative Judge Michael F. Kennedy to serve on the Board in place of Administrative Judge Kaye D. Lathrop.

All correspondence, documents, and other materials shall continue to be filed in accordance with the NRC E–Filing rule. *See* 10 CFR 2.302 *et seq.*

Issued at Rockville, Maryland, this 9th day of April 2012.

E. Roy Hawkens,

Chief Administrative Judge, Atomic Safety and Licensing Board Panel.

[FR Doc. 2012–8896 Filed 4–12–12; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2010–0029; Docket No. 50–397]

Energy Northwest, Columbia Generating Station; Final Supplement 47 to the Generic Environmental Impact Statement for License Renewal of Nuclear Plants

AGENCY: Nuclear Regulatory Commission.

ACTION: Final Supplement 47 to the Generic Environmental Impact Statement for License Renewal of Nuclear Plants; issuance.

SUMMARY: Notice is hereby given that the U.S. Nuclear Regulatory Commission (NRC or the Commission) has published the final plant-specific supplement 47 to the ''Generic Environmental Impact Statement for License Renewal of Nuclear Plants (GEIS),'' NUREG–1437, regarding the renewal of operating license NPF–21 for an additional 20 years of operation for the Columbia Generating Station (CGS). The CGS site is located approximately 12 miles north of Richland, WA. Possible alternatives to the proposed action (license renewal) include no action and reasonable alternative energy sources.

ADDRESSES: Please refer to Docket ID NRC–2010–0029 when contacting the NRC about the availability of information regarding this document. You may access information related to this document using the following methods:

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2010–0029. Address questions about NRC dockets to Carol Gallagher; telephone: 301–492–3668; email: *Carol.Gallagher@nrc.gov.*
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may access publicly available documents online in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''ADAMS Public Documents'' and then select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The

ADAMS accession number for each document referenced in this notice (if that document is available in ADAMS) is provided the first time that a document is referenced. Additional information regarding accessing materials related to this action is under the Document Availability heading in the **SUPPLEMENTARY INFORMATION** section of this document.

• *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

FOR FURTHER INFORMATION CONTACT: For information about the Final SEIS or the environmental review process, please contact Paula Cooper, telephone: 301–415–2323; email: *Paula.Cooper@nrc.gov.* Projects Branch 2, Division of License Renewal, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

SUPPLEMENTARY INFORMATION:

Discussion

The NRC received an application, dated January 19, 2010, from Energy Northwest (EN), filed pursuant to Section 103 of the Atomic Energy Act of 1954, as amended, and Title 10 of the Code of Federal Regulations Part 54 (10 CFR part 54), to renew the operating license for CGS. Renewal of the license would authorize the applicant to operate the facility for an additional 20-year period beyond the period specified in the current operating license. The current operating license for CGS (NPF–21), expires on December 20, 2023.

The final Supplemental Environmental Impact Statement (SEIS) is being issued as part of the NRC's process to decide whether to issue a renewed license to CGS, pursuant to 10 CFR part 54. The final SEIS was prepared in compliance with the *National Environmental Policy Act of 1969,* as amended (NEPA), and the NRC's regulations for implementing NEPA in 10 CFR part 51. In the final SEIS, the NRC staff assessed the potential environmental impacts from the operation, refurbishment, and decommissioning of the proposed CGS project. The NRC staff assessed the impacts of the proposed action on land use, historic and cultural resources, air quality, geology and soils, water resources, ecological resources, transportation, public and occupational health, waste management, socioeconomics, and environmental justice. In preparing this final SEIS, the NRC staff also reviewed, considered, evaluated, and addressed the public comments received during the scoping process and on the draft SEIS.

In addition to the proposed action, the NRC staff considered a reasonable range of alternatives, including the no-action alternative. Under the no-action alternative, the NRC would deny EN's request for a renewed operating license for the CGS site. The no-action alternative serves as a baseline for comparison of the potential environmental impacts of the proposed action. Other alternatives the NRC staff considered include: (1) Natural gas-fired combined cycle (NGCC); (2) new nuclear; (3) combination alternative (NGCC, hydroelectric, wind, and conservation and efficiency); (4) Offsite new nuclear and NGCC; (5) coal-fired power; (6) energy conservation and energy efficiency; (7) purchased power; (8) solar power; (9) wind power; (10) biomass waste; (11) hydroelectric power; (12) ocean wave and current energy; (13) geothermal power; (14) municipal solid waste; (15) biofuels; (16) oil-fired power; (17) fuel cells; and (18) delayed retirement. These alternatives, except for the NGCC, new nuclear, and combination alternative, were eliminated from further analysis because they do not meet future system needs and do not have costs or benefits that justify inclusion in the range of reasonable alternatives.

As discussed in Section 9.4 of the final supplement, the staff determined that the adverse environmental impacts of license renewal for CGS are not great enough to deny the option of license renewal for energy planning decision-makers. This recommendation is based on: (1) The analysis and findings in the GEIS; (2) information provided in the environmental report and other documents submitted by EN; (3) consultation with Federal, State, local, and tribal government agencies; (4) the staff's own independent environmental review; and (5) consideration of public comments received during the scoping process and on the draft Supplemental Environmental Impact Statement.

Document Availability

Documents related to this notice are available on the NRC's plant application for license renewal Web site at *http://www.nrc.gov/reactors/operating/licensing/renewal/applications/columbia.html.* The final SEIS for the proposed CGS project may also be accessed on the Internet at *http://www.nrc.gov/reading-rm/doc-collections/nuregs/staff/sr1437/* by selecting ''Supplement-47.''

The CGS's license application, the CGS's Environmental Report, and Volumes 1 and 2 of the NRC's final SEIS are available in ADAMS under Accession Numbers ML100250668, ML100250666, ML12096A334, and ML12096A336, respectively.

A copy of the final SEIS will be available at the Richland Public Library, 955 Northgate Drive, Richland, Washington 99352, and at the Kennewick Branch of Mid-Columbia Libraries, 1620 South Union Street, Kennewick, Washington 99338.

Dated at Rockville, Maryland, this 6th day of April, 2012.

For the Nuclear Regulatory Commission.

Dennis Morey,

Chief, Reactor Projects Branch 1, Division of License Renewal, Office of Nuclear Reactor Regulation.

[FR Doc. 2012–8809 Filed 4–12–12; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 70–0398; NRC–2012–0091]

Exemption Requests for Special Nuclear Material License SNM–362, Department of Commerce, Gaithersburg, MD

AGENCY: Nuclear Regulatory Commission.

ACTION: Availability of environmental assessment and finding of no significant impact.

FOR FURTHER INFORMATION CONTACT: Mary T. Adams, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–492–3113; email: *Mary.Adams@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

The Nuclear Regulatory Commission (NRC) is considering the issuance of exemptions from Title 10 of the *Code of Federal Regulations* (10 CFR) 36.27(b) and 36.31(a), to be included in the renewal of Special Nuclear Material (SNM) License SNM–362 for the U.S. Department of Commerce, National Institutes of Standards and Technology (NIST) in Gaithersburg, Maryland. NIST requested renewal of SNM–362 in an application dated June 29, 2007 (ML072140750). NIST revised the license renewal application on March 23, 2011 (ML110940239) to include three requests for exemption from NRC regulations in 10 CFR 36.27(b), 36.31(a), and 70.24.

Pursuant to 10 CFR 51.22(c)(14)(v), renewal of materials licenses issued under 10 CFR Part 70 for research and

development and for educational purposes is a category of actions which the NRC has determined does not individually or cumulatively have a significant effect on the human environment, and as such, this category of actions does not require environmental review or the preparation of an Environmental Assessment (EA). However, in addition to its application for renewal, NIST has also requested specific exemptions from three NRC regulations, and the exemption requests require environmental review unless the exemptions themselves are also subject to categorical exclusion. One of the exemption requests, that request related to 10 CFR 70.24, has also been determined to belong to the categorically excluded action, specifically those identified in 10 CFR 51.22(c)(25). This determination will be discussed in the safety evaluation report that will support the license renewal.

In accordance with 10 CFR 51.21 the NRC has prepared this EA to assess the environmental impacts of granting the remaining two exemption requests from 10 CFR 36.27(b) and 36.31(a). Based on the EA, the NRC has concluded that a Finding of No Significant Impact (FONSI) is appropriate, and therefore an EIS will not be prepared.

II. Environmental Assessment

On March 23, 2011, NIST provided a revised request for renewal of SNM–362, which authorizes the receipt, possession, and use of source, byproduct, and SNM for research and development purposes. NIST uses licensed materials for research, development, calibration, and testing activities. NIST develops, maintains, and disseminates national standards for ionizing radiation and radioactivity to support health care, industry, and homeland security. Examples of this work include development of reference materials and measurement calibration services for radiopharmaceuticals; maintaining and disseminating standards used by hospitals to calibrate systems; and development of standards and protocols for radiation measurement instruments used in homeland security. Activities for which the licensed material is used are described in the license renewal application (LRA).

Materials License SNM–362 was first issued by the Atomic Energy Commission in 1960 to the National Bureau of Standards, renamed in 1988 to the National Institute of Standards and Technology. NIST is a Federal agency within the Department of Commerce. The SNM license was renewed in 1979, 1985, 1991, and 1997. The current license was scheduled to expire on July 31, 2007. In accordance with 10 CFR Part 70, NIST submitted an application requesting renewal of Materials License SNM–162 on June 29, 2007 (Agencywide Documents Access and Management System [ADAMS] Accession No. ML072140750) and, in accordance with the timely renewal provision of 10 CFR 70.38(a), the license has remained in effect. In addition to the SNM license, NIST holds a test reactor operating license, TR–5 (Docket No. 50–184), and an NRC Exempt Distribution License No. 19–23454–01E (Docket No. 30–22202) for byproduct material. In response to an NRC Request for Additional Information (ADAMS Accession No. ML103210269), NIST provided a third revised LRA on March 23, 2011 (ADAMS Accession No. ML110940239), which included the requests for exemption from 10 CFR 36.27(b), 36.31(a), and 70.24.[1] The exemption requests that are under consideration in this EA are related to 10 CFR 36.27(b) and 36.31(a). The exemptions were first granted by the NRC in Amendment 2 to SNM–362 issued on November 23, 1999 (ADAMS accession numbers ML993350644 and ML993350646). This EA addresses the action of continuing these previously-granted exemptions in the renewed license.

Description of the Proposed Action

NIST has been licensed by the NRC for the possession and use of SNM in license SNM–362 since 1960. The exemptions from 10 CFR 36.27(b) and 36.31(a) have been parts of SNM–362 since 1999. The proposed actions are to continue to exempt the licensee from the requirement that the radiation room must be equipped with a fire extinguishing system capable of extinguishing a fire without the entry of personnel into the room (10 CFR 36.27(b)); and the requirements that (1) the console key must be attached to a portable radiation survey meter by a chain or cable, and (2) the door to the radiation room must require the same key used for source movement (i.e., control console key) (10 CFR 36.31(a)) upon renewal of Materials License SNM–362. Continuing these exemptions in the renewed license does not require or authorize any change in licensee operations.

[1] The exemption request for 10 CFR 70.24 is categorically excluded from the requirement to perform an environmental assessment by 10 CFR 51.22(c)(25). The categorical exclusion determination for the criticality accident alarm system exemption will be documented in the Safety Evaluation Report supporting the license renewal.

The action of renewing SNM–362 is an action that is categorically excluded from environmental review under 10 CFR 51.22(c)(14)(v), which includes issuance, amendment, or renewal of materials licenses issued pursuant to 10 CFR Parts 30, 31, 32, 33, 34, 35, 36, 39, 40, or 70 authorizing the use of radioactive materials for research and development and educational purposes. The inclusion of the two exemptions requested by NIST in the LRA is an action that requires an EA in accordance with 10 CFR 51.21.

Need for the Proposed Action

The first part of the proposed action is a continued exemption from 10 CFR 36.27(b), which requires that the irradiation room at a panoramic irradiator be equipped with a fire extinguishing system capable of extinguishing a fire without the entry of personnel into the room. The system for the irradiation room must have a shut-off valve to control flooding into unrestricted areas.

In the initial 1999 request for exemption, NIST indicated that equipment limitations and facility age (then nearly 40 years old) would prevent NIST from complying with 10 CFR 36.27(b). The second part of the proposed action is a continued exemption from 10 CFR 36.31(a). 10 CFR 36.31(a) requires that the key that operates the irradiator be attached to a portable radiation survey meter by a chain or cable. In addition, NIST stated that the age of the facility (then nearly 40 years old) and the interconnectivity of the safety features would make it prohibitively expensive to modify the facility to meet the same-key requirement and would offer no enhancement of safety.

Alternatives to the Proposed Action

An alternative to granting the continued exemption to 10 CFR 36.27(b) is to deny the exemption request and require NIST to provide the irradiation room with a fire extinguishing system capable of extinguishing a fire without the entry of personnel into the room with a shut-off valve to control flooding into unrestricted areas.

An alternative to granting the continued exemption to 10 CFR 36.31 is to deny the exemption request and require NIST to provide that the key that actuates the mechanism that moves the sources of a panoramic irradiator be attached to a portable radiation survey meter by a chain or cable.

Environmental Impacts of the Proposed Action and Alternatives

The NRC established 10 CFR Part 36 to ''specify radiation safety requirements and licensing requirements for the use of licensed radioactive materials in irradiators.'' 58 FR 7715; February 9, 1993. At that time, the NRC issued an environmental assessment and finding of no significant impact which analyzed the environmental impacts of the requirements in 10 CFR Part 36, including sections 36.27 and 36.31 (Ref. 3, Enclosure 4). Specifically, the NRC considered the environmental impacts of internal and external radiation exposure resulting from normal operations, accident scenarios, and abnormal operations. For each of these scenarios, the NRC determined that the safety requirements of the regulation would not have a significant environmental impact. As discussed below, the NRC has determined that the alternatives proposed by the licensee would have the same safety impact as the regulations, and as such, the environmental impacts that were analyzed by the NRC when the regulation was initially promulgated would remain unchanged, and the impacts would not be significant.

Section 36.27(b) requires that the irradiation room at a panoramic irradiator be equipped with a fire extinguishing system capable of extinguishing a fire without the entry of personnel into the room. The system for the irradiation room must have a shut-off valve to control flooding into unrestricted areas.

The irradiation room housing NIST's 10 CFR Part 36 panoramic irradiators are entirely of concrete construction. The rooms are limited in size so there is minimal opportunity for combustible materials to be stored in the area. NIST administratively limits storage of flammable materials in the rooms. As such, the most credible fire incident would be an electrical fire from the control, instrumentation, or lighting systems. This would not be sufficient to engulf or significantly endanger the source.

To compensate for NIST's not complying with 10 CFR 36.27(b), NIST indicated that the signal from the heat or smoke detectors will alert the NIST Fire Protection Group, and that the irradiators are designed to retract the source when the electrical power fails or on loss of air, as may occur during a fire. Fire extinguishers at the site are available to fight small fires and operators are instructed to retract the source, if possible, prior to exiting the facility for a fire involving major portions of the facility. NRC staff determined that the alternative fire protection provisions identified by NIST provide an adequate level of safety for workers and the public.

Based upon the compensatory measures provided by the licensee and described above, NRC staff has determined that potential environmental impacts from a fire in the irradiation room will not be increased by continuing the exemption from 10 CFR 36.27(b) because the compensatory measures control the likelihood of a fire to a level of protection equivalent to what would be provided by the prescribed measures in 36.27(b). There are no environmental impacts of the proposed exemption to 10 CFR 36.27(b). Granting the exemption will not result in effluents to the environment or an increase in occupational exposure. It also will not increase the likelihood or consequences of a fire at the facility.

Section 36.31(a) requires that the key that operates the irradiator be attached to a portable radiation survey meter by a chain or cable. In the 1999 exemption request, NIST stated that the age of the facility (then nearly 40 years old) and the interconnectivity of the safety features would make it prohibitively expensive to modify the facility to meet the same-key requirement and would offer no enhancement of safety. The key used to enter the irradiation room is captured in the lock when the door is opened. This means that physically the key cannot be moved out of its captured position if the door to the survey room is open. The distance from the lock to the source area is such that attaching the key to a survey meter would require a long chain that could be a trip hazard or get jammed in the chain of the access door when it is opening or closing. NIST's procedure requires that a survey meter be used when entering the room. Additionally, in lieu of attaching a survey meter to the key, NIST installed a radiation detector within the irradiation room. This detector indicates if the source is open, and it is tested every day that the unit is in operation. NRC agreed that the age of the facility and the limitations associated with modifying the safety features made it unreasonable to modify the facility to meet the requirement, and that the added radiation monitors, entrance controls, and security measures would provide comparable safety measures.

Based upon the alternative radiation safety measures provided by the licensee and described above, NRC staff has confirmed that there are no environmental impacts of the proposed exemption to 10 CFR 36.31(a). Granting the exemption will not result in any effluents to the environment or an increase in occupational exposure.

List of Agencies and Persons Consulted and Identification of Sources Used

NRC staff consulted with the Maryland Department of the Environment. The Department was not opposed to the NRC findings.

The NRC staff determined that consultation with the U.S. Fish and Wildlife Service for compliance with Section 7 of the Endangered Species Act is not necessary because the proposed action does not have the potential to affect listed species or critical habitat.

The NRC staff reviewed the Maryland Inventory of Historic Properties and confirmed that there are no known archeological sites or other historic properties within or immediately adjacent to the NIST campus. Continuing the proposed exemptions in the renewed NIST license is not a type of activity that has potential to cause effects on historic properties. Therefore, no further consultation is required under Section 106 of the National Historic Preservation Act.

Finding of No Significant Impact

Pursuant to 10 CFR Part 51, the NRC has considered the environmental consequences of taking the proposed action. On the basis of this assessment, the Commission has concluded that environmental impacts associated with the proposed action would not be significant and the Commission is making a finding of no significant impact. Accordingly, preparation of an EIS is not warranted.

III. Further Information

Documents related to this action, including the application for license renewal and supporting documentation, are available electronically at the NRC Library at *http://www.nrc.gov/reading-rm/adams.html.* From this site, you may access ADAMS, which provides text and image files of NRC's public documents. The ADAMS accession numbers for the documents related to this Notice are:

1. NIST Revised License Renewal Application for SNM–362, Docket No. 70–398, March 23, 2011, (ML110940239).

2. Exemptions from 10 CFR Part 36 (TAC No. L31075) and Safety Evaluation Report, November 23, 1999 (ML993350644 and ML993350646).

3. U.S. NRC, September 18, 1992, SECY–92–323, Final Rule on Licenses and Radiation Safety Requirements for Irradiators (ML120940618), Enclosure 4, Environmental Assessment and Finding of no Significant Impact, August 1992.

If you do not have access to ADAMS, or if there are problems in accessing the documents located in ADAMS, please contact the NRC Public Document Room (PDR) Reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* These documents may also be viewed electronically on the public computers located at the NRC's PDR, O1F21, One White Flint North, 11555 Rockville Pike Rockville, MD 20852. The PDR reproduction contractor will copy documents for a fee.

Dated at Rockville, Maryland this 5th day of April 2012.

For the U.S. Nuclear Regulatory Commission.

Kevin Ramsey,

Acting Chief, Fuel Manufacturing Branch, Division of Fuel Cycle Safety and Safeguards, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 2012–8917 Filed 4–12–12; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–66767; File No. SR–Phlx–2012–40]

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing of Proposed Rule Change Relating to Quarterly Trading Requirements Applicable to Registered Options Traders

April 6, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1], and Rule 19b–4 [2] thereunder, notice is hereby given that on March 26, 2012, 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 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

The Exchange proposes to amend Exchange Rules 1014, Obligations and Restrictions Applicable to Specialists and Registered Options Traders, and 1093, Phlx XL Risk Monitor Mechanism, and Options Floor Procedure Advice B–3, Trading Requirements, to change trading requirements applicable to certain Registered Options Traders trading electronically, as described below.

The text of the proposed rule change is available on the Exchange's Web site at *http://www.nasdaqtrader.com/micro.aspx?id=PHLXRulefilings,* at the principal office of the Exchange, and 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 parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to eliminate unnecessary and outdated potential burdens on certain Exchange market makers arising from their use of electronic orders to trade on the Exchange. The general term ''market makers'' on the Exchange includes specialists and registered options traders (''ROTs'').[3] ROTs can be either Streaming Quote Traders (''SQTs'') [4], Remote Streaming Quote Traders (''RSQTs'') [5] or non-Streaming Quote Trader ROTs (''non-SQT ROTs'') which by definition are neither SQTs nor RSQTs. The Exchange is proposing to amend Rule 1014, Commentary .13 to permit non-SQT ROTs to meet an in-person trading requirement set forth in that section using electronic orders. The Exchange also proposes to amend Rule 1014(b)(ii)(E) to eliminate a trading requirement applicable to a non-SQT ROT who transacts more than 20% of his/her contract volume in an option electronically versus in open outcry during any calendar quarter. A conforming change is proposed to Section (a) of Rule 1093, Phlx XL Risk Monitor Mechanism. Finally, changes are proposed to Options Floor Procedure Advice B–3 and to Rule 1014(b)(ii)(E)(1) to conform to a recent amendment by the Exchange of Rule 1014, Commentary .01, as explained below.

Recent Rule 1014, Commentary .01 Amendment

The Exchange has recently amended Commentary .01 of Rule 1014. [6] Prior to the amendment Commentary .01 required that in order for an ROT (other than an RSQT or a Remote Specialist) to receive specialist margin treatment for off-floor orders in any calendar quarter, the ROT was required among other things to execute the greater of 1,000 contracts or 80% of his total contracts that quarter in person and not through the use of orders (the ''80% in-person test'').

The only way to participate in trades other than through the use of orders is by quoting. As the Exchange explained in the proposed rule change, non-SQT ROTs do not ''stream'' quotes, meaning send quotes electronically to the Exchange. Instead, pursuant to Commentary .18 of Rule 1014, they submit limit orders electronically and respond to floor brokers verbally. While SQTs quote electronically by ''streaming'' quotations into the Exchange, non-SQT ROTs quote verbally in response to floor brokers representing orders in the trading crowd verbally.

The Exchange explained in the filing that the limitation on the use of orders to satisfy the 80% in-person test with respect to non-SQT ROTs was obsolete as, over time, following the movement toward a more electronic trading platform in options, it had become difficult for such ROTs to comply with the trading requirement without using orders. The Exchange explained that in order to comply with their quarterly trading requirements, non-SQT ROTs have to proactively enter orders that provide or take liquidity. While some time ago, ROTs were able to place their liquidity on the book by verbally

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] An ROT is defined in Exchange Rule 1014(b) as a regular member of the Exchange located on the trading floor who has received permission from the Exchange to trade in options for his own account. See Exchange Rule 1014 (b)(i) and (ii).

[4] An SQT is defined in Exchange Rule 1014(b)(ii)(A) as an ROT who has received permission from the Exchange to generate and submit option quotations electronically in options to which such SQT is assigned.

[5] An RSQT is defined in Exchange Rule in 1014(b)(ii)(B) as an ROT that is a member or member organization with no physical trading floor presence who has received permission from the Exchange to generate and submit option quotations electronically in options to which such RSQT has been assigned. An RSQT may only submit such quotations electronically from off the floor of the Exchange.

[6] *See* Securities Exchange Act Release No. 65644 (October 27, 2011), 76 FR 67786 (November 2, 2011) (approving SR–Phlx–2011–123).

informing the specialist the proposed rule change explained that this is no longer the case. The Exchange observed that non-SQT ROTs could only meet the 80% in person test by participating in crowd trades which they cannot control in terms of frequency. The 80% in-person test was therefore amended to permit non-SQT ROTs to count orders entered in person to meet the test.

The 50% in-person test.

Exchange Rule 1014 Commentary .13 contains a separate in-person requirement. It provides that within each quarter an ROT must execute in person, and not through the use of orders, a specified number of contracts, such number to be determined from time to time by the Exchange. Pursuant to Commentary .13, Options Floor Procedure Advice B–3 currently requires an ROT (other than an RSQT or a Remote Specialist) to trade in person, and not through the use of orders, the greater of 1000 contracts or 50% of his contract volume on the Exchange each quarter (the ''50% in person test'').[7]

For the same reasons discussed above in connection with the recent modification of the 80% in-person test, the Exchange proposes to amend Rule 1013 Commentary .13 and the 50% in-person test of Options Floor Procedure Advice B–3 to permit non-SQT ROTs to use orders entered in person to meet the test.

The ''20%'' Test

Currently, Rule 1014(b)(ii)(E)(2) provides that if a non-SQT ROT transacts more than 20% of his/her contract volume in an option electronically (i.e., by way of placing limit orders on the limit order book that are executed electronically and allocated automatically in accordance with Rule 1014(g)(vii)) versus in open outcry during any calendar quarter (the ''20% test''), commencing the next calendar quarter such non-SQT ROT will be subject to certain quoting obligations for as long as the non-SQT ROT trades the option. Among other things, the non-SQT ROT would be required to submit two-sided electronic quotations, or stream quotes, in a designated percentage of series within options in which he is assigned, in accordance with a schedule set forth in Rule 1014(b)(ii)(E)(2)(b).

Streaming quotes would be burdensome to non-SQT ROTS who are generally not equipped to undertake this new form of trading. Requiring a non-SQT ROT to begin streaming would result in a significant increase of fixed costs to the non-SQT ROT. The Exchange believes this will likely result in these ROTs leaving the trading floor. While meeting the 20% test has become more difficult due to the erosion of open outcry trading, the Exchange still believes price improvement, quality of execution, and especially price discovery will suffer if these non-SQT ROT's are forced out of open outcry market making.

The Exchange therefore proposes to eliminate the 20% test and its associated requirements as a vestige of the early days of electronic trading.[8] The Exchange believes the provision no longer makes sense in the current environment where electronic trading predominates. For the same reasons the Exchange deleted the restriction on non SQT ROTs' use of orders from the 80% in-person test and the 50% in-person test, it is proposing to eliminate the requirements of Rule 1014(b)(ii)(E)(2) that currently apply if a non-SQT ROT transacts more than 20% of his/her contract volume in an option electronically during any calendar quarter.[9] The proposed amendment is particularly critical given the recent adoption by the Exchange in Rule 1014, Commentary .01, of a general trading requirement that an ROT (other than an RSQT or a Remote Specialist) is required to trade 1,000 contracts and 300 transactions on the Exchange each quarter, not including transactions executed in the trading crowd where the contra-side is an ROT.[10] The non-SQT ROT cannot control the size and frequency of crowd trades, even less so crowd trades where the contra-side is not an ROT. As a practical matter, the non-SQT ROT may have no other option but to use electronic orders to meet the new general trading requirement, thus triggering the 20% test which will prohibit any further trading of the option unless he begins streaming quotes in the option in accordance with Rule 1014(b)(ii)(E)(2).

Finally, a reference to non-SQT ROTs is proposed to be deleted from Section (a) of Rule 1093, Phlx XL Risk Monitor Mechanism, which currently refers to non-SQT ROTs who are required to submit continuous two-sided electronic quotations pursuant to Rule 1014(b)(ii)(E) which is proposed to be deleted as discussed above. This is simply a conforming change to the proposed deletion of Rule 1014(b)(ii)(E).

Conforming Change—Deletion of Rule 1014(b)(ii)(E)(1)(c)

The Exchange also proposes to delete Rule 1014(b)(ii)(E)(1)(c) which provides that any volume transacted electronically will not count towards a non-SQT ROT's 80% in-person test contained in Commentary .01 to Rule 1014. As discussed above, the Exchange recently amended Commentary .01 to eliminate this restriction. The Exchange is deleting Rule 1014(b)(ii)(E)(1)(c) simply as a conforming change.

Conforming Change—Options Floor Procedures Advice B–3

Options Floor Procedure Advice B–3, Section (b), also requires an ROT (other than an RSQT or a Remote Specialist) in order to receive Specialist margin treatment for off-floor orders to meet the 80% in-person test (not through the use of orders). The Exchange proposes to amend Options Floor Procedure Advice B–3 to conform it to the recently revised language of Rule 1014 Commentary .01 such that non-streaming ROTs can use orders entered in person to meet the 80% in-person test. This change is simply a conforming change to the earlier amendment.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act[11] in general, and furthers the objectives of Section 6(b)(5) of the Act[12] 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 eliminating a restriction on non-SQT ROTs' use of orders to meet an in-person trading requirement, by eliminating burdensome requirements triggered by non-SQT ROTs' use of orders to transact more than 20% of their contract volume in an option, and

[7] The 50% in-person test is separate and distinct from the 80% in-person test and applies whether or not the ROT seeks to receive specialist margin treatment for off-floor orders.

[8] In addition to deleting Rule 1014(b)(ii)(E)(2), the Exchange proposes to delete introductory language from the beginning of Rule 1014(b)(ii)(E) that would no longer be necessary. The substantive provisions of Rule 1014(e)(1) governing non-SQT ROT obligations, as proposed to be renumbered and amended, would continue to apply.

[9] In addition to removing the electronic quoting obligation of Rule 1014(b)(ii)(E)(2)(b), the amendment would also remove a reference to the quote spread requirements of Rule 1014(c)(i) found in Rule 1014(b)(ii)(E)(2)(a). The removal of Rule 1014(b)(ii)(E)(2)(a) does not change non-SQT ROTs' quote spread parameter requirements, as Rule 1014(c)(i) will continue to apply to them. *See also* Rule 1014(b)(ii)(E)(1)(b), which is proposed to be renumbered as Rule 1014(b)(ii)(E)(2), which will continue to require non-SQT ROTs to comply with the quote spread parameter requirements of Rule 1014(c)(i).

[10] *See* Securities Exchange Act Release No. 65644 (October 27, 2011), 76 FR 67786 (November 2, 2011) (approving SR- Phlx–2011–123).

[11] 15 U.S.C. 78f(b).

[12] 15 U.S.C. 78f(b)(5).

by making clarifying and conforming changes to previously amended text.

It would be unjust and inequitable to continue to impose in-person trading requirements on non-SQT ROTs without counting orders entered electronically given that their ability to trade other than by the use of orders has substantially diminished over the years. Making the changes proposed herein will remove impediments to and perfect the mechanism of a free and open market and a national market system by eliminating an in-person trading requirement that non-SQT ROTs will have difficulty meeting given the current electronic trading environment, thus enabling them to continue making markets by open outcry, to the extent they are able, to the benefit of investors. Investors and the public interest are protected by including as market makers those individuals who, while unable or unwilling to invest resources necessary for streaming, are able to provide liquidity in the open outcry trading that does remain on the floor of the Exchange. The changes that conform rule text to an earlier Exchange amendment benefit investors and the public interest by providing clarity and eliminating potential confusion.

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

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve or disapprove the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, 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 email to *rule-comments@sec.gov.* Please include File Number SR–Phlx–2012–40 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–2012–40. This file number should be included on the subject line if email 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 will also be available for inspection and copying at the Exchange's principal office. 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 publicly available. All submissions should refer to File Number SR–Phlx–2012–40 and should be submitted on or before May 4, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–8877 Filed 4–12–12; 8:45 am]

BILLING CODE 8011–01–P

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–66772; File No. SR–MSRB–2012–05]

Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Notice of Filing of a Proposed Rule Change Consisting of a Restatement of an Interpretive Notice Concerning the Application of MSRB Rule G–17 to Sophisticated Municipal Market Professionals

April 9, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''the Exchange Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 26, 2012, the Municipal Securities Rulemaking Board (''Board'' or ''MSRB'') 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 MSRB. 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 MSRB is filing with the SEC a proposed rule change consisting of a restatement of an interpretive notice (the ''Existing SMMP Notice'' and the ''Restated SMMP Notice,'' respectively) concerning the application of MSRB Rule G–17 (on conduct of municipal securities and municipal advisory activities) to sophisticated municipal market professionals (''SMMPs''). Because of the relationship between the proposed rule change and FINRA Rule 2111 (on suitability), the MSRB requests that the proposed rule change be made effective on July 9, 2012, which is the date on which FINRA Rule 2111 will become effective.

The text of the proposed rule change is available on the MSRB's Web site at *www.msrb.org/Rules-and-Interpretations/SEC-Filings/2012-Filings.aspx,* at the MSRB's principal office, 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 MSRB included statements concerning the purpose of and basis for the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

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 MSRB 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

Existing Definition of SMMP

Under the Existing SMMP Notice, a dealer is permitted to treat an institutional customer [3] as an SMMP if the dealer has reasonable grounds for concluding the following and other known facts do not contradict such a conclusion:

- The customer has timely access to the publicly available material facts concerning a municipal securities transaction;
- The customer is capable of independently evaluating the investment risk and market value of the municipal securities at issue; and
- The customer is making independent decisions about its investments in municipal securities.

Although the Existing SMMP Notice permits a dealer to have an investor attest to SMMP status ''as a means of streamlining the dealers' process for determining that the customer is an SMMP,'' it also provides that a dealer may not rely on such an attestation if the dealer knows or has reason to know that the investor lacks sophistication concerning a municipal securities transaction based on a number of factors set forth in the notice.

Access to Material Facts. As to the first part of the definition of SMMP, access to material facts, the Existing SMMP Notice provides that a dealer's analysis may depend on the customer's resources to investigate the transaction (*e.g.,* research analysts) and the customer's ready access to established industry sources for disseminating material information concerning the transaction (*e.g.,* the predecessors of the MSRB's Electronic Municipal Market Access (''EMMA'') System and the MSRB's Real-Time Trade Reporting System (''RTRS''), rating agency data, and other indicative data sources).

Independent Evaluation of Investment Risk and Market Value. As to the second part of the definition of SMMP, independent evaluation of risk and market value, the Existing SMMP Notice identifies the following relevant factors:

- The customer's use of one or more consultants, investment advisers, research analysts or bank trust departments;
- The customer's general level of experience in municipal securities markets and specific experience with the type of municipal securities under consideration;
- The customer's ability to understand the economic features of the municipal security;
- The customer's ability to independently evaluate how market developments would affect the municipal security under consideration; and
- The complexity of the municipal security or securities involved.

Independent Investment Decisions. As to the third part of the definition, independent investment decisions, the Existing SMMP Notice provides that such a determination will depend on the nature of the relationship between the dealer and the institutional customer and provides that the following considerations may be relevant:

- Any written or oral understanding that exists between the dealer and the institutional customer regarding the nature of the relationship between the dealer and the institutional customer and the services to be rendered by the dealer;
- The presence or absence of a pattern of acceptance of the dealer's recommendations;
- The use by the institutional customer of ideas, suggestions, market views, and information relating to municipal securities obtained from sources other than the dealer; and
- The extent to which the dealer has received from the institutional customer current comprehensive portfolio information in connection with discussing potential municipal securities transactions or has not been provided important information regarding the institutional customer's portfolio or investment objectives.

Application of Existing SMMP Definition

The Existing SMMP Notice addresses a dealer's obligations to an SMMP under Rule G–17 (on fair dealing), Rule G–18 (on execution of transactions), Rule G–19 (on suitability), and Rule G–13 (on quotations).

Rule G–17. Just prior to the adoption of the Existing SMMP Notice, the SEC approved another MSRB notice [4] in which the MSRB interpreted Rule G–17 to require brokers, dealers, and municipal securities dealers (''dealers'') to disclose to customers at or before the time of trade all material facts about a transaction known by the dealer, as well as all material facts about a security reasonably accessible to the market from established industry sources.[5] The Existing SMMP Notice provides that, when a dealer effects a non-recommended secondary market transaction with an SMMP, its affirmative Rule G–17 disclosure duty concerning material facts available from established industry sources will be deemed satisfied. The Existing SMMP Notice does not alter a dealer's duty not to engage in deceptive, dishonest, or unfair practices under Rule G–17 or under the federal securities laws. In essence, it puts the dealer's disclosure obligations to SMMPs when effecting non-recommended secondary market transactions on a par with inter-dealer disclosure obligations. The Existing SMMP Notice provides that, as in the case of an inter-dealer transaction, in a transaction with an SMMP, a dealer's intentional withholding of a material fact about a security, when the information is not accessible through established industry sources, may constitute an unfair practice that violates Rule G–17.

Rule G–18. Rule G–18 provides that each dealer, when executing a transaction in municipal securities for or on behalf of a customer as agent, must make a reasonable effort to obtain a price for the customer that is fair and reasonable in relation to prevailing market conditions. The Existing SMMP Notice provides that a dealer effecting a non-recommended secondary market agency transaction to an SMMP is not required to take further actions to ensure that the transaction is effected at a fair and reasonable price, if its services have been explicitly limited to providing anonymity, communication, order matching, and/or clearance functions and the dealer does not exercise discretion as to how or when a transaction is executed. The Existing SMMP Notice then states that this interpretation of Rule G–18 is

[3] For purposes of the Existing SMMP Notice, an institutional customer is defined as ''an entity, other than a natural person (corporation, partnership, trust, or otherwise), with total assets of at least $100 million invested in municipal securities in the aggregate in its portfolio and/or under management.''

[4] MSRB Interpretive Notice Regarding Rule G–17, On Disclosure of Material Facts (March 20, 2002) (the ''2002 Rule G–17 Notice'').

[5] The 2002 Rule G–17 Notice was updated in 2009 to reflect, among other things, the addition of EMMA as an established industry source. *See* MSRB Guidance On Disclosure and Other Sales Practice Obligations to Individual and Other Retail Investors in Municipal Securities (July 14, 2009). The 2009 Notice also extended the Rule G–17 affirmative disclosure obligation to ''material information.''

particularly relevant to dealers operating alternative trading systems, stating that dealers operating such systems may be merely aggregating the buy and sell interest of other dealers or SMMPs. A footnote to the Existing SMMP Notice says that the same interpretation would apply to a broker's broker when executing an agency transaction for another dealer.

Rule G–19. Under Rule G–19, in the case of a recommended transaction, a dealer must have a reasonable basis for recommending a particular security (''reasonable-basis suitability''), as well as reasonable grounds for believing the recommendation is suitable for the customer to whom it is made, based upon information available from the issuer of the security or otherwise and based upon the facts disclosed by the customer or otherwise known about the customer (''customer-specific suitability''). The Existing SMMP Notice provides that, when a dealer has reasonable grounds for concluding that an institutional customer is an SMMP, the dealer's customer-specific suitability obligation is fulfilled.

Rule G–13. Under Rule G–13, no dealer may distribute or publish, or cause to be distributed or published, any quotation relating to municipal securities, unless the quotation is *bona fide* (*i.e.,* the dealer making the quotation is prepared to execute at the quoted price) and the price stated in the quotation is based on the best judgment of the dealer of the fair market value of the securities that are the subject of the quotation at the time the quotation is made. In general, any quotation disseminated by a dealer (including the quotation of an investor) is presumed to be a quotation made by the dealer and the dealer is responsible for ensuring compliance with the *bona fide* and fair market value requirements with respect to the quotation. However, if a dealer disseminates a quotation that is actually made by another dealer and the quotation is labeled as such, then the quotation is presumed to be a quotation made by such other dealer and not by the disseminating dealer. In such a case, the disseminating dealer is only required to have no reason to believe that either: (i) The quotation does not represent a *bona fide* bid for, or offer of, municipal securities by the maker of the quotation or (ii) the price stated in the quotation is not based on the best judgment of the maker of the quotation of the fair market value of the securities.

The Existing SMMP Notice provides that, if a dealer disseminates the quotation of an SMMP and it is labeled as such, the disseminating dealer will be held to the same standard as if it were disseminating a quotation made by another dealer. The notice says that the following factors are relevant to the dealer's assessment of whether dissemination of the SMMP's quotation may be considered to be a violation of Rule G–13 by the dealer: (i) Complaints received from dealers and investors seeking to execute against such quotations, (ii) a pattern of an SMMP failing to update, confirm or withdraw its outstanding quotations so as to raise an inference that such quotations may be stale or invalid, or (iii) a pattern of an SMMP effecting transactions at prices that depart materially from the prices listed in the quotations in a manner that consistently is favorable to the SMMP making the quotation.

Considerations for Change

Increased Availability of Information about Municipal Securities. In 2002, the MSRB decided to adopt a definition of SMMP that differed from certain other regulatory definitions of investors considered sophisticated enough to receive special treatment under the federal securities law. The SMMP definition was closely modeled on an NASD interpretation of its suitability rule,[6] which contained a comparable list of factors found relevant to an investor's independent evaluation of risk and independent investment decisions. A notable difference was that the definition of SMMP also looked to whether the investor had access to material facts. A key factor in the MSRB's decision was the lack of information available about municipal securities at that time. Since the adoption of the existing definition of SMMP, there has been a vast increase in the availability of information about municipal securities reasonably accessible by institutional investors regardless of the amount of their holdings of municipal securities (*e.g.,* on EMMA, from rating agencies, and from other information vendors).

New FINRA Institutional Suitability Rule. Effective July 9, 2012, the NASD guidance on institutional suitability will no longer be in effect. It will be replaced by FINRA Rule 2111, which adopts a different approach to a FINRA member's customer-specific duty of suitability to an ''institutional account.''[7] Under FINRA Rule 2111, a dealer's customer-specific suitability obligation to an institutional customer will be considered satisfied if (1) the dealer has a reasonable basis to believe that the institutional customer is capable of evaluating investment risks independently, both in general and with regard to particular transactions and investment strategies involving a security or securities and (2) the institutional customer affirmatively indicates that it is exercising independent judgment in evaluating the dealer's recommendations. There will no longer be a detailed listing of factors, such as that found in the Existing SMMP Notice. The MSRB generally considers it desirable from the standpoint of reducing the cost of dealer compliance to maintain consistency with FINRA rules, absent clear reasons for treating transactions in municipal securities differently.

Proposal to Restate SMMP Notice

Revised Definition of SMMP. Because the quality and availability of information concerning municipal securities has improved substantially since 2002, and to maintain consistency with the revised FINRA suitability rule for institutional customers, the MSRB proposes to retain the concept of an SMMP, but revise its definition so that it is consistent with the new FINRA suitability rule for institutional customers. Specifically, the MSRB proposes that an ''SMMP'' be defined as an ''institutional customer[8] of a dealer that: (1) The dealer has a reasonable basis to believe is capable of evaluating investment risks and market value independently, both in general and with regard to particular transactions in municipal securities, and (2) affirmatively indicates that it is exercising independent judgment in evaluating the recommendations of the dealer.''

The MSRB also proposes to include the following statement in the Restated SMMP Notice's discussion of the definition of SMMP: ''As part of the reasonable basis analysis required by clause (1), the dealer should consider the amount and type of municipal securities owned or under management by the institutional customer.''

The key to the revised definition of SMMP is the requirement that a dealer have a reasonable basis to believe that an investor is capable of evaluating

[6] *See* IM–2310–3. Suitability Obligations to Institutional Customers.

[7] The term ''institutional account'' will be defined in the same manner as under MSRB Rule G–8(a)(xi). MSRB Rule G–8(a)(xi) defines ''institutional account'' as: the account of (i) a bank, savings and loan association, insurance company, or registered investment company; (ii) an investment adviser registered either with the Commission under Section 203 of the Investment Advisers Act of 1940 or with a state securities commission (or any agency or office performing like functions); or (iii) any other entity (whether a natural person, corporation, partnership, trust, or otherwise) with total assets of at least $50 million.

[8] ''Institutional customer'' would be defined as a customer with an institutional account (as defined under MSRB Rule G–8(a)(xi).

investment risks and market value independently, both in general and with regard to particular transactions in municipal securities (sometimes referred to in this filing as the ''reasonable basis analysis''). When the MSRB created the existing definition of SMMP, alternative trading systems for municipal securities were new and access to material facts about municipal securities was in large part limited to very large institutional investors. The high threshold for determining whether an investor would be considered an institutional customer under the Existing SMMP Notice ($100 million of municipal securities owned and/or under management) was considered necessary to make sure that only the most sophisticated institutions and dealers were likely to use alternative trading systems. The Restated SMMP Notice would provide that, as part of its reasonable basis analysis, a dealer should consider the amount and type of municipal securities owned or under management by the institutional customer. However, there would no longer be a threshold requirement that a customer own or manage a certain amount of municipal securities in order to be considered an SMMP.

The MSRB also proposes that, in the case of the affirmation described in clause (2) of the revised definition of SMMP (*i.e.,* ''capable of evaluating investment risks and market value independently''), customers be allowed to make the affirmation orally or in writing and to provide the affirmation on a trade-by-trade basis, on a type-of-municipal-security basis (*e.g.,* general obligation, revenue, VRDO, etc.), or for all potential transactions for the customer's account. This would be consistent with the affirmation requirement of FINRA Rule 2111, so receipt by a dealer of the FINRA 2111 affirmation would also satisfy this requirement.

Application of Revised SMMP Definition. The Restated SMMP Notice would not change the application of Rules G–18, G–19, and G–13 to SMMPs. However, it would change the application of Rule G–17 to SMMPs, under the assumption that institutional customers now have substantial access to material information about municipal securities. The Existing SMMP Notice limits the exclusion from the duty to disclose all material facts to SMMPs to non-recommended transactions. The Restated SMMP Notice would apply the exclusion to all transactions with SMMPs, whether recommended or self-directed. The Restated SMMP Notice would also remove the lists of factors that were deemed by the Board in 2002 to be relevant to the components of the original definition of SMMP. It would also update the Existing SMMP Notice to reflect developments in the MSRB's interpretations of Rule G–17 since 2002 and remove endnote 9 to the Existing SMMP Notice, which has been construed by some to lessen the duty of a broker's broker under Rule G–18 in a manner that is inconsistent with the Board's proposed Rule G–43 (on broker's brokers).[9] Furthermore, it would remove the language that suggests that transactions on alternative trading systems are done on an agency basis, because at least one major alternative trading system engages only in principal transactions.

2. Statutory Basis

The MSRB believes that the proposed rule change is consistent with Section 15B(b)(2) of the Securities Exchange Act (''Exchange Act''), which provides that:

> The Board shall propose and adopt rules to effect the purposes of this title with respect to transactions in municipal securities effected by brokers, dealers, and municipal securities dealers and advice provided to or on behalf of municipal entities or obligated persons by brokers, dealers, municipal securities dealers, and municipal advisors with respect to municipal financial products, the issuance of municipal securities, and solicitations of municipal entities or obligated persons undertaken by brokers, dealers, municipal securities dealers, and municipal advisors.

Section 15B(b)(2)(C) of the Exchange Act, provides that the rules of the MSRB shall:

> be 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 municipal securities and municipal financial products, to remove impediments to and perfect the mechanism of a free and open market in municipal securities and municipal financial products, and, in general, to protect investors, municipal entities, obligated persons, and the public interest.

The proposed rule change is consistent with Sections 15B(b)(2) and 15B(b)(2)(C) of the Exchange Act. Its principal purpose is to remove impediments to and perfect the mechanism of a free and open market in municipal securities, particularly in the case of the alternative trading systems that have been an increasingly important venue for the provision of secondary market liquidity for municipal securities. New municipal securities products, such as Build America Bonds, and decreasing spreads between interest rates on Treasury bonds and municipal securities, have attracted investors that were not previously invested in municipal securities to the municipal securities market. At the same time, the amount of available information about municipal securities has vastly increased since the Existing SMMP Notice was approved. While the Restated SMMP Notice would provide that a dealer should consider the amount and type of municipal securities owned or under management by the institutional customer, the MSRB no longer considers it essential that an institutional customer own or manage municipal securities in order to engage in informed decisionmaking about municipal securities investments. The MSRB believes it is appropriate to allow sophisticated investors to trade in municipal securities on alternative trading systems even though they do not meet the $100 million threshold of municipal securities owned and/or managed found in the Existing SMMP Notice. This change would not come at the expense of investor protection. While the application of the proposed rule change would not be limited to transactions on alternative trading systems, the application of certain MSRB rules to such systems has proven difficult in practice, especially with the increasing use of computerized algorithmic trading. The MSRB notes that such systems, if monitored closely and subjected to appropriate rulemaking,[10] have the potential to increase pre-trade transparency in the municipal marketplace, which should eventually improve prices for all investors. The MSRB also generally considers it desirable from the standpoint of reducing the cost of dealer compliance to maintain consistency with FINRA rules, absent clear reasons for treating transactions in municipal securities differently.

B. Self-Regulatory Organization's Statement on Burden on Competition

The MSRB does not believe that the proposed rule change would impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act, since it would apply equally to all dealers that have SMMP customers, whether alternative trading systems or not.

[9] File No. SR–MSRB–2012–04 (March 5, 2012). The MSRB notes that, under proposed Rule G–43(d)(iii)(A), an alternative trading system that had any customers (as defined in MSRB Rule D–9) that were not SMMPs would not be excepted from the definition of ''broker's broker.''

[10] The MSRB notes that proposed MSRB Rule G–43 would provide for additional regulation of such alternative trading systems.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

On November 8, 2011, the MSRB requested comment on the original version of the proposed rule change.[11] The MSRB received comment letters from (1) Alternative Regulatory Solutions, LLC (''ARS''); (2) Bond Dealers of America (''BDA''); (3) Securities Industry and Financial Markets Association (''SIFMA''); and (4) TMC Bonds L.L.C. (''TMC''), formerly The MuniCenter.

Safe Harbor. The original version of the Restated SMMP Notice on which comment was requested proposed a safe harbor for satisfaction of the dealer's reasonable basis analysis. Most of the comments concerned that safe harbor. The reasonable basis analysis portion of the definition of SMMP is referred to in this discussion of comments as the ''general rule.'' SIFMA said that the safe harbor was too restrictive. It requested that: (1) The types of assets owned or under management required by the safe harbor not be limited to municipal securities, and (2) the attestation requirement of the safe harbor[12] either be eliminated entirely or eliminated for certain types of institutional customers (*i.e.,* banks, savings and loan associations, insurance companies, registered investment companies, and federally- or state-registered investment advisers). SIFMA said that, if the assets required for the safe harbor were required to be municipal securities, the dollar threshold should be reduced from $50 million to $25 million of municipal securities owned or under management. TMC said that the safe harbor should require ownership and/or management of at least $50 million of direct fixed income securities. BDA advocated that an institutional investor with at least $25 million of fixed income securities should qualify for the safe harbor without the need for an attestation. ARS recommended that the attestations of the general rule and the safe harbor be combined and that all attestations be required to be in writing. ARS also recommended that the safe harbor requirement of $50 million of municipal securities be determined on an average annual basis and asked how often a dealer would be required to verify this asset concentration.

The MSRB has determined to eliminate the safe harbor from the proposed rule due to a concern that the amount of municipal securities owned or managed by a customer does not necessarily equate to sophistication. Nevertheless, the Restated SMMP Notice would provide that, as part of its reasonable basis analysis, a dealer should consider the amount and type of municipal securities owned or under management by an institutional customer.

As to ARS's comment concerning the frequency with which the $50 million threshold of the safe harbor would need to be measured, while the safe harbor has been eliminated, the question is still relevant to the frequency with which dealers would need to take steps to reassess their reasonable basis determinations with respect to their institutional customers. Dealers should monitor their reasonable basis determinations as frequently as they consider prudent, just as they would need to do so if they planned to treat natural persons with total assets of at least $50 million as institutional customers under either FINRA Rule 2111 or the Restated SMMP Notice.[13]

As to ARS's suggestion that the affirmation be required to be in writing, although it appears that many dealers plan to rely on written affirmations, the MSRB is not requiring that the affirmations be in writing in view of the goal to be consistent with FINRA Rule 2111 unless a different rule is justified.

General Rule. SIFMA noted that the original version of the Restated SMMP Notice would have required an attestation from each institutional customer, while FINRA Rule 2111 requires an affirmation. It asked that the MSRB language track the FINRA rule precisely and requested clarification that the FINRA Rule 2111 affirmation would suffice for the SMMP affirmation. BDA questioned how a dealer could satisfy the reasonable basis requirement of the general rule absent use of the safe harbor and suggested that the list of factors set forth in the Existing SMMP Notice be retained. It said that, at a minimum, the MSRB should make it clear that there is no negative implication to the deletion of the list and that the deletion of the list is not an indication that the considerations are no longer considered relevant by the MSRB. BDA objected to the need for attestations from investors even under the general rule and suggested that a dealer should be able to inform its customer that the dealer considers the customer to be an SMMP, capable of exercising independent judgment and evaluating market risks and market value. As to customers that qualify as SMMPs under the current notice, BDA requested that the MSRB provide a transition rule that would permit dealers six months within which to obtain the required attestations from customers that meet the current definition of SMMP. TMC questioned whether attestations from customers that meet the current definition of SMMP would be required.

The MSRB has changed the words ''affirmatively attest'' in the definition of SMMP to ''affirmatively indicate'' to track precisely the affirmation language of FINRA Rule 2111 and wishes to clarify that the FINRA Rule 2111 customer affirmation would satisfy the SMMP affirmation requirement. The MSRB has also determined to recommend that the proposed effective date of the restated SMMP notice be the same as that of FINRA Rule 2111, which is July 9, 2012. No exception from the affirmation requirement would be provided, because under FINRA Rule 2111 affirmations must be received from all institutional customers as to which dealers plan to avail themselves of the institutional customer-specific suitability exception. Companies that already provide qualified institutional buyer (QIB) lists for dealers are already in the process of obtaining the required FINRA Rule 2111 affirmations from institutional customers.

As to BDA's comment on the list of factors that the restated notice would eliminate, the factors in the existing SMMP notice may actually have the practical effect of serving as a constraint on a dealer's ability to conclude that a customer is an SMMP. The text of the existing SMMP notice that precedes the list of factors follows:

The MSRB has identified certain factors for evaluating an institutional investor's sophistication concerning a municipal securities transaction and these factors are discussed in detail below. Moreover, dealers

[11] *See* MSRB Notice 2011–63 (November 8, 2011).

[12] Both the general rule and the safe harbor contained ''attestation'' requirements, unlike the version of the SMMP definition in the proposed rule change.

[13] The following statement from FINRA Regulatory Notice 11–02 (January 2011) is useful: a broker-dealer must know its customers not only at account opening but also throughout the life of its relationship with customers in order to, among other things, effectively service and supervise the customers' accounts. Since a broker-dealer's relationship with its customers is dynamic, FINRA does not believe that it can prescribe a period within which broker-dealers must attempt to update this information. As with a customer's investment profile under the suitability rule, a firm should verify the ''essential facts'' about a customer under the know-your-customer rule at intervals reasonably calculated to prevent and detect any mishandling of a customer's account that might result from the customer's change in circumstances. The reasonableness of a broker-dealer's efforts in this regard will depend on the facts and circumstances of the particular case. Firms should note, however, that SEA Rule 17a–3 requires broker-dealers to, among other things, attempt to update certain account information every 36 months regarding accounts for which the broker-dealers were required to make suitability determinations.

are advised that they have the option of having investors attest to SMMP status as a means of streamlining the dealers' process for determining that the customer is an SMMP. However, a dealer would not be able to rely upon a customer's SMMP attestation if the dealer knows or has reason to know that an investor lacks sophistication concerning a municipal securities transaction, as discussed in detail below.

Because the list of factors may actually serve as a constraint on the dealer's reasonable basis determination, when FINRA Rule 2111 eliminated a very similar list of factors, the MSRB decided to eliminate the list from the restated SMMP notice as well. This provides more flexibility to a dealer as to how it will satisfy the reasonable basis requirement of the general rule. The MSRB wishes to clarify that dealers might find those factors useful but would not be required to consider them.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Exchange 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 email to *rule-comments@sec.gov*. Please include File Number SR–MSRB–2012–05 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–MSRB–2012–05. This file number should be included on the subject line if email 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 MSRB's offices. 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–MSRB–2012–05 and should be submitted on or before May 4, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–8878 Filed 4–12–12; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–66773; File No. SR–CME–2012–09]

Self-Regulatory Organizations; Chicago Mercantile Exchange Inc.; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change To Comply With Revisions to CFTC Regulations Governing Derivatives Clearing Organizations

April 9, 2012.

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 March 29, 2012, the 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. The Commission is publishing this Notice and Order to solicit comments on the proposed rule change from interested persons and to approve the proposed rule change on an accelerated basis.

I. Self-Regulatory Organization's Statement of Terms of Substance of the Proposed Rule Change

CME proposes to amend certain of its rules to comply with pending revisions to Commodity Futures Trading Commission (''CFTC'') Regulations governing derivatives clearing organizations (''DCOs''). The text of the proposed rule change is available at the CME's Web site at *http://www.cmegroup.com/market-regulation/rule-filings.html.*

II. Self-Regulatory Organization's Statement of Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, CME 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 III below. CME 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

CME is registered as a DCO with the CFTC and operates a substantial business clearing futures and swaps contracts subject to the jurisdiction of the CFTC. CME proposes to amend certain of its rules to comply with pending changes to CFTC Regulations that require DCOs to make corresponding rule changes. The changes that are the subject of this filing will become effective on May 7, 2012.

1. Amendments To Comply With CFTC Regulations 39.12(a)(5)(B)

The CFTC adopted a number of new regulations designed to implement the core principles for DCOs in the Commodity Exchange Act (''CEA''), as amended by the Dodd-Frank Act. Certain of these new DCO regulations become effective on May 7, 2012, including CFTC Regulation 39.12(a)(5)(B), which provides that: ''(B) A derivatives clearing organization shall require clearing members that are not

[14] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

futures commission merchants to make the periodic financial reports provided pursuant to paragraph (a)(5)(i) of this section available to the Commission [CFTC] upon the Commission's [CFTC's] request or, in lieu of imposing this requirement, a derivatives clearing organization may provide such financial reports directly to the Commission [CFTC] upon the Commission's [CFTC's] request.''

In order to comply with CFTC Regulation 39.12(a)(5)(B), CME proposes to amend CME Rule 970.B by adding new language that makes clear that non-FCM clearing members are required to make available to the CFTC upon request copies of financial reports required to be submitted to the CME audit department.

2. Amendments To Comply With CFTC Regulations 39.13(h)(5)(B)–(C)

New CFTC Regulations effective on May 7, 2012, also include CFTC Regulation 39.13(h)(5), which requires each DCO to adopt rules that: ''(B) Ensure that it has the authority to request and obtain information and documents from its clearing members regarding their risk management policies, procedures, and practices, including, but not limited to, information and documents relating to the liquidity of their financial resources and their settlement procedures; and (C) Require its clearing members to make information and documents regarding their risk management policies, procedures, and practices available to the Commission [CFTC] upon the Commission's [CFTC's] request.''

In order to comply with Regulation 39.13(h)(5), CME proposes to amend CME Rule 982 and CME Rule 8F010 to make clear that clearing members will be required upon request to make appropriate information available regarding risk management policies, procedures, and practices.

3. Amendments To Comply With CFTC Regulation 39.12(a)(2)(iii)

New CFTC Regulations effective May 7, 2012, also include CFTC Regulation 39.12(a)(2)(iii) which provides that a DCO ''shall not set minimum capital requirements of more than $50 million for any person that seeks to become a clearing member in order to clear swaps.'' In order to comply with this Regulation, CME proposes to amend CME Rule 8F04 to conform it to the new standard described above. Note that CME plans to make additional changes in the near future to the relevant chapters in its rulebook governing interest rate swap and credit default swap clearing member obligations and qualifications.

CME also made two separate filings, CME Submissions 12–067 and 12–097, with its primary regulator, the CFTC, with respect to the proposed rule changes.

CME believes the proposed changes are consistent with the requirements of the Act. CME, a DCO, is required to implement the proposed changes to comply with recent changes to CFTC regulations. CME notes that the policies of the CEA with respect to clearing are comparable to a number of the policies underlying the Exchange Act, such as promoting market transparency for derivatives markets, promoting the prompt and accurate clearance of transactions, and protecting investors and the public interest.

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. 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 email to *rule-comments@sec.gov.* Please include File No. SR–CME–2012–09 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–2012–09. This file number should be included on the subject line if email 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 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–2012–09 and should be submitted on or before May 4, 2012.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

Section 19(b) of the Act [3] directs the Commission to approve a proposed rule change of a self-regulatory organization if it finds that such proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to such organization. The Commission finds that the proposed rule change is consistent with the requirements of the Act, in particular the requirements of Section 17A of the Act, and the rules and regulations thereunder applicable to CME.[4] Specifically, the Commission finds that the proposed rule change is consistent with Section 17A(b)(3)(F) of the Act which requires, among other things, that the rules of a clearing agency be designed to assure the safeguarding of securities and funds which are in the custody and control of the clearing agency because the proposed rule change should allow CME to better monitor the financial status and risk management procedures of its clearing members.[5]

In its filing, CME requested that the Commission approve this proposed rule change on an accelerated basis for good cause shown. CME cites as the reason for this request CME's operation as a

[3] 15 U.S.C. 78s(b).

[4] 15 U.S.C. 78q–1. In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[5] 15 U.S.C. 78q–1(b)(3)(F).

DCO, which is subject to regulation by the CFTC under the CEA. This rule change is being made according to regulations promulgated by the CFTC, which were previously subject to notice and comment. Not approving this request on an accelerated basis would have a significant impact on CME's operations as a DCO.

The Commission finds good cause for approving the proposed rule change prior to the 30th day after the date of publication of notice in the **Federal Register** because the proposed rule change allows CME to implement the regulations of another federal regulatory agency, the CFTC, in accordance with those regulations' effective date.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (SR–CME–2012–09) is approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[6]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–8879 Filed 4–12–12; 8:45 am]

BILLING CODE 8011–01–P

[6] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–66774; File No. SR–FINRA–2011–075]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of Amendment No. 1 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 1, Amending Rule 13024 of the Code of Arbitration Procedure for Industry Disputes To Preclude Collective Action Claims From Being Arbitrated

April 9, 2012.

I. Introduction

On December 22, 2011, the Financial Industry Regulatory Authority, Inc. (''FINRA'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Exchange Act'')[1] and Rule 19b–4 thereunder,[2] a proposal to amend Rule 13204 of the Code of Arbitration Procedure for Industry Disputes (''Industry Code'') to preclude collective action claims by employees of FINRA members under the Fair Labor Standards Act (FLSA), the Age Discrimination in Employment Act (ADEA), or the Equal Pay Act of 1963 (EPA) from being arbitrated under the Industry Code. Specifically, the proposal would, among other things, (1) State that collective action claims under the FLSA, the ADEA, or the EPA may not be arbitrated under the Code; (2) provide that any claim involving similarly situated plaintiffs against the same defendants, such as a court-certified collective action or a putative collective action, would not be arbitrated in FINRA's arbitration forum; (3) give arbitrators the authority to decide disputes about whether a claim is part of a collective action; and (4) prohibit a member firm or associated person from enforcing any arbitration agreement against a member of a certified or putative collective action with respect to any claim that is the subject of the certified or putative collective action until either the collective certification is denied or the group is decertified.

The proposed rule change was published for comment in the **Federal Register** on January 11, 2012.[3] The Commission received two comments on the proposed rule change.[4] On March 29, 2012, FINRA filed a response to comments and a partial amendment to the proposed rule change (''Amendment No. 1'').[5] The Commission is publishing this notice and order to solicit comment on Amendment No. 1 and to approve the proposed rule change, as modified by Amendment No. 1, on an accelerated basis.

II. Description of Proposed Rule Change

As stated in the Notice, Rule 13204 of the Industry Code generally provides that any claim that is based upon the same facts and law, and involves the same defendants as in a court-certified class action or a putative class action, shall not be arbitrated. The Notice also stated that in 1999 FINRA issued an Interpretive Letter stating that its class action rules should include collective action claims brought under the FLSA and, therefore, considered these claims ineligible for arbitration in its forum.[6] However, as described in the Notice, the United States District Court for the Southern District of New York found that an FLSA collective action is not a class action for purposes of Rule 13204 of the Industry Code and compelled arbitration of such claims in FINRA's dispute resolution forum.[7]

In response to the court's finding, FINRA is proposing to amend Rule 13204 to preclude collective action claims from being arbitrated in FINRA's forum under the Industry Code. The proposed amendments to Rule 13204, would separate Rule 13204 into two sections: subparagraph (a) for class actions, and subparagraph (b) for collective actions. Subparagraph (a) would be titled, ''Class Actions,'' and re-numbered. Subparagraph (b) would be titled, ''Collective Actions,'' and would contain four subparagraphs.

Proposed subparagraph (b)(1) would state that collective action claims under the FLSA, the ADEA, or the EPA may not be arbitrated under the Industry Code.

Under proposed subparagraph (b)(2), any claim that involves plaintiffs who are similarly-situated against the same defendants as in a court-certified collective action or a putative collective action, or that is ordered by a court for collective action at a forum not sponsored by a self-regulatory organization, would not be arbitrated under the Industry Code, if the party bringing the claim has opted in to the collective action.

Under proposed subparagraph (b)(3), as originally proposed, the Director would have referred to a panel any dispute as to whether a claim is part of a collective action, unless a party asked the court hearing the collective action to resolve the dispute within 10 days of receiving notice that the Director has decided to refer the dispute to a panel. Amendment No. 1, however, would permit a party to ask any forum (not just a court) hearing the collective action to resolve the dispute within the specified time.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Exchange Act Release No. 66109 (Jan. 5, 2012), 77 FR 1773 (Jan. 11, 2012) (Notice of Filing of Proposed Rule Change to Amend the Code of Arbitration Procedure for Industry Disputes to Preclude Collective Action Claims from Being Arbitrated) (''Notice''). The comment period closed on February 1, 2012.

[4] *See* Letter from Kevin M. Carroll, Managing Director and Associate General Counsel, Securities Industry and Financial Markets Association, dated February 1, 2012 (''SIFMA Letter''); and letter from Jill I. Gross, Director, Edward Pekarek, Assistant Director, and Genavieve Shingle, Student Intern, Investor Rights Clinic at Pace Law School, dated February 1, 2012 (''PIRC Letter''). Comment letters are available at *http://www.sec.gov.*

[5] *See* Letter from Mignon McLemore, Assistant Chief Counsel, FINRA, FINRA Dispute Resolution, to Elizabeth M. Murphy, Secretary, SEC, dated March 28, 2012 (''Response to Comments No. 1 and Partial Amendment No. 1''). The text of Response to Comments No. 1 and Partial Amendment No. 1 is available on FINRA's Web site at *http://www.finra.org,* at the principal office of FINRA, and on the Commission's Web site at *http://www.sec.gov.*

[6] *See* Notice (citing FINRA Interpretive Letter to Cliff Palefsky, Esq., dated September 21, 1999).

[7] *Id.* (citing *Hugo Gomez et al.* v. *Brill Securities, Inc. et al.,* No. 10 Civ. 3503, 2010 U.S. Dist. LEXIS 118162 (S.D.N.Y. Nov. 2, 2010)).

Subparagraph (b)(4), as originally proposed, would have provided that a member or associated person may not enforce any arbitration agreement against a member of a certified or putative collective action with respect to any claim that is the subject of the certified or putative collective action until the collective action certification is denied or the collective action is decertified. Amendment No. 1, however, would specify that subparagraph (b)(4) would apply only to agreements to arbitrate in the FINRA forum, thus not affecting agreements to arbitrate in fora other than FINRA's.

III. Summary of Comment Letters

As stated above, the proposed rule change was published for comment in the **Federal Register** on January 11, 2012, and the comment period closed on February 1, 2012. The Commission received two comment letters in response to the proposed rule change. On March 28, 2012, FINRA responded to the comments and filed Amendment No. 1 to the proposed rule change.

The PIRC Letter strongly supported the proposed rule change.

The SIFMA Letter did not object to the proposed rule change, but recommended revisions to certain language in proposed subparagraph (b). First, SIFMA recommended modifying proposed subparagraph (b)(2) to replace the phrase, ''Any claim that involves plaintiffs who are similarly situated against the same defendants as in a court-certified collective action or a putative collection action,'' with, ''Any claim that is the subject of a certified or putative collective action.'' SIFMA argued that FINRA's proposed language could be misconstrued to include multi-party litigation outside of the collective action context. SIFMA suggested that its proposed change would clarify FINRA's intent to limit the application of the proposed rule to collective actions.

In its Response to Comments No. 1, FINRA declined to amend its proposed subparagraph (b)(2) as SIFMA suggested. FINRA stated that the revision is unnecessary because as proposed the rule already clarifies its applicability to only those parties who opt in to a collective action; furthermore, as proposed the rule would preclude those claims from being arbitrated in FINRA's forum only, and would not preclude their being arbitrated in other fora. FINRA also declined to remove the term ''similarly situated'' from proposed subparagraph (b)(2) as SIFMA suggested because the term is consistent with language used in the FLSA to describe party plaintiffs in collective actions under the statute,[8] and the term helps define the parties to whom the proposal would apply.

Second, SIFMA recommended modifying proposed subparagraphs (b)(3) and (b)(4) to limit their scope to FINRA arbitration. Specifically, SIFMA recommended modifying proposed subparagraph (b)(3) by replacing ''the court hearing the collective action'' with ''the court or other forum hearing the collective action.'' SIFMA stated that this change would clarify that arbitration fora, other than FINRA's forum, accept collective action claims. Similarly, SIFMA recommended modifying proposed subparagraph (b)(4) by replacing ''may not enforce any arbitration agreement'' with ''may not enforce an agreement to arbitrate in this forum.'' SIFMA stated that this change would clarify that under the proposed rule agreements to arbitrate collective action claims in arbitration fora other than FINRA would remain valid and enforceable.

FINRA agreed to amend proposed subparagraphs (b)(3) and (b)(4) as SIFMA recommended. FINRA stated that it made these changes because the proposed rule is designed to prohibit collective action claims from being arbitrated in its forum only; FINRA members and their employees may, however, agree to address collective action claims either by filing them in a court of competent jurisdiction or by arbitrating them in other arbitration fora.

IV. Commission's Findings

The Commission has carefully considered the proposed rule change, the comments received, FINRA's Response to Comments No. 1, and Amendment No. 1. The Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Exchange Act, and the rules and regulations thereunder that are applicable to a national securities association.[9] In particular, the Commission finds that the proposal is consistent with Section 15A(b)(6) of the Act,[10] which requires, among other things, that the rules of a national securities association be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, protect investors and the public interest.

The proposed rule change, as amended, would facilitate the efficient resolution of collective actions under the FLSA, ADEA, or the EPA, as courts have established procedures to manage these types of representative actions. It also would preserve access to courts for these types of claims for employees of FINRA members.

The Commission believes that FINRA has responded adequately to SIFMA's comments recommending revisions to certain language in proposed subparagraphs (b)(2), (b)(3) and (b)(4) to the proposed rule by explaining, among other things, why it is proposing to revise proposed subparagraphs (b)(3) and (b)(4), but is not proposing to revise subparagraph (b)(2). In response to SIFMA's comments, FINRA proposed to amend proposed subparagraphs (b)(3) and (b)(4) to acknowledge that arbitration fora other than FINRA's dispute resolution forum accept collective action claims. FINRA has suitably explained its reasons for declining to amend proposed subparagraph (b)(2) as SIFMA recommended.

V. Accelerated Approval

The Commission finds good cause, pursuant to Section 19(b)(2) of the Act[11] for approving the proposed rule change, as modified by Amendment No. 1, prior to the 30th day after publication of Amendment No. 1 in the **Federal Register**. The changes proposed in Amendment No. 1 revised proposed subparagraphs (b)(3) and (b)(4) in response to specific concerns raised by SIFMA. The amendment addresses these concerns by clarifying that arbitration fora, other than FINRA's forum, accept collective action claims, and that under the proposed rule agreements to arbitrate collective action claims in arbitration fora other than FINRA would remain valid and enforceable.

Accordingly, the Commission finds that good cause exists to approve the proposal, as modified by Amendment No. 1, on an accelerated basis.

VI. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether Amendment No. 1 to the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

[8] *See* 29 U.S.C. 216(b).

[9] In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[10] 15 U.S.C. 78*o*–3(b)(6).

[11] 15 U.S.C. 78s(b)(2).

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–FINRA–2011–075 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–FINRA–2011–075. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of FINRA. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–FINRA–2011–075 and should be submitted on or before May 4, 2012.

VII. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[12] that the proposed rule change (SR–FINRA–2011–075), as modified by Amendment No. 1, be, and hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–8880 Filed 4–12–12; 8:45 am]

BILLING CODE 8011–01–P

[12] 15 U.S.C. 78s(b)(2).

[13] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice 7845]

Culturally Significant Objects Imported for Exhibition Determinations: ''Ellsworth Kelly: Plant Drawings''

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.;* 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, and Delegation of Authority No. 236–3 of August 28, 2000, I hereby determine that the object to be included in the exhibition ''Ellsworth Kelly: Plant Drawings,'' imported from abroad for temporary exhibition within the United States, is of cultural significance. The object is imported pursuant to a loan agreement with the foreign owners or custodians. I also determine that the exhibition or display of the exhibit object at The Metropolitan Museum of Art, New York, New York from on or about June 5, 2012, until on or about September 3, 2012, and at possible additional exhibitions or venues yet to be determined, is in the national interest. I have ordered that Public Notice of these Determinations be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact Ona M. Hahs, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202–632–6473). The mailing address is U.S. Department of State, SA–5, L/PD, Fifth Floor (Suite 5H03), Washington, DC 20522–0505.

Dated: April 9, 2012.

Ann Stock,

Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2012–8925 Filed 4–12–12; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No. FAA–2012–0233]

Airport Improvement Program (AIP) Grant Assurances

AGENCY: Federal Aviation Administration (FAA).

ACTION: Notice of modification of Airport Improvement Program grant assurances; opportunity to comment.

SUMMARY: On February 14, 2012, the FAA Modernization and Reform Act of 2012 was signed into law (Pub. L. 112–95). Provisions contained in this law necessitate modifications to five grant assurances.

DATES: The effective date the modifications to the grant assurances is April 13, 2012. The FAA will consider comments on the modifications to the grant assurances. If necessary, any appropriate revisions resulting from the comments received will be adopted as of the date of a subsequent publication in the **Federal Register**. Comments must be submitted on or before May 14, 2012.

ADDRESSES: You may send comments [identified by Docket Number FAA–2012–0233] using any of the following methods:

- *Government-wide rulemaking web site:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- *Mail:* Docket Operations, U.S. Department of Transportation, West Building, Ground Floor, Room W12–140, Routing Symbol M–30, 1200 New Jersey Avenue SE., Washington, DC 20590.
- *Fax:* 1–202–493–2251.
- *Hand Delivery:* To Docket Operations, Room W12–140 on the ground floor of the West Building, 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: Frank San Martin, Manager, Airports Financial Assistance, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591, telephone (202) 267–3831; facsimile: (202) 267–5302.

Authority for Grant Assurance Modifications

This notice is published under the authority described in Subtitle VII, Part B, Chapter 471, Sections 47107 and 47122 of Title 49 United States Code.

SUPPLEMENTARY INFORMATION: A sponsor (applicant) seeking financial assistance

for airport planning, airport development, noise compatibility planning or noise mitigation under 49 U.S.C., as amended must agree to comply with certain assurances. These assurances are submitted as part of a sponsor's application for federal assistance and are incorporated into all grant agreements. As need dictates, these assurances are modified to reflect new federal requirements. Notice of such modifications is published in the **Federal Register**, and an opportunity for public comment is provided.

The assurances, prior to the FAA Modernization and Reform Act of 2012 (Pub. L. 112–95), were published on February 3, 1988, at 53 FR 3104 and amended on September 6, 1988, at 53 FR 34361; on August 29, 1989, at 54 FR 35748; on June 10, 1994 at 59 FR 30076; on January 4, 1995, at 60 FR 521; on June 2, 1997, at 62 FR 29761; on August 18, 1999, at 64 FR 45008; on March 29, 2005 at 70 FR 15980; and on March 18, 2011, at 76 FR 15028.

A complete list of the current grant assurances can be viewed at: *http://www.faa.gov/airports/aip/grant_assurances/*

Discussion of Grant Assurance Modifications

The FAA is modifying five grant assurances to conform with the FAA Modernization and Reform Act of 2012 (Pub. L. 112–95) (hereinafter ''FMRA'' or ''the Act''). The FAA will implement these modified grant assurances upon publication of this notice to expedite processing fiscal year 2012 grants under the Airport Improvement Program. The FAA will accept public comments concerning these modified grant assurances for 30 days. If necessary, in response to comments received, the FAA will also adopt any appropriate revisions to these grant assurance modifications.

Through-the-Fence Arrangements

Section 136 of the FMRA amends the statutory conditions for project grant approval to permit sponsors of general aviation airports to enter into residential through-the-fence arrangements. The FAA is amending paragraph (g) of Sponsor Assurance 5, Preserving Rights and Powers, to conform to this change in the law. Additionally, the FAA is amending paragraph (a) of Sponsor Assurance 29, Airport Layout Plan, to require that all proposed and existing access points used to taxi aircraft across the airport property's boundary be depicted on the airport layout plan (ALP). This includes all residential and commercial through-the-fence access points at both general aviation and commercial service airports. ALP depiction of existing access points can be made through pen-and-ink changes. ALP depiction of residential through-the-fence access points at general aviation airports will facilitate the FAA's ability to enforce the requirements included in Section 136.

Use of Airport Revenues

Sections 149 and 813 of the Act modify the statutory grant assurances on use of airport revenue to add two new exceptions. The FAA is revising Sponsor Assurance 25 to incorporate these new statutory exceptions relating to use of proceeds from the sale of an airport and use of revenues derived or generated by mineral extraction. To make this assurance easier to understand, the FAA reorganized paragraph (a) of Sponsor Assurance 25 by taking the grandfathering exception set forth at the end of paragraph (a) and making it a new subparagraph (a)(1). The two new statutory exceptions are then stated verbatim as separate new subparagraphs (a)(2) and (3).

Veteran's Preference

Section 139 expands the statutory grant assurance regarding veteran's preference to include Persian Gulf veterans, Afghanistan-Iraq war veterans, and small business concerns owned and controlled by disabled veterans. FAA has revised Sponsor Assurance 15, Veteran's Preference, to include these changes verbatim.

Costs of Relocating or Replacing Sponsor-Owned Property

Sections 135(a) and 138(c) of the FMRA revise the statutory grant assurance relating to airport layout plans to provide that a sponsor does not have to bear all costs of relocating property or its replacement and of restoring the property or its replacement to the level that existed before the alteration was made in certain circumstances. The FAA has added this exception to paragraph (b) of Sponsor Assurance 29, Airport Layout Plan, to incorporate this statutory change.

Disposal of Land

Section 135(b) of the Act makes several changes to the statutory assurances regarding disposal of land relating to noise buffers and leasing of land for noise compatibility purposes and preferences for reinvesting or transferring proceeds from disposal of land. These changes have been included in paragraphs (a) and (b) of Sponsor Assurance 31, Disposal of Land.

In consideration of the above, the FAA makes the following changes:

C. *Sponsor Certification.* The sponsor hereby assures and certifies, with respect to this grant that:

* * * * *

5. Preserving Rights and Powers.

* * * * *

g. Sponsors of commercial service airports will not permit or enter into any arrangement that results in permission for the owner or tenant of a property used as a residence, or zoned for residential use, to taxi an aircraft between that property and any location on airport. Sponsors of general aviation airports entering into any arrangement that results in permission for the owner of residential real property adjacent to or near the airport must comply with the requirements of Sec. 136 of Public Law 112–95 and the sponsor assurances.

* * * * *

15. *Veteran's Preference.* It shall include in all contracts for work on any project funded under this grant agreement which involve labor, such provisions as are necessary to insure that, in the employment of labor (except in executive, administrative, and supervisory positions), preference shall be given to Vietnam era veterans, Persian Gulf veterans, Afghanistan-Iraq war veterans, disabled veterans, and small business concerns owned and controlled by disabled veterans as defined in Section 47112 of Title 49, United States Code. However, this preference shall apply only where the individuals are available and qualified to perform the work to which the employment relates.

* * * * *

25. Airport Revenues.

a. All revenues generated by the airport and any local taxes on aviation fuel established after December 30, 1987, will be expended by it for the capital or operating costs of the airport; the local airport system; or other local facilities which are owned or operated by the owner or operator of the airport and which are directly and substantially related to the actual air transportation of passengers or property; or for noise mitigation purposes on or off the airport. The following exceptions apply to this paragraph:

(1) If covenants or assurances in debt obligations issued before September 3, 1982, by the owner or operator of the airport, or provisions enacted before September 3, 1982, in governing statutes controlling the owner or operator's financing, provide for the use of the revenues from any of the airport owner or operator's facilities, including the airport, to support not only the airport but also the airport owner or operator's general debt obligations or other facilities, then this limitation on the use of all revenues generated by the airport (and, in the case of a public airport, local taxes on aviation fuel) shall not apply.

(2) If the Secretary approves the sale of a privately owned airport to a public sponsor and provides funding for any portion of the public sponsor's acquisition of land, this limitation on the use of all revenues generated by the sale shall not apply to

certain proceeds from the sale. This is conditioned on repayment to the Secretary by the private owner of an amount equal to the remaining unamortized portion (amortized over a 20-year period) of any airport improvement grant made to the private owner for any purpose other than land acquisition on or after October 1, 1996, plus an amount equal to the federal share of the current fair market value of any land acquired with an airport improvement grant made to that airport on or after October 1, 1996.

(3) Certain revenue derived from or generated by mineral extraction, production, lease, or other means at a general aviation airport (as defined at Section 47102 of title 49 United States Code), if the FAA determines the airport sponsor meets the requirements set forth in Sec. 813 of Public Law 112–95.

* * * * *

29. Airport Layout Plan.

a. It will keep up to date at all times an airport layout plan of the airport showing (1) boundaries of the airport and all proposed additions thereto, together with the boundaries of all offsite areas owned or controlled by the sponsor for airport purposes and proposed additions thereto; (2) the location and nature of all existing and proposed airport facilities and structures (such as runways, taxiways, aprons, terminal buildings, hangars, and roads), including all proposed extensions and reductions of existing airport facilities; (3) the location of all existing and proposed nonaviation areas and of all existing improvements thereon; and (4) all proposed and existing access points used to taxi aircraft across the airport's property boundary. Such airport layout plans and each amendment, revision, or modification thereof, shall be subject to the approval of the Secretary which approval shall be evidenced by the signature of a duly authorized representative of the Secretary on the face of the airport layout plan. The sponsor will not make or permit any changes or alterations in the airport or any of its facilities which are not in conformity with the airport layout plan as approved by the Secretary and which might, in the opinion of the Secretary, adversely affect the safety, utility, or efficiency of the airport.

b. If a change or alteration in the airport or the facilities is made which the Secretary determines adversely affects the safety, utility, or efficiency of any federally owned, leased, or funded property on or off the airport and which is not in conformity with the airport layout plan as approved by the Secretary, the owner or operator will, if requested, by the Secretary (1) eliminate such adverse effect in a manner approved by the Secretary; or (2) bear all costs of relocating such property (or replacement thereof) to a site acceptable to the Secretary and all costs of restoring such property (or replacement thereof) to the level of safety, utility, efficiency, and cost of operation existing before the unapproved change in the airport or its facilities except in the case of a relocation or replacement of an existing airport facility due to a change in the Secretary's design standards beyond the control of the airport sponsor.

* * * * *

31. Disposal of Land.

a. For land purchased under a grant for airport noise compatibility purposes, including land serving as a noise buffer, it will dispose of the land, when the land is no longer needed for such purposes, at fair market value, at the earliest practicable time. That portion of the proceeds of such disposition which is proportionate to the United States' share of acquisition of such land will be, at the discretion of the Secretary, (1) reinvested in another project at the airport, or (2) transferred to another eligible airport as prescribed by the Secretary. The Secretary shall give preference to the following, in descending order, (1) reinvestment in an approved noise compatibility project, (2) reinvestment in an approved project that is eligible for grant funding under Section 47117(e) of title 49 United States Code, (3) reinvestment in an approved airport development project that is eligible for grant funding under Sections 47114, 47115, or 47117 of title 49 United States Code, (4) transferred to an eligible sponsor of another public airport to be reinvested in an approved noise compatibility project at that airport, and (5) paid to the Secretary for deposit in the Airport and Airway Trust Fund. If land acquired under a grant for noise compatibility purposes is leased at fair market value and consistent with noise buffering purposes, the lease will not be considered a disposal of the land. Revenues derived from such a lease may be used for an approved airport development project that would otherwise be eligible for grant funding or any permitted use of airport revenue.

b. For land purchased under a grant for airport development purposes (other than noise compatibility), it will, when the land is no longer needed for airport purposes, dispose of such land at fair market value or make available to the Secretary an amount equal to the United States' proportionate share of the fair market value of the land. That portion of the proceeds of such disposition which is proportionate to the United States' share of the cost of acquisition of such land will, (1) upon application to the Secretary, be reinvested or transferred to another eligible airport as prescribed by the Secretary. The Secretary shall give preference to the following, in descending order: (1) Reinvestment in an approved noise compatibility project, (2) reinvestment in an approved project that is eligible for grant funding under Section 47117(e) of title 49 United States Code, (3) reinvestment in an approved airport development project that is eligible for grant funding under Sections 47114, 47115, or 47117 of title 49 United States Code, (4) transferred to an eligible sponsor of another public airport to be reinvested in an approved noise compatibility project at that airport, and (5) paid to the Secretary for deposit in the Airport and Airway Trust Fund.

* * * * *

Issued in Washington, DC on April 10, 2012.

Benito De Leon,

Director, Office of Airport Planning and Programming.

[FR Doc. 2012–8961 Filed 4–12–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Noise Exposure Map Notice; Lafayette Regional Airport, Lafayette, LA

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its determination that the noise exposure maps submitted by Lafayette Airport Commission for Lafayette Regional Airport under the provisions of 49 U.S.C. 47501 et seq. (Aviation Safety and Noise Abatement Act) and 14 CFR Part 150 are in compliance with applicable requirements.

DATES: *Effective Date:* The effective date of the FAA's determination on the noise exposure maps is April 3, 2012.

FOR FURTHER INFORMATION CONTACT: DOT/FAA Southwest Region, Tim Tandy, Environmental Resources Specialist, ASW–640D, 2601 Meacham Boulevard, Fort Worth, Texas 76137. Telephone (817) 222–5644.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA finds that the noise exposure maps submitted for Lafayette Regional Airport are in compliance with applicable requirements of Part 150, effective April 3, 2012. Under 49 U.S.C. section 47503 of the Aviation Safety and Noise Abatement Act (hereinafter referred to as ''the Act''), an airport operator may submit to the FAA noise exposure maps which meet applicable regulations and which depict non-compatible land uses as of the date of submission of such maps, a description of projected aircraft operations, and the ways in which such operations will affect such maps. The Act requires such maps to be developed in consultation with interested and affected parties in the local community, government agencies, and persons using the airport. An airport operator who has submitted noise exposure maps that are found by FAA to be in compliance with the requirements of Federal Aviation Regulations (FAR) Part 150, promulgated pursuant to the Act, may submit a noise compatibility program for FAA approval which sets forth the measures the operator has taken or

proposes to take to reduce existing non-compatible uses and prevent the introduction of additional non-compatible uses.

The FAA has completed its review of the noise exposure maps and accompanying documentation submitted by Lafayette Airport Commission. The documentation that constitutes the ''noise exposure maps'' as defined in section 150.7 of Part 150 includes: Exhibit 2.1, Existing Land Use and Jurisdictional Boundaries; Table 2.4, Noise-Sensitive Sites and Historic Properties; Exhibit 2.2, Noise-Sensitive Sites and Historic Properties; Table 3.3, Historical Annual Aircraft Operations; Table 3.4, Historical Annual Operations by Aircraft Category; Table 3.5, Forecast of Commercial Operations; Table 3.6, Forecast of General Aviation Operations; Table 3.7, Forecast of Military Operations; Table 3.8, Forecast of Aviation Operations; Table 3.9, Existing and Forecast Average Daily Operations; Table 4.1, INM Aircraft Substitutions; Exhibit 4.1, Year 2010—Annual and Average Daily Operations; Table 4.2, 2010 Fleet Mix at LFT; Table 4.4, 2010 Day-Night Split by Aircraft Category; Table 4.5, 2010 Runway Utilization; Exhibit 4.2, Existing and Future Condition Flight Tracks, Arrival and Departure—Runway 04L/R; Exhibit 4.3, Existing and Future Condition Flight Tracks, Arrival and Departure—Runway 11; Exhibit 4.4, Existing and Future Condition Flight Tracks, Arrival and Departure—Runway 22L/R; Exhibit 4.5, Existing and Future Condition Flight Tracks, Arrival and Departure—Runway 29; Exhibit 4.6, Existing and Future Condition Touch-and-Go Flight Tracks; Exhibit 4.7, Existing (2010) Condition Noise Contour Map; Table 4.6, 2010 Noise Exposure Estimates; Table 5.1, 2016 Aircraft Fleet Mix; Table 5.2, 2016 Day-Night Split by Aircraft Category; Exhibit 5.1, Year 2016—Annual and Average Daily Operations; Table 5.3, 2016 Runway Utilization; Exhibit 5.2, Future (2016) Noise Contour Map; Table 5.4, 2016 Noise Exposure Estimates; Exhibit 5.3, Incompatible Land Use; and Exhibit 5.4, Incompatible Land Use.

The FAA has determined that these noise exposure maps and accompanying documentation are in compliance with applicable requirements. This determination is effective on April 3, 2012.

FAA's determination on an airport operator's noise exposure maps is limited to a finding that the maps were developed in accordance with the procedures contained in appendix A of FAR Part 150. Such determination does not constitute approval of the applicant's data, information or plans, or a commitment to approve a noise compatibility program or to fund the implementation of that program. If questions arise concerning the precise relationship of specific properties to noise exposure contours depicted on a noise exposure map submitted under section 47503 of the Act, it should be noted that the FAA is not involved in any way in determining the relative locations of specific properties with regard to the depicted noise contours, or in interpreting the noise exposure maps to resolve questions concerning, for example, which properties should be covered by the provisions of section 47506 of the Act. These functions are inseparable from the ultimate land use control and planning responsibilities of local government. These local responsibilities are not changed in any way under Part 150 or through FAA's review of noise exposure maps. Therefore, the responsibility for the detailed overlaying of noise exposure contours onto the map depicting properties on the surface rests exclusively with the airport operator that submitted those maps, or with those public agencies and planning agencies with which consultation is required under section 47503 of the Act. The FAA has relied on the certification by the airport operator, under section 150.21 of FAR Part 150, that the statutorily required consultation has been accomplished.

Copies of the full noise exposure map documentation and of the FAA's evaluation of the maps are available for examination at the following locations: Louisiana/New Mexico Airports Development Office, Federal Aviation Administration, 2601 Meacham Boulevard, Fort Worth, Texas; Gregory M. Roberts, Director of Aviation, Lafayette Regional Airport, 222 Tower Drive, Lafayette, LA 70508. Questions may be directed to the individual named above under the heading **FOR FURTHER INFORMATION CONTACT.**

Issued in Fort Worth, Texas, April 4, 2012.

Kelvin L. Solco,

Manager, Airports Division.

[FR Doc. 2012–8963 Filed 4–12–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2012–12]

Petition for Exemption; Summary of Petition Received

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petition for exemption received.

SUMMARY: This notice contains a summary of a petition seeking relief from specified requirements of 14 CFR. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of the petition or its final disposition.

DATES: Comments on this petition must identify the petition docket number involved and must be received on or before May 3, 2012.

ADDRESSES: You may send comments identified by Docket Number FAA–2012–0053 using any of the following methods:

- *Government-wide rulemaking Web site:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- *Mail:* Send comments to the Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590.
- *Fax:* Fax comments to the Docket Management Facility at 202–493–2251.
- *Hand Delivery:* Bring comments to the Docket Management Facility in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Privacy: We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. Using the search function of our docket web site, anyone can find and read the comments received into any of our dockets, including the name of the individual sending the comment (or signing the comment for an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78).

Docket: To read background documents or comments received, go to

http://www.regulations.gov at any time or to the Docket Management Facility in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Tyneka Thomas ARM–105, (202) 267–7626, FAA, Office of Rulemaking, 800 Independence Ave. SW., Washington, DC 20591. This notice is published pursuant to 14 CFR 11.85.

Issued in Washington, DC on April 10, 2012.

Brenda D. Courtney,

Acting Deputy Director, Office of Rulemaking.

PETITION FOR EXEMPTION

Docket No.: FAA–2012–0053

Petitioner: Omni Air International

Section of 14 CFR Affected: 14 CFR § 121.652(a) and (c)

Description of Relief Sought: Omni Air International seeks relief to allow pilots to substitute crosswind component and braking action restrictions, along with a requirement to utilize automatic landing and approach coupler equipment, at the destination and alternate airports in place of the existing restrictions to decision height and visibility minimum for pilots-in-command who have not yet accumulated 100 hours (50 if reducible) in their current aircraft type. The relief would be applicable to regular part 121 domestic, flag or supplemental operations.

[FR Doc. 2012–8981 Filed 4–12–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2012–10]

Petition for Exemption; Summary of Petition Received

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petition for exemption received.

SUMMARY: This notice contains a summary of a petition seeking relief from specified requirements of 14 CFR. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of the petition or its final disposition.

DATE: Comments on this petition must identify the petition docket number and must be received on or before May 3, 2012.

ADDRESSES: You may send comments identified by Docket Number FAA–2012–0127 using any of the following methods:

- *Government-wide rulemaking Web site:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- *Mail:* Send comments to the Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590.
- *Fax:* Fax comments to the Docket Management Facility at 202–493–2251.
- *Hand Delivery:* Bring comments to the Docket Management Facility in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Privacy: We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. Using the search function of our docket Web site, anyone can find and read the comments received into any of our dockets, including the name of the individual sending the comment (or signing the comment for an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78).

Docket: To read background documents or comments received, go to *http://www.regulations.gov* at any time or to the Docket Management Facility in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Keira Jones (202) 267–4024, or Tyneka Thomas (202) 267–7626, Office of Rulemaking, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85.

Issued in Washington, DC, on April 5, 2012.

Brenda D. Courtney,

Acting Deputy Director, Office of Rulemaking.

Petition for Exemption

Docket No.: FAA–2012–0127

Petitioner: United Airlines

Section of 14 CFR Affected: 14 CFR 121.291(b)(1) and (d)

Description of Relief Sought: United Airlines seeks relief to continue operating the B767–300 without conducting the required partial evacuation and ditching demonstrations. In addition, United seeks the relief to avoid unnecessary operational burdens and avoid disruptions in service by ensuring continued operations of the B767–300.

[FR Doc. 2012–8986 Filed 4–12–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2012–11]

Petition for Exemption; Summary of Petition Received

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petition for exemption received.

SUMMARY: This notice contains a summary of a petition seeking relief from specified requirements of 14 CFR. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of the petition or its final disposition.

DATES: Comments on this petition must identify the petition docket number involved and must be received on or before May 3, 2012.

ADDRESSES: You may send comments identified by Docket Number FAA–2012–0137 using any of the following methods:

- *Government-wide rulemaking Web site:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- *Mail:* Send comments to the Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590.
- *Fax:* Fax comments to the Docket Management Facility at 202–493–2251.
- *Hand Delivery:* Bring comments to the Docket Management Facility in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Privacy: We will post all comments we receive, without change, to *http://www.regulations.gov,* including any

personal information you provide. Using the search function of our docket web site, anyone can find and read the comments received into any of our dockets, including the name of the individual sending the comment (or signing the comment for an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78).

Docket: To read background documents or comments received, go to *http://www.regulations.gov* at any time or to the Docket Management Facility in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Tyneka Thomas ARM–105, (202) 267–7626, FAA, Office of Rulemaking, 800 Independence Ave SW., Washington, DC 20591. This notice is published pursuant to 14 CFR 11.85.

Issued in Washington, DC, on April 20, 2102.

Brenda D. Courtney,

Acting Deputy Director, Office of Rulemaking.

PETITION FOR EXEMPTION

Docket No.: FAA–2012–0137

Petitioner: Landmark Aviation

Section of 14 CFR Affected: 14 CFR §§ 135.293(a)(2) and (3), 135.293(b), 135.297, 135.329(b), 135.345(b) and 135.347

Description of Relief Sought: The relief sought would allow Landmark's wholly-owned subsidiary, Piedmont Aviation, to receive credit for aircraft specific training, testing, and checking by pilots while employed by Landmark Waukegan, another operating unit of Landmark Aviation. In addition the requested relief includes aircraft-specific initial new hire ground and flight training written, and oral tests, competency checks, and pilot in command instrument proficiency checks.

[FR Doc. 2012–8983 Filed 4–12–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Safety Advisory 2012–01]

Odorant Fade in Railroad Tank Cars

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Notice of Safety Advisory.

SUMMARY: FRA is issuing Safety Advisory 2012–01 to remind shippers and consignees of railroad tank cars containing odorized liquefied petroleum gas (LPG), of the importance of taking actions to ensure that a sufficient level of odorant remains in the LPG throughout the entire transportation cycle. FRA is issuing this notice to raise awareness within the hazardous materials community, of the potential consequences of having LPG reach end-users as under-odorized or essentially non-odorized material due to the diminishment of the added odorant during the transportation cycle (commonly known as ''odorant fade''). This safety advisory recommends that shippers and consignees of bulk quantities of odorized LPG review their existing LPG odorization standards and procedures, and take appropriate actions to guard against odorant fade in their shipments.

FOR FURTHER INFORMATION CONTACT: Kevin R. Blackwell, Railroad Safety Specialist, Hazardous Materials Division, Office of Safety Assurance and Compliance, FRA, 1200 New Jersey Avenue SE., Washington, DC 20590 (telephone: (202) 493–6315; email: *Kevin.Blackwell@dot.gov*); or Kurt Eichenlaub, Railroad Safety Specialist, Hazardous Materials Division, Office of Safety Assurance and Compliance, FRA, 1200 New Jersey Avenue SE., Washington, DC 20590 (telephone: (202) 493–6050; email: *Kurt.Eichenlaub@dot.gov*).

SUPPLEMENTARY INFORMATION: DOT's Hazardous Materials Regulations (HMR), Title 49 Code of Federal Regulations (CFR) Parts 171–180, allow use of the proper shipping name, ''liquefied petroleum gas'' (or LPG), for a number of petroleum gases with properties similar to propane. Much of the LPG loaded and shipped in the United States by railroad tank car is from bulk suppliers to either industrial end-users or to ''midstream'' suppliers who then sell and redistribute the LPG to commercial, retail, and general public end-users. In 2010, LPG represented less than 9 percent of all loaded hazardous materials tank car shipments originating in the United States. Because LPG is a colorless and odorless gas, odorants are normally added to the material (with the exception of LPG being shipped to industrial end-users) in the liquid phase to enable human detection when its vaporized gases are released in the atmosphere. The majority of LPG produced for non-industrial uses is odorized by bulk providers of the material. The presence of LPG in the consumer supply chain, with either diminished levels of odorant or no odorant present, represents significant safety risks. Absent sufficient odorization of the commodity, LPG leaks can go undetected and ignite.

Diminished or absent levels of LPG odorant has been determined to have been a contributing factor in incidents that have resulted in injuries and fatalities. For example, a July 30, 2010, incident occurred at a condominium construction site in Norfolk, MA, when a release of LPG from a leaking connection in the basement of a building under construction resulted in an explosion and fire. This incident resulted in one fatality and seven injuries. An investigation conducted by the Massachusetts Department of Fire Services, Division of Fire Safety, revealed that the LPG in the storage tanks at the construction site had virtually no odorant present, explaining why no one at the construction site reported smelling the LPG leak prior to the explosion. While the LPG involved in the Norfolk accident did not originate from a rail shipment, the investigation into the accident revealed that a large quantity of LPG—shipped via railroad tank car as odorized—had been delivered to commercial and retail end-users with either a diminished level of odorization or no odorization at all.

Odorization

The proper odorization of LPG is addressed by a combination of Federal and State laws and regulations, as well as by accepted industry standards and practices. In accordance with the applicable laws and regulations, LPG intended for use by non-industrial entities (e.g., commercial and retail entities, and the general public) is generally required to be odorized (or ''stenched'') to enable the detection of any unintended release or leak of the gas. In the context of the rail transportation of LPG, the HMR require the odorization of LPG transported in cargo tanks and portable tanks, but not railroad tank cars. Specifically, 49 CFR 173.315(b)(1) provides that odorizing LPG shipments in cargo and portable tanks with 1.0 pound of ethyl mercaptan per 10,000 gallons of LPG, or the equivalent, is an acceptable form of odorization.[1] That section also provides an exception from the odorization requirement if odorization would be ''harmful in the use or further processing of the [LPG], or if odorization will serve no useful purpose as a

[1] Ethyl mercaptan is a colorless organic liquid with a low odor threshold of 0.4 parts per billion, thus making it easily detectable by persons with a normal sense of smell when injected at standard industry rates.

warning agent in such use or further processing.'' Essentially, this exception applies to LPG being transported to industrial end-users.

The Occupational Safety and Health Administration's requirements regarding the storage and handling of LPG found at 29 CFR 1910.110(b)(1) essentially mirror DOT's odorization requirements at 49 CFR 173.315(b)(1). In addition to these Federal regulations, the National Fire Protection Association (NFPA) has also established odorization standards that largely mirror the Federal requirements. *See* NFPA Standard 58, paragraph 1–4.1. In addition, most States have adopted laws, regulations, or codes that incorporate this NFPA standard. Further, it is standard industry practice to exceed the established regulatory minimums and add 1.5 pounds of ethyl mercaptan per 10,000 gallons of LPG in order to combat the effects of odorant fade should a release of material occur.

Odorant Fade

Under-odorization of railroad tank cars containing LPG is sometimes caused by the phenomenon commonly known as odorant fade. While LPG may be satisfactorily odorized in accordance with the above requirements at the source, there are circumstances that may cause the odorant added to the LPG to ''fade'' and render it virtually undetectable by a person's sense of smell. Typically, there are three different potential causes of odorant fade: oxidation, container condition, and gas quality.

This safety advisory focuses on recommendations to prevent odorant fade caused by oxidation and/or the condition of the LPG container. First, oxidation can cause odorant fade when the presence of rust in a tank car, or the subsequent formation of rust over time, as a result of the presence of oxygen and moisture, decreases the amount of odorant that is in the LPG in the tank due to a chemical reaction between the odorant and the oxidized (rusted) surface. The presence of rust causes mercaptans to oxidize into other compounds that have a different odor and lower intensity. Residual oxygen from air and moisture that may be in the container can increase the oxidation rate of rust or even cause new rust to form where previously none existed, exasperating the rate at which the odorant fades.

Next, the condition of the LPG container itself can also potentially cause odorant fade. An odorant can adsorb onto the metal surface of the container or even potentially be absorbed into the metal surface itself. This process is most likely to occur when the container is new and has not previously contained odorized LPG. It can also occur when the inside of the container has been left open to the air while the container is out of service or after the container has been cleaned and purged (e.g., when a railroad tank car is cleaned and purged for repair or service at a tank car facility and then later placed back into LPG service).

There are existing industry procedures that can passivate (or treat) the interior surface of an LPG container in order to render the surface inactive so that the odorant will not be diminished through oxidation or adsorption/absorption. Also, there are several methods available to detect whether there are adequate amounts of odorant in LPG at any given point. The simplest, and most often used method, is a ''sniff test'' where a person uses their sense of smell to detect the presence of odorant. The person performing a sniff test should have a normal sense of smell, uncompromised by such factors as olfactory fatigue, sinus congestion, allergies, head colds, smoking, or the recent use of alcohol or drugs. Colorimetric tube testing and the gas chromatography test method provide more quantitative methods to measure the concentration of the odorant in LPG. The colorimetric tube, or stain tube, test method measures the concentration of odorant by pulling a measured amount of LPG through a hermetically sealed glass tube containing a detecting reagent. The odorant causes a chemical reaction resulting in a color change of the tube material. The quantity of odorant can be measured by reading the concentration of the odorant from the calibration scale that is marked on the tube. The gas chromatography test method is the most accurate method because it separates the various components of the LPG and odorant for identification. However, this method is costly and requires sending LPG samples to a location that has the proper equipment and trained personnel to perform these tests.

Railroad Tank Cars

At present, while DOT's regulation discussed above contains an odorization requirement for LPG transported in cargo and portable tank containers, there is no comparable DOT regulation regarding the transportation of LPG transported in railroad tank cars. FRA is currently reviewing this situation to determine if further action is warranted. During routine inspections at facilities that receive railroad tank cars loaded with LPG, FRA is obtaining data on the LPG odorization testing procedures being used by industry. FRA is also collecting data on the number of LPG shipments that are received yearly, the number of these shipments that are shipped as odorized versus non-odorized, and the number of odorized shipments received that failed odorization testing or were identified as having insufficient odorant.

As noted above, there are currently Federal regulations, State laws, and accepted industry standards and testing methods in place to ensure proper LPG odorization. FRA encourages industry members to comply with all applicable requirements and standards. In order to help prevent odorant fade incidents involving LPG transported by railroad tank car, and to facilitate compliance with existing requirements and standards, this safety advisory makes several recommendations below.

Recommended Action: In an effort to encourage industry members to take actions to ensure that a sufficient level of odorant remains in odorized LPG shipped via railroad tank car throughout the entire transportation cycle, FRA recommends that:

1. Facilities that load, offer, receive, or offload railroad tank cars containing LPG review their procedures to ensure they are adequate to address the issue of ''odorant fade'' and its various potential causes, and that those procedures ensure that tank car shipments of odorized LPG are odorized to meet applicable regulatory and industry requirements and maintain sufficient levels of odorant throughout the entire transportation cycle. Such procedures should ensure quantitative testing methods are used to measure the amount of odorant in LPG.

2. Facilities that load odorized LPG into railroad tank cars have adequate procedures in place to identify if a tank car received for loading of odorized LPG has been out of LPG product service for any extended length of time, is coming from a tank car repair or cleaning facility, or has been subjected to any condition that could lead to corrosion of the tank.

3. Facilities that load odorized LPG into railroad tank cars inspect, to the degree possible, railcars they receive for signs of oxidation or corrosion, which can lead to the loss of odorant.

4. Facilities that load odorized LPG into tank cars take any other corrective actions needed to ensure sufficient levels of odorization remain in the shipment throughout the entire transportation cycle, such as increasing the amount of odorant injected into the LPG, if necessary.

FRA encourages industry members to take actions consistent with the

preceding recommendations, and to take other complementary actions to help ensure the safety of the Nation's citizens and railroads. FRA may modify this Safety Advisory 2012–01, issue additional safety advisories, or take other appropriate actions necessary to ensure the highest level of safety on the Nation's railroads, including pursuing other corrective measures under its regulatory authority.

Issued in Washington, DC, on April 9, 2012.

Robert C. Lauby,

Acting Associate Administrator for Railroad Safety/Chief Safety Officer.

[FR Doc. 2012–8970 Filed 4–12–12; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Petition for Exemption From the Federal Motor Vehicle Motor Theft Prevention Standard; TESLA

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Grant of petition for exemption.

SUMMARY: This document grants in full the petition of Tesla Motors Inc's. (Tesla) for an exemption of the Model S vehicle line in accordance with 49 CFR Part 543, *Exemption from the Theft Prevention Standard.* This petition is granted, because the agency has determined that the antitheft device to be placed on the line as standard equipment is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts-marking requirements of the Theft Prevention Standard 49 CFR Part 541, *Federal Motor Vehicle Theft Prevention Standard.* Tesla requested confidential treatment for specific information in its petition. The agency granted Tesla's request for confidential treatment by a letter dated December 5, 2011.

DATES: The exemption granted by this notice is effective beginning with the 2012 model year (MY).

FOR FURTHER INFORMATION CONTACT: Ms. Carlita Ballard, Office of International Policy, Fuel Economy and Consumer Standards, NHTSA, W43–439, 1200 New Jersey Avenue SE., Washington, DC 20590. Ms. Ballard's phone number is (202) 366–5222. Her fax number is (202) 493–2990.

SUPPLEMENTARY INFORMATION: In a petition dated October 24, 2011, Tesla requested an exemption from the parts-marking requirements of the theft prevention standard (49 CFR Part 541) for the Model S vehicle line beginning with MY 2012. The petition requested an exemption from parts-marking pursuant to 49 CFR part 543, Exemption from Vehicle Theft Prevention Standard, based on the installation of an antitheft device as standard equipment for the entire vehicle line.

Under § 543.5(a), a manufacturer may petition NHTSA to grant an exemption for one vehicle line per model year. In its petition, Tesla provided a detailed description and diagram of the identity, design and location of the components of the antitheft device for the Model S vehicle line. Tesla will install a passive, transponder-based, electronic engine immobilizer device as standard equipment on its Model S vehicle line beginning with MY 2012. Key components of the antitheft device include an engine immobilizer, security controller, gateway function, drive inverter and a passive entry transponder (PET). Tesla stated that its immobilizer device, which will be installed beginning with its MY 2012 vehicle line, will be an upgraded version with a more robust design than the antitheft device already installed as standard equipment on its MYs 2008–2011 Tesla roadsters. Tesla stated that the new design of its immobilizer device will have enhanced communications between components, prevent tampering and also provide additional features to enhance its overall effectiveness.

In addition to Tesla's immobilizer device, an audible alarm (horn) will be incorporated as standard equipment, but no visual feature will be provided with the alarm system. Tesla stated that its alarm system will activate with any unauthorized attempt to break in the front and rear cargo areas. Tesla also stated that any unauthorized entry without the correct PET will trigger the audible alarm. Tesla stated that its antitheft device has a two-step activation process with a vehicle code query being conducted at each stage. The first stage allows access to the vehicle when an authorization cycle occurs between the PET and the Security Controller as long as the PET is in close proximity to the car and the driver either pushes the lock/unlock button on the key fob, pushes the exterior door handle to activate the handle sensors or inserts a hand into the handle to trigger the latch release. During the second stage, vehicle operation will be enabled when the driver has depressed the brake pedal and moves the gear selection stalk to drive or reverse. When one of these actions is performed, the security controller will poll to verify if the appropriate PET is inside the vehicle. Upon location of the PET, the security controller will run an authentication cycle with the key confirming the correct PET is being used inside the vehicle. Tesla stated that once authentication is successful, the security controller initiates an encrypted message through the gateway enabling the drive inverter to receive the encrypted message which then processes the message generating an encrypted response posting the message back to the security controller. If the encrypted exchange yields a result that meets the security code's expectations of the security controller, the correct exchange will authorize the drive inverter to deactivate immobilization allowing the vehicle to be driven under its own power. Tesla stated that if the results are not correct and there is no response to the drive inverter from the security controller, the vehicle will remain immobilized and the drive inverter will retry the exchange until there is a proper response or it times out. Tesla's submission is considered a complete petition as required by 49 CFR 543.7 in that it meets the general requirements contained in 543.5 and the specific content requirements of 543.6.

Tesla stated that the immobilizer functions will ensure maximum theft protection when the immobilizer is active, the vehicle is off and the doors are locked. Tesla stated that it will incorporate an additional security measure that performs when the car is unlocked and immobilization is deactivated. Specifically, immobilization will reactivate when there are no user inputs to the vehicle within a programmed period of time. Tesla stated that any attempt to operate the vehicle without performing and completing each task, will render the vehicle inoperable.

In addressing the specific content requirements of 543.6, Tesla provided information on the reliability and durability of its proposed device. To ensure reliability and durability of the device, Tesla conducted tests based on its own specified standards. Tesla provided a detailed list of the test conducted and stated that it believes that its device is reliable and durable because it complied with its own specific design standards. Additionally, Tesla stated that it has incorporated other measures of ensuring reliability and durability of the device. Those measures include the inaccessible location of all immobilizer device components within the passenger compartment of the vehicle or their containment in other vehicle

components. Tesla stated that these measures protect the immobilizer device from exposure to the elements and limit its access by unauthorized persons. Additionally, Tesla stated that the immobilizer relies on electronic functions versus mechanical functions and therefore expects the components to last at least the life of the vehicle.

Tesla also compared the device proposed for its vehicle line with other devices which NHTSA has already determined to be as effective in reducing and deterring motor vehicle theft as would compliance with the parts-marking requirements of the Theft Prevention Standard. Tesla compared the BMW 5 series and the Mercedes-Benz E-Class to its Model S vehicle line. Specifically, the agency's data show that theft rates for the BMW 5 series are 0.9044, 0.6550 and 0.4098 and for the Mercedes-Benz E-Class, 0.5898, 0.6286 and 0.9041 respectively. Using an average of 3 MYs data (2007–2009), the agency theft rate data show that the average theft rate for the BMW 5 series is 0.6564 and 0.7075 for the Mercedes-Benz E-Class, well below the median theft rate of 3.5826. Tesla also stated that its 2008–2011 roadsters are already equipped with an antitheft device as standard equipment. Agency theft rate data for the roadster vehicles using an average of the most current theft rate data available is 0.0000.

Based on the evidence submitted by Tesla, the agency believes that the antitheft device for the Model S vehicle line is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts-marking requirements of the Theft Prevention Standard (49 CFR 541).

Pursuant to 49 U.S.C. 33106 and 49 CFR 543.7 (b), the agency grants a petition for exemption from the parts-marking requirements of Part 541, either in whole or in part, if it determines that, based upon substantial evidence, the standard equipment antitheft device is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts-marking requirements of Part 541. The agency finds that Tesla has provided adequate reasons for its belief that the antitheft device for the Model S vehicle line is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts-marking requirements of the Theft Prevention Standard (49 CFR Part 541). This conclusion is based on the information Tesla provided about its device.

The agency concludes that the device will provide the five types of performance listed in § 543.6(a)(3): promoting activation, attracting attention to the efforts of an unauthorized person to enter or move a vehicle by means other than a key, preventing defeat or circumvention of the device by unauthorized persons, preventing operation of the vehicle by unauthorized entrants and ensuring the reliability and durability of the device.

For the foregoing reasons, the agency hereby grants in full Tesla's petition for exemption for the Model S vehicle line from the parts-marking requirements of 49 CFR Part 541, beginning with the 2012 model year vehicles. The agency notes that 49 CFR Part 541, Appendix A–1, identifies those lines that are exempted from the Theft Prevention Standard for a given MY. 49 CFR 543.7(f) contains publication requirements incident to the disposition of all Part 543 petitions. Advanced listing, including the release of future product nameplates, the beginning model year for which the petition is granted and a general description of the antitheft device is necessary in order to notify law enforcement agencies of new vehicle lines exempted from the parts marking requirements of the Theft Prevention Standard.

If Tesla decides not to use the exemption for this line, it shall formally notify the agency. If such a decision is made, the line must be fully marked according to the requirements under 49 CFR 541.5 and 541.6 (marking of major component parts and replacement parts).

NHTSA notes that if Tesla wishes in the future to modify the device on which this exemption is based, the company may have to submit a petition to modify the exemption. Section 543.7(d) states that a Part 543 exemption applies only to vehicles that belong to a line exempted under this part and equipped with the antitheft device on which the line's exemption is based. Further, § 543.9(c)(2) provides for the submission of petitions ''to modify an exemption to permit the use of an antitheft device similar to but differing from the one specified in that exemption.''

The agency wishes to minimize the administrative burden that § 543.9(c)(2) could place on exempted vehicle manufacturers and itself. The agency did not intend in drafting Part 543 to require the submission of a modification petition for every change to the components or design of an antitheft device. The significance of many such changes could be *de minimis.* Therefore, NHTSA suggests that if the manufacturer contemplates making any changes, the effects of which might be characterized as *de minimis,* it should consult the agency before preparing and submitting a petition to modify.

Authority: 49 U.S.C. 33106; delegation of authority at 49 CFR 1.50.

Issued on: April 10, 2012.

Christopher J. Bonanti,

Associate Administrator for Rulemaking.

[FR Doc. 2012–8893 Filed 4–12–12; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Petition To Modify an Exemption of a Previously Approved Antitheft Device; Porsche

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Grant of a petition to modify an exemption of a previously approved antitheft device.

SUMMARY: On December 22, 1995, the National Highway Traffic Safety Administration (NHTSA) granted in full, Porsche Cars North America, Inc.'s (Porsche) petition for an exemption in accordance with § 543.9(c)(2) of 49 CFR part 543, *Exemption from the Theft Prevention Standard* for the Porsche Boxster vehicle line, beginning with model year (MY) 1997. On February 1, 2012, Porsche submitted a petition to modify its previously approved exemption for the Porsche Boxster vehicle line and notified the agency that all new successor models within the Boxster line will be installed with the proposed antitheft device beginning with MY 2013. NHTSA is granting Porsche's petition to modify the exemption in full, because it has determined that the modified device is also likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts-marking requirements of the Theft Prevention Standard.

DATES: The exemption granted by this notice is effective beginning with the 2013 MY.

FOR FURTHER INFORMATION CONTACT: Deborah Mazyck, Office of International Policy, Fuel Economy and Consumer Standards, NHTSA, 1200 New Jersey Avenue SE., West Building, W43–443, Washington, DC 20590. Ms. Mazyck's telephone number is (202) 366–4139. Her fax number is (202) 493–2990.

SUPPLEMENTARY INFORMATION: On December 22, 1995, NHTSA published in the **Federal Register** a notice granting in full, a petition from Porsche for an

exemption from the parts-marking requirements of the Theft Prevention Standard (49 CFR part 541) for a vehicle line whose nameplate and model year were confidential, but subsequently provided as the Porsche Boxster vehicle line. The Boxster vehicle line has been exempted from the Theft Prevention Standard beginning with its MY 1997 vehicles (See 60 FR 66575). On February 1, 2012, Porsche submitted a petition to modify the previously approved exemption for the Boxster vehicle line. This notice grants in full Porsche's petition to modify the exemption for the Boxster vehicle line. Porsche's submission is a complete petition, as required by 49 CFR 543.9(d), in that it meets the general requirements contained in 49 CFR 543.5 and the specific content requirements of 49 CFR 543.6. Porsche's petition provided a detailed description and diagram of the identity, design and location of the components of the antitheft device proposed for installation beginning with the 2013 model year.

The current antitheft device (MYs 1997–2012) installed on the Porsche Boxster vehicle line is a passive, microprocessor-based device which includes a starter interrupt function, transponder key and a central-locking system. Porsche also offers a remote-controlled audible and visible alarm system as optional equipment to its current device.

Porsche stated that its current antitheft device is activated by removing the key from the vehicle's ignition switch/steering lock. By removing the key, the ignition switch returns the system to its normal ''OFF'' state where starting the engine and operation of the vehicle is prohibited. Porsche stated that the key contains a radio signal transponder which signals the control unit to allow the engine to start when the correct key is inserted into the ignition switch.

Porsche further stated that the optional alarm system on the vehicle line monitors the doors, hood, rear decklid, glove compartment or radio contact switch and if any of the areas are breached, the horn will sound and the lights will flash.

In Porsche's petition to modify its exemption for MY 2013, it stated that the Boxster vehicle line will be modified to include the antitheft device and strategies used for the Panamera vehicle line. The Panamera vehicle line has been granted a parts-marking exemption since MY 2010 (See 74 FR 18037, April 20, 2009). However, Porsche was granted a modification to its previously approved exemption for the Panamera vehicle line beginning with its MY 2012 vehicles (See 75 FR 22174, April 27, 2010). Specifically, in its MY 2012 modification, Porsche proposed to remove the steering column lock on the Panamera line, because it considered the feature to be a redundant function that is also offered by the electronic parking brake which is installed as standard equipment on the line. The electronically activated parking brake will also be included as standard equipment on the MY 2013 Boxster line. Porsche also made special mention that the agency recently granted its MY 2012 request to modify the previously approved exemption for the 911 vehicle line for also having adopted the Panamera antitheft device and strategies (See 76 FR 69321, November 8, 2011).

For MY 2013, Porsche will install its passive, transponder-based electronic, engine-immobilizer antitheft device as standard equipment on its Porsche Boxster vehicle line. Porsche stated that the antitheft system consists of two major subsystems: a microprocessor-based immobilizer device that prevents the engine management system from functioning when the system is engaged, and a central locking and alarm system. Key components of the modified antitheft device will include an electronic ignition switch, transponder key, remote control unit, transponder, alarm/central locking control unit, key or keyless entry system, an engine control unit, electronic parking brake and an off-board antitheft strategy.

Porsche stated that the immobilizer device is automatically activated when the driver removes the key from the ignition switch assembly or the optional special keyless entry keycard exits the vehicle with the driver. The key contains a radio signal transponder which signals the control unit to allow the engine to be started. Porsche stated that as an option, a keyless entry device can be provided for the Boxster vehicle line. Porsche stated that the antitheft device will remain the same, but the ignition key is substituted with a special key that contains a radio signal transmitter similar to that in the standard ignition key. The immobilizer system is automatically activated after the engine is turned off with the optional keyless entry device. Porsche stated that only by inserting the correct key into the ignition switch or by having the special keyless entry device within the compartment of the car, will the correct signal be sent to the control unit allowing start and operation of the engine. When the key is removed from the ignition or the keyless entry key is removed from the vehicle, the device will return to its normal ''OFF'' state disallowing engine start and operation.

The central locking system works in conjunction with the audible and visible alarm system. Porsche will continue to offer a central locking system as standard equipment on the Boxster vehicle line. The previously approved device offered the alarm system as optional equipment. Porsche stated that the 2013 modification for the Boxster vehicle line will include the audible and visible alarm system as standard equipment. Porsche stated that the alarm system will continue to monitor the opening of the doors, rear luggage compartment and front deck lid.

Porsche stated that the proposed central locking and alarm systems can be armed by using the ignition key, the remote control, or a door switch (with the keyless entry option). Porsche stated that when the key or remote control is used to lock the doors, the alarm is armed. With the keyless entry system, either the door switch or the remote control is used instead of a manual key. The proposed alarm system will also monitor interior movement within the vehicle through an ultrasonic sensor. If any violation of these areas is detected, the horn will sound and the lights will flash.

In Porsche's petition to modify its exemption, it stated that for 2013, the Boxster will be modified to accommodate the introduction of the electronically activated parking brake. Porsche stated that if the control unit does not receive the correct signal from the key or keyless entry system, the parking brake will remain activated and the vehicle cannot be towed away.

Porsche stated that another additional theft prevention feature to the Boxster vehicle line will be the implementation of a new off-board antitheft strategy, making it impossible to use stolen electronic control units to repair other Porsche vehicles. Porsche stated that the goal of the off-board theft protection strategy is to reduce the marketability of stolen electronic components. Porsche believes its off-board antitheft strategy is similar in concept to parts marking, and will further reduce the demand for stolen Porsche vehicle components. Specifically, Porsche explained that during the production process of the vehicle, initialization and registration of various antitheft related electronic components are recorded in a central database. Changes to these components are only possible with authorized on-line access to the central database. Porsche stated that if the components have to be repaired or replaced while authorized access to the central database is unavailable or the central database

indicates the components are unauthorized, further operation and use of the vehicle is restricted or even impossible.

In order to ensure the reliability and durability of the device, Porsche conducted tests based on its own specified standards. Porsche provided a detailed list of tests conducted and believes that its device is reliable and durable since the device complied with its specified requirements for each test. The test conducted included extreme temperature tests, voltage spike tests, reverse polarity tests, electromagnetic interference tests, vibration tests and endurance tests. Porsche stated that its antitheft device also features a built-in self-diagnostic that constantly checks for system failures. If a failure is detected, the operator receives a signal via an alarm indicator.

In its MY 2013 modification, Porsche stated that it believes its new Boxster antitheft device will prove to be even more effective in reducing and deterring theft than its antitheft devices have proven in the past. Porsche also compared its device with other devices without alarms that NHTSA has determined to be as effective in reducing and deterring motor vehicle theft. Porsche stated that similar systems without alarms, i.e., GM PASS–Key, Mercedes Benz 202 vehicle line, Porsche Boxster (Cayman) as well as earlier 911 vehicle line devices, were determined to be as effective as parts-marking. Porsche also referenced the agency's theft rate data for the Boxster vehicle line which indicates that its theft rates (MY/CY 2002–2009) are still below the median theft rate of 3.5826. The average theft rates for the Boxster vehicle line (Boxster convertible and Cayman coupe) using the most current 3 MY's theft rate data are 0.3789 and 0.7217, respectively.

The agency has evaluated Porsche's MY 2013 petition to modify the exemption for the Boxster vehicle line from the parts-marking requirements of 49 CFR part 541, and has decided to grant it. The agency believes that the proposed device will continue to provide the five types of performance listed in § 543.6(a)(3): (1) Promoting activation, (2) attracting attention to the efforts of unauthorized persons to enter or operate a vehicle by means other than a key, (3) preventing defeat or circumvention of the device by unauthorized persons, (4) preventing operation of the vehicle by unauthorized entrants and (5) ensuring the reliability and durability of the device.

If Porsche decides not to use the exemption for this line, it should formally notify the agency. If such a decision is made, the line must be fully marked according to the requirements under 49 CFR 541.5 and 541.6 (marking of major component parts and replacement parts).

NHTSA suggests that if the manufacturer contemplates making any changes, the effects of which might be characterized as *de minimis,* it should consult the agency before preparing and submitting a petition to modify.

Authority: 49 U.S.C. 33106; delegation of authority at 49 CFR 1.50.

Issued on: April 10, 2012.

Christopher J. Bonanti,

Associate Administrator for Rulemaking.

[FR Doc. 2012–8892 Filed 4–12–12; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2012–0041; Notice 1]

Hyundai Motor Company, Receipt of Petition for Decision of Inconsequential Noncompliance

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Receipt of petition.

SUMMARY: Hyundai America Technical Center, Inc., on behalf of Hyundai Motor Company (collectively referred to as ''Hyundai'') [1] has determined that certain model year 2011 and 2012 Hyundai Sonata Hybrid passenger cars, do not fully comply with paragraph S4.1.5.5.2 of Federal Motor Vehicle Safety Standard (FMVSS) No. 208, *Occupant Crash Protection.* Hyundai has filed an appropriate report dated March 8, 2012, pursuant to 49 CFR part 573, *Defect and Noncompliance Responsibility and Reports.*

Pursuant to 49 U.S.C. 30118(d) and 30120(h) (see implementing rule at 49 CFR part 556), Hyundai submitted a petition for an exemption from the notification and remedy requirements of 49 U.S.C. Chapter 301 on the basis that this noncompliance is inconsequential to motor vehicle safety.

This notice of receipt of Hyundai's petition is published under 49 U.S.C. 30118 and 30120 and does not represent any agency decision or other exercise of judgment concerning the merits of the petition.

Vehicles involved: Affected are approximately 14,728 model year 2011 and 2012 Hyundai Sonata Hybrid vehicles produced beginning on December 2, 2010 and shipped to dealers through March 7, 2012 that are equipped with a center rear seat belt incorporating a release mechanism that detaches both the lap and shoulder portion at the lower anchorage point.

NHTSA notes that the statutory provisions (49 U.S.C. 30118(d) and 30120(h)) that permit manufacturers to file petitions for a determination of inconsequentiality allow NHTSA to exempt manufacturers only from the duties found in sections 30118 and 30120, respectively, to notify owners, purchasers, and dealers of a defect or noncompliance and to remedy the defect or noncompliance. Therefore, these provisions only apply to the subject 14,728 [2] vehicles that Hyundai no longer controlled at the time it determined that the noncompliance existed.

Noncompliance: Hyundai explains that the noncompliance is that the affected vehicles do not comply with Paragraph S4.1.5.5.2 because they are equipped with a non-folding rear seat back and a center rear seat belt incorporating a release mechanism that detaches both the lap and shoulder portion at the lower anchorage point to allow improved assembly line procedures.

Rule text: Paragraph S4.1.5.5 of FMVSS No. 208 requires in pertinent part:

S4.1.5.5 Passenger cars manufactured on or after September 1, 2007.

S4.1.5.5.1 Except as provided in S4.1.5.5.2, each passenger car shall have a Type 2 seat belt assembly that conforms to Standard No. 209 and to S7.1 and S7.2 of this standard at each rear designated seating position, except that side-facing designated seating positions shall have a Type 1 or Type 2 seat belt assembly that conforms to Standard No. 209 and to S7.1 and S7.2 of this standard.

S4.1.5.5.2 Any inboard designated seating position on a seat for which the entire seat back can be folded (including the head restraints and any other part of the vehicle attached to the seat back) such that no part of the seat back extends above a horizontal plane located 250 mm above the highest SRP located on the seat may meet the requirements of S4.1.5.5.1 by use of a belt incorporating a release mechanism that

[1] Hyundai America Technical Center, Inc., is a corporation registered under the laws of the state of Michigan.

[2] Hyundai's petition, which was filed under 49 CFR part 556, requests an agency decision to exempt Hyundai as a motor vehicles manufacturer from the notification and recall responsibilities of 49 CFR part 573 for the 14,728 affected vehicles. However, a decision on this petition will not relieve vehicle distributors and dealers of the prohibitions on the sale, offer for sale, introduction or delivery for introduction into interstate commerce of the noncompliant motor vehicles under their control after Hyundai notified them that the subject noncompliance existed.

detaches both the lap and shoulder portion at either the upper or lower anchorage point, but not both. The means of detachment shall be a key or key-like object.

Summary of Hyundai's Analysis and Arguments

Hyundai believes that the installation of a center rear seat belt incorporating a release mechanism that detaches both the lap and shoulder portion at the lower anchorage point in a vehicle with a nonfolding rear seat back is inconsequential as it relates to motor vehicle safety. The seat belt assembly complies with FMVSS No. 208 requirements and with FMVSS No. 209 requirements, with the sole exception that it may be detached from the lower anchorage by use of a tool, such as a key or key-like object. If the rear seat back of the Sonata Hybrid vehicle was simply capable of being folded, which would have no effect upon seat belt performance, this detachable aspect would not result in a compliance issue.

Hyundai also stated its belief that it is clear from the intended difficulty in detaching the seat belt and the instructions contained in the vehicle owner's manual that the seat belt should not be detached. Further, in the Sonata Hybrid with a fixed rear seat back, there is no advantage or reason for the owner to detach the center rear seat belt from the lower anchorage.

Hyundai has additionally informed NHTSA that it has corrected the noncompliance so that all future production vehicles will comply with FMVSS No. 208.

With consideration of the above information, Hyundai Motor Company does not believe that it is appropriate to conduct a recall campaign to replace the center rear seat belts in vehicles that have been delivered to customers.

In summation, Hyundai believes that the described noncompliance of its vehicles is inconsequential to motor vehicle safety, and that its petition, to exempt from providing recall notification of noncompliance as required by 49 U.S.C. 30118 and remedying the recall noncompliance as required by 49 U.S.C. 30120 should be granted.

Comments: Interested persons are invited to submit written data, views, and arguments on this petition. Comments must refer to the docket and notice number cited at the beginning of this notice and be submitted by any of the following methods:

a. By mail addressed to: U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.

b. By hand delivery to U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590. The Docket Section is open on weekdays from 10 a.m. to 5 p.m. except Federal Holidays.

c. Electronically: by logging onto the Federal Docket Management System (FDMS) Web site at *http://www.regulations.gov/*. Follow the online instructions for submitting comments. Comments may also be faxed to 1–202–493–2251.

Comments must be written in the English language, and be no greater than 15 pages in length, although there is no limit to the length of necessary attachments to the comments. If comments are submitted in hard copy form, please ensure that two copies are provided. If you wish to receive confirmation that your comments were received, please enclose a stamped, self-addressed postcard with the comments. Note that all comments received will be posted without change to *http://www.regulations.gov*, including any personal information provided.

Documents submitted to a docket may be viewed by anyone at the address and times given above. The documents may also be viewed on the Internet at *http://www.regulations.gov* by following the online instructions for accessing the dockets. DOT's complete Privacy Act Statement is available for review in the **Federal Register** published on April 11, 2000, (65 FR 19477–78).

The petition, supporting materials, and all comments received before the close of business on the closing date indicated below will be filed and will be considered. All comments and supporting materials received after the closing date will also be filed and will be considered to the extent possible. When the petition is granted or denied, notice of the decision will be published in the **Federal Register** pursuant to the authority indicated below.

Comment Closing Date: May 14, 2012.

Authority: 49 U.S.C. 30118, 30120: delegations of authority at CFR 1.50 and 501.8.

Issued on: April 9, 2012.

Claude H. Harris,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 2012–8895 Filed 4–12–12; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

[Docket No. PHMSA–2012–0024]

Pipeline Safety: Information Collection Activities, Revision to Gas Transmission and Gathering Pipeline Systems Annual Report, Gas Transmission and Gathering Pipeline Systems Incident Report, and Hazardous Liquid Pipeline Systems Accident Report

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

ACTION: Notice and request for comments.

SUMMARY: PHMSA is preparing to request approval from the Office of Management and Budget (OMB) for the revision of several forms in two currently approved information collections. PHMSA is looking at making several minor revisions to the hazardous liquid pipeline systems accident report and the gas transmission and gathering pipeline systems incident report. In addition, PHMSA is considering a number of revisions to the annual report form for gas transmission and gathering pipeline systems. In accordance with the Paperwork Reduction Act (PRA) of 1995, PHMSA invites comments only on the proposed revisions to the forms.

DATES: Interested persons are invited to submit comments on or before June 12, 2012.

ADDRESSES: Comments may be submitted in the following ways:

E-Gov Web Site: http://www.regulations.gov. This site allows the public to enter comments on any **Federal Register** notice issued by any agency.

Fax: 1–202–493–2251.

Mail: Docket Management Facility; U.S. Department of Transportation (DOT), 1200 New Jersey Avenue SE., West Building, Room W12–140, Washington, DC 20590–0001.

Hand Delivery: Room W12–140 on the ground level of DOT, West Building, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Instructions: Identify the docket number, PHMSA–2012–0024, at the beginning of your comments. Note that all comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided. You

should know that 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.). Therefore, you may want to review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477) or visit *http://www.regulations.gov* before submitting any such comments.

Docket: For access to the docket or to read background documents or comments, go to *http://www.regulations.gov* at any time or to Room W12–140 on the ground level of DOT, West Building, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. If you wish to receive confirmation of receipt of your written comments, please include a self-addressed, stamped postcard with the following statement: ''Comments on PHMSA–2012–0024.'' The Docket Clerk will date stamp the postcard prior to returning it to you via the U.S. mail. Please note that due to delays in the delivery of U.S. mail to Federal offices in Washington, DC, we recommend that persons consider an alternative method (internet, fax, or professional delivery service) of submitting comments to the docket and ensuring their timely receipt at DOT.

FOR FURTHER INFORMATION CONTACT: Cameron Satterthwaite by telephone at 202–366–1319, by fax at 202–366–4566, or by mail at DOT, PHMSA, 1200 New Jersey Avenue SE., PHP–30, Washington, DC 20590–0001.

SUPPLEMENTARY INFORMATION:

A. Background

Section 1320.8(d), Title 5, Code of Federal Regulations, requires PHMSA to provide interested members of the public and affected agencies an opportunity to comment on information collection requests. This notice identifies several changes to existing information collections that PHMSA will be submitting to OMB for approval.

B. Incident and Accident Report Revisions

PHMSA is revising the gas transmission and gathering pipeline systems incident report (PHMSA F 7100.2, gas transmission incident report) and hazardous liquid pipeline systems accident report (PHMSA F 7000–1, hazardous liquid accident report) to collect additional information relative to incidents involving girth welds. The revisions to these forms will allow for the reporting of detailed information regarding the pipe involved with the weld. This information includes basic information such as pipe size, diameter, and thickness. Several other minor changes are being made to align the form with the online system used to collect the reports from pipeline operators. The gas transmission incident report is approved under OMB control number 2137–0522 and the hazardous liquid accident report is approved under OMB control number 2137–0047. PHMSA does not anticipate any change to the burden of the information collection due to the proposed revision of these forms.

C. Gas Transmission and Gathering Pipeline Systems Annual Report Revisions

On September 26, 2011, the National Transportation Safety Board issued recommendations to PHMSA regarding improvements in pipeline safety. These recommendations include requiring that all gas transmission pipelines installed before 1970 be subjected to pressure testing, that manufacturing- and construction-related defects only be considered stable if a gas pipeline has been subjected to a post-construction hydrostatic test of at least 1.25 times the maximum allowable operating pressure (MAOP), and that all gas transmission pipelines be able to accommodate in-line inspection tools. On January 3, 2012, President Obama signed the Pipeline Safety, Regulatory Certainty, and Job Creation Act of 2011 which requires that PHMSA:

- Issue a regulation for the testing of previously untested gas transmission pipelines located in high consequence areas (HCAs) and operating at a pressure greater than 30 percent of specified minimum yield strength;
- Require each owner or operator to verify that their records accurately reflect the physical and operational characteristics of their pipelines and associated facilities within Class 3 and 4 locations and Class 1 and 2 HCAs; and
- Require each owner or operator to identify and submit documentation relating to each pipeline segment for which records are insufficient to confirm the established MAOP.

PHMSA intends to revise the gas transmission and gathering pipeline systems annual report (PHMSA F 7100.2–1, gas transmission annual report) to provide a mechanism for owners and operators to identify those segments of pipelines for which it is unable to verify the MAOP. For the purpose of reporting, ''verification records'' are records that can be used to validate the MAOP for the subject pipelines such as as-built drawings, alignment sheets, specifications, and design, construction, inspection, testing, maintenance, manufacturer, or other related documents. These records should be traceable, verifiable, and complete. The purpose of this verification is to ensure that the records accurately reflect the physical and operational characteristics of the pipelines. In an upcoming Advisory Bulletin, PHMSA will inform operators of their responsibilities to verify that their records accurately reflect the physical and operational characteristics of their pipelines and associated facilities. In addition, the Advisory Bulletin will further clarify what PHMSA considers to be a ''verifiable'' record.

PHMSA also intends to revise the gas transmission annual report to collect other information related to the NTSB Recommendations and the recently signed legislation detailed above. In addition to the MAOP verification reporting, these revisions will allow for the collection of information regarding the methodology used to determine the MAOP of gas transmission pipelines, the total miles of pipelines which have not been subjected to a post-construction hydrostatic pressure test of at least 125% of the MAOP, and total miles of pipelines which are not able to accommodate the passage of instrumented internal inspection devices. PHMSA is also revising the gas transmission annual report to improve the granularity of the data, remove sections of limited value, collect data about anomalies removed from gas transmission pipeline systems, and make several minor changes to improve the quality of the data. Background for these topics is as follows:

Pipeline Material Reporting by State: Pipeline mileage by material type was collected state-by-state prior to 2010. This data allowed PHMSA to determine the amounts and types of pipeline materials used in each state. The proposed change would restore this granularity which was lost during the 2010 revision to the gas transmission annual report. Parts D and E of the gas transmission annual report are used to collect information regarding pipeline material type. PHMSA proposes to collect this information in the state-specific section of the report and to combine Parts D and E of the report into a single table. This change will not impact the burden of the information collection.

Additional Commodities: In the current gas transmission annual report, operators have the ability to report ''other'' as the commodity transported and then enter text describing the commodity. Based on a review of 2010 data, many operators submitted text equivalent to landfill gas to describe the ''other'' commodity. PHMSA proposes to add landfill gas as a commodity choice to reduce

the mileage reported under the ''other'' category. This change will not impact the burden of the information collection.

Additional Material Type: PHMSA recognizes that composite pipe materials are currently being used, or considered for use, by the pipeline industry. Outside of reinforced thermosetting plastic, in certain and limited use, composite pipe can only be used if PHMSA issues a special permit. In an effort to determine the amount of composite pipe currently in use, PHMSA proposes to add ''composite pipe'' as a material type to Parts D and N of the gas transmission annual report. This change will not impact the burden of the information collection.

Removal of Sections A6 and A8: Section A6 in the gas transmission annual report allows each submitter to characterize the facilities covered by their Operator Identification (OPID) and commodity group with respect to whether they are included in an integrity management program subject to 49 CFR part 192. Section A8 allowed submitters to identify whether or not there were any changes from the previous year's filing. PHMSA has determined that these sections provide limited value to all stakeholders and should be removed. This change will not impact the burden of the information collection.

Anomalies Removed from Gas Transmission Systems: The gas transmission annual report currently collects information about the number of anomalies repaired in response to integrity assessments. During data quality checks of the 2010 data, PHMSA learned that many anomalies are eliminated from gas transmission systems by pipe replacement or abandonment. This data helps to demonstrate the benefits of integrity management programs. Therefore, PHMSA proposes to revise the gas transmission annual report to collect the number of anomalous conditions eliminated by pipe replacement and abandonment in Part F of the report.

PHMSA estimates that these revisions will add a burden of two hours per response to the gas transmission annual report. PHMSA receives approximately 1,440 gas transmission annual reports each year. Therefore, PHMSA estimates the burden of the information collection to increase by a total of 2,880 hours (1,440 reports × 2 hours). A copy of the revised report has been placed in the docket and is available for comment.

D. Information Collection Focus

PHMSA is only requesting approval of the information collection changes addressed in this notice. The information collection for hazardous liquid accident reports (OMB control number 2137–0047) is scheduled to expire December 31, 2013, and the information collection that covers gas transmission annual reports and incident reports (OMB control number 2137–0522) is scheduled to expire January 31, 2014. In 2013, PHMSA will solicit comments on all aspects of these information collections, including the forms, in accordance with the standard PRA renewal process.

E. Summary of Impacted Collections

The following information is provided for each information collection: (1) Title of the information collection; (2) OMB control number; (3) Current expiration date; (4) Type of request; (5) Abstract of the information collection activity; (6) Description of affected public; (7) Estimate of total annual reporting and recordkeeping burden; and (8) Frequency of collection. PHMSA is only focusing on the revisions detailed in this notice and will request revisions to the following information collection activities. PHMSA requests comments on the following information collections:

1. *Title:* Incident and Annual Reports for Gas Pipeline Operators.
OMB Control Number: 2137–0522.
Current Expiration Date: 1/31/2014.
Type of Request: Revision.
Abstract: PHMSA is looking to revise the gas transmission annual report (PHMSA F 7100.2–1) to collect additional information in response to recent NTSB recommendations and legislation. In addition, PHMSA is revising the gas transmission incident report form (PHMSA F 7100.2) to allow for the submission of additional information regarding the pipe in relation to girth weld failures.
Affected Public: Gas transmission/gathering pipeline operators.
Annual Reporting and Recordkeeping Burden:
Total Annual Responses: 21,864.
Total Annual Burden Hours: 80,264 (increase of 2,880).
Frequency of Collection: On occasion.

2. *Title:* Transportation of Hazardous Liquids by Pipeline: Recordkeeping and Accident Reporting.
OMB Control Number: 2137–0047.
Current Expiration Date: 12/31/2013.
Type of Request: Revision.
Abstract: PHMSA is looking to revise the hazardous liquid incident report form (PHMSA F 7000–1) to allow for the submission of additional information regarding the pipe in relation to girth weld failures.
Affected Public: Hazardous liquid pipeline operators.
Annual Reporting and Recordkeeping Burden:
Total Annual Responses: 847.
Total Annual Burden Hours: 51,329.
Frequency of Collection: On occasion.
Comments are invited on:
(a) The need for the proposed collection of information for the proper performance of the functions of the agency, including whether the information will have practical utility;
(b) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
(c) Ways to enhance the quality, utility, and clarity of the information to be collected; and
(d) Ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques.

Issued in Washington, DC on April 10, 2012.

Linda Daugherty,
Deputy Associate Administrator for Policy and Programs.

[FR Doc. 2012–8960 Filed 4–12–12; 8:45 am]
BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. FD 35606]

State of Michigan Department of Transportation—Acquisition Exemption—Certain Assets of Norfolk Southern Railway Company

The State of Michigan Department of Transportation (MDOT), a noncarrier, has filed a verified notice of exemption under 49 CFR 1150.31 to acquire from Norfolk Southern Railway Company (NSR) certain right-of-way and trackage extending from (1) approximately milepost 7.60 at Townline in Wayne County, Mich. to approximately milepost 119.60 at CP Baron in Calhoun County, Mich., a distance of approximately 112.0 miles, and (2) approximately milepost 121.39 in Gord, Calhoun County, Mich., to approximately milepost 145.60 in Kalamazoo, Kalamazoo County, Mich., a distance of approximately 24.21 miles (collectively, the line). MDOT states that, under the proposed transaction, NSR would not transfer to MDOT certain real property and personal property otherwise part of the line, including Wayne Yard and Willow Run Yard. According to MDOT, NSR will retain an exclusive, irrevocable, perpetual, assignable, divisible, licensable and transferable freight operations easement to provide freight rail service on the line.[1]

[1] A motion to dismiss this notice of exemption on the grounds that the transaction does not require authorization from the Board was concurrently filed with this notice of exemption. MDOT requests that the Board give expedited consideration to the motion and issue a decision effective by May 31,

Continued

MDOT states that the proposed transaction has been agreed upon pursuant to an Agreement for Purchase and Sale by and between MDOT and NSR. According to MDOT, it would operate intercity passenger rail service, through a designated third-party operator, and MDOT would not acquire any freight operating rights. MDOT also states that the agreement does not contain any provisions that would limit interchange with a third party.

MDOT certifies that, because it will not conduct any rail operations on the line being acquired, its projected annual revenues as a result of this transaction will not exceed those that would qualify it as a Class III rail carrier and will not exceed $5 million.

MDOT states that it expects to consummate the proposed transaction on May 31, 2012, or later. The earliest this transaction may be consummated is April 29, 2012, the effective date of the exemption (30 days after the exemption is filed).

If the notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Petitions for stay must be filed no later than April 20, 2012 (at least 7 days before the exemption becomes effective).

An original and 10 copies of all pleadings, referring to Docket No. FD 35606, must be filed with the Surface Transportation Board, 395 E Street SW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Kevin M. Sheys, Nossaman LLP, 1666 K Street NW., Suite 500, Washington, DC 20006.

Board decisions and notices are available on our Web site at *www.stb.dot.gov.*

Decided: April 10, 2012.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

Jeffrey Herzig,

Clearance Clerk.

[FR Doc. 2012–8890 Filed 4–12–12; 8:45 am]

BILLING CODE 4915–01–P

2012. The motion to dismiss will be addressed in a subsequent Board decision.

DEPARTMENT OF THE TREASURY

Debt Management Advisory Committee Meeting

Notice is hereby given, pursuant to 5 U.S.C. App. 2, 10(a)(2), that a meeting will be held at the Hay-Adams Hotel, 16th Street and Pennsylvania Avenue NW., Washington, DC, on May 1, 2012 at 11:30 a.m. of the following debt management advisory committee:

Treasury Borrowing Advisory Committee of The Securities Industry and Financial Markets Association.

The agenda for the meeting provides for a charge by the Secretary of the Treasury or his designate that the Committee discuss particular issues and conduct a working session. Following the working session, the Committee will present a written report of its recommendations. The meeting will be closed to the public, pursuant to 5 U.S.C. App. 2, 10(d) and Public Law 103–202, 202(c)(1)(B)(31 U.S.C. 3121 note).

This notice shall constitute my determination, pursuant to the authority placed in heads of agencies by 5 U.S.C. App. 2, 10(d) and vested in me by Treasury Department Order No. 101–05, that the meeting will consist of discussions and debates of the issues presented to the Committee by the Secretary of the Treasury and the making of recommendations of the Committee to the Secretary, pursuant to Public Law 103–202, 202(c)(1)(B). Thus, this information is exempt from disclosure under that provision and 5 U.S.C. 552b(c)(3)(B). In addition, the meeting is concerned with information that is exempt from disclosure under 5 U.S.C. 552b(c)(9)(A). The public interest requires that such meetings be closed to the public because the Treasury Department requires frank and full advice from representatives of the financial community prior to making its final decisions on major financing operations. Historically, this advice has been offered by debt management advisory committees established by the several major segments of the financial community. When so utilized, such a committee is recognized to be an advisory committee under 5 U.S.C. App. 2, 3.

Although the Treasury's final announcement of financing plans may not reflect the recommendations provided in reports of the Committee, premature disclosure of the Committee's deliberations and reports would be likely to lead to significant financial speculation in the securities market. Thus, this meeting falls within the exemption covered by 5 U.S.C. 552b(c)(9)(A).

Treasury staff will provide a technical briefing to the press on the day before the Committee meeting, following the release of a statement of economic conditions and financing estimates. This briefing will give the press an opportunity to ask questions about financing projections. The day after the Committee meeting, Treasury will release the minutes of the meeting, any charts that were discussed at the meeting, and the Committee's report to the Secretary.

The Office of Debt Management is responsible for maintaining records of debt management advisory committee meetings and for providing annual reports setting forth a summary of Committee activities and such other matters as may be informative to the public consistent with the policy of 5 U.S.C. 552(b). The Designated Federal Officer or other responsible agency official who may be contacted for additional information is Fred Pietrangeli, Deputy Director for Office of Debt Management (202) 622–1876.

Dated: April 9, 2012.

Matthew S. Rutherford,

Acting Assistant Secretary, Financial Markets.

[FR Doc. 2012–8858 Filed 4–12–12; 8:45 am]

BILLING CODE 4810–25–M

FEDERAL REGISTER

Vol. 77 Friday,

No. 72 April 13, 2012

Part II

Environmental Protection Agency

40 CFR Part 60

Standards of Performance for Greenhouse Gas Emissions for New Stationary Sources; Electric Utility Generating Units; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[EPA–HQ–OAR–2011–0660; FRL–9654–7]

RIN 2060–AQ91

Standards of Performance for Greenhouse Gas Emissions for New Stationary Sources: Electric Utility Generating Units

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The United States EPA is proposing new source performance standards for emissions of carbon dioxide (CO_2) for new affected fossil fuel-fired electric utility generating units (EGUs). The EPA is proposing these requirements because CO_2 is a greenhouse gas (GHG) and fossil fuel-fired power plants are the country's largest stationary source emitters of GHGs. The EPA in 2009 found that by causing or contributing to climate change, GHGs endanger both the public health and the public welfare of current and future generations. The proposed requirements, which are strictly limited to new sources, would require new fossil fuel-fired EGUs greater than 25 megawatt electric (MWe) to meet an output-based standard of 1,000 pounds of CO_2 per megawatt-hour (lb CO_2/MWh), based on the performance of widely used natural gas combined cycle (NGCC) technology. Because of the economics of the energy sector, the EPA and others project that NGCC will be the predominant choice for new fossil fuel-fired generation even absent this rule. In its base case analysis, the EPA does not project any new coal-fired EGUs without CCS to be built in the absence of this proposal through 2030. New coal-fired or pet coke-fired units could meet the standard either by employing carbon capture and storage (CCS) [1] of approximately 50% of the CO_2 in the exhaust gas at startup, or through later application of more effective CCS to meet the standard on average over a 30-year period. The 30-year averaging option could also provide flexibility for owners and operators of coal or pet coke units implementing CCS at the outset of the unit's operation that were designed and operated to emit at less than 1,000 lb CO_2/MWh to address startup concerns or short term interruptions in their ability to sequester captured carbon dioxide. The EPA is not proposing standards of performance for existing EGUs whose CO_2 emissions increase as a result of installation of pollution controls for conventional pollutants, or for proposed EGUs, which are referred to here as transitional sources, that have acquired a complete preconstruction permit by the time of this proposal and that commence construction within 12 months of this proposal. As a result, those sources would not be subject to the standards of performance proposed in today's rule.

[1] Throughout this preamble, we refer to 'carbon capture and storage' or CCS. By this, we mean the use of a technology for separating and capturing CO_2 from the flue gas or syngas stream with subsequent compression and transportation to a suitable location for long term storage and monitoring. Many references refer to CCS as 'carbon capture and sequestration'. In this preamble, 'storage' and 'sequestration' mean the same thing and the words are used interchangeably.

DATES: *Comments.* Comments must be received on or before June 12, 2012. Under the Paperwork Reduction Act (PRA), since the Office of Management and Budget (OMB) is required to make a decision concerning the information collection request between 30 and 60 days after April 13, 2012, a comment to the OMB is best assured of having its full effect if the OMB receives it by May 14, 2012.

Public Hearing. The EPA will hold public hearings on this proposal. The dates, times, and locations of the public hearings will be announced separately. Oral testimony will be limited to 5 minutes per commenter. The EPA encourages commenters to provide written versions of their oral testimonies either electronically or in paper copy. Verbatim transcripts and written statements will be included in the rulemaking docket. If you would like to present oral testimony at one of the hearings, please notify Ms. Pamela Garrett, Sectors Policies and Programs Division (C504–03), U.S. EPA, Research Triangle Park, NC 27711, telephone number (919) 541–7966; email: *garrett.pamela@epa.gov.* Persons wishing to provide testimony should notify Ms. Garrett at least 2 days in advance of the public hearings. The public hearings will provide interested parties the opportunity to present data, views, or arguments concerning the proposed rule. The EPA officials may ask clarifying questions during the oral presentations, but will not respond to the presentations or comments at that time. Written statements and supporting information submitted during the comment period will be considered with the same weight as any oral comments and supporting information presented at the public hearing. For updates and additional information on the public hearings, please check the EPA's Web site for this rulemaking, *http://www.epa.gov/airquality/carbonpollutionstandards.*

ADDRESSES: *Comments.* Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2011–0660, by one of the following methods:

At the Web site http://www.regulations.gov: Follow the instructions for submitting comments.

At the Web site http://www.epa.gov/oar/docket.html: Follow the instructions for submitting comments on the EPA Air and Radiation Docket web site.

Email: Send your comments by electronic mail (email) to *a-and-r-docket@epa.gov,* Attn: Docket ID No. EPA–HQ–OAR–2011–0660.

Facsimile: Fax your comments to (202) 566–9744, Attn: Docket ID No. EPA–HQ–OAR–2011–0660.

Mail: Send your comments to the EPA Docket Center, U.S. EPA, Mail Code 2822T, 1200 Pennsylvania Ave. NW., Washington, DC 20460, Attn: Docket ID No. EPA–HQ–OAR–2011–0660. Please include a total of two copies. In addition, please mail a copy of your comments on the information collection provisions to the Office of Information and Regulatory Affairs, OMB, Attn: Desk Officer for EPA, 725 17th St. NW., Washington, DC 20503.

Hand Delivery or Courier: Deliver your comments to the EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave., NW., Room 3334, Washington, DC, 20460, Attn: Docket ID No. EPA–HQ–OAR–2011–0660. Such deliveries are accepted only during the Docket's normal hours of operation (8:30 a.m. to 4:20 p.m., Monday through Friday, excluding legal holidays), and special arrangements should be made for deliveries of boxed information.

Instructions: All submissions must include agency name and docket ID number (EPA–HQ–OAR–2011–0660). The EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or email. Send or deliver information identified as CBI only to the following address: Roberto Morales, OAQPS Document Control Officer (C404–02), Office of Air Quality Planning and Standards, U.S. EPA, Research Triangle Park, North Carolina 27711, Attention Docket ID No. EPA–

HQ–OAR–2011–0660. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to the EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

The EPA requests that a separate copy of your comments also be sent to the contact person identified below (see **FOR FURTHER INFORMATION CONTACT**). If the comment includes information you consider to be CBI or otherwise protected, a copy of the comment that does not contain the information claimed as CBI or otherwise protected should be sent.

The *www.regulations.gov* Web site is an ''anonymous access'' system, which means the EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to the EPA without going through *http://www.regulations.gov,* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, the EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If the EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, the EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available (e.g., CBI or other information whose disclosure is restricted by statute). Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Air Docket is (202) 566–1742. Visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm* for additional information about the EPA's public docket.

In addition to being available in the docket, an electronic copy of this proposed rule will also be available on the Worldwide Web (WWW) through the Technology Transfer Network (TTN). Following signature, a copy of the proposed rule will be posted on the TTN's policy and guidance page for newly proposed or promulgated rules at the following address: *http://www.epa.gov/ttn/oarpg/.* The TTN provides information and technology exchange in various areas of air pollution control.

FOR FURTHER INFORMATION CONTACT: Mr. Christian Fellner, Energy Strategies Group, Sector Policies and Programs Division (D243–01), U.S. EPA, Research Triangle Park, NC 27711; telephone number (919) 541–4003, facsimile number (919) 541–5450; email address: *fellner.christian@epa.gov* or Dr. Nick Hutson, Energy Strategies Group, Sector Policies and Programs Division (D243–01), U.S. EPA, Research Triangle Park, NC 27711; telephone number (919) 541–2968, facsimile number (919) 541–5450; email address: *hutson.nick@epa.gov.*

SUPPLEMENTARY INFORMATION: *Acronyms.* A number of acronyms and chemical symbols are used in this preamble. While this may not be an exhaustive list, to ease the reading of this preamble and for reference purposes, the following terms and acronyms are defined as follows:

AB Assembly Bill
AEP American Electric Power
AEO Annual Energy Outlook
ANSI American National Standards Institute
ASME American Society of Mechanical Engineers
ASTM American Society for Testing of Materials
BACT Best Available Control Technology
BDT Best Demonstrated Technology
BSER Best System of Emission Reduction
Btu/kWh British Thermal Units per Kilowatt Hour
Btu/lb British Thermal Units per Pound
CAA Clean Air Act
CAIR Clean Air Interstate Rule
CBI Confidential Business Information
CCS Carbon Capture and Storage (or Sequestration)
CDX Central Data Exchange
CEDRI Compliance and Emissions Data Reporting
CEMS Continuous Emissions Monitoring System
CH_4 Methane
CHP Combined Heat and Power
CO_2 Carbon Dioxide
CSAPR Cross-State Air Pollution Rule
DOE Department of Energy
DOT Department of Transportation
ECMPS Emissions Collection and Monitoring Plan System
EERS Energy Efficiency Resource Standards
EGU Electric Utility Generating Units
EIA Energy Information Administration
EO Executive Order
EOR Enhanced Oil Recovery
EPA Environmental Protection Agency
FR Federal Register
GHG Greenhouse Gas
H_2 Hydrogen Gas
HAP Hazardous Air Pollutant
HFC Hydrofluorocarbon
HRSG Heat Recovery Steam Generator
IGCC Integrated Gasification Combined Cycle
IPCC Intergovernmental Panel on Climate Change
IPM Integrated Planning Model
kg/MWh Kilogram per Megawatt-hour
kJ/kg Kilojoules per Kilogram
kWh Kilowatt Hour
lb CO_2/MMBtu Pound of CO_2 per Million British Thermal Unit
lb CO_2/MWh Pound of CO_2 per Megawatt-hour
lb CO_2/yr Pound of CO_2 per Year
lb/lb-mole Pound per Pound-Mole
MATS Mercury and Air Toxic Standards
MW Megawatt
MWe Megawatt Electric
MWh Megawatt-hour
N_2O Nitrous Oxide
NAAQS National Ambient Air Quality Standards
NAICS North American Industry Classification System
NAS National Academy of Sciences
NETL National Energy Technology Laboratory
NGCC Natural Gas Combined Cycle
NRC National Research Council
NSPS New Source Performance Standards
NSR New Source Review
NTTAA National Technology Transfer and Advancement Act
O_2 Oxygen Gas
OMB Office of Management and Budget
PC Pulverized Coal
PFC Perfluorocarbon
PM Particulate Matter
$PM_{2.5}$ Fine Particulate Matter
PRA Paperwork Reduction Act
PSD Prevention of Significant Deterioration
RCRA Resource Conservation and Recovery Act
RFA Regulatory Flexibility Act
RGGI Regional Greenhouse Gas Initiative
RIA Regulatory Impact Analysis
RPS Renewable Portfolio Standard
SBA Small Business Administration
SCC Social Cost of Carbon
SCR Selective Catalytic Reduction
SF_6 Sulfur Hexafluoride
SIP State Implementation Plan
SNCR Selective Non-Catalytic Reduction

SO_2 Sulfur Dioxide
SSM Startup, Shutdown, and Malfunction
Tg Teragram
Tpy Tons per Year
TSD Technical Support Document
TTN Technology Transfer Network
UIC Underground Injection Control
UMRA Unfunded Mandates Reform Act of 1995
U.S. United States
USGCRP U.S. Global Climate Research Program
VCS Voluntary Consensus Standard
WWW Worldwide Web

Organization of This Document. The information presented in this preamble is organized as follows:

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I. General Information

A. Summary

1. Executive Summary

In this rulemaking, the EPA proposes to limit GHG emissions from new fossil fuel-fired power plants by limiting CO_2 emissions. The proposed rule is undertaken pursuant to section 111 of the Clean Air Act, which establishes a several step process for the EPA and the States to regulate air pollutants from stationary sources. Under section 111, the EPA must regulate emissions from new sources in the source category by issuing a standard of performance, which is defined as ''a standard for emissions of air pollutants which reflects the degree of emission limitation achievable through the application of the best system of emission reduction which (taking into account * * * cost [and other factors]) * * * has been adequately demonstrated.''

In today's action, the EPA is proposing to combine electric utility steam generating units (boilers and IGCC units, which are currently included in the Da category) and combined cycle units that generate electricity for sale and meet certain size criteria (which are currently included in the KKKK category), into a new category for new sources (the TTTT category) for the purposes of GHG emissions. The EPA is proposing standards of performance that require that all new fossil fuel-fired EGUs meet an electricity-output-based emission rate of 1,000 lb CO_2/MWh of electricity generated on a gross basis. This proposed standard is based on the demonstrated performance of natural gas combined cycle (NGCC) units, which are currently in wide use throughout the country, and are likely to be the predominant fossil fuel-fired technology for new generation in the future.

New coal-, coal refuse-, oil- and petroleum coke-fired boilers and IGCC units should also be able to meet this standard by employing carbon capture and storage (CCS) technology. While a coal unit with CCS may be more expensive to construct than NGCC generation, for reasons explained below, we expect the difference to decrease over time as CCS becomes more mature and less expensive.

We include in today's proposed rulemaking a 30-year averaging compliance option under which affected coal- and pet coke-fired sources could comply with the 1,000 lb CO_2/MWh standard on a 30-year average basis. Coal- and pet coke-fired EGUs that use this compliance alternative must meet an immediate performance standard of 1,800 lb CO_2/MWh (gross) on a 12-month annual average basis, which can be achieved by a ''supercritical'' efficiency level, during the period before installation of CCS. By no later than the beginning of the 11th year, the facility would be required to meet a reduced CO_2 emission limit of no more than 600 lb CO_2/MWh (gross) on a 12-month annual average basis for the remaining 20 years of the 30-year period, such that the weighted average CO_2 emissions rate from the facility over the 30-year time period would be equivalent to the proposed standard of performance of 1,000 lb CO_2/MWh.

Today's proposal to require an emission rate of 1,000 lb CO_2/MWh meets the requirements for a ''standard of performance,'' as defined under CAA section 111(a)(1). This proposed standard is based on the degree of emission limitation achievable through natural gas combined cycle generation. NGCC qualifies as the ''best system of emission reduction'' (BSER) that the EPA has determined has been adequately demonstrated. New natural gas-fired EGUs are less costly than new coal-fired EGUs, and as a result, our Integrated Planning Model (IPM) model projects that for economic reasons, natural gas-fired EGUs will be the facilities of choice until at least 2020, which is the analysis period for this rulemaking.

Indeed, our IPM model does not project construction of any new coal-fired EGUs during that period. This state of affairs has come about primarily because technological developments and discoveries of abundant natural gas reserves have caused natural gas prices to decline precipitously in recent years and have secured those relatively low prices for the near-future. We emphasize that, in light of a number of economic factors, including the increased availability and significantly lower price

of natural gas, energy industry modeling forecasts uniformly predict that few, if any, new coal-fired power plants will be built in the foreseeable future.

We recognize that some owners/operators may nevertheless seek to construct new coal-fired capacity. This may be beneficial from the standpoint of promoting energy diversity, and today's proposal does not interfere with construction of new coal-fired capacity. At present, while CCS would add considerably to the costs of a new coal-fired power plant, there are sources of funding available to support the deployment of CCS, including a limited number of government demonstration programs. Even if companies decide to construct a few new coal-fired power plants under any circumstance, those few may well have access to those government programs. We expect that the costs of CCS will decline in the future as CCS matures and is utilized more widely.

For purposes of today's action, the EPA does not have a sufficient base of information to develop a proposal for the anticipated relatively few affected sources that may be expected to take actions that would constitute ''modifications'' (as defined under the EPA's NSPS regulations) and therefore be subject to requirements for new sources. As a result, the EPA is not proposing requirements for NSPS modifications.

The EPA is aware that approximately 15 proposed EGUs have received CAA permitting authority approval for their preconstruction permits, but may not have ''commenced construction'' by the date of today's proposed rulemaking. For this proposed rule, these sources that, as of the date of this proposal, have a PSD permit and are poised to commence construction within the very near future are referred to as ''transitional sources.'' In today's proposed rulemaking, the EPA is not proposing a standard of performance for transitional sources, which we define as sources that have been issued a PSD permit by the date of proposal (including sources that have approved permits that are in the process of being amended, if those sources are intending to install CCS as evidenced by participating in any of the DOE CCS funding programs, either loan guarantee or grant programs) and that commence construction within 12 months of the date of publication of this proposal in the **Federal Register**. Upon finalization of this rulemaking without a standard of performance applicable to these sources, they will not be treated as new sources subject to the specific limitations set forth in the final new source standards.

Our IPM modeling, using Energy Information Administration (EIA) reference case assumptions, projects that there will be no construction of new coal-fired generation without CCS by 2030. Under these assumptions, the proposed rule will not impose costs by 2030. We also examined a scenario with both increased future natural gas prices and increased future electric demand. In this sensitivity case, we saw small amounts of coal-fired generation being built in 2030. Even under this sensitivity analysis with small amounts of new coal generation under conditions of high natural gas prices and simultaneously high electricity demand in 2030, we do not project that this proposed rule will impose notable costs upon sources.

We seek comments on all aspects of this proposal and identify a number of aspects of the proposal on which comments are specifically requested.

B. Overview and Outline

1. Overview

In this rulemaking, the EPA proposes to limit GHG emissions from new fossil fuel-fired power plants by limiting CO_2 emissions. In 2009, the EPA issued a finding that GHG air pollution may reasonably be anticipated to endanger Americans' public health and welfare, now and in the future, by contributing to climate change. Fossil fuel-fired power plants emit more GHG emissions than any other stationary source category in the United States, and among new GHG emissions sources, the largest individual sources are in this source category. This rulemaking proposes federal standards of performance for new fossil fuel-fired power plants that can be met with existing technology.

Note that in this preamble, while we refer to these sources, interchangeably, as power plants, steam generating units, affected sources, fossil fuel-fired electric generating units, covered EGUs, or, simply, EGUs, the proposed standards apply to only those sources identified in Section III.A. as the affected source category.

2. Why is the EPA proposing this rule?

This proposed rule reflects the EPA's common-sense approach to reducing CO_2 and other GHG emissions, which by causing climate change, pose a serious threat to public health and welfare. The EPA is focusing first on reducing emissions from the largest emitters through measures with reasonable costs. The EPA is proposing to control CO_2 pollution from fossil fuel-fired power plants because they are responsible for approximately 40 percent of all U.S. anthropogenic CO_2 emissions.[2] Individual new coal-fired power plants are among the largest individual new sources of GHGs. Furthermore, design and technology choices, such as NGCC, exist that can be readily and cost-effectively used to reduce GHG emissions from new fossil fuel-fired power plants. Thus, this proposed rule is a rational first step to control GHG emissions from the largest-emitting stationary sources under CAA section 111.

a. The Serious Threat of Climate Change to the Public's Health and Welfare. Climate change, including global warming, is a significant threat to the global environment. The National Research Council (NRC) of the National Academies[3] stated in a 2011 report, ''Each additional ton of greenhouse gases emitted commits us to further change and greater risks. In the judgment of the [NRC] Committee on America's Climate Choices, the environmental, economic, and humanitarian risks of climate change indicate a pressing need for substantial action to limit the magnitude of climate change and to prepare to adapt to its impacts.''[4]

Action to reduce emissions is warranted because, as the EPA stated in its 2009 Endangerment Finding,[5] GHGs endanger the public health and public welfare of current and future generations. The anthropogenic buildup of GHGs in the atmosphere is very likely (90 to 99 percent probability) the cause of most of the observed global warming over the last 50 years.[6] Based on the Endangerment Finding and its underlying technical support document (TSD),[7] reasons to reduce GHG emissions include the following:

[2] Or 32.4% of all anthropogenic GHG emissions; from information in Table 2–1 from 'Inventory of U.S. Greenhouse Gas Emissions and Sinks: 1990–2009,' U.S. Environmental Protection Agency, EPA 430–R–11–005, April 2011.

[3] The National Academies comprise the National Academy of Sciences, National Academy of Engineering, Institute of Medicine and National Research Council.

[4] National Research Council (2011) *America's Climate Choices,* Committee on America's Climate Choices, Board on Atmospheric Sciences and Climate, Division on Earth and Life Studies, The National Academies Press, Washington, DC.

[5] EPA, ''Endangerment and Cause or Contribute Findings for Greenhouse Gases under Section 202(a) of the Clean Air Act'' (74 FR 66,496; Dec. 15, 2009). *http://epa.gov/climatechange/endangerment.html.*

[6] Endangerment Finding at 74 FR 66,518, which notes that the 2007 conclusion of the Intergovernmental Panel on Climate Change was re-confirmed by the June 2009 assessment by the U.S. Global Change Research Program.

[7] EPA, ''Technical Support Document for Endangerment and Cause or Contribute Findings for

Continued

• The key effects of climate change observed to date and projected to occur in the future include, but are not limited to, more frequent and intense heat waves, more severe wildfires, degraded air quality, heavier and more frequent downpours and flooding, increased drought, greater sea level rise and storm surge, more intense storms, harm to water resources, continued ocean acidification, harm to agriculture, and harm to wildlife and ecosystems.

• These effects are anticipated to result in premature deaths, illnesses, damage to property and infrastructure, and other harm to people's welfare in the U.S.

• Those ''most vulnerable'' to climate related health effects, such as children, the elderly and the poor—and future generations—face disproportionate risks.[8]

• Human-induced climate change impacts have the potential to be far-reaching and multidimensional, though not all risks and potential impacts can be quantified.[9]

• A supporting consideration is that climate change impacts in certain regions of the world (potentially leading, for example, to food scarcity, conflicts or mass migration) may exacerbate problems that raise humanitarian, trade and national security issues for the United States.[10]

The TSD further notes that some risks, such as the extinction of many species, would be irreversible.[11] Also, the TSD points to research on the potential for ''abrupt changes'' [12] which have uncertain or low probability but high potential impact. The NRC has said abrupt changes are an important consideration because, if triggered, they could occur so quickly and unexpectedly that human or natural systems would have difficulty adapting to them.[13] Examples include severe drought in subtropical areas, release of large amounts of GHGs stored in the sea floor and frozen Arctic soils, and rapid disintegration of Greenland ice sheet or collapse of the West Antarctic ice sheet leading to many feet of sea level rise.[14]

The special characteristics of GHGs make it important to take initial steps to control the largest emissions categories without delay. Unlike most traditional air pollutants, GHGs persist in the atmosphere for time periods ranging from decades to millennia, depending on the greenhouse gas. Greenhouse gases will continue to accumulate in the atmosphere at higher and higher concentrations each year unless substantial reductions in global greenhouse gas emissions are achieved. The NRC notes that emissions reduction choices made today matter in determining the level of impacts experienced not just over the next few decades, but in the coming centuries and millennia.[15] Also, the longer that the U.S. and other countries take to reduce emissions, the greater the future emissions reductions that will be required to limit global temperature increase to any given level.

This proposed rule to limit GHG emissions from the largest U.S. stationary source category will contribute to the emissions reductions required to slow or reverse the accumulation of GHG concentrations in the atmosphere, which is necessary to protect against projected climate change impacts and risks. Reducing GHG emissions reduces the impacts and risks articulated in the Endangerment Finding and TSD.

b. The High Level of GHG Emissions from Fossil-Fuel-Fired Power Plants and the Opportunities to Reduce these Emissions. Fossil fuel-fired power plants comprise the largest category of stationary source GHG emissions in the U.S. These sources account for approximately 40 percent of total U.S. anthropogenic CO_2 emissions, based on 2009 data.[16] Among all stationary sources of GHG emissions, fossil-fuel-fired power plants generally constitute the largest individual sources.

Furthermore, a range of options are available to reduce emissions of new power plants. For economic reasons, most new power plants being built in the U.S. today are either natural gas-fired or are powered by renewable sources of energy, such as wind and solar, and therefore generally produce significantly fewer CO_2 emissions than uncontrolled coal-fired power plants. Natural gas combustion inherently emits less CO_2 than coal combustion and the technology of choice for generating electricity with natural gas, stationary combined cycle gas turbines, is also more efficient. Almost all the stationary combined cycle gas turbines built in the U.S. in the last five years can meet the proposed standard of 1,000 lb CO_2/MWh. New coal-fired power plants can install CCS technology and can thereby limit their CO_2 emissions per MWh generated to levels similar to, or even lower than, those of natural gas-fired combined cycle plants without CCS. New coal-fired power plants with CCS are being permitted and built today, albeit usually with considerable financial assistance from the federal government.

c. Alignment with Industry's Other CAA Obligations. Establishing the overall regulatory requirements for GHG emissions from new fossil fuel-fired power plants at this time is efficient because the EPA has recently issued regulations to limit criteria and hazardous air pollutants from these sources. Aligning the timing of these GHG rules with the rules for criteria and air toxics pollutants gives the industry more regulatory certainty, will facilitate the industry's investment decisions, and will help inform its compliance decisions to meet all of its CAA obligations.

d. Promotion of Energy Diversity. This proposed rule is consistent with the President's goal to ensure that ''by 2035 we will generate 80% of our electricity from a diverse set of clean energy sources—including renewable energy sources like wind, solar, biomass and hydropower, nuclear power, efficient natural gas and clean coal.'' [17] The proposed rule will assist the deployment of CCS technology for new coal-fired power plants and reinforce incentives for the use of efficient natural gas-fired generation. Regulatory uncertainty may be hindering the development and deployment of CCS, as evidenced by American Electric Power (AEP)'s recent deferral of a large-scale CCS retrofit demonstration project on one of its coal-fired power plants because the State's utility regulators would not approve CCS without a

Greenhouse Gases under Section 202(a) of the Clean Air Act, Dec. 9, 2009.'' Both the **Federal Register** Notice and the TSD for Endangerment and Cause or Contribute Findings are found in the public docket established for the endangerment rulemaking, Docket No. EPA–OAR–2009–0171 and at *http://epa.gov/climatechange/endangerment.html.*

[8] Endangerment Finding, 74 FR 66498.

[9] Endangerment Finding, 74 66497.

[10] Endangerment Finding, 74 FR 66535.

[11] Endangerment TSD, p. 136.

[12] Endangerment TSD, p. 75–78. The U.S. Climate Change Science Program defined ''abrupt change'' as a ''large-scale change in the climate system that takes place over a few decades or less, persists (or is anticipated to persist) for at least a few decades, and causes substantial disruptions in human and natural systems.'' Synthesis and Assessment Product (SAP) 3.4: Abrupt Climate Change (2008).

[13] Endangerment TSD, p. 75, citing National Research Council (2002).

[14] Endangerment TSD, pp. 76–78.

[15] National Research Council (NRC) (2011). Climate Stabilization Targets. Committee on Stabilization Targets for Atmospheric Greenhouse Gas Concentrations; Board on Atmospheric Sciences and Climate, Division of Earth and Life Sciences, National Academy Press. Washington, DC.

[16] Or 32.4% of all anthropogenic GHG emissions; from information in Table 2–1 from 'Inventory of U. S. Greenhouse Gas Emissions and Sinks: 1990—2009', U. S. Environmental Protection Agency, EPA 430–R–11–005, April 2011.

[17] ''Blueprint for a Secure Energy Future'', March 30, 2011.

regulatory requirement to reduce CO_2.[18] The standard established in this proposal would help create the regulatory certainty that CCS is the path forward for new coal-fired generation.

3. Legal Proceedings Leading up to This Rulemaking

In April 2007, the U.S. Supreme Court ruled, in *Massachusetts* v. *EPA,*[19] that GHGs meet the definition of ''air pollutant'' in the CAA. This decision clarified that the authorities and requirements of the CAA, including section 111, apply to GHG emissions.

As a result of this decision, the EPA obtained a voluntary remand from the U.S. Court of Appeals for the District of Columbia Circuit (the ''Court'') to reconsider the EPA's actions in a 2006 rulemaking for EGUs under CAA section 111, in which the EPA had promulgated standards for criteria air pollutants, but had declined to regulate GHG emissions. In part in response to threatened litigation over the EPA's failure to act on the remand, the EPA agreed to propose today's action to regulate GHG emissions from new fossil fuel-fired EGUs.

4. Legal Basis for CAA Standards for Fossil-Fired Power Plants

a. General Legal Requirements. Clean Air Act section 111 establishes a several step process for the EPA and the States to regulate air pollutants from stationary sources. First, the EPA must list categories of stationary sources that cause or contribute significantly to air pollution that may reasonably be anticipated to endanger public health or welfare. Then, the EPA must regulate emissions from new sources in the source category by issuing a standard of performance, which is defined as ''a standard for emissions of air pollutants which reflects the degree of emission limitation achievable through the application of the best system of emission reduction which (taking into account * * * cost [and other factors]) * * * has been adequately demonstrated.'' New sources include new construction, and, as discussed below, modifications to existing sources as well as reconstructed sources. Standards of performance for new sources are often referred to as new source performance standards (NSPS).

b. Cause-or-Contribute-Significantly Finding for Fossil Fuel-Fired Power Plants and Endangerment Finding for GHG Air Pollution. The EPA is authorized to regulate GHGs from power plants based on earlier actions concerning endangerment. Before today's rulemaking, the EPA listed different types of fossil fuel-fired EGUs as source categories that caused or contributed significantly to air pollution that may reasonably be anticipated to endanger public health or welfare. Specifically, the EPA listed electric utility steam generating boilers, including coal-fired boilers, and initially regulated them in subpart D of its regulations under CAA section 111. Subsequent regulation of utility boilers has been under subpart Da. The EPA listed stationary combustion turbine engines and initially regulated them under subpart GG. The stationary combustion turbine engine portions of combined cycle facilities were also regulated under subpart GG. Heat recovery steam generators (HRSG) associated with combined cycle facilities with duct burners were regulated under either subpart Da or one of the industrial boiler regulations, depending on the specific characteristics of the HRSG. To minimize the compliance burden for owners/operators of combined cycle facilities some monitoring harmonization was done, but the two subparts were still applicable. In 2005, the EPA proposed subpart KKKK as a replacement for subpart GG and specifically covered the entire combined cycle facility under subpart KKKK such that only a single set of requirements would apply. In that same year, the EPA proposed to include Integrated Gasification Combined Cycle (IGCC) facilities under the applicability of subpart Da. The EPA is authorized to promulgate the rulemaking proposed today—which would establish standards of performance for CO_2 emissions from EGUs currently in the Da and KKKK source categories—because the EPA has already determined that both those source categories cause or contribute significantly to air pollution that may reasonably be expected to endanger public health or welfare. Clean Air Act section 111 does not require the EPA, as a prerequisite to regulating any particular air pollutant, to issue an endangerment finding or a cause-or-contribute-significantly finding for that air pollutant from that source category.

As an alternative, the EPA is considering whether CAA section 111 should be interpreted to require that the EPA base its regulation of CO_2 emissions from EGUs on two findings: (i) A finding that GHG air pollution may reasonably be anticipated to endanger public health or welfare; and (ii) a finding that CO_2 emissions from EGUs cause or contribute significantly to that air pollution. If section 111 were so interpreted, the EPA believes that (a) the 2009 Endangerment Finding, along with the EPA's 2010 action denying petitions to reconsider that finding (which action reviewed scientific developments after the Endangerment Finding) would fulfill any requirement to make the endangerment finding concerning GHG air pollution; and (b) the large amount of CO_2 emissions from EGUs clearly exceeds the low applicability threshold upon which the EPA would make the cause-or-contribute-significantly finding.

As another alternative, the EPA is also considering whether CAA section 111 should be interpreted to require that the EPA base its regulation of CO_2 emissions from EGUs on a rational basis for protection of the public health or welfare. If section 111 were so interpreted, the EPA believes that (i) its 2009 Endangerment Finding and 2010 denial of petitions to reconsider, by themselves, and particularly in conjunction with the National Academy of Sciences' assessment reports issued since then, coupled with (ii) the fact that EGUs are the largest stationary source emitters of CO_2, provide a rational basis for regulating CO_2 emissions from EGUs. There is no reason to revisit the 2009 Endangerment Finding given recent scientific findings that strengthen the scientific conclusion that GHG air pollution endangers public health and welfare.[20]

5. Summary of Today's Proposed Requirements To Reduce GHG Emissions From New Fossil Fired Power Plants, and Rationale for Those Requirements

a. Summary of Proposed Revisions to Categories and Requirements for New Sources

i. Revisions to Categories of EGUs. In today's action, the EPA is proposing to

[18] In a July 17, 2011, press release, AEP's chairman said, ''We are placing the project on hold until economic and policy conditions create a viable path forward * * * We are clearly in a classic 'which comes first?' situation. The commercialization of this technology is vital if owners of coal-fueled generation are to comply with potential future climate regulations without prematurely retiring efficient, cost-effective generating capacity. But as a regulated utility, it is impossible to gain regulatory approval to recover our share of the costs for validating and deploying the technology without federal requirements to reduce greenhouse gas emissions already in place. The uncertainty also makes it difficult to attract partners to help fund the industry's share.''

[19] 549 U.S. 497 (2007).

[20] These recent scientific findings are described in section II of this notice, titled ''Background.'' See subsection II.B.3., ''Climate Impacts Detailed in Recent NRC Assessments.'' The legal options introduced here are presented in detail below in section IV.A.2, ''Endangerment and Cause-or-Contribute-Significantly Finding.''

combine electric utility steam generating units (boilers and IGCC units, which are currently included in the Da category) and combined cycle units that generate electricity for sale and meet certain size criteria (which are currently included in the KKKK category), into a new category for new sources (the TTTT category) for the purposes of GHG emissions. Today's proposed rulemaking would not affect NSPS requirements for criteria air pollutants, simple cycle turbines or EGUs located in non-continental areas.[21] It also would not affect biomass-fired boilers (including those that sell electricity to the grid) that co-fire with less than 250 MMBtu/h of any fossil fuel (biomass boilers currently subject to subpart Db, the Industrial-Commercial-Institutional Steam Generating Unit NSPS).

ii. Control Requirements for New Sources. The EPA is proposing standards of performance that require that all new fossil fuel-fired EGUs meet an electricity-output-based emission rate of 1,000 lb CO_2/MWh of electricity generated on a gross basis. This proposed standard is based on the demonstrated performance of natural gas combined cycle (NGCC) units, which are currently in wide use throughout the country, and are likely to be the predominant fossil fuel-fired technology for new generation in the future.

New coal-, coal refuse-, oil- and petroleum coke-fired boilers and IGCC units should also be able to meet this standard by employing CCS technology. There are currently a number of coal- and pet coke-fired EGU projects under development that include CCS. While a coal unit with CCS may be more expensive to construct than NGCC generation, for reasons explained below, we expect the difference to decrease over time as CCS becomes more mature and less expensive.

We include in today's proposed rulemaking a 30-year averaging compliance option under which affected coal- and pet coke-fired sources could comply with the 1,000 lb CO_2/MWh standard on a 30-year average basis. Coal- and pet coke-fired EGUs that use this compliance alternative must meet an immediate performance standard of 1,800 lb CO_2/MWh (gross) on a 12-month annual average basis, which can be achieved by a ''supercritical'' efficiency level, during the period before installation of CCS. By no later than the beginning of the 11th year, the facility would be required to meet a reduced CO_2 emission limit of no more than 600 lb CO_2/MWh (gross) on a 12-month annual average basis for the remaining 20 years of the 30-year period, such that the weighted average CO_2 emissions rate from the facility over the 30-year time period would be equivalent to the proposed standard of performance of 1,000 lb CO_2/MWh.

We seek comment on this compliance option and on reasonable variations on the framework we propose to establish, and in particular on a mechanism for establishing practicably enforceable short term limits during the 30-year period. The potential approaches here include (1) requiring the owner/operator to identify and obtain approval of, at the time of construction, an alternative 30-year emission trajectory to the 10- and 20-year limits described immediately above; and (2) specifying the emission rate for each year during the 30-year period consistent with meeting a 30-year average emission rate of 1,000 lb CO_2/MWh. Such an option would provide coal-fired sources that intend to use a reduction technology, such as CCS, significant flexibility in how that reduction technology is implemented. They could install the technology as part of the original project but use some or all of the initial ten year period to optimize the system. Such flexibility could be particularly useful to early adopters (i.e., ''first movers'') of the technology. Alternatively, they could delay installation of the technology for a period of up to ten years to take advantage of advancements in the technology that could reduce costs and enhance performance. Under CAA section 111(b)(1)(B), the EPA is required to conduct a review of the new source standards in eight years and we intend at that time to review the availability and cost of CCS. As proposed, this 30-year averaging compliance option is available only to new coal- and pet coke-fired EGUs. We do not believe that it is necessary for NGCC units, as they should be able to meet the proposed performance with no need for add-on technology. We also solicit comment on the need to extend the applicability for the 30-year averaging compliance option to other fossil fuels beyond just coal and pet coke.

b. *Rationale.* Today's proposal to combine the relevant parts of the Da and KKKK categories is authorized under CAA section 111(b)(1)(A) because that provision authorizes the EPA, after drawing up the list of affected source categories, to ''revise'' that list from time to time. Combining the relevant parts of the categories, as the EPA proposes to do, is one method to ''revise'' the list. Moreover, the EPA's action to combine the relevant parts of the categories is reasonable because with the combination, all new fossil fuel-fired electricity generating units that meet specified minimum criteria will be subject to the same requirements, and therefore will be treated alike because they serve the same function, that is to serve baseload or intermediate demand. The EPA is not including stationary simple cycle turbines in this rule because they generally operate differently than the other units covered by today's rule. The units covered by today's rule are generally used to serve baseload or intermediate demand, while simple cycle turbines are generally used much less often (and thus have lower GHG emissions) and are generally used to meet peak demand rather than base or intermediate load requirements.

Today's proposal does not apply to new sources in non-continental areas, which include Hawaii and the territories. This is because non-continental areas do not have available pipeline quality natural gas and, accordingly, a natural-gas-fired plant that could comply with the 1,000 lb CO_2/MWh may not be feasible. At present, we do not have information to identify what types of new power plants may be constructed in those areas. Those types of power plants may range from liquified natural gas (LNG)-, to oil-, to coal-fired to renewables. Our lack of more specific information precludes us from proposing, at this time, a standard for new sources in non-continental areas.

Today's proposal to require an emission rate of 1,000 lb CO_2/MWh meets the requirements for a ''standard of performance,'' as defined under CAA section 111(a)(1). This proposed standard is based on the degree of emission limitation achievable through natural gas combined cycle generation. NGCC qualifies as the ''best system of emission reduction'' (BSER) that the EPA has determined has been adequately demonstrated because NGCC emits the least amount of CO_2 and does so at the least cost. We propose that a NGCC facility is the best system of emission reduction for two main reasons. First, natural gas is far less polluting than coal. Combustion of natural gas emits only about 50 percent of the CO_2 emissions that the combustion of coal does per unit of energy generated. Second, new natural gas-fired EGUs are less costly than new coal-fired EGUs, and as a result, our Integrated Planning Model (IPM) model projects that for economic reasons, natural gas-fired EGUs will be the facilities of choice until at least 2020,

[21] Thus, today's rulemaking does not affect the Da and KKKK categories for conventional pollutants and does not affect the KKKK category for simple cycle turbines.

which is the analysis period for this rulemaking. Indeed, our IPM model does not project construction of any new coal-fired EGUs during that period. This state of affairs has come about primarily because technological developments and discoveries of abundant natural gas reserves have caused natural gas prices to decline precipitously in recent years and have secured those relatively low prices for the near-future. Importantly, because the IPM modeling shows that natural gas-fired plants are the facilities of choice, the proposed standard of performance in today's rulemaking — which is based on the emission rate of a new NGCC unit — does not add costs. In addition, compared to coal-fired EGUs, natural gas-fired EGUs have fewer nonair quality health and environmental impacts. This is true under not only a set of base-case assumptions, but also under a sensitivity considering significantly higher gas prices.

The just-described reasons are sufficient as a legal matter to justify today's proposed actions to combine source categories and establish the 1,000 lb CO_2/MWh standard. Such a standard could also be met today by new coal-fired units using CCS. In addition, we propose to include the compliance alternative of allowing new coal- and pet coke-fired power plants to meet the 1,000 lb CO_2/MWh standard over a 30-year period so that plant developers can take advantage of future advancements cost savings in CCS technology that could lower its cost. This compliance alternative allows owners/operators to install CCS when the unit is first constructed but also provides the operational flexibility that may be necessary to optimize the performance and to have additional time to address any startup challenges related to issues such as business arrangements related to the sale or storage of the captured CO_2.

We recognize that, in light of a number of economic factors, including the increased availability and significantly lower price of natural gas, energy industry modeling forecasts uniformly predict that few, if any, new coal-fired power plants will be built in the foreseeable future. For these economic reasons, and independent of this proposed standard, the fossil fuel-fired electricity generating industry has been trending towards increased use of natural gas and decreased use of coal for new generating capacity. Today's proposed action is consistent with that trend; but, at the same time, today's proposal is not intended to affect that apparent trend.

We recognize that some owners/operators may nevertheless seek to construct new coal-fired capacity. This may be beneficial from the standpoint of promoting energy diversity, and today's proposal does not interfere with construction of new coal-fired capacity. In the first instance, a new coal-fired power plant may be able to meet the 1,000 lb CO_2/MWh standard by installing CCS at the time of construction. At present, while CCS would add considerably to the costs of a new coal-fired power plant, there are sources of funding available to support the deployment of CCS, including a limited number of government demonstration programs.[22] Even if companies decide to construct a few new coal-fired power plants under any circumstance, those few may well have access to those government programs.

The proposed 30-year averaging compliance option adds additional flexibility for new coal- and pet coke-fired power plants by allowing them to construct and begin operations without CCS, and then to install and operate CCS at some time in the future, as long as they install CCS within ten years and operate it in a manner that allows them to meet the 1,000 lb CO_2/MWh standard, on a weighted average basis, over the 30-year period.

We expect that the costs of CCS will decline in the future as CCS matures and is utilized more widely. Today's action, if finalized, would promote utilization and further development of CCS by making it clear that CCS would be necessary for new coal-fired power plants to meet the performance standard. The prospect of declining CCS costs, in conjunction with the possibility of continued availability of additional funding mechanisms (e.g. demonstration funding such as Department of Energy (DOE) grants, tax credits (for investment and/or EOR), State incentives such as clean energy standards), and sale of other usable products such as CO_2, sulfur and hydrogen based products, indicates that CCS may well be sufficiently accessible in the near term to the few coal-fired power plants that are expected to commence construction. Thus, the 30-year averaging compliance option, along with the potential opportunities for funding to implement CCS immediately, helps to alleviate any concerns that today's action could restrict new coal-fired construction.

It should be noted that we are not required to justify the 30-year averaging compliance option on grounds that it qualifies as the ''best system of emission reduction'' adequately demonstrated, and we are not stating in this action whether that compliance alternative does or does not qualify as such. Thus, it is not necessary to determine that our expectation that costs will go down meets the standards for determining that CCS is ''adequately demonstrated.'' Rather, to reiterate, the 30-year averaging compliance option, along with the opportunity to implement CCS to meet the 1,000 lb CO_2/MWh standard immediately upon startup, make CCS an available option for the limited number of new coal-fired power plants that may construct to serve the policy goals of promoting energy diversity, as well as other policy objectives.[23] Indeed, by clarifying that, in the future, new coal-fired power plants will need to implement CCS, this rulemaking eliminates uncertainty about the status of new coal and may well enhance the prospects for new coal-fired generation.

In addition, there may also be other potential compliance options available that were not considered in this proposal. In the analysis for today's proposal, the EPA did not include unique treatment of CO_2 emissions from biologically-based material, otherwise called biogenic CO_2 emissions.[24]

In 2011, the EPA prepared and submitted the draft Accounting Framework for Biogenic CO_2 Emissions from Stationary Sources (*http://www.epa.gov/climatechange/emissions/biogenic_emissions/study.html*). The draft Framework includes both a detailed examination of the scientific and technical issues related to accounting for biogenic CO_2 emissions from stationary sources, and a proposed method to account for a stationary source's onsite CO_2 emissions, taking the biological cycling of carbon into consideration, in a scientifically and technically rigorous manner. The independent Science Advisory Board (SAB) has convened a Biogenic Carbon

[22] A number of the sources that EPA has identified as transitional sources have received some form of DOE financial assistance to demonstrate CCS. In addition, several additional projects have received funding but have not yet received air permits. Beyond these projects, prospects for additional federal funding are dependent on the overall budget process.

[23] EIA analysis (AEO 2012 early release) shows that ''coal remains the dominant energy source for electricity generation.''

[24] Biologically-based material is defined as non-fossilized and biodegradable organic material originating from modern or contemporaneously grown plants, animals or micro-organisms (including products, by-products, residues and waste from agriculture, forestry and related industries as well as the non-fossilized and biodegradable organic fractions of industrial and municipal wastes, including gases and liquids recovered from the decomposition of non-fossilized and biodegradable organic material).

Emissions Panel (*http://yosemite.epa.gov/sab/sabproduct.nsf/0/2F9B572C712AC52E8525783100704886?OpenDocument*) to conduct a peer review of the draft Framework. The peer review report will be finalized later in 2012.

The SAB's peer review of the EPA's discussion on the science related to the impacts of biogenic CO_2 is not yet finalized and the EPA looks forward to the SAB's conclusions later in 2012. Given that the SAB's peer review is ongoing, the EPA is not suggesting specific methods of accounting or otherwise making particular proposals for treatment of biogenic CO_2 emissions in any stationary source program, including NSPS. As more information, including the SAB peer review, becomes available, the EPA will consider its options and move forward as warranted.

c. *Requirements and Rationale for NSPS Modifications for GHGs.* For purposes of today's action, the EPA does not have a sufficient base of information to develop a proposal for the affected sources that may be expected to take actions that would constitute ''modifications'' (as defined under the EPA's NSPS regulations) for GHGs and therefore be subject to requirements for new sources. As a result, the EPA is not proposing requirements for NSPS modifications for GHGs.[25]

The EPA's current regulations define an NSPS ''modification'' as a physical or operational change that increases the source's maximum achievable hourly rate of emissions, but specifically exempt from that definition pollution control projects, which are projects that entail the installation of pollution control equipment or systems. Based on current information, most of the projects that we believe EGUs are most likely to undertake in the foreseeable future that could increase the maximum achievable hourly rate of CO_2 emissions would constitute pollution control projects. In many cases, those projects would involve the installation of add-on control equipment required to meet CAA requirements for criteria and air toxics air pollutants. These increases in CO_2 emissions would generally be small and would occur as a chemical byproduct of the operation of the control equipment. In other cases, those projects would involve equipment changes to improve efficiency to meet the requirements of a future 111(d) rulemaking for existing sources and would have the effect of increasing a source's maximum achievable hourly emission rate (lb CO_2/hr), even while decreasing its actual output based emission rate (lb CO_2/MWh). Because all of these actions would be treated as pollution control projects under the EPA's current NSPS regulations, they would be specifically exempted from the definition of modification.

Our base of knowledge concerning NSPS modifications has depended largely on the enforcement actions brought against power plants and on self-reporting by power plants. Over the lengthy history of the NSPS program, those have been too few in number to allow us to develop a sufficiently robust base of knowledge to propose a standard of performance for NSPS modifications for GHGs at this time.

In addition, the sources that took these actions vary widely one from another, and the types of actions were disparate. In light of this, as noted, we do not have adequate information as to the types of actions that qualify as modifications, the amount of increase in CO_2 emissions they cause, the types of control measures, or the costs and effectiveness of control measures, on which to base a proposed standard of performance. Therefore, in today's action, we are not proposing a standard of performance for modifications. We note that the statute contemplates that in circumstances such as these (where section 111(d) is implicated), sources not subject to the new source standards would be treated as existing sources subject to section 111(d).

In today's action, we solicit comment on the types of modifications power plants may undertake and the appropriate control measures. Depending on the information we develop, we may issue proposed standards of performance in the future.

d. *Requirements for Transitional sources.* The EPA is aware that approximately 15 proposed EGUs have received CAA permitting authority approval for their preconstruction permits, but may not have ''commenced construction'' by the date of today's proposed rulemaking.

A few of these sources have taken additional action preparatory to commencing construction. For this proposed rule, these sources that, as of the date of this proposal, have a PSD permit and are poised to commence construction within the very near future are referred to as ''transitional sources.'' We are aware that approximately six of these sources have plans to implement CCS to some degree.

CAA section 111 provides by its terms that sources that have not ''commenced construction'' before the date of proposed standards for new sources will be subject to the NSPS when they do commence construction. The EPA's regulations define ''commenced construction'' as, in general, undertaking a continuous program of construction or entering into a binding contract to do so. 40 CFR 60.2.

Commenters[26] have pointed out that absent different treatment, transitional sources will be subject to the same requirements that apply to new sources that did not obtain their permit before the date of proposal. These commenters have suggested that today's proposed rule should treat transitional sources differently, especially in light of the substantial redesign that meeting such the proposed standard would have and the impact that redesign would have on the schedule for a project that was nearly ready to commence construction. The transitional sources at issue are coal-fired EGUs that, absent special treatment, would be subject to the standard of performance proposed in this rulemaking.

In today's proposed rulemaking, the EPA is not proposing a standard of performance for transitional sources, which we define as sources that have been issued a PSD permit by the date of proposal (including sources that have approved permits that are in the process of being amended, if those sources are intending to install CCS as evidenced by participating in any of the DOE CCS funding programs, either loan guarantee or grant programs) and that commence construction within 12 months of the date of publication of this proposal in the **Federal Register**. Upon finalization of this rulemaking without a standard of performance applicable to these sources, they will not be treated as new sources subject to the specific limitations set forth in the final new source standards. These sources would remain obligated, by the terms of their permits, to construct and operate in accordance with their permits. In addition, these sources will be treated as existing sources and would be subject to any requirements that a State promulgates to meet its obligations under section 111(d). Sources that do not commence construction within 12 months of the date of this proposed action will be subject to this standard of performance for new sources.

[25] Note that any analysis of the cost and feasibility of CCS that EPA has undertaken for purposes of this proposal has focused solely on new sources. In today's action, EPA has not undertaken any analysis of the cost or feasibility of CCS for existing units that undergo modifications.

[26] As mentioned elsewhere, the EPA held a series of listening sessions and allowed for a period of additional comment after announcing it was moving forward with development of new source performance standards for GHGs emitted from fossil fuel-fired EGUs. The term ''commenters'' here refers to those who commented during the listening sessions or during the subsequent comment period.

e. *Requirements for Reconstructed Sources, and Rationale.* The EPA's CAA section 111 regulations provide that reconstructed sources are to be treated as new sources and, therefore, subject to new source standards of performance. The regulations define reconstructed sources as, in general, existing sources (i) that replace components to such an extent that the capital costs of the new components exceed 50 percent of the capital costs of an entirely new facility, and (ii) for which compliance with standards of performance for new sources is technologically and economically feasible. 40 CFR 60.15.

As with NSPS modifications, our base of knowledge concerning reconstructions has depended largely on the enforcement actions brought against power plants and on self-reporting by power plants. Over the lengthy history of the NSPS program, those have been too few in number to allow us to develop a sufficiently robust base of knowledge to propose a standard of performance for reconstructions for GHGs at this time. Thus, we lack adequate information about the type of source; the type of changes; the extent of emissions increases; and the type of control measures, including their cost and emissions reductions, that we need to propose a standard of performance for reconstructions.

As a result, in today's action, the EPA is not including a proposal for reconstructed units for GHGs. Instead, we solicit comment on how we should approach reconstructions and, depending on the information we receive, we may propose and finalize a standard for reconstructions at a later time.

6. Summary of Emissions Impacts, Costs and Benefits

Our IPM modeling, using Energy Information Administration (EIA) reference case assumptions, projects that there will be no construction of new coal-fired generation without CCS. In addition we examined a case with higher future electric demand and another case with higher future natural gas prices. We did not see any additional new construction of coal-fired generation through 2030 in either of these cases. Under the relevant assumptions, we do not project that this rule will impose notable costs.

We also examined a scenario with both increased future natural gas prices and increased future electric demand. In this sensitivity case we saw small amounts of coal-fired generation being built in 2030. Even under this sensitivity analysis with small amounts of new coal generation under conditions of high natural gas prices and simultaneously high electricity demand in 2030, we do not project that this proposed rule will impose notable costs upon sources. (See the RIA for further discussion of sensitivities).

While this proposed rule also will not have direct impact on U.S. emissions of greenhouse gases under expected economic conditions, it provides assurance that emission rates from new fossil fuel-fired generation will not exceed the level of the standard and will send a strong signal both domestically and internationally. Domestically, this proposed rule can further stimulate investment in CCS and other clean coal technologies, by making it clear that such technologies do provide a clear path forward for new coal-fired generating capacity. Internationally, this rule may encourage others to consider less GHG-intensive forms of power generation.

B. Does this action apply to me?

The entities potentially affected by the proposed standards are shown in Table 1 below.

TABLE 1—POTENTIALLY AFFECTED ENTITIES [a]

Category	NAICS Code	Examples of potentially regulated entities
Industry	221112	Fossil fuel electric power generating units.
Federal Government	[b] 221112	Fossil fuel electric power generating units owned by the federal government.
State/Local Government	[b] 221112	Fossil fuel electric power generating units owned by municipalities.
Tribal Government	921150	Fossil fuel electric power generating units in Indian Country.

[a] Include NAICS categories for source categories that own and operate electric power generating units (including boilers and stationary combined cycle combustion turbines).

[b] Federal, state, or local government-owned and operated establishments are classified according to the activity in which they are engaged.

This table is not intended to be exhaustive but rather to provide a guide for readers regarding entities likely to be affected by this proposed action. To determine whether your facility, company, business, organization, etc., would be regulated by this proposed action, you should examine the applicability criteria in 40 CFR 60.1. If you have any questions regarding the applicability of this action to a particular entity, consult either the air permitting authority for the entity or your EPA regional representative as listed in 40 CFR 60.4 or 40 CFR 63.13 (General Provisions).

II. Background

A. Statutory Background for This Rule

Clean Air Act section 111 establishes mechanisms for controlling emissions of air pollutants from stationary sources. As a preliminary step, CAA section 111(b)(1)(A) requires the EPA to list categories of stationary sources that the Administrator, in his or her judgment, finds ''cause[], or contribute[] significantly to, air pollution which may reasonably be anticipated to endanger public health or welfare.'' [27]

Once it has listed a source category, the EPA establishes ''standards of performance'' that apply to new sources, which are sources that are constructed, or that undertake modifications or reconstruction, after the EPA proposes the standards of performance for the relevant source category. CAA section 111(b)(1)(B). Specific statutory and regulatory provisions define what constitutes a modification or reconstruction of a facility. An existing facility undertakes a modification if it undergoes ''any physical change * * * or change in the method of operation * * * which increases the amount of any air pollutant emitted by such source or which results in the emission of any air pollutant not previously emitted.'' CAA section 111(a)(4). The EPA's NSPS regulations provide exemptions for several types of changes, including the installation of pollution control projects. 40 CFR 60.2, 60.14(e). An existing facility undertakes a reconstruction if it replaces components to such an extent that the capital costs of the new equipment or components exceed 50 percent of what is believed to be the cost of a completely new facility. 40 CFR 60.15. In promulgating standards of performance, the EPA has significant

[27] The EPA has made endangerment findings under this section for more than 60 stationary source categories and subcategories that are now subject to NSPS.

discretion to create subcategories based on source type, class or size. CAA section 111(b)(2).

Clean Air Act section 111(a)(1) defines a ''standard of performance'' as—

> a standard for emissions of air pollutants which reflects the degree of emission limitation achievable through the application of the best system of emission reduction which (taking into account the cost of achieving such reduction and any nonair quality health and environmental impact and energy requirements) the Administrator determines has been adequately demonstrated.

We call this level of control the best system of emission reduction (BSER).[28] The standard that the EPA develops, based on the BSER, is commonly a numerical emissions limit, expressed as a performance level (e.g., a rate-based standard). Generally, the EPA does not prescribe a particular technological system that must be used to comply with a standard of performance. Rather, sources remain free to elect whatever combination of measures will achieve equivalent or greater control of emissions.

B. Overview of Climate Change Impacts From GHG Emissions

In 2009, the EPA Administrator issued the 2009 Endangerment Finding,[29] under CAA section 202(a)(1), as part of the process for promulgating the Light Duty Vehicle Rule.[30] With the Endangerment Finding, the Administrator found that elevated concentrations of GHGs in the atmosphere may reasonably be anticipated to endanger public health and welfare. These adverse effects on public health and welfare are summarized here, and described in more detail in the RIA. As explained in the Endangerment Finding, the EPA made this determination based primarily upon the recent, major assessments by the U.S. Global Change Research Program (USGCRP), Intergovernmental Panel on Climate Change (IPCC), and the National Research Council (NRC).[31] In brief, these assessments addressed the scientific issues that the EPA was required to examine, were comprehensive in their coverage of the GHG and climate change problem, and underwent rigorous and exacting peer review by the expert community, as well as rigorous levels of U.S. government review and acceptance. Below is a brief, non-comprehensive summary of effects noted in the Endangerment Finding and the assessment reports.

1. Public Health Impacts Detailed in the 2009 Endangerment Finding

Climate change threatens public health through a number of impacts such as increases in hot weather, ozone pollution, and the severity and frequency of extreme weather events. Children, the elderly, and the poor are among the most vulnerable to these climate-related health effects.

By increasing higher average temperatures, climate change increases the likelihood of heat waves, which are associated with increased deaths and illnesses. While climate change also leads to decreases in cold-related mortality, some evidence suggests that the net impact on mortality is more likely to be adverse. Heat is already the leading cause of weather-related deaths in the U.S.

Climate change is expected to increase ozone pollution over broad areas of the country including large population areas with unhealthy surface ozone levels. Ozone health studies indicate that elevated surface ozone increases risks of premature death, acute bronchitis, heart attacks, asthma aggravation, and other respiratory effects.

Public health threats also stem from increases in intensity or frequency of extreme weather associated with climate change, such as increased hurricane intensity, increased frequency of intense storms and heavy precipitation. The assessment literature indicates that there is the potential for hurricanes to become more intense, and there is some evidence that Atlantic hurricanes have already become more intense. Hurricanes and floods from human-induced climate change can cause deaths, injuries, waterborne diseases, and mental health problems such as post-traumatic stress disorders. Drownings and other health impacts from coastal storms and storm surges are expected to increase due to rising sea levels.

2. Public Welfare Impacts Detailed in the 2009 Endangerment Finding

Climate change is expected to have numerous effects on public welfare. Large areas of the country are at serious risk of reduced water supplies, increased water pollution, and increased occurrence of extreme events such as floods and droughts. Coastal areas face increased risks from storm and flooding damage to property, as well as adverse impacts from sea level rise such as land loss due to inundation, erosion, wetland submergence, and habitat loss.

Climate change is expected to result in an increase in peak electricity demand, and changes in extreme weather threaten energy, transportation, and water resource infrastructure. Climate changes may exacerbate ongoing environmental pressures in certain settlements, particularly in Alaskan indigenous communities. Over the 21st century, climate change will fundamentally rearrange U.S. ecosystems.

It is possible that in the next few decades, adverse effects in certain parts of the agriculture and forestry sectors—such as enhanced pest and weed growth, increased surface ozone, changes in the intensity and frequency of droughts and heavy storms, and increased wildfires—may be offset by benefits resulting from a stimulatory carbon dioxide effect and a longer growing season. However, the body of evidence points towards increasing risks of net adverse impacts on U.S. food production, agriculture, and forest productivity as temperatures continue to rise, with the potential for significant disruptions and crop failure.

Human-induced climate change has the potential to be far-reaching and multidimensional. Given the long atmospheric lifetime of the six GHGs,[32] which range from roughly a decade to centuries, future atmospheric greenhouse gas concentrations for the remainder of this century and beyond will be influenced not only by future emissions but indeed by present-day emissions. The severity of all the described risks and impacts is likely to increase over time with accumulating GHG concentrations and the associated temperature increases and precipitation changes. Finally, these impacts are global, and may exacerbate problems that raise humanitarian, trade, and national security issues for the U.S.

3. Climate Impacts Detailed in Recent NRC Assessments

Since the EPA issued the 2009 Endangerment Finding, the NAS, which is a society established by an Act of Congress that is composed of distinguished scholars engaged in scientific and engineering research, has

[28] This level of control has historically been referred to as best demonstrated technology (BDT).

[29] ''Endangerment and Cause or Contribute Findings for Greenhouse Gases Under Section 202(a) of the Clean Air Act.'' 74 FR 66496 (December 15, 2009).

[30] ''Light-Duty Vehicle Greenhouse Gas Emission Standards and Corporate Average Fuel Economy Standards; Final Rule.'' 75 FR 25324 (May 7, 2010).

[31] 74 FR 66510–66511.

[32] Carbon dioxide (CO_2), nitrous oxide (N_2O), methane (CH_4), perflurocarbons (PFCs), hydrofluorocarbons (HFCs), and sulfur hexafluoride (SF_6).

issued assessments with similar conclusions to those of the assessments upon which the EPA based the Endangerment Finding. In May 2010, the NRC, which is the operating arm of the National Academy of Sciences (NAS) that conducts most of the science policy and technical work, published its comprehensive assessment, ''Advancing the Science of Climate Change'' (the 2010 NRC Assessment).[33] It concluded that ''climate change is occurring, is caused largely by human activities, and poses significant risks for—and in many cases is already affecting—a broad range of human and natural systems.'' [34] Furthermore, the NRC stated that this conclusion is based on findings that are ''consistent with the conclusions of recent assessments by the U.S. Global Change Research Program, the Intergovernmental Panel on Climate Change's (IPCC) Fourth Assessment Report, and other assessments of the state of scientific knowledge on climate change.'' [35] These are the same assessments that served as the primary scientific references underlying the 2009 Endangerment Finding. The 2010 NRC Assessment also warned of risks associated with abrupt changes and surprises that might occur when certain thresholds are crossed, such as the release of large quantities of GHGs stored in frozen soils in the Arctic or irreversible drying and desertification in the subtropics; and of potential for broad, ''catastrophic'' impacts on marine ecosystems resulting from ocean acidification.

Another NRC assessment, ''Climate Stabilization Targets: Emissions, Concentrations, and Impacts over Decades to Millenia'', was published in 2011 (the 2011 NRC Assessment). This report found that climate change due to CO_2 emissions will persist for many centuries. The report also estimates a number of specific climate change impacts, finding that every degree Celsius (°C) of warming could lead to increases in heavy rainfall and decreases in crop yields and Arctic sea ice extent, along with other precipitation and stream flow changes. The assessment also found that with an increase of 4 °C, the average summer would be as warm as the warmest summers of the past century, that for an increase of 1 to 2 °C the area burnt by wildfires in western North America will likely more than double, that coral bleaching and erosion will increase due both to warming and ocean acidification, and that sea level will rise 1.6 to 3.3 feet by 2100 in a 3 °C scenario. The assessment notes that many important aspects of climate change are difficult to quantify but that the risk of adverse impacts is likely to increase with increasing temperature, and that the risk of surprises can be expected to increase with the duration and magnitude of the warming. Importantly, these recent NRC assessments represent another independent and critical inquiry of the state of climate change science, separate and apart from the previous IPCC, NRC, and USGCRP assessments.

C. GHGs From Fossil Fuel-Fired Power Plants

Fossil fuel-fired electric utility generating units are by far the largest emitters of GHGs, primarily in the form of CO_2, among stationary sources in the U.S. This section describes the amount of those emissions and places that amount in the context of the national inventory of GHGs.

The EPA prepares the official U.S. Inventory of Greenhouse Gas Emissions and Sinks [36] (the U.S. GHG Inventory) to comply with existing commitments under the United Nations Framework Convention on Climate Change. This inventory, which includes recent trends, is presented by industrial sectors. It is the source for the information provided in Table 2 below concerning total U.S. anthropogenic emissions and sinks of GHGs and CO_2 emissions, by industrial sector—including fossil fuel-fired EGUs—for the years 1990, 2000, and 2009.

TABLE 2—U.S. GHG EMISSIONS AND SINKS BY SECTOR

[Teragram Carbon Dioxide Equivalent (Tg CO_2 Eq.)] [37]

Sector	1990	2000	2009
Energy	5,287.8	6,168.0	5,751.1
Industrial Processes	315.8	348.8	282.9
Solvent and Other Product Use	4.4	4.9	4.4
Agriculture	383.6	410.6	419.3
Land Use, Land-Use Change and Forestry (Emissions)	15.0	36.3	25.0
Waste	175.2	143.9	150.5
Total Emissions	6,181.8	7,112.7	6,633.2
Land Use, Land-Use Change and Forestry (Sinks)	(861.5)	(576.6)	(1,015.1)
Net Emissions (Sources and Sinks)	5,320.3	6,536.1	5,618.2

Energy-related CO_2 emissions are the largest contributor to total U.S. GHG emissions, representing 86.7 percent of total 2009 GHG emissions. In 2009, the electric power sector—consisting of those entities whose primary business is the generation of electricity—accounted for 40 percent of all energy-related CO_2 emissions. The transportation sector, with emissions principally from the combustion of gasoline, diesel, and jet fuel, was the second-largest source, at 32 percent of the total. Other energy-related CO_2 emission sources included industrial, residential, and commercial fossil fuel combustion, natural gas and petroleum systems, and incineration of waste.

Direct fuel use in the residential and commercial sectors accounted for 26 percent of total CO_2 emissions in 2009. Total CO_2 emissions from fossil fuel-fired EGUs, for years 1990, 2000 and 2009, are shown below in Table 3.

[33] NRC (2010). Advancing the Science of Climate Change. National Academy Press. Washington, DC.

[34] NRC (2010). Advancing the Science of Climate Change. National Academy Press. Washington, DC. Page 3.

[35] NRC (2010). Advancing the Science of Climate Change. National Academy Press. Washington, DC. Page 286.

[36] ''Inventory of U.S. Greenhouse Gas Emissions and Sinks: 1990–2009'', Report EPA 430–R–11–005, United States Environmental Protection Agency, April 15, 2011.

[37] From Table 2–3 of the EPA GHG Emissions and Sinks Inventory, EPA 430–R–11–005.

TABLE 3—U.S. GHG EMISSIONS FROM GENERATION OF ELECTRICITY FROM COMBUSTION OF FOSSIL FUELS

[Tg CO_2 Eq.]

GHG Emissions	1990	2000	2009
Total CO_2 from fossil fuel combustion	1,820.8	2,296.9	2,154.0
—from coal	1,547.6	1,927.4	1,747.6
—from natural gas	175.3	280.8	373.1
—from petroleum	97.5	88.4	32.9
From use of limestone and dolomite	2.6	2.5	3.8
Total CH_4—stationary combustion	0.6	0.7	0.7
Total N_2O—stationary combustion	8.1	10.0	9.0

We are aware that nitrous oxide (N_2O) (and to a lesser extent, methane (CH_4)) may be emitted from fossil fuel-fired EGUs, especially from coal-fired circulating fluidized bed (CFB) combustors and from units with selective catalytic reduction (SCR) and selective non-catalytic reduction (SNCR) systems installed for NO_X control. We are not proposing separate N_2O or CH_4 emission limits or an equivalent CO_2 emission limit in today's action because of a lack of available data for these affected sources. Additional information on the quantity and significance of emissions and on the availability of cost-effective controls would be needed before proposing standards for these pollutants. The estimated emissions for N_2O and CH_4 from fossil fuel-fired EGUs (9.0 and 0.7 Tg of CO_2 equivalent, respectively) is about 0.4 percent of total CO_2 equivalent emissions from fossil fuel-fired electric power generating units. We are requesting comment on this approach and on the need to collect additional data on N_2O and CH_4 emissions from these affected sources.

D. Litigation Directly Leading to This Rule

As discussed below, in section II.E., on February 27, 2006, the EPA published a final rule that revised the standards of performance for criteria pollutant emissions of EGUs included in the Da category. ''Standards of Performance for Electric Utility Steam Generating Units, Industrial-Commercial-Institutional Steam Generating Units, and Small Industrial-Commercial-Institutional Steam Generating Units,'' 71 FR 9866 (Feb. 27, 2006) (the ''2006 Final Rule''). The 2006 Final Rule did not establish standards of performance for GHG emissions. Two groups of petitioners filed petitions for judicial review of this rule in the U.S. Court of Appeals for the District of Columbia Circuit (the Court), contending, among other things, that the rule was required to include standards of performance for GHG emissions from EGUs. The two groups of petitioners were (1) the States of New York, California, Connecticut, Delaware, Maine, New Mexico, Oregon, Rhode Island, Vermont, and Washington, the Commonwealth of Massachusetts, the District of Columbia, and the City of New York (collectively ''State Petitioners''); and (2) Natural Resources Defense Council (NRDC), Sierra Club, and Environmental Defense Fund (EDF)(collectively ''Environmental Petitioners'').

The portions of State and Environmental Petitioners' petitions for review of the 2006 Final Rule that related to GHG emissions were severed from other petitions for review of that rule, and were formally pending before the Court under the caption *State of New York, et al.* v. *EPA,* No. 06–1322. Following the U.S. Supreme Court's decision in *Massachusetts,* discussed above, the Court, upon motion from the EPA, remanded the 2006 Final Rule for further consideration of the issues related to GHG emissions in light of *Massachusetts.* The EPA did not act on that remand. To avoid further litigation, the State and Environmental Petitioners and the EPA negotiated a proposed settlement agreement that set deadlines for the EPA to propose and take final action on (1) a rule under CAA section 111(b) that includes standards of performance for GHGs for new and modified EGUs that are subject to 40 CFR part 60, subpart Da; and (2) a rule under CAA section 111(d) that includes emission guidelines for GHGs from existing EGUs that would have been subject to 40 CFR part 60, subpart Da if they were new sources. Pursuant to CAA section 113(g), the EPA published a notice of the proposed settlement agreement in the **Federal Register,** and provided for a public comment period. 75 FR 82392 (December 30, 2010).[38] The EPA considered the comments received and concluded that they did not disclose facts or considerations indicating that the proposed settlement agreement was inappropriate, improper, inadequate or inconsistent with the CAA. Therefore, the EPA concluded that the proposed settlement agreement should be finalized.

E. Coordination With Other Rulemakings

EGUs are the subject of several CAA rulemakings that have been recently completed. The EPA recognizes that it is important that all of these efforts achieve their intended environmental objectives in a common sense manner. The confluence of these rulemakings allows the industry to look across the regulatory requirements and design cost effective integrated compliance strategies.[39]

On July 6, 2011, the EPA finalized the Cross-State Air Pollution Rule (CSAPR)[40]. 76 FR 48208 (August 8, 2011). Also known as the Transport Rule, the CSAPR requires a total of 28 states and the District of Columbia to improve air quality by reducing power plant emissions that contribute to ozone and fine particle pollution in other States. The CSAPR applies to 3,642 EGUs at 1,081 coal-, gas- and oil-fired facilities in the eastern half of the U.S. By 2014, combined with other final state and EPA actions, the CSAPR will reduce power plant SO_2 emissions by 73 percent and NO_X emissions by 54 percent from 2005 levels in the CSAPR region. The CSAPR was scheduled to begin on January 1, 2012. However, on December 30, 2011, the U.S. Court of Appeals for the DC Circuit issued a ruling to stay the rule pending judicial review. This decision is not a ruling on the merits of the CSAPR. While this decision delays implementation of the

[38] Copies of the **Federal Register** notice, the settlement agreement, other supporting documents and the comments received are available online at fdms.gov under docket EPA–HQ–2010–1057.

[39] We include this discussion of other rulemakings for background purposes. The effort to coordinate rulemakings does not provide a defense to a violation to the CAA. Sources cannot defer compliance with existing requirements because of other upcoming regulations.

[40] On December 15, 2011, EPA finalized a supplemental rule (76 FR 80760, December 27, 2012) to include five additional states in the CSAPR ozone season NO_X program. On February 7, 2012, EPA issued two sets of minor adjustments to the CSAPR (77 FR 10324, February 21, 2012).

CSAPR and the significant health benefits associated with the rule, it leaves the Clean Air Interstate Rule (CAIR), the predecessor regulation to CSAPR, in place while the Court considers the merits of the challenges to the CSAPR. Oral arguments are scheduled for April 13, 2012.

On December 16, 2011, the EPA signed the Mercury and Air Toxic Standards (MATS) rule to reduce emissions of mercury and other HAP emissions from coal- and oil-fired power plants. This regulation requires investments in pollution controls to reduce emissions of mercury, other metals and acid gases by 2015 or 2016. In the same notice, the EPA also revised the NSPS for criteria pollutants from these sources. Because the control technologies and strategies that reduce SO_2 can also reduce or help to reduce HAP emissions, coordinating compliance strategies for the CSAPR and MATS rules, including the revised NSPS for criteria pollutants, will allow cost-effective compliance options.

In April, 2011, the EPA proposed standards under the Clean Water Act (CWA) to reduce injury and death of fish and other aquatic life caused by cooling water intake structures existing at power plants and factories. 76 FR 22174 (April 20, 2011). These facilities pull in large volumes of cooling water from lakes, rivers, estuaries or oceans to cool their machinery. The EPA is currently considering a wide range of comments to this proposal.

The EPA recognizes that it is important that each of these efforts achieves its intended environmental objectives in a common-sense, cost effective manner, that is consistent with the underlying statutory requirements and that allows the industry to comply with all of its obligations under these rules as efficiently as possible and to do so by making coordinated investment decisions and, to the greatest extent possible, by adopting integrated compliance strategies. In addition, EO 13563 states that ''[i]n developing regulatory actions and identifying appropriate approaches, each agency shall attempt to promote * * * coordination, simplification, and harmonization. Each agency shall also seek to identify, as appropriate, means to achieve regulatory goals that are designed to promote innovation.'' Recent guidance from the Office of Information and Regulatory Affairs has emphasized the importance of, where appropriate and feasible, considering cumulative effects and of seeking to harmonize rules in terms of both content and timing.

Thus, the EPA recognizes that it needs to approach these rulemakings, to the extent that its legal obligations permit, in ways that allow the industry to make practical investment decisions that minimize costs in complying with all of the final rules, while still achieving the fundamentally important environmental and public health benefits that the rulemakings must achieve.

F. PSD and Title V Implications

Commenters have asked whether the rulemaking the EPA is proposing today has implications for EGUs and other stationary sources under the prevention of significant deterioration (PSD) and Title V programs. We discuss this issue in section VI, below, and we include relevant background information in that discussion.

G. Stakeholder Input

The EPA has been engaged in extensive interactions with many different stakeholders on the subjects of climate change, source contributions, and potential emission reduction opportunities. These stakeholders have included industries, environmental organizations, and many regional, State, and local air quality management agencies that have been actively engaged in efforts to address GHG emissions over a period of several years. In addition to these conversations, as part of developing this proposed rule, the EPA held five listening sessions in February and March 2011 to obtain additional information and input from key stakeholders and the public. Each of the five sessions had a particular target audience: The electric power industry, environmental and environmental justice organizations, States and Tribes, coalition groups, and the petroleum refinery industry. Each session lasted two hours and featured a facilitated round table discussion among stakeholder representatives who were identified and selected for their expertise in the CAA standard-setting process. The EPA had asked key stakeholder groups to identify these round table participants in advance of the listening sessions. The EPA accepted comments from the public at the end of each session and via the electronic docket system.

From the listening sessions and written submissions, the EPA received a wide range of comments and ideas for this proposed rule. The main topics of the comments, which concerned requirements for both new and existing sources, included the following:

- Feasibility and availability of control technologies
- Output-based standards
- Subcategorization factors
- Fleet-wide averaging
- Neutrality of fuels
- Role of efficiency improvements
- Equivalency of state and regional reduction programs
- Recognition of early action by industries and states achieving reductions
- Use of a multi-pollutant, multi-media approach
- Market-based flexibility
- Use of a tiered structure, with requirements evolving over time
- Credit for replacement of older, less efficient generation units
- Role of biomass
- Consideration of compliance issues arising from conflicts with other regulatory programs
- Schedule for proposing and promulgating this rule
- Small business impacts

Comments submitted via the electronic docket system concerning development of this proposed rule are available at *www.regulations.gov* (docket number EPA–HQ–OAR–2011–0090).

III. Proposed Requirements for New Sources

This section describes the proposed requirements in this rulemaking for new sources. Our rationale for these proposed requirements is provided in Section IV of this preamble.

A. What is the affected source?

Sources affected by today's proposal for new source provisions are sources that are considered both covered EGUs as defined by this rule and ''new'' sources as defined under the provisions of CAA section 111.

1. Covered EGUs, Generally

The EPA is proposing to define a covered EGU, which is a source that is subject to this rule, as any fossil fuel-fired combustion unit that supplies more than one-third of its potential annual electric output and more than 25 MW net-electrical output (MWe) to any utility power distribution system for sale, with certain exceptions noted below. For this proposed rule, covered EGUs include electric utility steam generating units (''boilers''), stationary combined cycle combustion turbines and their associated HRSG) and duct burners; and IGCC units, including their combustion turbines and associated HRSG. However, for purposes of this rule, covered EGUs do not include stationary simple cycle combustion turbines or EGUs located in Hawaii or other non-continental areas. In addition, units subject to emission requirements

under CAA section 129 would not be subject to requirements under this proposed rule.

2. CO_2 Emissions Only

This action proposes to regulate covered EGU emissions of CO_2, and not other constituent gases of the air pollutant GHG, although we identify the pollutant we propose to regulate as GHGs. Note that emissions of criteria pollutants for covered EGUs remain covered under 40 CFR part 60 subparts Da and KKKK.

3. ''New'' Sources

CAA section 111(a)(2) defines a ''new source'' as ''any stationary source, the construction or modification of which is commenced after publication of regulations (or, if early, proposed regulations) prescribing a standard of performance under [CAA section 111] which will be applicable to such source.'' In contrast, CAA section 111(a)(6) defines an ''existing source'' as ''any stationary source other than a new source.'' The definition of a ''new source'' applies according to its terms for purposes of this rulemaking, except that special considerations come into play for sources undertaking physical or operational changes, transitional sources, and sources undertaking reconstruction, as discussed below in Section V of this preamble.

B. What emissions limitations must I meet?

In this rulemaking, the EPA is proposing a standard of performance (NSPS), and we are requesting comment on a 30-year averaging compliance option, for CO_2 emissions from affected sources, which are new fossil fired EGUs described above in Section III.A.

1. Standard of Performance

The standard of performance is a gross output-based CO_2 emission limit expressed in units of emissions mass per unit of useful recovered energy (specifically, in pounds per megawatt-hour (lb/MWh)). This emission limit would be effective upon the effective date of the final action.

We are not proposing any subcategories for new affected sources. Instead, we are proposing a single output-based CO_2 emission limit that must be met by all affected sources.[41] Specifically, the EPA is proposing a standard of 1,000 lb CO_2/MWh, but, as discussed below, is taking comment on a range from 950 lb CO_2/MWh to 1,100 lb CO_2/MWh.

As discussed below, the proposed method to calculate compliance is to sum the emissions for all operating hours and to divide that value by the sum of the electrical energy output and useful thermal energy output, where applicable for combined heat and power (CHP) EGUs, over a rolling 12-month period. In the alternative, we solicit comment on requiring calculation of compliance on an annual (calendar year) period.

Under this proposal, no averaging or emissions trading among affected sources would be allowed.

We seek comment on all aspects of the proposed standard of performance, including using net, instead of gross, generation-based emissions rate measurement.

2. 30-Year Averaging Compliance Option

We also propose a 30-year averaging compliance option that would be available only for affected coal- and pet coke-fired sources that comply with the standard through the use of CCS. This approach involves a performance standard that includes both a 12-month annual average limit and a longer-term limit that may be met on an average basis by the end of a 30-year period. The 12-month limit is important because it is a practicably enforceable mechanism to ensure that the source is on a path to comply with the 30-year average limit. The annual limit will ensure that the source takes timely action to meet a 30-year limit. For instance, if meeting the 30-year limit was predicated on installing CCS technology before year eleven of operation, the annual compliance limits would provide an enforceable measure to ensure that CCS was installed and operating well before a 30-year average could be calculated. Note that after the 30th year, the source would be required to meet the 12-month annual average 1,000 lb CO_2/MWh emission limit.

Specifically, for the first ten years of operation, the affected source would be required to comply with a 12-month annual average CO_2 emissions limit based on the best demonstrated performance of a coal-fired facility without CCS, which is 1,800 lb CO_2/MWh (816 kg CO_2/MWh) (gross). This proposed emission limit can be met by modern coal-fired facilities using supercritical steam conditions, IGCC facilities, and pressurized CFBs boilers. By no later than the 11th year from the effective date of the rule, the facility would be required to meet a reduced emission limit of no more than 600 lb CO_2/MWh (272 kg CO_2/MWh) (gross) on a 12-month annual average basis for the remaining 20 years of the 30-year averaging period, such that the weighted average CO_2 emissions rate from the facility over the 30-year time period would be equivalent to the proposed standard of performance of 1,000 lb CO_2/MWh. This reduced emissions standard during the remainder of the 30-year period would be met with some level of CCS.[42]

For added flexibility, under this option, we are taking comment on allowing the owner/operator to select a different emission trajectory to achieving the 30-year average as long as the owner/operator obtains EPA approval of that rate before beginning operations. Such a trajectory would have to assure that, assuming similar amounts of operation in each year, the overall overage emission rate would be at or below the required 30-year average of 1,000 lb CO_2/MWh. For instance, if an owner or operator wished to operate at a rate of 2,000 lb CO_2/MWh for the first period, it would have to commit to something more stringent than achieving a 600 lb CO_2/MWh standard by the 11th year. Potential compliance pathways could include committing to a limit of 500 lb CO_2/MWh by the 11th year or committing to a limit of 600 lb CO_2/MWh by the 8th year.

The EPA is also soliciting comment on what additional requirements would be necessary to implement the 30-year averaging requirement. Specifically, if the owners or operators did not intend to install CCS when the unit commenced operation, they could be required to submit a plan that includes a location to store CO_2 and a schedule for construction and operation of their carbon capture system. The schedule would include key milestone dates such as soliciting proposals, obtaining financing, beginning construction, and beginning operation. The EPA requests comment on the appropriateness of including these, and/or other requirements to ensure that the owners or operators of the facility have adequate plans in place to meet the 30-year average emission rate requirement. Further, the shorter term emission limits for the entire 30-year period must be included in the source's title V permit. We solicit comment on the

[41] As discussed below, we are not proposing such a limit for modifications, transitional sources, or reconstructed sources.

[42] As discussed elsewhere, EPA is soliciting comment on whether the emissions standard that reflects CCS should be somewhat higher or lower than 1,000 lb CO_2/MWh, and whether the emissions standard that reflects supercritical efficiency should be somewhat higher or lower than 1,800 lb CO_2/MWh. If EPA does promulgate a higher or lower standard in either case, then EPA may revise the 600 lb CO_2/MWh amount accordingly.

enforceability of the 30-year averaging period, how we can ensure that the owner/operator will comply with the second phase of the standard, and what sort of compliance demonstrations are appropriate with such a long-term standard. We also solicit comment on whether this alternative compliance mechanism should automatically terminate in 2020 such that only facilities that commenced construction prior to 2020 would be able to use the 30-year average.

The EPA suggests that this 30-year averaging compliance option may be warranted for at least two reasons. First, it provides power companies with the option of building a coal-fired power plant in the near term and installing CCS at a later time when costs will likely be lower and further experience from demonstration projects will have been gained. The 30-year averaging period is sufficiently long to allow sources, before they install CCS, to benefit from the experience that will be gained from commercial-scale CCS demonstration projects operating over the next decade from a number of DOE-funded demonstration projects. A new coal- or pet coke-fired unit could operate for at least a decade before installing CCS and still have enough years operating at a controlled emission rate to reach a 1,000 lb CO_2/MWh standard on a 30-year basis. A second reason that this alternative may be practicable is that, even for sources installing and operating CCS at the beginning of a project, there may be startup issues (other than those related to the capture technology or the arrangements for sequestration). For instance, a company's ability to sequester CO_2 may be dependent upon construction by a third party of a pipeline that will be transporting the CO_2 to a site to be used for enhanced oil recovery or permanent sequestration. Because the owner or operator does not have direct control over this part of the project, there may be concerns that it will not be completed on time and that even after spending all of the money to construct a coal-fired unit capable of capture, it will have to remain non-operational for a period of time until the pipeline project or sequestration destination is completed. The 30-year averaging compliance option could provide flexibility to operate the unit until the pipeline was completed as long as the carbon capture system is designed to meet a rate sufficiently below 1,000 lb CO_2/MWh to allow for compliance with a 30-year averaging period. Such flexibility is likely to be most important for the first several CCS projects (i.e., ''first movers'') because of the complexity of integration of the technologies and the fact that the business model is new for the power sector. Because the policy purpose of this 30-year averaging compliance option is to leave open the option of building a coal-fired unit in the near term and installing CCS after several years or to allow for flexibility during startup of the system, a long-term averaging period is needed to allow time for such a unit to achieve the 1,000 lb CO_2/MWh level.

We note that under CAA section 111(b)(1)(B), ''the Administrator shall, at least every 8 years, review and, if appropriate, revise [the] standards [of performance] * * * ''. This review is required to take place in 2020, if not sooner. In the event that the EPA adopts the 30-year averaging compliance option, then at the time of the next required review, the EPA will evaluate the state of development or commercialization of CCS technologies and make a determination as to whether or not the 30-year averaging approach is still warranted for new sources. Because we expect CCS technology to advance significantly over the next several years, we believe that it may not be necessary to include this type of compliance option for a 30-year average the next time we review this NSPS. In light of this, we further solicit comment as to whether the 30-year averaging compliance option should automatically terminate in 2020, so that it would be available only for facilities that commenced construction prior to 2020.

We recognize that this compliance option, by authorizing sources to average the CO_2 emission level over a 30-year period, is unique. We recognize that the uniqueness of this approach may give rise to new issues concerning compliance and enforcement. We solicit comment on any practical difficulties in compliance and enforcement. Along these lines, although we propose that sources be required to retain records to demonstrate compliance with the emission limits for at least 30 years following the date of initial startup of the affected EGU, we solicit comment on the merits of extending this period to 50 years. As with the proposed standard of performance, no averaging or emissions trading among affected sources would be allowed for this 30-year averaging compliance option.

This 30-year averaging compliance option is available only to new coal- and pet coke-fired EGUs. We do not believe that it is necessary for NGCC units, as they should be able to meet the proposed performance with no need for add-on technology. We also solicit comment on the need to extend the applicability for the 30-year averaging compliance option to other fossil fuels beyond just coal and pet coke. We seek comment on all other aspects of this 30-year averaging compliance option.

C. What are the startup, shutdown, and malfunction requirements?

1. Startups and Shutdowns

The NSPS that the EPA is proposing in this action would apply at all times, including during startups and shutdowns. In establishing the level of the proposed NSPS, the EPA has taken into account startup and shutdown periods. The EPA is not proposing different standards for those periods.

To establish the proposed NSPS's output-based CO_2 standard, we accounted for periods of startup and shutdown by considering periods of part-load operation. As noted above, the proposed method to calculate compliance is to sum the emissions for all operating hours and to divide that value by the sum of the electrical energy output and useful thermal energy output, where applicable for CHP EGUs, over a rolling 12-month period. This averaging approach gives more weight to high-load hours and more accurately reflects overall environmental performance. In addition, because low-load hours do not factor as heavily into the calculated average, the impact of including periods of startup and shutdown is minimized when calculating emission rates.

We solicit comment on the alternative of requiring compliance through an annual (calendar year) average.

We propose that these same requirements for startups and shutdowns would apply to the 30-year averaging compliance option.

2. Malfunctions

The NSPS that the EPA is proposing in this action would apply at all times, including during malfunctions. Periods of startup, normal operations, and shutdown are all predictable and routine aspects of a source's operations. By contrast, malfunction is defined as a ''sudden, infrequent, and not reasonably preventable failure of air pollution control and monitoring equipment, process equipment or a process to operate in a normal or usual manner * * * ''(40 CFR 60.2). The EPA has determined that CAA section 111 does not require that emissions that occur during periods of malfunction be factored into development of CAA section 111 standards. Further, nothing in section 111 or in case law requires that the EPA anticipate and account for

the innumerable types of potential malfunction events in setting emission standards. *See, Weyerhaeuser* v. *Costle,* 590 F.2d 1011, 1058 (DC Cir. 1978) (''In the nature of things, no general limit, individual permit, or even any upset provision can anticipate all upset situations. After a certain point, the transgression of regulatory limits caused by 'uncontrollable acts of third parties,' such as strikes, sabotage, operator intoxication or insanity, and a variety of other eventualities, must be a matter for the administrative exercise of case-by-case enforcement discretion, not for specification in advance by regulation.'')

Further, it is reasonable to interpret CAA section 111 as not requiring the EPA to account for malfunctions in setting emissions standards. For example, we note that section 111 provides that the EPA set standards of performance which reflect the degree of emission limitation achievable through ''the application of the best system of emission reduction'' that the EPA determines is adequately demonstrated. Applying the concept of ''the application of the best system of emission reduction'' to periods during which a source is malfunctioning presents difficulties. The ''application of the best system of emission reduction'' is more appropriately understood to include operating units in such a way as to avoid malfunctions.

Further, accounting for malfunctions would be difficult, if not impossible, given the myriad different types of malfunctions that can occur across all sources in the category and given the difficulties associated with predicting or accounting for the frequency, degree, and duration of various malfunctions that might occur. As such, the performance of units that are malfunctioning is not ''reasonably'' foreseeable. *See, e.g., Sierra Club* v. *EPA,* 167 F.3d 658, 662 (DC Cir. 1999) (The EPA typically has wide latitude in determining the extent of data-gathering necessary to solve a problem. We generally defer to an agency's decision to proceed on the basis of imperfect scientific information, rather than to ''invest the resources to conduct the perfect study.''). In addition, the goal of a best controlled or best performing source is to operate in such a way as to avoid malfunctions of the source and accounting for malfunctions could lead to standards that are significantly less stringent than levels that are achieved by a well-performing non-malfunctioning source. The EPA's approach to malfunctions is consistent with section 111 and is a reasonable interpretation of the statute.

In the event that a source fails to comply with the applicable CAA section 111 standards as a result of a malfunction event, the EPA would determine an appropriate response based on, among other things, the good faith efforts of the source to minimize emissions during malfunction periods, including preventative and corrective actions, as well as root cause analyses to ascertain and rectify excess emissions. The EPA would also consider whether the source's failure to comply with the CAA section 111 standard was, in fact, ''sudden, infrequent, not reasonably preventable'' and was not instead ''caused in part by poor maintenance or careless operation.'' 40 CFR section 60.2 (definition of malfunction).

Finally, the EPA recognizes that even equipment that is properly designed and maintained can sometimes fail and that such failure can sometimes cause an exceedance of the relevant emission standard. (*See, e.g.,* ''State Implementation Plans: Policy Regarding Excessive Emissions During Malfunctions, Startup, and Shutdown'' (Sept. 20, 1999); Policy on Excess Emissions During Startup, Shutdown, Maintenance, and Malfunctions (Feb. 15, 1983), which are both included in the docket for this rulemaking.) The EPA is therefore proposing to add to the final rule an affirmative defense to civil penalties for exceedances of emission limits that are caused by malfunctions. See 40 CFR 60.10042 (defining ''affirmative defense'' to mean, in the context of an enforcement proceeding, a response or defense put forward by a defendant, regarding which the defendant has the burden of proof, and the merits of which are independently and objectively evaluated in a judicial or administrative proceeding.). We also are proposing other regulatory provisions to specify the elements that are necessary to establish this affirmative defense: The source must prove by a preponderance of the evidence that it has met all of the elements set forth in 60.10001. (See 40 CFR 22.24). The criteria ensure that the affirmative defense is available only where the event that causes an exceedance of the emission limit meets the narrow definition of malfunction in 40 CFR 60.2 (sudden, infrequent, not reasonably preventable and not caused by poor maintenance and or careless operation). For example, to successfully assert the affirmative defense, the source must prove by a preponderance of the evidence that excess emissions ''[w]ere caused by a sudden, infrequent, and unavoidable failure of air pollution control and monitoring equipment, process equipment, or a process to operate in a normal or usual manner * * *.'' The criteria also are designed to ensure that steps are taken to correct the malfunction, to minimize emissions in accordance with section 60.10001 and to prevent future malfunctions. For example, the source must prove by a preponderance of the evidence that ''[r]epairs were made as expeditiously as possible when the applicable emission limitations were being exceeded * * *'' and that ''[a]ll possible steps were taken to minimize the impact of the excess emissions on ambient air quality, the environment and human health * * *.'' In any judicial or administrative proceeding, the Administrator may challenge the assertion of the affirmative defense and, if the respondent has not met its burden of proving all of the requirements in the affirmative defense, appropriate penalties may be assessed in accordance with section 113 of the CAA (see also 40 CFR part 22.77).

The EPA is including an affirmative defense in an attempt to balance a tension, inherent in many types of air regulation, to ensure adequate compliance while simultaneously recognizing that despite the most diligent of efforts, emission limits may be exceeded under circumstances beyond the control of the source. The EPA must establish emission standards that ''limit the quantity, rate, or concentration of emissions of air pollutants on a continuous basis.'' 42 U.S.C. 7602(k) (defining ''emission limitation and emission standard''). *See* generally *Sierra Club* v. *EPA,* 551 F.3d 1019, 1021 (DC Cir. 2008) Thus, the EPA is required to ensure that section 112 emissions limitations are continuous. The affirmative defense for malfunction events meets this requirement by ensuring that even where there is a malfunction, the emission limitation is still enforceable through injunctive relief.[43] While ''continuous'' limitations, on the one hand, are required, there is also case law indicating that in many situations it is appropriate for the EPA to account for the practical realities of technology. For example, in *Essex Chemical* v. *Ruckelshaus,* 486 F.2d 427, 433 (DC Cir. 1973), the DC Circuit acknowledged that in setting standards under CAA section 111 ''variant provisions'' such as provisions allowing for upsets during startup, shutdown and equipment

[43] Note that the Ninth Circuit recently upheld EPA's decision to apply this affirmative defense approach to only actions seeking civil penalties, and not also to actions seeking injunctive relief. *Montana Sulfur & Chemical Co.* v. *EPA, No. 02–71657 (9th Cir. August 31, 2011) (slip op. at 456).*

malfunction ''appear necessary to preserve the reasonableness of the standards as a whole and that the record does not support the 'never to be exceeded' standard currently in force.'' *See* also, *Portland Cement Association* v. *Ruckelshaus,* 486 F.2d 375 (DC Cir. 1973). Though intervening case law such as *Sierra Club* v. *EPA* and the CAA 1977 amendments undermine the relevance of these cases today, they support the EPA's view that a system that incorporates some level of flexibility is reasonable. The affirmative defense simply provides for a defense to civil penalties for excess emissions that are proven to be beyond the control of the source. By incorporating an affirmative defense, the EPA has formalized its approach to upset events. In a Clean Water Act setting, the Ninth Circuit required this type of formalized approach when regulating ''upsets beyond the control of the permit holder.'' *Marathon Oil Co.* v. *EPA,* 564 F.2d 1253, 1272–73 (9th Cir. 1977). But *see, Weyerhaeuser Co.* v. *Costle,* 590 F.2d 1011, 1057–58 (DC Cir. 1978) (holding that an informal approach is adequate). The affirmative defense provisions give the EPA the flexibility to both ensure that its emission limitations are ''continuous'' as required by 42 U.S.C. 7602(k), and account for unplanned upsets and thus support the reasonableness of the standard as a whole.

We propose that these same requirements for malfunctions would apply to the 30-year averaging compliance option; however, we take comment on whether it is appropriate to have an affirmative defense for the 30-year averaging portion of that compliance option, given that we would expect malfunctions to only impact shorter emissions limits, and the longer the compliance period, the less likely malfunction events are to impact a source's ability to meet the standard.

D. What are the continuous monitoring requirements?

The EPA is proposing that a CO_2 mass rate CEMS and the associated automatic data acquisition and handling system must be installed and operated in accordance with the requirements below.

1. Prepare a site-specific monitoring plan that addresses the monitoring system design, data collection, and the quality assurance and quality control elements consistent with the requirements in 40 CFR part 75.

2. Use all the data collected during all other required data collection periods in assessing the operation of the control device and associated control system.

3. Report any periods for which the monitoring system failed to collect required data.

4. Except for periods of monitoring system malfunctions, repairs associated with monitoring system malfunctions, and required monitoring system quality assurance or quality control activities (including, as applicable, calibration checks and required zero and span adjustments); failure to collect required data is a deviation of the monitoring requirements.

We propose that owners/operators would install the CEMS and complete the CEMS certification in accordance with the schedule required in 40 CFR part 75, section 75.4(b).

We also request comment on the appropriateness of applying the backup monitor requirements in 40 CFR part 75.10(e), the missing data procedures in 40 CFR part 75, sections 75.31 through 75.37, and appendix C for this proposed rule.

We propose that these same monitoring requirements would apply to the 30-year averaging compliance option.

E. What are the emissions performance testing requirements?

Consistent with the performance testing requirements in the CAA section 111 regulatory general provisions (40 CFR part 60.8) and CEMS certification requirements (40 CFR part 75.4(b)), we propose that owners/operators of a new unit, conduct an initial performance test to demonstrate compliance with the CO_2 emissions limits beginning in the calendar month following initial certification of the CO_2 and flow rate monitoring CEMS.

We propose that the initial performance test consist of collection of hourly CO_2 average concentration, mass flow rate (standard cubic feet per hour) recorded with the certified CO_2 concentration and flow rate CEMS and the corresponding electrical power generation data for all of the hours of operation for the first calendar year beginning on the first day of the first month following completion of the CEMS installation and certification. For all of the operating hours during each monthly period, including startup and shutdown, you would calculate compliance with the emissions limit by dividing the sum of the hourly CO_2 mass values by the sum of the hourly useful energy output produced over the first 12 months of data.

We propose that these same emissions performance testing requirements would apply to the 30-year averaging compliance option.

F. What are the continuous compliance requirements?

In this rulemaking, we propose that compliance with the applicable average CO_2 mass emissions rate (lb/MWh) must be calculated as a 12-month rolling average, updated monthly, using the reported hourly CO_2 average concentration and flow rate values from the certified CEMS data collected for the previous month's process operating days along with generation data tracked by the facility for the unit. We propose that compliance with the emissions limit must be calculated by dividing the sum of the hourly CO_2 mass emissions values by the sum of the useful energy output produced for each calendar month period and that the 12-month rolling average must be updated as the average of the previous 12 months' calculations. Affected sources will continue to be subject to the standards and maintenance requirements in the section 111 regulatory general provisions. 40 CFR part 60, subpart A.

We solicit comment on, in the alternative, an annual (calendar year) average emission limit, which would be calculated through comparable methodology as just described.

We propose that these same continuous compliance requirements would apply to the 30-year averaging compliance option.

G. What are the notification, recordkeeping, and reporting requirements?

In this rulemaking, the EPA is proposing that you, as the owner or operator of a new unit, must comply with the notification and recordkeeping requirements in the section 111 regulatory general provisions, 40 CFR part 60, subpart A, and need to report results of performance testing and excess emissions; as well as record and maintain hourly average CO_2 emissions concentration, hourly average flow rate, and hourly useful electrical generation. Note that the summary form identified as Figure 1 in 40 CFR part 60.7(d) will be revised to include CO_2 as a pollutant. We are also seeking comments on whether the EPA should require initial notification of compliance status reports. In most rules, an initial notification of compliance status report, where owners and operators of sources subject to a particular rule notify the EPA and State and Local Air Pollution Control Agencies that their source is subject to the rule and how they intend to comply with the rule, is required. Regulators find this information very helpful in implementing and enforcing particular rules. In this case, most, if not

all, of the sources that are potentially subject to this rule have already been identified because they are subject to other New Source Performance Standards and Part 75 Acid Rain provisions.

As part of an Agency-wide effort to facilitate reporting of environmental data and reports, we are requiring electronic reporting of selected reports, required by this regulation, to the EPA. We are proposing that owners and operators subject to this regulation must electronically submit excess emissions, continuous monitoring systems performance and-or summary reports required under section 60.7(c). Owners and operators would need to submit these reports to the EPA's WebFIRE database by using the Compliance and Emissions Data Reporting Interface (CEDRI) that is accessed in the Central Data Exchange (CDX). The CDX is the EPA's portal for submitting and managing electronic environmental data and reports and is accessed at *www.epa.gov/cdx.* The CDX is needed to meet the EPA standards for electronic reporting set by the Cross-Media Electronic Reporting Rule. For more information, please see *http://www.epa.gov/cromerr/.* Owners and operators required to submit electronic reports would need to register to use the CDX and for the CEDRI node at *http://cdx.epa.gov/epa_home.asp.* Once a user has access to CDX and CEDRI, the owners and operators would use the subpart specific forms in CEDRI to enter the information for the 60.7(c) required reports.

In most New Source Performance Standards owners and operators are required to keep records of their reports on site for at least 2 years. Since the owner or operator would be submitting the data in these reports to be housed in CDX and WebFIRE, we are proposing to forgo recordkeeping requirements for those reports required to be submitted in proposed section 60.5555(a)(1). We believe that since the WebFIRE database is public that the need for recordkeeping onsite for certain information will not be needed as the information will be readily available for all stakeholders to access.

We are aware that owners or operators of many existing EGUs are required to submit some emissions data through the EPA Acid Rain Program's Emissions Collection and Monitoring Plan System (ECMPS) for SO_2, NO_X, CO_2, and other related data. We propose for affected sources to continue to use ECMPS with modifications to allow for collecting CO_2 mass emissions data and the CEMS relative accuracy reports proposed in this rule.

We request comment on these and other modifications to ECMPS appropriate for implementing this rule and any other EPA rules that apply to EGUs in order to streamline and focus all applicable emissions data reporting requirements. We request comment on modification of the ECMPS system to collect, track, and calculate CO_2 emissions rates based on hourly useful energy output for the unit. We also request comment on tracking and making use of useful steam data for new facilities.

We are also aware that owners or operators of existing units are required to submit electrical generation data according to procedures required by the DOE's Energy Information Administration (EIA) for its reports. We request comment on the appropriateness of using these electrical generation data in this proposed rule.

The EPA proposes that these same notice, recordkeeping, and reporting requirements would apply to the 30-year averaging compliance option. The EPA requests comment on whether any alterations or additions are appropriate for the notice, recordkeeping, and reporting requirements that would apply to the 30-year averaging compliance option. The EPA also requests comment on whether sources that utilize the 30-year averaging compliance option should include, as applicable requirements in their title V permits, a specific explanation of their compliance plan, including when CCS would be deployed, what capture rate(s) would be achieved, how the CO_2 would be sequestered, and whether the company anticipates receiving government financial assistance or other incentives for the CCS.

IV. Rationale for the Proposed Standards for New Sources

A. How did the EPA establish the emission limits?

1. Rationale for Proposing to Combine the Subpart Da Category and a Component of the Subpart KKKK Category into a New Category for Purposes of Regulating GHG Emissions

The EPA is proposing to create a new subpart in 40 CFR part 60 by combining the sources in subpart Da (the Da category) and a subset of the sources in subpart KKKK (the KKKK category)—stationary combined cycle units, but not stationary simple cycle units—for purposes of promulgating standards of performance for emissions of GHGs from new sources. This new subpart will be numbered TTTT. Consistent with standard practice and Executive Order 13563, and in particular its emphasis on ''the open exchange of information and perspectives'' and ''providing an opportunity for public comment on all pertinent parts of the rulemaking docket, including relevant scientific and technical findings'' and on consideration of alternatives, we invite comments on our decision to combine the two source categories.

At this time, the EPA is not proposing to subcategorize new sources and is not proposing to combine the Da category and components of the KKKK category for purposes of regulating criteria pollutants.

CAA section 111 provides legal authority for combining the categories into a new category. Clean Air Act section 111(b)(1)(A) provides:

> The Administrator shall, within 90 days after December 31, 1970, publish *(and from time to time thereafter shall revise)* a list of categories of stationary sources. He shall include a category of sources in such a list if in his judgment it causes or contributes significantly to air pollution which may reasonably be anticipated to endanger public health or welfare.

(Emphasis added.)

As quoted, this provision grants to the Administrator the authority to ''revise'' the list of categories. Combining categories, in whole or in part, is a form of ''revis[ing]'' the list of categories (along with taking other actions, such as adding more categories or delisting categories), and accordingly is authorized.

For three principal reasons, it is appropriate for the EPA to combine the Da category and the stationary combined cycle component of the KKKK category at this time for purposes of regulating GHGs. First, all of the plants covered by the new combined category (including fossil fuel-fired boilers, IGCC units and NGCC units) perform the same essential function, which is to provide generation to serve baseload or intermediate load demand. It is sensible to treat as part of the same category units that generate baseload or intermediate load electricity, regardless of their design or fossil fuel type.

Second, all newly constructed sources have options in selecting their design (although it is true that natural gas-fired plants are inherently lower emitting with regard to CO_2 than coal-fired plants. As a result, prospective owners and operators of new sources could readily comply with the proposed emission standards by choosing to construct a NGCC unit. These two factors provide sufficient legal rationale for the EPA to combine the Da category and the combined cycle component of the KKKK category for purposes of

establishing a standard of performance for GHG emissions.

The agency has previously combined one type of baseload and intermediate load combined cycle unit (IGCC, previously covered under Subpart GG) with Da units for the purposes of setting a standard [40 CFR 60.41Da(b), Feb. 28, 2005]. This action now similarly combines another type of baseload and intermediate load combined cycle unit (NGCC, previously covered under Subpart KKKK) with Subpart Da units for the purposes of setting a standard.

A third factor lends additional support. Combining the categories does not raise adverse policy concerns. On the basis of comments made during the listening sessions, we anticipate that some commenters may question whether combining the categories and applying the NGCC standard to all new plants within the combined category may limit construction of new coal-fired power plants, and thereby have a disruptive effect on the electric power industry, increase electricity prices and/or have adverse implications for energy diversity in new generation. We do not believe that this action would have those effects. As discussed below, and importantly, economic models forecast no new construction of coal-fired generation without CCS through the analysis period, which extends until 2020 (when the standard will be revisited). Accordingly, economic conditions are expected to be the main driver precluding, or at least limiting, construction of coal-fired EGUs. Because of those economic conditions, there is a strong independent movement of power plants serving baseload generation toward NGCC. In light of that movement, it is appropriate for the EPA to focus on this technology in developing the standard, rather than subcategorizing and providing a separate standard for new coal units. *See Portland Cement Ass'n* v. *EPA,* 665 F.3d 177, 190 (D.C. Cir. 2011) (affirming the EPA's decision not to subcategorize in part because of ''the universal movement in the portland cement industry towards adoption of preheater/precalciner technology'').

Notwithstanding these points, we recognize the possibility that a limited amount of new coal-fired construction may nevertheless occur. Today's action would not foreclose construction of new coal-fired EGUs. Rather, the new coal-fired EGUs that may be expected to be built in the foreseeable future (and for reasons stated above, this is anticipated to be a relatively small number) may install CCS control equipment (if not at the time of construction, then not long thereafter). By doing so, they may achieve the same average CO_2 emission rate (at least over time) as a natural gas-fired combined cycle unit. It is reasonable to expect that some coal-fired power plants may be able to implement CCS at the present time, and thereby achieve the 1,000 lb CO_2/MWh standard immediately. As noted elsewhere, CCS has been demonstrated to be technologically achievable, and, even though it is costly, there are some State and Federal programs that can make CCS more affordable. Several power companies have announced plans to incorporate CCS at six already permitted coal-fired EGU construction projects in this country (as we discuss below in section V.B., concerning transitional sources). Programs exist that provide some funding for CCS through pilot or other demonstration programs, and we expect those to continue. In addition, we reasonably expect the costs of CCS to decline over time. As discussed below, we are not proposing that CCS does or does not qualify as the ''best system of emission reduction'' that ''has been adequately demonstrated'' for new coal-fired power plants. Rather, the feasibility of CCS and its availability for the limited amount of new coal-fired construction that may be expected, means that this action to combine the categories and establish the NSPS at the proposed 1,000 lb CO_2/MWh emission limit will not have notable adverse effects on new coal-fired construction or, therefore, on the electric utility industry, electricity prices, or energy diversity. We welcome public comments on this discussion.

On the other hand, at this time, we do not consider it appropriate to include simple cycle facilities as an affected source in the new 40 CFR part 60, subpart TTTT for GHG emissions from new facilities. The reason for this is that the function of a new simple cycle power plant is different than that of a new combined cycle plant or coal-fired plant. Combined cycle plants and coal-fired plants are typically designed to provide baseload or intermediate-load power, while simple cycle turbines are designed to provide peaking power. Because combined cycle power plants and coal-fired power plants both serve the same purpose and have design options to emit CO_2 at similar levels, we believe it is appropriate to combine them. Because peaking turbines operate less and because it would be much more expensive to lower their emission profile to that of a combined cycle power plant or a coal-fired plant with CCS, the EPA does not believe it is appropriate to include them in this source category.

As noted above, some commenters in the listening sessions did suggest that the EPA not combine the two source categories. The EPA has rejected that option for all the reasons outlined above: (1) Fossil-fuel-fired boilers, combined cycle natural gas units, and IGCC units all serve the same basic function, generating baseload or intermediate load power; (2) the proposed standards can be met by different types of units in the category (NGCC units or coal-fired units with CCS); and (3) it is consistent with industry trends (as further explained elsewhere in this notice: Due largely to current and projected gas and coal price trends, new fossil-fuel-fired builds are projected to be natural gas combined cycle units or coal-fired units with CCS supported by federal funding). There is an additional reason for rejecting the option of retaining (and establishing separate standards for) separate source categories. The EPA's analysis (in Section 5.10 of the RIA) suggests that over a wide range of market conditions, constructing a new unit that meets a limit of 1,000 lb CO_2/MWh instead of an advanced coal-fired unit without CCS would likely produce net social benefits. For all of these reasons, retaining separate source categories would be unlikely to generate substantial private cost savings, but at the same time, would create the risk of significantly higher GHG emissions and other air pollutants from some new units, resulting, in turn, in higher social costs.

By the same token, at this time, we do not consider it appropriate to combine the Da category and the combined cycle component of the KKKK category for any pollutants other than GHGs, that is, for criteria pollutants. This is because although coal-fired EGUs have an array of control options for criteria and air toxic air pollutants to choose from, those controls generally do not reduce their criteria and air toxic emissions to the level of conventional emissions from natural gas-fired EGUs.

2. Endangerment and Cause-or-Contribute-Significantly Finding

a. *Overview.* In today's rulemaking, we propose or solicit comment on alternative interpretations for whether section 111 includes prerequisites to rulemaking that involve an endangerment finding and a cause-or-contribute-significantly finding. By its terms, CAA section 111 provides that once the EPA lists a source category for regulation because the category causes or contributes significantly to air pollution that may reasonably be anticipated to endanger public health or

welfare, the EPA then establishes requirements for new sources in that source category. The EPA proposes to interpret these provisions so that it is authorized to promulgate the rulemaking proposed today because it has already determined that both the Da and KKKK source categories cause or contribute significantly to air pollution that may reasonably be anticipated to endanger public health or welfare. The EPA solicits comment on interpreting CAA section 111 in the alternative so as to require (i) an endangerment finding for air pollution not specifically covered by the endangerment finding the EPA made when listing the source category, but that in this case, the EPA's 2009 Endangerment Finding for GHGs under Section 202(a) of the CAA (along with the EPA's 2010 denial of petitions to reconsider (2010 Reconsideration Denial)), fulfills that requirement; and (ii) a cause-or-contribute-significantly finding for air pollutants not specifically covered by the cause-or-contribute-significantly finding the EPA made when listing the source category, and that in this case, the large amounts of CO_2 emissions from power plants provide a compelling basis allowing the EPA to propose that finding. The EPA also solicits comment on another alternative, which is interpreting CAA section 111 so as not to require a specific endangerment finding or cause or contribute finding, but simply to require the EPA to establish a rational basis for regulating an air pollutant from a source category. In this case, the EPA's 2009 Endangerment Finding for GHGs and the 2010 denial of petitions to reconsider the Endangerment Finding, as well as the large amounts of CO_2 emissions from power plants, provide that rational basis. Finally, as an alternative for the basis for a rational basis determination, the 2010 and 2011 Assessment Reports from the National Academies confirm the Endangerment Finding and the denial of petitions to reconsider.

b. *Proposal:* Previous Source Category Findings Meet Any Endangerment Prerequisite to Regulation. In this rulemaking, the EPA proposes to interpret CAA section 111 so that we are not required, as a prerequisite to regulating CO_2 emissions from EGUs, to issue a new finding as to the health or welfare impacts of GHG air pollution or a finding as to the extent that affected sources contribute to that air pollution.

Clean Air Act section 111(b)(1)(A), by its terms, requires that the Administrator list a source category for regulation if the ''category * * * in [the Administrator's] judgment, * * * causes or contributes significantly to air pollution which may reasonably be anticipated to endanger public health or welfare.'' Clean Air Act section 111(b)(1)(B) goes on to provide that after listing the source category, the EPA must promulgate regulations ''establishing federal standards of performance for new sources within such category.'' In turn, CAA section 111(a)(1) defines a ''standard of performance'' as a ''standard for emissions of air pollutants which reflects the degree of emission reduction which (taking into account * * * cost * * * and any nonair quality health and environmental impact and energy requirements) * * * has been adequately demonstrated.''

Thus, although CAA section 111 clearly requires the EPA to list a source category if its emissions contribute significantly to air pollution that endangers public health or welfare, and then to promulgate standards of performance for particular pollutants, section 111 does not by its terms require that the EPA make any endangerment finding with respect to those particular pollutants, or any cause-or-contribute-significantly finding with respect to the source category, at the time the EPA promulgates the standards of performance for those pollutants. The lack of any such requirement contrasts with (i) the definition of ''standard of performance,'' which specifically requires the EPA to consider ''*nonair* quality health and environmental impact,'' CAA section 111(a)(1) (emphasis added); and (ii) other CAA provisions that do require the EPA to make endangerment and cause-or-contribute findings for the particular pollutant that the EPA regulates under those provisions. *E.g.,* CAA sections 202(a)(1), 211(c)(1), 231(a)(2)(A).

Accordingly, under our proposal, once the EPA has listed a source category, and the EPA proceeds to regulate particular pollutants from that source category, CAA section 111 does not require that the EPA make an endangerment finding for the relevant air pollution or a cause-or-contribute-significantly finding for the relevant air pollutants from that source category. The fact that the EPA is, in this rulemaking, proposing to partially combine the Da and KKKK source categories does not alter this outcome. As noted above, under CAA section 111(b)(1)(A), the EPA may add a source category to the list of categories only after determining that the source category ''causes, or contributes significantly to, air pollution which may reasonably be anticipated to endanger public health or welfare.'' The EPA has previously determined that each of the Da and KKKK categories causes or contributes significantly to such air pollution. Combining the Da category and some of the sources in the KKKK category does not necessitate that the EPA make a new cause-or-contribute-significantly finding for the expanded Da category. This is because the EPA has already found that at least one component of the new category—the former Da sources—by itself causes or contributes significantly to such air pollution. There is no reason why this expansion of the Da category to include the pre-existing Da sources plus additional sources could be considered to contribute to such air pollution to an extent that is less than the contribution from the pre-existing Da sources alone. As a result, the new category must necessarily be considered to cause or contribute significantly to such air pollution.

In addition to proposing this interpretation, we also solicit comment on alternative interpretations under CAA section 111, including those described next.

c. *First Alternative Interpretation:* Endangerment Finding Prerequisite. We solicit comment on an alternative interpretation under which the EPA is required, as a prerequisite to promulgating standards of performance under CAA section 111(b), to have issued an endangerment finding specifically for the relevant air pollution and a cause-or-contribute-significantly finding specifically for the relevant source category and air pollutant. In particular, what would be the legal basis for such an interpretation?

Even if CAA section 111 is interpreted to require those findings, then, in a case in which the EPA did not make those findings under CAA section 111, it is the EPA's view that the EPA would satisfy the need for a CAA section 111 endangerment finding through an endangerment or comparable finding that the EPA made or that Congress adopted under any other provision of the CAA. For example, the EPA may regulate, under CAA section 111, (i) NAAQS pollutants because of the determinations the EPA made under CAA sections 108 and 109 and (ii) HAPs that Congress listed under CAA section 112(b)(1). It is the EPA's interpretation that once an endangerment or comparable finding is made with respect to the relevant air pollution under another CAA provision, regulation under CAA section 111 of source categories that cause or contribute significantly to that same air pollution may proceed without any need for the EPA to revisit or update that endangerment finding as part of the

CAA section 111 regulatory process. Instead, any concerns about the continued validity of that endangerment finding may be resolved through a petition to reconsider that finding under the applicable CAA provision.

Applying this alternative interpretation of CAA section 111 to this rulemaking, the 2009 Endangerment Finding for GHG air pollution fulfills any requirement under CAA section 111 that the EPA issue a finding that GHG air pollution may reasonably be anticipated to endanger public health or welfare in order for the EPA to establish standards of performance for GHG emissions from EGUs. As discussed above, the EPA already issued this endangerment finding under CAA section 202(a)(1), as part of its process for promulgating the Light Duty Vehicle Rule.

The EPA recognizes that under this alternative interpretation, the EPA could be required to issue a cause-or-contribute-significantly finding for CO_2 emissions from the fossil fuel-fired EGUs, as a prerequisite to regulating such emissions under CAA section 111. Therefore, under this alternative interpretation, in today's rulemaking, the EPA proposes to find that CO_2 emissions from fossil fuel-fired EGUs cause or contribute significantly to the GHG air pollution. The EPA's basis for this proposed finding is, in part, that the large amounts of CO_2 emitted by fossil fuel-fired EGUs clearly exceed the low hurdle necessary for the cause-or-contribute-significantly finding. As noted above in Tables 2 and 3, fossil fuel-fired EGUs emit almost one-third of all U.S. GHG emissions, and constitute by far the largest single stationary source category of GHG emissions. Indeed, so great is the contribution of CO_2 air pollutants from EGUs to GHG air pollution, that it is simply not necessary in this rulemaking to determine thresholds for when a contribution may be considered to be a ''significant[]'' contribution. If it were necessary, the EPA proposes that a limited amount of contribution would meet that standard in light of the fact that GHG air pollution is caused by a large number of types of sources and that no one source category dominates the entire inventory.

d. *Second alternative interpretation:* Rational Basis Prerequisite. As a second alternative interpretation, the lack of any requirement in CAA section 111 addressing whether and how the EPA is to evaluate emissions of particular pollutants from sources in the listed source category as a prerequisite for regulation may be viewed as a statutory gap that requires a *Chevron* step 2 interpretation. In this case, the EPA is authorized to develop an interpretation that reasonably effectuates the purposes of CAA section 111. Under this alternative interpretation, the EPA must demonstrate a rational basis for controlling the emissions of the particular pollutants. That rational basis may consist of some type of factual showing that is consistent with the purposes of CAA section 111, but may be something short of an endangerment and a cause-or-contribute-significantly finding.

There are several options for the factual showings that comprise a rational basis. Under the first option, the EPA would be justified in the present case in taking action with respect to GHG air pollution because of the EPA's 2009 Endangerment Finding that GHG air pollution may reasonably be anticipated to endanger public health and welfare. The EPA issued that Endangerment Finding quite recently, in December, 2009, and by notice dated August 13, 2010, the EPA denied ten petitions to reconsider that Finding, an action that entailed further review of scientific information.

Under the second option, the EPA could conclude that the recent Endangerment Finding and denial of reconsideration, coupled with the even more recent assessments from the NAS, published in 2010 and 2011, which lend further credence to the science supporting the Endangerment Finding, suffice to provide a rational basis for promulgating regulations under CAA section 111 designed to address contributions to the GHG air pollution.

Under either of these options, the EPA would need to establish a rational basis for regulating CO_2 emissions from affected EGUs. The fact that affected EGUs emit almost one-third of all U.S. GHGs and comprise by far the largest stationary source category of GHG emissions, as discussed above, would readily provide such a rational basis.

3. Rationale for Emission Limits

a. *Few New Coal-fired Power Plants.* An important part of the basis for the EPA's proposal for new sources in this rulemaking is that all indications suggest that very few new coal-fired power plants will be constructed in the foreseeable future. Although a small number of new coal-fired power plants have been built recently, the industry generally is not building these kinds of power plants at present and is not expected to do so for the foreseeable future. The reasons include the current economic environment, which has lead to lower electricity demand, and competitive natural gas prices. Natural gas prices have stabilized over the past few years as new drilling techniques have brought additional supply to the marketplace. As a result, natural gas prices are expected to be competitive for the foreseeable future and utilities are likely to rely heavily on natural gas to meet new demand for electricity generation. On average, the cost of generation from a new NGCC power plant is expected to be lower than the cost of generation from a new coal-fired power plant.[44]

Other drivers that may influence decisions to build new power plants are State and Federal energy and tax policies. Many states have adopted renewable portfolio standards (RPS), which require that a certain portion of electricity come from renewable energy sources like solar or wind. The federal government has also adopted incentives for electric generation from renewable energy sources and loan guarantees for new nuclear power plants.

These economic, cost, and policy factors create an environment in which natural gas-fired power plants, renewable energy, and nuclear power are the forms of energy generation that are most often predicted to be built to meet new electricity demand over the coming years.

Various energy sector modeling efforts, including projections from both the EIA and the EPA, show results that are consistent with these findings. The Annual Energy Outlook (AEO) for 2011 shows a very modest amount of new coal-fired power coming online beyond 2012, although there are a number of coal-fired power plants that are currently under construction and expected to begin operation in the next year or two. According to the AEO 2011, the majority of new generating capacity will be either natural gas-fired or renewable, with some lesser amounts of nuclear power. The AEO 2011 is based on existing policy and regulations, such as state RPS programs and Federal tax credits for renewables.[45] The new generation that EIA does show coming on-line after 2012 fits into one of three categories: generation that is currently under construction, generation that will include CCS or industrial CHP. Units in the first group would not be subject to this rule because, since they have commenced construction, they are considered existing sources. Units in the second group would include either units in the transitional category or new

[44] Levelized Cost of New Generation in the Annual Energy Outlook 2011 *http://205.254.135.24/oiaf/aeo/electricity_generation.html.*

[45] *http://www.eia.gov/forecasts/aeo/chapter_legs_regs.cfm.*

units. In either case, they could be built consistent with this action. Units in the third group would not be subject to this rule because CHP units that generate primarily on-site power are not considered EGUs and are thus not affected by the rule.

The EPA modeling using the Integrated Planning Model (IPM), a detailed power sector model that the EPA uses to support power sector regulations, is keyed to the AEO in a number of respects and shows similar patterns of little future construction of new coal-fired power plants under the base case.[46] The EPA's projections from IPM can be found in the RIA.

As discussed below, the fact that the expected number of coal-fired power plants is so limited supports both (i) basing the standard of performance on NGCC, which is expected to be the most commonly built new fossil fuel-fired generating technology; and (ii) allowing 30-year averaging as an alternative compliance option for coal- and pet coke-fired power plants because CCS is feasible and sufficiently available for the few such plants expected, in light of the demonstration programs or other incentives available for CCS, coupled with the prospects that the costs of CCS will decline over time.

b. *Basis for the Proposed Standard of Performance.* In this section, we describe our basis for proposing a standard of 1,000 lb/MWh, and for taking comment on a range of 950 to 1,100 lb/MWh (430 to 500 kg/MWh). We first describe our method for calculating these levels of CO_2 emissions, and then note that several states are already requiring these levels of CO_2 emissions.

(1) Calculation of the Standard. For reasons explained below (see ''d. Legal Justification for the Standard of Performance and 30-year averaging compliance option''), a NGCC facility is the best system of emission reduction for new baseload and intermediate load EGUs. To establish an appropriate, natural gas-based standard, we reviewed the emissions rate of natural gas-fired (non-CHP) combined cycle facilities used in the power sector that commenced operation between 2006 and 2010 and that report complete generation data to EPA. Based on this analysis, nearly 95% of these facilities meet the proposed standards on an annual basis. These units represent a wide range of geographic locations (with differing elevations and ambient temperatures), operational characteristics, and sizes.

We are requesting comment on a range of 950 to 1,100 lb/MWh (430 to 500 kg/MWh) for the final rule. The upper limit would incorporate essentially all available new combined cycle designs and would have limited impact on improving efficiency of combined cycle facilities. This upper limit would also be consistent with standards promulgated by some states, as noted elsewhere. The stricter standard would in general eliminate designs without a steam reheat cycle and similar lower efficiency designs for use in electric-only generation, and could limit presently available options for generation below approximately 40 MW. However, an owner/operator of combined cycle facilities with higher heat rates could either implement CHP or integrated solar thermal for feedwater heating to achieve the proposed standard.

(2) States Implementing a Comparable Standard. Several states have recently established emission performance standards or other measures to limit emissions of GHGs from new EGUs that are comparable to the proposal in this rulemaking. For example, in September 2006, California Governor Schwarzenegger signed into law Senate Bill 1368. The law limits long-term investments in baseload generation by the state's utilities to power plants that meet an emissions performance standard jointly established by the California Energy Commission and the California Public Utilities Commission. The Energy Commission has designed regulations that establish a standard for new and existing baseload generation owned by, or under long-term contract to publicly owned utilities, of 1,100 lb CO_2/MWh.

In May 2007, Washington Governor Gregoire signed Substitute Senate Bill 6001, which established statewide GHG emissions reduction goals, and imposed an emission standard that applies to any baseload electric generation that commenced operation after June 1, 2008 and is located in Washington, whether or not that generation serves load located within the state. Baseload generation facilities must initially comply with an emission limit of 1,100 lb CO_2/MWh.

In July 2009, Oregon Governor Kulongoski signed Senate Bill 101, which mandated that facilities generating baseload electricity, whether gas- or coal-fired, must have emissions equal to or less than 1,100 lb CO_2/MWh, and prohibited utilities from entering into long-term purchase agreements for baseload electricity with out-of-state facilities that do not meet that standard. Natural gas- and petroleum distillate-fired facilities that are primarily used to serve peak demand or to integrate energy from renewable resources are specifically exempted from the performance standard.

c. *Basis for CCS as a Feasible Technology Option.* In this section, we describe the basis for our position that CCS is a feasible technology option for new coal-fired power plants because CCS is technically feasible and sufficiently available in light of the limited amount of new coal-fired construction expected in the foreseeable future. In brief, first, at present, CCS is technologically feasible for implementation at new coal-fired power plants and its core components (CO_2 capture, compression, transportation and storage) have already been implemented at commercial scale. Second, although the costs of CCS are presently high, we have reason to expect that the costs of CCS will decrease over time. This action will itself contribute to downward pressure on CCS costs by shifting the regulatory landscape towards CCS, consistent with the recent report by the Interagency Task Force on Carbon Capture and Storage, established by President Obama on February 3, 2010, which we describe below. Third, we expect construction of no more than a few new coal-fired power plants by 2020 and those plants may well be able to take advantage of demonstration programs or other sources of funding for CCS. Fourth, several states have set emission standards that will make implementation of CCS necessary for new coal-fired power plants, some projects that implement CCS or components of it are proceeding, and other CCS projects are in the planning stages.

(1) Technological Feasibility of CCS. The current state of affairs concerning CCS was described and analyzed by the Interagency Task Force on Carbon Capture and Storage, established by President Obama on February 3, 2010, co-chaired by the DOE and the EPA, and composed of 14 executive departments and federal agencies. The Task Force was charged with proposing a plan to overcome the barriers to the widespread, cost-effective deployment of CCS within 10 years, with a goal of bringing five to ten commercial demonstration projects online by 2016. The Task Force found that, although early CCS projects face economic challenges related to climate policy uncertainty, first-of-a-kind technology risks, and the current high cost of CCS relative to other technologies, there are no insurmountable technological, legal, institutional, regulatory or other barriers that prevent CCS from playing a role in

[46] *http://www.epa.gov/airmarkets/progsregs/epa-ipm/BaseCasev410.html#documentation.*

reducing GHG emissions. The Task Force also identified the need for comprehensive review of the overall environmental impacts of CCS.

(a) Capture and Compression Technologies and Costs. Capture of CO_2 from industrial gas streams has occurred since the 1930s using a variety of approaches to separate CO_2 from other gases. These processes have been used in the natural gas industry and to produce food and chemical-grade CO_2. Although current capture technologies are feasible, the costs of CO_2 capture and compression represent the largest stumbling block to widespread commercialization of CCS. Currently available CO_2 capture and compression processes are estimated to represent seventy to ninety percent of the overall CCS costs.[47]

In general, CO_2 capture technologies applicable to coal-fired power generation can be categorized into three approaches:[48]

- Pre-combustion systems are designed to separate CO_2 and H_2 in the high-pressure syngas produced at IGCC power plants.
- Post-combustion systems are designed to separate CO_2 from the flue gas produced by fossil-fuel combustion in air.
- Oxy-combustion uses high-purity O_2, rather than air, to combust coal and therefore produces a highly concentrated CO_2 stream.

Each of these three carbon capture approaches (pre-combustion, post-combustion, and oxy-combustion) is technologically feasible. However, each results in increased capital and operating costs and decreased electricity output (that is, an energy penalty), with a resulting increase in the cost of electricity. The energy penalty occurs because the CO_2 capture process uses some of the energy produced from the plant.

(b) Current Availability of Transportation and Sequestration. The remaining steps for CCS (i.e., pipeline transportation and storage), are also well established but less expensive than capture and compression.

Carbon dioxide has been transported via pipelines in the U.S. for nearly 40 years. Approximately 50 million metric tons of CO_2 are transported each year through 3,600 miles of pipelines. Moreover, a review of the 500 largest CO_2 point sources in the U.S. shows that 95 percent are within 50 miles of a possible geologic sequestration site,[49] which would lower transportation costs. For these reasons, the transportation component of CCS is not expected to be a significant stumbling block to the commercial availability of CCS in the future.

With respect to sequestration, globally, there are at least four commercial integrated CCS facilities sequestering captured CO_2 into deep geologic formations and applying a suite of technologies to monitor and verify that the CO_2 remains sequestered.[50] These four sites represent over 25 years of cumulative experience on safely and effectively storing anthropogenic CO_2 in appropriate deep geologic formations.[51] Estimates based on DOE studies indicate that areas of the U.S. with appropriate geology have a storage potential of 1,800 billion to more than 20,000 billion metric tons of CO_2 in deep saline formations, oil and gas reservoirs and un-mineable coal seams.[52] The U.S. experience with large-scale CO_2 injection, such as at enhanced oil and gas recovery projects, combined with ongoing research, development, and demonstration programs in the U.S. and throughout the world, provide confidence that the storage—along with capture, compression and transport—of large amounts of CO_2 can be achieved.

It should be noted that the EPA recently finalized two rules that aim to protect drinking water and track the amount of CO_2 that is sequestered from facilities that carry out geologic sequestration. The Underground Injection Control (UIC) Class VI rule, established under authority of the Safe Drinking Water Act, sets requirements to ensure that geologic sequestration wells are appropriately sited, constructed, tested, monitored, and closed in a manner that ensures protection of underground sources of drinking water.[53] The UIC Class VI regulations contain monitoring requirements to protect underground sources of drinking water, including the development of a comprehensive testing and monitoring plan. This includes testing of the mechanical integrity of the injection well, ground water monitoring, and tracking of the location of the injected CO_2 using direct and indirect methods. Projects are also required to do extended post-injection monitoring and site care to track the location of the injected CO_2 and monitor subsurface pressures until it can be demonstrated that underground sources of drinking water are no longer endangered. Subpart RR of the Greenhouse Gas Reporting Program, which was established under authority of the CAA and builds on UIC requirements, provides requirements for quantifying the amount of CO_2 sequestered by these facilities.[54] In addition, the EPA recently proposed a rule that would conditionally exclude CO_2 streams from the definition of hazardous waste under RCRA, where these streams are being injected for purposes of geologic sequestration, provided that they are managed in accordance with certain conditions.[55] That proposed rule is based upon the EPA's conclusion that the management of CO_2 streams, under the proposed conditions, does not present a substantial risk to human health or the environment, and was based upon a review of existing regulatory programs applicable to the transportation of CO_2 streams, and their injection into permitted UIC Class VI wells. Together, these actions help create a consistent national framework to ensure the safe and effective deployment of geologic sequestration.

(2) Expected reduction in CCS costs. Research is underway to reduce CO_2 capture costs and to improve performance. The DOE/National Energy Technology Laboratory (NETL) sponsors an extensive research, development and demonstration program that is focused on developing advanced technology options that will dramatically lower the cost of capturing CO_2 from fossil-fuel energy plants compared to today's available capture technologies. The DOE/NETL estimates that using today's commercially available CCS technologies would add around 80 percent to the cost of electricity for a new pulverized coal (PC) plant, and around 35 percent to the cost of electricity for a new advanced

[47] Report of the Interagency Task Force on Carbon Capture and Storage (August 2010).

[48] IPCC, 2005; DOE, 2007.

[49] JJ Dooley, CL Davidson, RT Dahowski, MA Wise, N Gupta, SH Kim, EL Malone (2006), Carbon Dioxide Capture and Geologic Storage: A Key Component of a Global Energy Technology Strategy to Address Climate Change. Joint Global Change Research Institute, Battelle Pacific Northwest Division. PNWD–3602. College Park, MD.

[50] These projects are: Sleipner in the North Sea, Snøhvit in the Barents Sea, In Salah in Algeria, and Weyburn in Canada.

[51] Dooley, J. J., *et al.* (2009). An Assessment of the Commercial Availability of Carbon Dioxide Capture and Storage Technologies as of June 2009. U.S. Department of Energy, Pacific Northwest National Laboratory, under Contract DE–AC05–76RL01830.

[52] U.S. Department of Energy National Energy Technology Laboratory (2010). Carbon Sequestration Atlas of the United States and Canada, Third Edition.

[53] Federal Requirements under the Underground Injection Control (UIC) Program for Carbon Dioxide (CO_2) Geologic Sequestration (GS) Wells, Final Rule, 75 FR 77230 (Dec. 10, 2010).

[54] Mandatory Reporting of Greenhouse Gases: Injection and Geologic Sequestration of Carbon Dioxide, Final Rule, 75 FR 75060 (Dec. 1, 2010).

[55] Hazardous Waste Management System: Identification and Listing of Hazardous Waste: Carbon Dioxide (CO_2) Streams in Geologic Sequestration Activities, Proposed Rule, 76 FR 48073 (Aug. 8, 2011).

gasification-based (IGCC) plant. The CCS research, development and demonstration program is aggressively pursuing efforts to reduce these costs to a less than 30 percent increase in the cost of electricity for PC power plants and a less than 10 percent increase in the cost of electricity for new gasification-based power plants.[56] The large-scale CO_2 capture demonstrations that are currently planned and in some cases underway, under DOE's initiatives, as well as other domestic and international projects, will generate operational knowledge and enable continued commercialization and deployment of these technologies.

Gas absorption processes using chemical solvents, such as amines, to separate CO_2 from other gases have been in use since the 1930s in the natural gas industry and to produce food and chemical grade CO_2. The advancement of amine-based solvents is an example of technology development that has improved the cost and performance of CO_2 capture. Most single component amine systems are not practical in a flue gas environment as the amine will rapidly degrade in the presence of oxygen and other contaminants. The Fluor Econamine FG process uses a monoethanolamine (MEA) formulation specially designed to recover CO_2 and contains a corrosion inhibitor that allows the use of less expensive, conventional materials of construction. Other commercially available processes use sterically hindered amine formulations (for example, the Mitsubishi Heavy Industries KS–1 solvent) which are less susceptible to degradation and corrosion issues. The DOE/NETL and private industry are continuing to sponsor research on advanced solvents (including new classes of amines) to improve the CO_2 capture performance and reduce costs.

Significant reductions in the cost of CO_2 capture would be consistent with overall experience with the cost of pollution control technology. A significant body of literature suggests that the per-unit cost of producing or using a given technology declines as experience with that technology increases over time,[57] and this has certainly been the case with air pollution control technologies. Reductions in the cost of air pollution control technologies as a result of learning-by-doing, research and development investments, and other factors have been observed over the decades.

We expect that the costs of capture technology will follow this pattern. Rubin *et al.* assessed the historical rates of cost reductions achieved by other energy and environmental process technologies and then, by analogy, estimated future cost reductions that might be achieved by four types of new power plants employing CO_2 capture.[58] The results of the study suggested that total costs of CO_2 capture can be expected to decline by the following percentages: NGCC by 40 percent, PC by 26 percent, IGCC by 13 percent, and Oxyfuel by 13 percent after installation of the first 100 GW of capacity.

In a subsequent study, the model used in the initial study was extended with learning curves for several key performance variables, including overall energy loss in power plants, the energy required for CO_2 capture, the CO_2 capture ratio (removal efficiency) and the power plant availability. The model predicted continued reductions in cost with increased implementation.[59]

In addition, we note that the Administration's CCS Task Force report recognized that CCS would not become more widely available without the advent of a regulatory framework that promoted CCS or a strong price signal for CO_2. Today's action is an important component in developing that framework.

(3) Limited amount of construction of new coal-fired power plants; opportunities for CCS funding. A third factor that supports CCS as a feasible technology option is that through the IPM model period of up to 2020, we expect few, if any, new builds of coal-fired EGUs, beyond those that already have approved PSD permits. We also expect continued opportunities for financial support for some CCS projects through a variety of potential mechanisms such as direct grants, tax incentives and/or regulatory programs (e.g. Clean Energy Standards or guaranteed electricity purchase price agreements).[60] Accordingly, the few new coal-fired generation projects that may occur over this timeframe may well find that financial support for CCS is available.

(4) State Requirements for CCS; Projects and Permits for CCS. Several states have recently established requirements that new coal-fired EGUs must implement CCS, and a number of projects with CCS have been approved and/or are under construction.

In May 2007, Montana Governor Schweitzer signed House Bill 25, adopting a CO_2 emissions performance standard for electric generating units in the state. House Bill 25 prohibits the state Public Utility Commission from approving new electric generating units primarily fueled by coal unless a minimum of 50 percent of the CO_2 produced by the facility is captured and sequestered.

On January 12, 2009, Illinois Governor Blagojevich signed Senate Bill 1987, the Clean Coal Portfolio Standard Law. The legislation establishes emission standards for new power plants that use coal as their primary feedstock. From 2009–2015, new coal-fueled power plants must capture and store 50 percent of the carbon emissions that the facility would otherwise emit; from 2016–2017, 70 percent must be captured and stored; and after 2017, 90 percent must be captured and stored.

The following is a brief summary of currently operating or planned CO_2 capture or storage systems, including, in some cases, components necessary for coal-based power plant CCS applications.

AES's coal-fired Warrior Run (Cumberland, MD) and Shady Point (Panama, OK) power plants are equipped with amine scrubbers developed by ABB/Lummus. They were designed to process a relatively small percentage of each plant's flue gas. At Warrior Run, approximately 110,000 tonnes of CO_2 per year are captured, whereas at Shady Point 66,000 tonnes of CO_2 per year are captured. The CO_2 from both plants is subsequently used in the food processing industry.[61]

[56] DOE/NETL Carbon Dioxide Capture and Storage RD&D Roadmap, U.S. Department of Energy National Energy Technology Laboratory, December 2010.

[57] These studies include John M. Dutton and Annie Thomas, ''Treating Progress Functions as a Managerial Opportunity,'' 2, 235–247; Dennis Epple, Linda Argote, and Rukmini Devadas, ''Organizational Learning Curves: A Method for Investigating Intra-plant Transfer of Knowledge Acquired Through Learning by Doing,'' Organizational Science, Vol. 2, No. 1, February 1991; International Energy Agency, Experience Curves for Energy Technology Policy, 2000; and Paul L. Joskow and Nancy L. Rose, ''The Effects of Technological Change, Experience, and Environmental Regulation on the Construction Cost of Coal-Burning Generating Units,'' RAND Journal of Economics, Vol. 16,Issue 1, 1–27, 1985. See discussion in ''The Benefits and Costs of the Clean Air Act from 1990 to 2020,'' U.S. EPA, Office of Air and Radiation, April 2011.

[58] Rubin, E.S.; Yeh, S.; Antes, M.; Berkenpas, M.; Davison, J.; ''Use of experience curves to estimate the future cost of power plants with CO_2 capture'', Intl. J. of Greenhouse Gas Control, 1, 188 (2007).

[59] Van den Broek, M.; Hoefnagels, R.; Rubin, E.; Turkenburg, W.; Faaij, A.; ''Effects of technological learning on future cost and performance of power plants with CO_2 capture'', *Progress in Energy and Combustion Science* 35 (2009) 457–480.

[60] See Center for Climate and Energy Solutions, ''Financial Incentives for CCS''—*http://www.c2es.org/sites/default/modules/usmap/pdf.php?file=8380.*

[61] Dooley, J.J., *et al.* (2009). An Assessment of the Commercial Availability of Carbon Dioxide Capture and Storage Technologies as of June 2009. U.S.

At the Searles Valley Minerals soda ash plant in Trona, CA, approximately 270,000 tonnes of CO_2 per year are captured from the flue gas of a coal power plant via amine scrubbing and used for the carbonation of brine in the process of producing soda ash.[62]

A pre-combustion Rectisol® system is used for CO_2 capture at the Dakota Gasification Company's synthetic natural gas production plant located in North Dakota, which is designed to remove approximately 1.6 million tonnes of CO_2 per year from the synthesis gas. The CO_2 is purified, transported via a 200-mile pipeline, and injected into the Weyburn oilfield in Saskatchewan, Canada.

In September 2009, American Electric Power Co. (AEP) began a pilot-scale CCS demonstration at its Mountaineer Plant in New Haven, WV. The Mountaineer Plant is a 1,300 MWe coal-fired unit that was retrofitted with Alstom's patented chilled ammonia CO_2 capture technology on a 20 MWe portion, or ''slipstream'', of the plant's exhaust flue gas. In May 2011, Alstom Power announced the successful operation of the chilled-ammonia CCS validation project. The AEP–Alstom project, the world's first facility to both capture and store CO_2 from a coal-fired power plant, represents a successful scale-up of ten times the size of previous field pilots (e.g., at We Energies Pleasant Prairie). The demonstration achieved capture rates from 75 percent (design value) to as high as 90 percent, produced CO_2 at purity of greater than 99 percent, with energy penalties within a few percent of predictions. The facility reported robust steady-state operation during all modes of power plant operation including load changes, and saw an availability of the CCS system of greater than 90 percent.

AEP, with assistance from the DOE, had planned to expand the slipstream demonstration to a commercial scale, fully integrated demonstration at the Mountaineer facility. The commercial-scale system was designed to capture at least 90 percent of the CO_2 from 235 MW of the plant's 1,300 MW total capacity. Plans were for the project to be completed in four phases, with the system to begin commercial operation in 2015. However, in July 2011, AEP announced that it is terminating its cooperative agreement with the DOE and placing its plans to advance CO_2 capture and storage technology to commercial scale on hold, citing the current uncertain status of U.S. climate policy and the continued weak economy as contributors to the decision.

Oxy-combustion of coal is being demonstrated in a 10 MWe facility in Germany. The Vattenfall plant in eastern Germany (Schwarze Pumpe) has been operating since September 2008. It is designed to capture 70,000 tonnes of CO_2 per year.

In June 2011, Mitsubishi Heavy Industries, an equipment manufacturer, announced the successful launch of operations at a 25 MW coal-fired carbon capture facility at Southern Company's Alabama Power Plant Barry. The demonstration is planned to capture approximately 150,000 tons of CO_2 annually at a CO_2 capture rate of over 90 percent. The captured CO_2 will be permanently stored underground in a deep saline geologic formation.

Southern Company has begun construction of Mississippi Power Plant Ratcliffe (formerly the Kemper County IGCC Project). Plant Ratcliffe is a 582 MW IGCC plant that will utilize local Mississippi lignite and include pre-combustion carbon capture to reduce CO_2 emissions by 65 percent. Operation is expected to begin in 2014. The CO_2 captured from Plant Ratcliffe will be used for enhanced oil recovery (EOR) in the Heidelberg Oil Fields in Jasper County, MS.

The Texas Clean Energy Project, a 400 MW IGCC facility located near Odessa, TX will capture 90 percent of its CO_2, which is approximately 3 million tonnes annually. The captured CO_2 will be used for EOR in the West Texas Permian Basin. (Additionally, the plant will produce urea and smaller quantities of commercial-grade sulfuric acid, argon, and inert slag, all of which will also be marketed.) Construction is expected to begin in 2012.

d. Legal Justification for the Standard of Performance and 30-year Averaging Compliance Option. This section describes our legal justification for proposing that new affected facilities in the TTTT category—which combines the Da and part of the KKKK categories—(i) must limit their CO_2 emissions to 1,000 lb CO_2/MWh, which an affected facility could achieve by constructing a NGCC unit or by constructing a coal-fired boiler that implements CCS immediately; or (ii) in the case of a coal- or pet coke-fired power plant, may either meet the 1,000 lb CO_2/MWh standard or implement an 30-year averaging compliance option that allows an affected facility to meet an initial CO_2 emission limit of 1,800 lb CO_2/MWh (gross), and then—through the implementation of CCS—meet the 1,000 lb CO_2/MWh standard, on a time-averaged basis, over no longer than a 30-year period.

(1) Legal Justification for the Standard of Performance. The EPA proposes that the emission limit of 1,000 lb CO_2/MWh meets the requirements for a ''standard of performance'' applicable to new sources under CAA section 111(b)(1)(B). The term ''standard of performance'' is defined under CAA section 111(a)(1) as follows:

> Definitions. For purposes of this section: (1) The term ''standard of performance'' means a standard for emissions of air pollutants which reflects the degree of emission limitation achievable through the application of the best system of emission reduction which (taking into account the cost of achieving such reduction and any nonair quality health and environmental impact and energy requirements) the Administrator determines has been adequately demonstrated.

We apply this definition, in effect, from the bottom up. That is, first, we determine the ''best system of emission reduction which (taking into account * * * cost [and other factors]) the Administrator determines has been adequately demonstrated.'' For EGUs, that is a NGCC facility, for reasons discussed below. Then, we calculate the ''degree of emission limitation achievable through the application of'' such best system; and after that, we formulate ''a standard for emissions of air pollutants which reflects'' that degree of emission limitation. This standard is 1,000 lb of CO_2/MWh. These analytical steps are also discussed further below.

In determining the ''best system of emission reduction'' for this category of boilers and combined cycle units, we considered a range of natural gas-fired and coal-fired generation technologies, with available controls. We considered modern supercritical and ultra-supercritical coal-fired boilers. This technology is available—it is currently deployed in Europe and is now being widely deployed in Asia (especially China)—and it offers much more efficient operation than the subcritical boilers that have more often been constructed in the U.S. These supercritical and ultra-supercritical boilers have CO_2 emissions of approximately 1,800 lb/MWh and provide the lowest overall costs for conventional coal-based electricity. We also considered new IGCC, or ''coal gasification'' facilities, which can have CO_2 emissions levels very similar to those of ultra-supercritical coal-fired units—albeit at a higher price.

We also considered natural gas-fired boilers which have CO_2 emissions of approximately 1,350 lb/MWh, obviously

DOE, Pacific Northwest National Laboratory, under Contract DE–AC05–76RL01830.

[62] IEA (2009a), World Energy Outlook 2009, OECD/IEA, Paris.

much lower than the advanced coal-fired or coal gasification technologies. However, it seems unlikely that utilities would choose a natural gas-fired boiler as the generation technology of choice when NGCC is a much more efficient, less expensive, and more widely used technology.

We propose that a NGCC facility is the best system of emission reduction for two main reasons. First, natural gas is far less polluting than coal. Combustion of natural gas emits only about 50 percent of the CO_2 emissions that combustion of coal does per unit of energy generated. Second, new natural gas-fired EGUs are less costly than new coal-fired EGUs, and as a result, our IPM model projects that for economic reasons, natural gas-fired EGUs will be the facilities of choice until at least 2020, which is the analysis period. Indeed, those models do not project construction of *any* new coal-fired EGUs during that period that would not comply with the proposed standard. This state of affairs has come about primarily because technological development and discoveries of abundant reserves have caused natural gas prices to decline precipitously in recent years and have secured those relatively low prices for the near-future. Importantly, because the IPM modeling shows that natural gas-fired plants are the facilities of choice, the proposed standard of performance in today's rulemaking—which is based on the emission rate of a new NGCC unit—does not add costs. In addition, compared to coal-fired EGUs, natural gas-fired EGUs have fewer nonair quality health and environmental impacts.

Essentially because natural gas generation is cleaner and cheaper than coal, natural gas-fired EGUs qualify as the ''best system of emission reduction which (taking into account the cost of achieving such reduction and any nonair quality health and environmental impact and energy requirements) the Administrator determines has been adequately demonstrated.''

We recognize that today's proposed approach of combining the Da category and a portion of the KKKK category, and applying as the standard of performance the rate that natural gas-fired EGUs can meet, represents a departure from prior agency practice. We consider this departure warranted in light of both the emissions benefits and the changed economic circumstances, notably the lowered prices of natural gas due to technological development and recent discoveries that have boosted recoverable reserves. We are aware that in theory, those economic circumstances could change and if they do, then a change in the standard of performance may be warranted. In this regard, we note that CAA section 111(b)(1)(B) requires that the EPA ''shall, at least every 8 years, review and, if appropriate, revise [the] standards [of performance].'' This 8-year review cycle provides a mechanism for the EPA to assure that the standard of performance for any particular source category continues to reflect the ''best system.''

(2) Legal Justification for the 30-year Averaging Compliance Option. Although the IPM model projects that for economic reasons, new coal- or pet coke-fired EGUs will not be built in the foreseeable future (beyond early CCS projects), we recognize that in a few instances, owners or operators may in fact seek to build coal- or pet coke-fired EGUs. As discussed in detail below, those owners or operators could avail themselves of CCS as a 30-year averaging compliance option. In addition, today's proposed rulemaking offers flexibility for CCS installation: The owners or operators could (i) achieve the supercritical efficiency level for an initial period (e.g., up to the first 10 years), and (ii) after that, implement CCS so as to achieve a 600 lb CO_2/MWh rate on a 12-month annual average during the latter period (i.e., the back 20 years) and thereby achieve the 1,000 lb CO_2/MWh rate on an average annual basis over the 30-year period. The alternative compliance option could also allow them to install and operate CCS much earlier and use the 10-year period to address any startup challenges related to being an early adopter of the technology.

Because CO_2 is long-lived in the atmosphere, the 30-year averaging period, as structured, with shorter term compliance requirements, is not expected to have a different impact on climate compared to meeting the standard of performance.

(a) CCS. The significance of CCS as a compliance alternative is several-fold. As a practical matter, it offers a vehicle for the construction of new coal-fired EGUs in those few instances in which owners or operators decide to construct such EGUs, notwithstanding the underlying economics. Also, it offers a vehicle for the continued scaling of CCS, a process that can be expected to lower the costs of CCS in the future. In addition, this compliance alternative provides further support for the reasonableness of the EPA's proposals in this rulemaking to combine the Da category and a portion of the KKKK category and to determine that a NGCC facility is the ''best system of emission reduction.'' This is because this compliance alternative, by providing a vehicle for new coal-fired power plant builds, would minimize any disruptions that the EPA's proposals might, at least in theory, otherwise entail to the power plant industry.

CCS as a compliance alternative does not achieve these goals by necessarily qualifying, under the CAA section 111(a)(1) definition of ''standard of performance,'' as the ''best system of emission reduction which (taking into account cost [and other factors]) the Administrator determines has been adequately demonstrated.'' Instead, this compliance alternative is feasible and sufficiently available for the limited amount of new coal-fired construction that is expected, whether or not it would qualify as the ''best system.''

First, it is reasonable to expect that some coal-fired power plants may be able to implement CCS at the present time, and thereby achieve the 1,000 lb CO_2/MWh standard immediately. As noted elsewhere, CCS has been demonstrated to be technologically achievable, and, even though it is costly, there are some state and Federal subsidy programs that can make CCS more affordable, particularly in tandem with use of captured CO_2 for enhanced oil recovery, and those programs may be sufficient for the very few new coal-fired plants that are expected to be constructed in the foreseeable future. Some of these programs are discussed above.

We note that the need for governmental subsidies to reduce the costs of CCS is hardly unique in the electricity generation sector. Each of the major types of energy used to generate electricity has been or is currently supported by some type of government subsidy—such as tax benefits, loan guarantees, low-cost leases, or direct expenditures—for some aspect of development and utilization, ranging from exploration to control installation. This is true of fossil fuel-fired; as well as nuclear-, geothermal, wind-, and solar-generated electricity. These subsidies have been designed to overcome cost barriers to the utilization of the energy. In this context, the need for subsidies for CCS to overcome cost barriers does not mean that CCS cannot be considered an alternative compliance method in this rulemaking.

Second, it is reasonable to expect that some coal-fired power plants may be able to implement the supercritical efficiency standard for an initial period of time (the first 10 years) and then implement CCS and achieve lower 12-month annual average rates after that, so that the source achieves the 1,000 lb CO_2/MWh standard on average over the

30-year period following construction.[63] This is because, again, CCS is feasible and can be expected to be sufficiently available—in light of continued subsidies and lower future costs—in light of the limited demand.

Third, although we do not propose that the 30-year averaging compliance option meets the definition of the ''best system of emission reduction [(BSER)] * * * adequately demonstrated,'' under CAA section 111, we note that identifying CCS as a compliance option based in part on the expectation that CCS will cost less in the future is consistent with the section 111 requirements for determining the BSER adequately demonstrated. In determining what emissions controls qualify as the BSER adequately demonstrated—which must take costs into account—the EPA is authorized under CAA section 111 to anticipate that technology that is costly at present will come down in price in the future. It is clear from the legislative history of section 111 and relevant case law that the EPA may anticipate future developments—as long as supported by an adequate record—in determining whether a particular system of emission reduction is the BSER adequately demonstrated. The Senate Committee Report to the 1970 CAA Amendments, which first enacted CAA section 111, made clear that the EPA may anticipate future developments in determining the BSER adequately demonstrated:

> As used in this section, the term ''available control technology'' is intended to mean that the Secretary should examine the degree of emission control that has been or can be achieved through the application of technology which is available *or normally can be made available. This does not mean that the technology must be in actual, routine use somewhere.* It does mean that the technology must be available at a cost *and at a time* which the Secretary determines to be reasonable. The implicit consideration of economic factors in determining whether technology is ''available'' should not affect the usefulness of this section. The overriding purpose of this section would be to prevent new air pollution problems, and toward that end, maximum feasible control of new sources at the time of their construction is seen by the committee as the most effective and, in the long run, the least expensive approach.

Sen. Rep. 91–1196 at 16 (emphasis added). As quoted, this statement makes clear that a standard of performance may be based on a technology that is not ''in actual routine use somewhere,'' but that ''normally can be made available.'' Moreover, the technology need not be available until ''a time which the Secretary determines to be reasonable.'' *Id.*

In addition, the D.C. Circuit has been explicit that in setting a CAA section 111 standard of performance, the EPA may make reasonable projections of what technology will be available to the regulated industry in the future. The Court stated, in *Portland Cement Ass'n* v. *Ruckelshaus,* 486 F.2d 375 (D.C. Cir. 1973):

> We begin by rejecting the suggestion of the cement manufacturers that the Act's requirement that emission limitations be ''adequately demonstrated'' necessarily implies that any cement plant now in existence be able to meet the proposed standards. *Section 111 looks toward what may fairly be projected for the regulated future, rather than the state of the art at present,* since it is addressed to standards for new plants—old stationary source pollution being controlled through other regulatory authority. It is the ''achievability'' of the proposed standard that is in issue. * * * The * * * standard is analogous to the one examined in *International Harvester* * * *. *The Administrator may make a projection based on existing technology, though that projection is subject to the restraints of reasonableness and cannot be based on ''crystal ball'' inquiry.*[64]

Id. at 391 (emphasis added). Again, although these statements in the legislative history and case law are in the context of establishing the basis for a standard of performance, the same principle –- that the EPA may reasonably project the path of technological development –- supports treating CCS as a compliance alternative.

Although, for the reasons noted above, we do expect the costs of CCS to decline, we recognize that the amount of the decrease is uncertain. Even so, the presence of cost uncertainty by itself does not mean that prospective power plants cannot be expected to adopt the 30-year averaging compliance option. We note that prospective power plants face significant cost uncertainties in any event.

For example we note that recently, several owner/operators have announced that they do not intend to construct coal-fired power plants without CCS. They have explained that they anticipate more widespread CO_2 control requirements in the future, so that constructing coal-fired plants at this time without CCS could leave them subject to liability for high retrofit control costs in the future. This sentiment indicates that some sources may avail themselves of the 30-year averaging compliance option.

The inclusion of a 30-year averaging compliance option has precedent in EPA rulemaking under the CAA. In the past, the EPA has promulgated rules that adopt an emission limit based on a particular technology (such as, in the present rulemaking, NGCC), but has supported that action on grounds that sources have compliance alternatives, even though higher priced. See ''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, 57378 (Oct. 27, 1998) (in the rule that became known as the ''NO_X SIP Call,'' the EPA based NO_X emission limits that states were required to meet on the assumption that states could adopt specified control measures that were ''highly cost-effective,'' but the EPA identified other control measures that, even though not as cost-effective, the states could adopt instead).

(b) 30-year Period. We propose a 30-year period because (i) we generally expect that ten years provides sufficient time either for owners/operators who are interested in considering cost improvements that occur as a result of the lessons learned from early adopters, or provides early adopters sufficient time to address any startup challenges; and (ii) as noted above, 30 years provides enough time for sources to achieve the 1,000 lb CO_2/MWh emission limit following an elevated level of emissions over the first 10-year period.

(c) Supercritical Efficiency Level. According to the Department of Energy Cost and Performance Baseline for Fossil Energy Plants reports, the use of supercritical steam is the most cost effective option for new conventional coal-fired generation and results in the lowest overall costs. In addition, the increased efficiency results in reduced cooling water requirements and reduced environmental impacts associated with coal mining, delivery, and handling. Therefore, considering the benefits and minimal, if any, cost of using supercritical steam conditions, as opposed to subcritical steam conditions, we have concluded that an annual standard based on the best performing conventional coal-fired generation is appropriate.

There are a dozen bituminous-fired and 2 subbituminous-fired EGUs that have demonstrated the proposed annual standard is achievable on a long term basis. Furthermore, we have concluded that with coal drying technology, which is being used on a number of power plants today, the annual standard is achievable by a wide range of units

[63] Note that under today's proposed rulemaking, the 30-year averaging proposal is associated only with the implementation of CCS at new coal- or pet coke-fired EGUs. This proposal does not allow 30-year averaging for any other purpose.

firing a variety of coal types, including lignites. There are multiple vendors that offer processes to upgrade lignites to heating values that are equal to or greater than those of subbituminous coals. The best performing subbituminous-fired EGU has maintained a 12-month emissions rate of 1,730 lb CO_2/MWh. A new EGU using a similar design would be able to burn upgraded lignite and be in compliance with the proposed annual standard.

We solicit comment on all aspects of the alternative compliance option, including the 30-year averaging period we propose in this action. Although we are not proposing that CCS, including the 30-year averaging compliance option, does or does not qualify as the BSER adequately demonstrated, we also solicit comment on that issue.

B. How did the EPA determine the other requirements for the proposed standards?

1. Compliance Requirements

The proposed compliance requirements, to the extent possible, incorporate monitoring already being performed as part of existing part 60 and part 75 requirements.

In addition, we intend to recognize the environmental benefit of electricity generated by CHP facilities to account for the increased end use efficiency resulting from avoided transmission and distribution losses. Actual line losses vary from location to location, but we intend to assume a benefit of 5 percent avoided transmission and distribution losses when determining the electric output for CHP facilities. This provision would be restricted to facilities where the useful thermal output is at least 20 percent of the total output.

We also propose to base compliance requirements on a 12-month rolling average basis. The variability in GHG emissions rates is such that establishing a shorter averaging period would necessitate establishing a standard to account for the conditions that result in the lowest efficiency and therefore the highest GHG emissions rate. A 12-month rolling average accounts for variable operating conditions, allows consistent emissions rate averaging, allows for a more protective standard and decreased compliance burden, and simplifies compliance for state permitting authorities. Because the 12-month rolling average can be calculated each month, this form of standard makes it possible to assess compliance and take any needed corrective action on a monthly basis. The EPA proposes that it is not necessary to have a shorter averaging period for CO_2 from these sources because the effect of GHGs on climate change depends on global atmospheric concentrations which are dependent on cumulative total emissions over time, rather than hourly or daily emissions fluctuations or local pollutant concentrations.

Even so, we solicit comment on, in the alternative basing compliance requirements on an annual (calendar year) average basis.

V. Requirements for Modifications, Transitional Sources, Reconstructions

A. Requirements for Modifications

1. Overview

Under CAA section 111, existing sources are treated as new sources if they undertake ''modification[s],'' which are generally defined as physical or operational changes that increase emissions. CAA section 111(a)(2) and (4). The EPA's regulations exempt certain types of changes from the definition of modification. 40 CFR 60.14(e). Available information does not provide an adequate basis for the EPA to develop proposed standards of performance for modifications. Our base of knowledge concerning NSPS modifications has depended largely on the enforcement actions brought against power plants and on self-reporting by power plants. Over the lengthy history of the NSPS program, those have been too few in number to allow us to develop a sufficiently robust base of knowledge to propose a standard of performance for NSPS modifications for GHGs at this time.

We note that the types of projects that these EGUs are most likely to undertake that could increase GHG emissions are projects that put on pollution controls required under other CAA provisions and that emit CO_2 as a byproduct, and those types of projects are specifically exempted from the definition of ''modifications'' under 40 CFR 60.14(e)(5). In addition, based on past experience, we expect that actions that do constitute modifications to be from different types of sources and to take different forms. In light of this, the EPA does not have sufficient information to develop standards of performance for modifications, and therefore the EPA is not proposing any standards for modifications. As a result, EGUs that undertake pollution control projects or other physical or operational changes would continue to be treated as existing sources.

2. Statutory and Regulatory Requirements

Clean Air Act section 111(b)(1)(B) requires the EPA to promulgate ''standards of performance'' for ''new sources'' within source categories. For certain pollutants, CAA section 111(d)(1) requires the EPA to prescribe regulations for state plans covering ''existing source[s]'' in a category regulated for that pollutant under section 111(b). Clean Air Act section 111(a)(2) defines a ''new source'' as ''any stationary source, the construction or modification of which is commenced after the publication of regulations (or, if earlier, proposed regulations) prescribing a standard of performance under this section which will be applicable to such source.'' Clean Air Act section 111(a)(6) defines an ''existing source'' as ''any stationary source other than a new source.'' Clean Air Act section 111(a)(4) defines ''modification'' as ''any physical change in, or change in the method of operation of, a stationary source which increases the amount of any air pollutant emitted by such source or which results in the emission of any air pollutant not previously emitted.''

The EPA's regulations provide that under CAA section 111(a)(4), for purposes of determining whether an existing electric utility steam generating unit undertakes a modification, a physical or operational change is treated as increasing emissions only when it increases the ''maximum hourly emissions'' above the ''maximum hourly emissions achievable'' at the unit. 40 CFR 60.14(h). In addition, the EPA's regulations exempt certain physical or operational changes from the definition of modification. 40 CFR 60.14(e)(5). The exemptions include pollution control projects:

> (e) The following shall not, by themselves, be considered modifications * * *:
>
> * * * * *
>
> (5) The addition or use of any system or device whose primary function is the reduction of air pollutants, except when an emission control system is removed or is replaced by a system which the Administrator determines to be less environmentally beneficial.

40 CFR 60.14(e)(5). Thus, the EPA's current regulations define a modification as a physical or operational change that increases an existing affected EGU's maximum achievable hourly rate of emissions, but specifically exempt from that definition pollution control projects, which are projects that entail the installation of pollution control equipment or systems.

3. The EPA's Proposed Course of Action

We expect EGUs to undertake changes in the foreseeable future that would increase their maximum achievable hourly rate of CO_2 emissions for

purposes of the NSPS. We expect that most of those actions would constitute pollution control projects. In many cases, those projects would involve the installation of add-on control equipment required to meet CAA requirements for conventional air pollutants. We expect that these increases in CO_2 emissions would occur as a chemical byproduct of the operation of the control equipment, and would be small. In other cases, those projects will involve equipment changes to meet the requirements of this rulemaking and that may have the effect of increasing the sources' maximum hourly achievable emission rate, even while decreasing actual emission rate. Because such actions would be treated as pollution control projects under the EPA's current NSPS regulations, they would be specifically exempted from the definition of modification.

Aside from pollution control projects, in the past, there have also been, as noted, a limited number of instances, on an annual basis, in which power plants have undertaken actions that should be treated as NSPS modifications. The sources that took these actions vary widely, one from another, depending on, among other things, size, fuel type, and physical plant configuration. The diversity of sources undertaking modifications has reflected the diversity among power plants as a whole. Moreover, the types of modifications they have undertaken have also varied widely.

Because of the limited number of modifications, their disparate nature, and the disparate type of sources, we do not at present have an adequate base of information to propose standards of performance for modifications. For example, we do not have adequate information as to the types of physical or operational changes sources may undertake or the amount of increase in CO_2 emissions from those changes. Nor do we have adequate information as to the types of control actions sources could take to reduce emissions, including the types of controls that may be available or the cost or effectiveness of those controls. The most likely candidates for control actions would be efficiency measures and we do not have adequate information as to the types of sources and types of changes at issue that could provide the basis for a proposal for efficiency measures. If there were a more robust set of data on facilities of a particular type undertaking NSPS modifications of a particular kind, the EPA may be able to develop a standard of performance for that type. But, as noted, that is not the case here.

As a result, in this action, the EPA is not proposing standards of performance for NSPS modifications for GHGs. The EPA is soliciting comment on the types of sources that may be expected to undertake modifications, the types of modifications, the types of control measures, and all other aspects of this issue. This solicitation of comment is in the nature of an advance notice of proposed rulemaking. If we receive sufficient additional information, we may issue a proposal for modifications in the future. However, to reiterate, we are not proposing any standards of performance for these modifications at this time. Accordingly, the EPA does not expect to promulgate any standards of performance for modifications when it takes final action on this rulemaking.

The definitional provisions of CAA section 111, quoted above, make clear that a stationary source that undertakes construction or modification is considered a ''new source'' only if there is a proposed or final ''standard of performance under this section which will be applicable to such source.'' CAA section 111(a)(2). Accordingly, if there is no proposed or promulgated standard of performance applicable to a particular source, then the source cannot be considered a ''new source'' and therefore will not be subject to any standards of performance we finalize for new sources.

Further, under the definitional provisions, any source that is not a ''new'' source is an ''existing source.'' CAA section 111(a)(6). Therefore, affected EGUs that undertake NSPS modifications for GHGs will continue to be treated as existing sources. Although modified sources would not be subject to the 1,000 lb CO_2/MWh standard for new sources, the EPA anticipates that modified sources would become subject to the requirements the EPA would promulgate at the appropriate time, for existing sources under 111(d). It is important to note that at the same time that the EPA promulgated the pollution control provision in the EPA's regulations under CAA section 111, the EPA promulgated a similar provision in EPA's NSR regulations. The DC Circuit, in *New York* v. *EPA,* 413 F.3d 3, 40 (DC Cir. 2005), vacated the NSR pollution-control-project exemption. Because of the similarities between the NSR and the section 111 pollution control project regulatory provisions, the Court's vacatur of the NSR regulatory provision may call into question the continued validity of the section 111 regulatory provision. As a result, we are soliciting comment on whether this exemption from the definition of ''modification'' for pollution control projects, under 40 CFR 60.14(e)(5), continues to be valid or not, and what course of action, if any, would be appropriate for the EPA to take.

B. Requirements for Transitional Sources

1. Overview

In this action, the EPA is not proposing a standard of performance for transitional sources. We define these sources as coal-fired power plants that, by the date of this proposal, have received approval for their PSD preconstruction permits that meet CAA PSD requirements (or that have approved PSD permits that expired and are in the process of being extended, if those sources are participating in a Department of Energy CCS funding program), and that commence construction within a year of the date of this proposal. For convenience, we refer to the new sources for which we are proposing a standard of performance as non-transitional sources.

Transitional sources are a distinct set of sources with unique circumstances.[65] We have identified 15 proposed sources that may qualify as transitional sources based on the above criteria. These proposed sources differ considerably one from another. They range in size from as small as 80 megawatts (MW) to as large as 1320 MWs; they will burn different fuels: Conventional coal, waste coal, or petcoke; and they will use different technologies: Circulating fluidized bed (CFB), integrated gasification combined cycle (IGCC), supercritical pulverized coal, or sub-critical pulverized coal. Recent industry practice raises the probability that no more than a few of these 15 proposed sources will in fact be constructed.

We recognize that by the date of this proposal, some of the 15 proposed sources may have incurred substantial sunk costs and may have progressed in their preconstruction planning to the point where they are poised to commence construction in the very near future. Under these circumstances, the 1,000 lb CO_2/MWh standard of performance that applies to non-transitional sources would not be appropriate for these proposed sources. As noted, that standard is based on natural gas combined cycle (NGCC) as the ''best system of emission reduction * * * adequately demonstrated'' because NGCC is the least expensive

[65] Nothing in this discussion of the unique circumstances of transitional sources facing new GHG requirements should be interpreted as providing a defense to any violation of the CAA by sources that, for example, fail to obtain PSD permits or comply with NSPS before construction.

and lowest emitting design for a fossil-fuel fired power plant, and because a proposed new source may choose to construct as an NGCC facility. However, proposed coal-fired power plants that have already received a PSD permit and that have incurred substantial sunk costs and developed plans to commence construction in the very near future are not in the same position as non-transitional sources. Applying the 1,000 lb CO_2/MWh standard would likely result in the loss of their sunk costs and would likely cause multi-year delays, or even abandonment, of their plans to construct. (Nor is the 1,000 lb CO_2/MWh standard appropriate for CCS sources, as discussed below.) This is not within the scope of BSER.

However, we do not have sufficient information concerning the 15 proposed sources to identify which ones may be in this position. Specifically, we do not have information as to the extent of their sunk costs, their preconstruction planning, or their overall business plans.

Accordingly, we propose to include a requirement that proposed sources must commence construction within 12 months of today's rulemaking proposal as a mechanism for revealing which of these sources qualifies as a transitional source. We believe that any of these 15 proposed sources that commences construction within 12 months of today's rulemaking proposal should be considered to have incurred substantial sunk costs and will have engaged in sufficient preconstruction planning so that the 1,000 lb CO_2/MWh standard should not apply. Any of these 15 proposed sources that do not commence construction within this period should not be considered to be similarly situated. For any of these latter sources that ultimately are constructed, the 1,000 lb CO_2/MWh standard would apply.

Having identified which proposed sources could qualify as transitional sources, we further believe that for several reasons, it is not appropriate to propose any standard of performance for those sources. As noted above, we necessarily lack information specifically as to which of the 15 proposed sources will actually qualify as transitional sources, and, given the range of size, fuel types, and technologies among these proposed sources, that renders it problematic to propose standards of performance. In addition, for the proposed sources that are planning to install CCS, we lack important information concerning the extent to which they are planning to capture CO_2 or their costs to do so. We also lack information as to whether they have made contractual arrangements for the sale of the CO_2 or carbon credits, which may be critical to their financing arrangements. In addition, attempting to propose a standard of performance would give rise to serious practical problems that would undermine the usefulness of the requirement that sources commence construction within 12 months of today's rulemaking proposal as a mechanism for revealing which of these sources qualifies as a transitional source. These include creating uncertainty as to the level of the final standard of performance to which the proposed sources would be subject, which may have the effect of forcing them to delay commencing construction until after we finalize the standards, at which time they would have missed their 12-month window to commence construction and as a result, would fail to qualify as transitional sources. We note that CAA section 111 does not require that we propose or promulgate standards of performance for all sources in a source category, and on numerous occasions in past rulemakings the EPA has taken the similar approach of not proposing standards of performance for all sources in the source category.

Even without an applicable standard of performance, transitional sources will remain constrained in their emissions of CO_2 by the requirements of their PSD permits. In addition, although transitional sources would not be subject to the 1,000 lb CO_2/MWh standard for new sources, the EPA anticipates that transitional sources would become subject to the requirements the EPA would promulgate at the appropriate time, for existing sources under 111(d).

2. Identification of Transitional Sources

For purposes of this action, we define a transitional source as a coal-fired power plant that has received approval for its complete PSD preconstruction permit by the date of this proposal (or that has an approved PSD permit that expired and for which the source is seeking an extension, if the source has been issued or awarded a DOE CCS loan guarantee or grant) for the project, and that commences construction within 12 months of the date of this proposal. For this purpose, the date of this proposal is the date of publication in the **Federal Register** of this notice of proposed rulemaking. The 12-month period would not be extended for any reason, including because of any challenges to the permit that may be brought in any Federal or State court or agency.

The EPA is aware of approximately 15 sources that could potentially qualify as transitional sources because, except as otherwise noted, they have obtained PSD permits but have not yet commenced construction. These proposed sources vary considerably one from another. They range in size from as small as 80 megawatts (MW) to as large as 1320 MWs; they will burn different fuels: conventional coal, waste coal, or petcoke; and they will use different technologies: Circulating fluidized bed (CFB), integrated gasification combined cycle (IGCC), supercritical pulverized coal, or sub-critical pulverized coal.

Based on recent industry practice, it appears that no more than a few of these sources will be constructed.[66]

Of these 15 identified potential transitional sources, six have indicated that they plan to install CCS (and in most if not all cases have been issued or awarded a DOE CCS loan guarantee or grant). These six projects are: The Texas Clean Energy Project in Texas, the Trailblazer project in Texas, the Taylorville project in Illinois, the Good Spring facility in Pennsylvania, the Power County Advanced Energy Center in Idaho and the Cash Creek Generation Plant in Kentucky. The remaining nine plants, which are without CCS, are: Limestone 3, White Stallion and Coletto Creek in Texas, Holcomb 2 in Kansas, James De Young and Wolverine in Michigan, Washington County in Georgia, Bonanza in Utah, and Two Elk in Wyoming.[67]

We request that during the public comment period on this rulemaking, each of these EGUs confirm to us that we have correctly identified the status of their PSD permits and, in the case of any sources that had approved permits that are in the process of being extended, and that plan to install CCS, that they have been issued or awarded a DOE CCS loan guarantee or grant. We also request that the sources indicate whether their permits are undergoing challenges before Federal or state authorities or courts. We further request that any other EGU not listed above that has a complete PSD permit and that otherwise meets the parameters for transitional sources described in this

[66] Since 2008, some 15 proposed coal-fired power plants with approved PSD permits have cancelled plans to construct, and since 2009, only one coal-fired power plant has constructed (Southern Company's Kemper County Project, which installed CCS and received DOE funding).

[67] We note that there may be some proposed natural gas-fired EGUs that are similarly situated to the coal-fired transitional sources because the natural-gas fired sources have received PSD permits but have not commenced construction by the date of this proposal. Because they are new gas-fired EGUs, we expect that they will be able to meet the requirements of the proposed new source standard of performance.

section identify itself to us (including indicating whether its PSD permit is undergoing challenge before Federal or state authorities or courts). In our final rulemaking, we intend to include a confirmed list of sources that would qualify as transitional sources if they commence construction within the 12-month period following publication of this proposal in the **Federal Register.**

As commenters have noted, among these 15 proposed sources, some may have incurred substantial sunk costs associated with processing their permits as well as taking additional preconstruction steps (e.g., purchasing land) so that they may be able to commence construction within the near term. As examples of these types of steps, several sources, such as the Texas Clean Energy Project, have signed contracts for the sale of electricity, the sale or disposal of CO_2 or other enabling products, or supporting systems.[68] Although the Taylorville project's PSD permit has expired, the source is seeking to extend it, and the source has entered into CCS funding arrangements with DOE. These actions indicate that this proposed source, too, has sunk costs and may be in a position to commence construction within the near term, and therefore is similarly situated to the other 14 proposed plants (assuming that it is able to secure an extension of its PSD permit).

Even so, we face major gaps in our information about these sources that would inform us at this point as to which of these sources have incurred costs and material commitments to the extent that a 1,000 lb CO_2/MWh standard would be so costly and disruptive as not to be BSER. For example, we do not have specific information as to those sources' specific sunk costs, specific project development actions to date, or overall business plan. Accordingly, we are not able to determine which ones are in a position to commence construction in the near term. In addition, for the sources whose PSD permit indicates that they will install CCS, we do not have specific information as to the amount of CO_2 that they plan to capture; their costs to operate CCS; or their possible revenue streams associated with CCS, such as from the sale or use of CO_2 in enhanced oil recovery or the possible sale of carbon credits in voluntary or other carbon markets.

Instead, the 12-month period, serving as a surrogate for the missing information, provides a mechanism for revealing the qualification of proposed sources for treatment as transitional sources. In light of the complex of requirements, which range from siting to financing, needed to commence construction of a project as large and expensive as a power plant, any proposed source that does commence construction within the relatively short period of 12 months of the date of proposal can be said to have incurred substantial sunk costs and to have taken preconstruction steps by the time of this proposal. It is these sources that would be most disadvantaged by being subjected to the standards of performance proposed in today's rulemaking. The one-year period serves as a type of surrogate for more precise information as to the amount of sunk costs sources must incur or steps leading to commencement of construction that sources must undertake in order to qualify as transitional sources, as well as which sources have incurred those costs or taken those steps, which information is not available at this time. In addition, 12 months is long enough to give these sources a reasonable period to commence construction in accordance with the terms of their permit. Any proposed source that does not commence construction within 12 months cannot be said to be similarly situated.

3. The EPA's Treatment of Transitional Sources

In this action, the EPA is treating transitional sources as a distinct set of sources. We make clear that the proposed standard of performance for non-transitional sources of 1,000 lb CO_2/MWh is not applicable to transitional sources because that standard is not based on the BSER adequately demonstrated for transitional sources. In addition, in light of the unique circumstances of transitional sources, including a lack of information and other considerations, we do not propose any other standard of performance for transitional sources.[69]

Although a transitional source would not be subject to new source CO_2 emissions controls under CAA section 111(b), it would be subject to CO_2 emissions limits due to any CO_2 limits in the source's PSD permit. If the source received the permit prior to January 2, 2011, the permit will not include CO_2 limits, but in that case, as a practical matter, CO_2 emissions would be limited by whatever design or operating constraints are imposed on the source under the PSD permit.

We also note that the fact that transitional sources would not be subject to the proposed standard of performance, would not relieve them from any requirements applicable to existing sources under section 111(d) and related state plans.

4. Legal Basis for the EPA's Treatment of Transitional Sources

In this section, we describe the legal basis for our treatment of transitional sources. First, we identify the relevant CAA section 111 provisions. Second, we explain why the standard of performance we propose for non-transitional sources does not apply to transitional sources, which is because that standard does not reflect the best system of emission reduction adequately demonstrated for transitional sources. Third, we explain why we are not proposing any other standard of performance for transitional sources, which is due to lack of information and other considerations. In the course of these explanations, we discuss the relevant CAA section 111 requirements and our interpretations of them.

a. Key CAA Section 111 Provisions

As the first step in the process of promulgating regulations under section 111, under CAA section 111(b)(1)(A), the Administrator must ''publish * * * a list of categories of stationary sources.'' Then, the Administrator must ''[propose] * * * Federal standards of performance for new sources within [the source] category,'' and then ''promulgate * * * such standards with such modifications as he deems appropriate.'' Section 111(b)(1)(B). Section 111(b)(2) goes on to provide that ''[t]he Administrator may distinguish among classes, types, and sizes within categories of new sources for the purpose of establishing such standards.''

Section 111 includes several key definitions. The provision defines a ''new source'' as ''any stationary source, the construction or modification of which is commenced after the publication of regulations (or, if earlier, proposed regulations) prescribing a standard of performance under this section which will be applicable to such source.'' CAA section 111(a)(2).[70] A

[68] *http://www.texascleanenergyproject.com/news-room/.*

[69] EPA intends that its treatment of transitional and non-transitional sources be severable from each other and considers that severability is logical because of the record-based differences between the two types of sources and because there is no interdependency in EPA's treatment of the two types of sources. This statement concerning severability for these components in this rulemaking should not be construed to have implications for whether other components in this rulemaking are severable.

[70] The CAA does not include a definition of the term ''commenced'' for these purposes, but the EPA

Continued

''standard of performance'' is defined as a—

standard for emissions of air pollutants which reflects the degree of emission limitation achievable through the application of the best system of emission reduction which (taking into account the cost of achieving such reduction and any nonair quality health and environmental impact and energy requirements) the Administrator determines has been adequately demonstrated.

CAA section 111(a)(2).

Once the Administrator promulgates standards for new sources under CAA section 111(b), the States, consistent with EPA regulatory requirements, must take action under CAA section 111(d) to establish requirements for ''any existing source for any air pollutant (i) [that falls into specified categories] but (ii) to which a standard of performance under this section would apply if such existing source were a new source. * * *'' Section 111(d)(1). An ''existing source'' is defined as ''any stationary source other than a new source.'' Section 111(a)(6).

b. Reasons for Not Applying the 1,000 lb CO_2/MWh Standard of Performance to Transitional Sources

(i) Introduction

In this action, the EPA is treating transitional sources as a distinct set of sources, although the EPA is not establishing a specific subcategory for these sources in the regulatory provisions.[71] Under CAA section 111, the EPA may not apply a standard of performance to sources unless it reflects the ''best system of emission reduction'' (BSER) adequately demonstrated.

As noted, the EPA proposes that non-transitional source fossil-fired power plants that commence construction after the date of proposal are subject to the standard of 1,000 lb CO_2/MWh, and the EPA proposes to base this standard on the EPA's identification of natural gas combined cycle (NGCC) as the BSER adequately demonstrated. The EPA justifies this proposal because owners or operators contemplating construction of non-transitional power plants to serve baseload and intermediate load demand have choices: They can choose the type of facility and therefore may choose to construct a NGCC plant. As a result, for these sources, NGCC constitutes the BSER, and the 1,000 lb CO_2/MWh emission limit reflects that BSER and therefore is the appropriate standard of performance under section 111. Moreover, for those that choose to construct a coal-fired unit, they may choose to construct the plant in a place and a manner that allows installation of CCS—and thereby meet the 1,000 lb CO_2/MWh standard—either at the time of construction or, in accordance with the 30-year averaging proposal, some years later.

(ii) Transitional Sources and NGCC

In contrast, the circumstances surrounding transitional sources are quite different. Transitional sources are a very small group of sources with a distinct profile of costs, preconstruction planning, overall business plans, technical and design concerns, and equitable concerns. Because they are such large facilities, their sunk costs and planning horizons are substantial.

Transitional sources have already incurred substantial costs in permitting and taking other steps preparatory to commencing construction as coal-fired power plants within 12 months of the date of this proposal, which may include purchasing land for the new facility. Considering these sunk costs, converting their plant design to NGCC would be significantly more expensive than for proposed non-transitional sources that have not reached the stage of development that transitional sources have reached. The EPA is required to consider costs in determining the BSER adequately demonstrated, and under these circumstances, the costs factor points away from treating NGCC as BSER for transitional sources.

In addition, because transitional sources have obtained a PSD permit and have developed their plans to the point where they are on the verge of commencing construction, the converting of their plant design to NGCC would be significantly more disruptive to their plans than for proposed non-transitional sources. It may require them to start over the process of developing the plant, and thereby render futile the planning and steps they have taken to date. These losses would, at a minimum, lead to delays in their commencing construction that realistically would be measured in years, and in fact may lead them to abandon the project.

Although the potentially significant planning impacts at issue here are not explicitly identified as part of the definition of the ''standard of performance,'' they should nevertheless be considered in determining the BSER. This is because CAA section 111(a)(2), in its definition of ''new source,'' clearly contemplates that sources are expected to be able to commence construction after the EPA proposes, and before the EPA promulgates, a standard of performance applicable to them. There is nothing in CAA section 111 that suggests that Congress expected that the EPA may determine the BSER in a way that would significantly disrupt the plans of the regulated sources that are implicated here. Therefore, for this reason, too, the 1,000 lb CO_2/MWh standard cannot be considered to reflect the BSER for transitional sources, and therefore cannot be the appropriate standard of performance.

Nor can transitional sources reasonably be expected to meet the 1,000 lb CO_2/MWh standard through the installation of CCS, for the reasons discussed below.

Note that the EPA takes the position that in this particular action, both of those factors—sunk costs and extent of planning to commence construction—must be considered in determining whether the 1,000 lb CO_2/MWh standard reflects the BSER adequately demonstrated. That is, both are necessary conditions, and neither one, by itself, is a sufficient condition. We believe that these reasons concerning costs and planning suffice to justify our position that the 1,000 lb CO_2/MWh standard is not appropriate for transitional sources.

(iii) Coal-Fired Transitional Sources Not Designed for CCS

As noted, while it is generally the case that proposed new sources could choose to build coal-fired power plants with CCS and thereby meet the 1,000 lb CO_2/MWh standard, that is not the case for those transitional sources that are not designed for CCS. As a practical matter, it would be challenging for such a source to proceed with construction without substantial re-design of the project in order to install CCS and thereby be in compliance with the 1,000 lb CO_2/MwH standard. There are several reasons for this. First, captured CO_2 must be sequestered or used. If this was not considered as part of the original site selection, the source will likely be significantly challenged in its efforts to adopt CCS. Second, if CCS was not considered in the original project

framework regulations promulgated under section 111 define this term as follows:

Commenced means, with respect to the definition of new source in section 111(a)(2) of the Act, that an owner or operator has undertaken a continuous program of construction or modification or that an owner or operator has entered into a contractual obligation to undertake and complete, within a reasonable time, a continuous program of construction or modification.

40 CFR 60.2.

[71] Section 111(b)(2) authorizes the EPA to ''distinguish among classes, types, and sizes within categories of new sources for the purpose of establishing such standards.'' In other words, once the EPA selects the set of sources for which to propose regulations, the EPA may establish subcategories among those new sources and promulgate different standards for those subcategories.

design, space considerations may make it difficult to now accommodate it in the facility's design. Third, the requirement to use CCS could necessitate a change in the very power generation technology that a source may choose to use. For instance, instead of building a pulverized coal boiler, IGCC technology may be more appropriate. This is not to say that CCS could not be added to a project at this stage. Projects like the AEP Mountaineer project have shown that CCS can be successfully retrofitted into an existing plant. However, unlike in an existing facility where retrofit decisions must take into account previously made design decisions, in a facility in the pre-design phase, there is more opportunity for cost savings from re-designing the project, rather than having to adapt through retrofit.

It bears emphasis that the requirements created by the new source standard in today's action are fundamentally different from post-combustion controls required to meet new source standards for conventional pollutants in the sense that those controls could be much more easily re-designed into an already planned plant without changing the plant's basic underlying characteristics (such as type of unit or even location). In contrast, CCS is more fundamental to both the design and siting of a unit, and therefore would likely involve fundamental changes to the underlying project. This is much more difficult in a project that has progressed through the permitting stage and is very close to commencing construction than it would be in other types of projects.

(iv) Coal-Fired Transitional Sources Designed for CCS

Although some of the proposed sources that may qualify as transitional sources are planning for CCS, that does not provide a basis for concluding that the 1,000 lb CO_2/MWh standard is appropriate for them. As noted, the EPA is not, in this rulemaking, proposing that CCS is the BSER adequately demonstrated for coal-fired EGUs.

Moreover, these proposed sources have established their location and developed their business plans without the expectation that the proposal in this rulemaking for CCS would apply to them. For example, their plans may assume installing CCS in a manner that results in emissions at levels higher than 1,000 lb CO_2/MWh, or it may assume the sale of emission reduction credits based on an allowable emission rate above 1,000 lb CO_2/MWh. Imposition of an unexpected emission rate requirement at such a late date could upset carefully crafted financial plans, causing delay or even cancellation of the project.

Importantly, we do not have information as to key components of their proposed project and business plan, including, among other things, the amount of capture from the planned CCS system or possible revenue streams associated with CCS. Any proposal for what is BSER would depend on those costs and other information. Accordingly, we are not able to propose determinations that are essential to proposing the BSER for these proposed sources. As a result, we are not able to propose a standard of performance for these proposed sources.

(v) Equitable Considerations

For all transitional sources, the costs and delays discussed above give rise to equitable considerations that also support our treatment of these proposed sources. As noted, owners or operators of transitional sources have incurred significant expenses and undertaken a long planning period that has led them to being able to commence construction in the very near future, and, having invested so substantially in their current plans, should as an equitable matter be allowed to proceed without concern about requirements other than those in their PSD permits. To reiterate, they are in a posture that is fundamentally different from non-transitional sources.

c. Reasons for Not Applying Other Standard of Performance

Although, for the reasons described above, the 1,000 lb CO_2/MWh standard that the EPA proposes for non-transitional sources does not reflect BSER for transitional sources, the EPA is not proposing any other standard of performance for transitional sources. It is reasonable to read section 111 not to require the EPA to propose a standard of performance when faced with the specific circumstances presented by transitional sources in the context of this rulemaking. These circumstances include: (1) The EPA's lack of information with regard to these sources and the appropriate BSER for these sources; (2) the unique challenges with regard to adaptation of proposed projects to the requirements of this standard; (3) the small number of these sources and the possibility that promulgating a standard of performance would not have a beneficial environmental impact; and (4) although transitional sources would not be subject to the 1,000 lb CO_2/MWh standard for new sources, the EPA anticipates that transitional sources would become subject to the requirements the EPA would promulgate at the appropriate time, for existing sources under 111(d).

(i) CAA Requirements for Promulgating Standards of Performance for Sources in a Source Category

The EPA interprets the CAA provisions described above to authorize the EPA not to promulgate a standard of performance for transitional sources. Under section 111(b)(1)(B), once the EPA lists a category of sources, the EPA is required to propose and promulgate standards of performance for new sources in that category. The EPA is not, however, required to promulgate standards of performance that cover all new sources . This is clear from the directive in section 111(b)(1)(B), which requires that the EPA propose standards of performance ''for new sources'' within the category, but does not require that the EPA propose such standards for *all* new sources or for *any* new source. The EPA may fulfill that directive by proposing standards that cover some, but not all, sources that newly commence construction or modification.

Similarly, the term ''new source'' in section 111(a)(2) is defined to incorporate the limitation that the EPA must propose or promulgate a standard applicable to the source for the source to be considered ''new.'' That is, section 111(a)(2) defines a ''new source'' as any source for which construction or modification commences after the EPA proposes ''a standard of performance * * * which will be applicable to such source.'' By its terms, this provision contemplates that the EPA may not propose a standard of performance applicable to certain sources, and that if the EPA does not, those sources would not be considered to be ''new source[s]'' and therefore not subject to any new source standard of performance.

Thus, these provisions do not, by their terms, mandate that the EPA propose standards for each and every source in the source category. Under *Chevron* step 1, these provisions do not unambiguously require that the EPA propose standards of performance for all sources in the source category. We read these provisions as according the EPA some measure of discretion for the EPA to determine not to set standards for a particular portion of the source category, where appropriate, bounded by the principle of rationality. If these provisions are read to be ambiguous as to whether the EPA has discretion to propose and promulgate standards of performance for all sources in the source category, we believe it reasonable to read the provisions to provide such discretion in appropriate circumstances and that such reading is entitled to

deference under *Chevron* step 2. In addition, interpreting these provisions to give the EPA the discretion not to propose and promulgate standards covering all sources in a category under appropriate circumstances—such as those present here—is consistent with the caselaw that authorizes agencies to establish a regulatory framework in an incremental fashion, that is, a step at a time.[72]

(ii) Precedents in Prior NSPS Rulemakings

In applying section 111 over the past several decades, there have been a number of rulemakings in which the EPA has promulgated new source performance standards that do not cover all sources within the relevant source category that newly commence construction or modification. Some examples include the following: (i) In an early NSPS, involving lime kilns, the EPA promulgated an NSPS for certain types of kilns, but not for all types of sources that remained within the relevant source category. The DC Circuit, in its opinion reviewing the rule, noted this state of affairs, without expressing concerns. *National Lime Ass'n* v. *EPA,* 627 F.2d 416, 426 & n. 28 (DC Cir. 1980) (noting that ''of the various types of kilns that may be used in the calcinations of limestone, only rotary kilns are regulated by the standards,'' and not ''the vertical kiln; the rotary hearth kiln; and the fluidized bed kiln''). (ii) In the EPA's initial promulgation of NSPS regulations for petroleum refineries, the EPA did not promulgate standards of performance for certain units, including fluid coking units, delayed coking units, and process heaters, instead promulgating standards of performance for those units subsequently. *See* 40 CFR 60.100a(a); ''Standards of Performance for Petroleum Refineries: Proposed Rules,'' 72 FR 27178 (May 14, 2007). (iii) Similarly, in the EPA's recent revision of the NSPS regulations for coal preparation and processing plants, the EPA ''expand[ed] applicability of the existing NSPS by revising the definitions of thermal dryers, pneumatic coal-cleaning equipment, and coal. It also establishe[d] work practice standards for open storage piles. The final rule amend[ed] the definition of thermal dryer for units constructed, reconstructed, or modified after May 27, 2009, to include both direct and indirect dryers drying all coal ranks (*i.e.,* bituminous, subbituminous, lignite, and anthracite coals) and coal refuse.'' ''Standards of Performance for Coal Preparation and Processing Plants,'' 74 FR 51950, 51952 (Oct. 8, 2009). (iv) In subpart KKKK of the NSPS regulations, the EPA promulgated regulations for the source category of stationary combustion turbines. The EPA did not promulgate regulations for turbines with smaller than 10 MMBtu/hr heat input, emergency units, or combustion turbine test cells. 40 CFR 60.4305(a), 60.4310(a), (d). (v) For other source categories, the EPA also declined to propose and promulgate standards of performance for the smaller sources. For example, for the source category of metal furniture coating operations, the EPA did not apply standards of performance to metal furniture surface coating operations that use less than 3.842 liters of coating (as applied) per year. 40 CFR 60.310(b). (vi) In proposing standards of performance for natural gas processing plants, the EPA proposed standards for only two of the three emission points in the plants (''storage emission sources'' and ''equipment leaks'') and declined to propose standards for the third emission point (''process emission sources'') on grounds that ''[b]est demonstrated control technology has not been identified for [the latter] sources.'' ''Standards of Performance for New Stationary Sources; Onshore Natural Gas Processing Plants in the Natural Gas Production Industry, Equipment Leaks of VOC,'' 49 *FR* 2636, 2637 (January 20, 1984).

(iii) Lack of Basis for Specifying Information

A major reason why the EPA is not proposing a standard of performance for transitional sources is that it is relying, in part, on the one-year commence-construction limit to qualify a source as transitional: The EPA does not have sufficient information about the proposed sources' sunk costs and preconstruction steps to be able to identify which of these proposed sources may qualify as transitional sources. In addition, even if the EPA could determine that a particular proposed source would in fact become a transitional source, the EPA lacks information that, under these circumstances, may be important for determining BSER. For example, the EPA lacks information as to the amount of the proposed source's sunk costs, which may be relevant in determining BSER for these proposed sources. In addition, for proposed CCS sources, as noted above, the EPA does not have information as to key components of their proposed project and business plan, including, among other things, the amount of capture from the planned CCS system or possible revenue streams associated with CCS.

Moreover, because transitional sources are defined by reference to the fact that they will commence construction within 12 months of the date of this proposal, it would be futile for the EPA to attempt to develop that information and then issue a proposal. By the time the EPA could do this, which would likely take at least a year, this set of sources will have become a null set: They either will have commenced construction, such that they would no longer be deemed ''new sources'' for purposes of CAA section 111, or they will not have commenced construction, such that they would be subject to the new source standard for non-transitional sources we are proposing today.[73]

(iv) Practical Problems

In addition, the EPA's lack of information and other considerations give rise to several serious practical problems that would arise were the EPA to propose a standard of performance for transitional sources. Importantly, were the EPA to propose a standard of performance, all transitional sources would face substantial uncertainty as to what final standard the EPA would promulgate. This uncertainty would arise for several reasons. As noted, the EPA lacks information concerning transitional sources. In addition, transitional sources differ one from another in terms of design and in other respects, which would render the EPA's task more complex. As a result, there is risk that the EPA might finalize standards of performance different from what the EPA proposed. The final standards of performance may be more difficult for a given transitional source to meet.

[72] As the U.S. Supreme Court recently stated in *Massachusetts* v. *EPA,* 549 U.S. 497, 524 (2007): ''Agencies, like legislatures, do not generally resolve massive problems in one fell regulatory swoop;'' and instead they may permissibly implement such regulatory programs over time, ''refining their preferred approach as circumstances change and as they develop a more nuanced understanding of how best to proceed.'' *See Grand Canyon Air Tour Coalition* v. *F.A.A.,* 154 F.3d 455 (DC Cir. 1998), *City of Las Vegas* v. *Lujan,* 891 F.2d 927, 935 (DC Cir. 1989), *National Association of Broadcasters* v. *FCC,* 740 F.2d 1190, 1209–14 (DC Cir. 1984).

[73] Note that because the basic rationale for EPA's treatment of transitional sources is that they have already incurred substantial sunk costs and have positioned themselves to be close to commencing construction, and the one-year period for commencing construction is a surrogate for that, this treatment of transitional sources cannot logically be stretched to cover sources that do not commence within a substantially longer period. There is no reason to believe those latter sources would have, by the time of the proposal for the rest of the source category, already incurred significant costs and moved close to commencing construction.

Other forms of uncertainty may arise as well. For example, a possible standard of performance that the EPA would consider would be based on identifying the BSER for transitional sources as the controls to which they would be subject under the terms of their PSD permits, with no further controls under section 111.[74] With this approach, the EPA would need to determine the emission rate for each source that would reflect that source's level of CO_2 emissions in accord with the terms of its PSD permit. This emission rate would constitute the ''no-further-control'' standard of performance. Note that under such an approach, each source would receive an emission limit unique to that source. However, some of the transitional sources may have a PSD permit that does not regulate CO_2 because GHGs were not subject to PSD until the January 2, 2011 effective date of the first regulatory action controlling CO_2 emissions under the CAA. Particularly for those sources, this approach could create uncertainty as to what the EPA would promulgate as the emission rate in the final standard of performance. This is because since these sources' permits do not specify a CO_2 limit, the EPA would have to develop limits based on the design of the unit (including the project's type of technology and fuels).

The uncertainties that the sources could experience as to what the final standards of performance would entail could well deter those sources from commencing construction until the EPA promulgated the final standard of performance. Such delay would undermine the usefulness of the requirement that sources commence construction within 12 months of today's rulemaking proposal as a mechanism for revealing which of these sources qualifies as a transitional source, and thus defeat the policy underlying the EPA's approach to transitional sources, which, for the reasons explained above, is to exclude from coverage by this new source standard only those sources that commence construction within 12 months of proposal. If sources are deterred from commencing construction until after the final rule, they will have lost the benefit of the 12-month window. As another practical problem, we also note concern with attempting to promulgate standards of performance for transitional sources at a time when it may reasonably be expected that some of the 15 sources with PSD permits may well not commence construction within 12 months (or may never do so). As a result, the effort to develop a standard of performance for those sources would have been unnecessary.

(v) Small Number of Transitional Sources, Lack of Environmental Benefit

As part of our reasoning for not proposing a standard of performance for transitional sources, we also take into consideration the fact that we expect the number of transitional sources to be small, no more than a few of the 15 potential sources listed above. Further, if we were to propose a ''no further control'' standard of performance, as described above, that approach would provide little, if any, environmental benefit because that standard would not likely provide further control beyond the limits of the sources' PSD permits. In fact, treating transitional sources as existing sources may achieve more reductions than a no-further-control NSPS standard for those sources by including them under the flexible existing source standard that the EPA expects to promulgate.

(vi) Other Considerations

The EPA's approach of not proposing a standard of performance for transitional sources does not leave these sources uncontrolled. Rather, they would remain subject to whatever CO_2 emission limits are included in, or result from compliance with, their PSD permits. And, although transitional sources would not be subject to the 1,000 lb CO_2/MWh for new sources, the EPA anticipates that transitional sources would become subject to the requirements the EPA would promulgate at the appropriate time for existing sources under 111(d).

In notable contrast, in the previous rulemakings cited above in which the EPA did not propose coverage of all sources within the relevant source category, because of the pollutants at issue in these actions, the decision not to propose coverage of all sources within the relevant source category operated without the assurance afforded by section 111(d) that uncovered sources would necessarily be picked up as existing sources subject to existing source guidelines. Where, as here, that assurance mechanism applies, the recognition and application of the Agency's discretion to not propose coverage of all sources in the source category is all the more appropriate.

We recognize that this approach of not proposing a standard of performance for transitional sources could raise the question of consistency with the requirement implicit in the definition of ''new source'' under CAA section 111(a)(2) that a source be subject to a standard of performance when it commences construction after the date of proposal for that standard. We believe the approach is consistent with, and does not circumvent, that requirement. As noted, CAA section 111 does not require that all sources that newly commence construction be treated as new sources, and in past section 111 rulemakings, the EPA has not applied the standards of performance that it proposes and promulgates to all sources that newly commence construction in a source category. In addition to the reasons for not promulgating a standard for transitional sources provided above, where, as here, the pollutants covered by the proposed new source standard give rise to an obligation to develop section 111(d) guidelines for existing sources with the source category, ultimate coverage of the sources in question is inevitable, eliminating any prospect of a regulatory gap of any material concern.

C. Requirements for Reconstructions

1. Overview

The EPA's framework regulations under CAA section 111 provide that reconstructed sources —which, in general, are existing sources that conduct extensive replacement of components—are to be treated as new sources and, therefore, subject to new source standards of performance. In today's rulemaking, we do not propose any standard of performance for reconstructed sources, and we take comment how to approach reconstructions. We note that if we do not establish a new standard of performance for reconstructions, as a practical matter, that would mean that reconstructed sources would be treated as existing sources.

2. Background

a. The EPA Regulations. The EPA's framework regulations, interpreting the definition of ''new source'' in CAA section 111(a)(2),[75] provide that an existing source, ''upon reconstruction,'' becomes subject to the standard of performance for new sources. 40 CFR 60.15(a). The regulations define ''reconstruction'' as—

[T]he replacement of components of an existing facility to such an extent that:

[74] This type of standard of performance could take one of several different forms, such as a standard that would not limit the source's CO_2 emissions, or a standard that the transitional source itself would identify as equaling the emission limit it would achieve through compliance with the applicable terms of its permit.

[75] CAA section 111 does not explicitly include provisions for reconstructed sources.

(1) The fixed capital cost of the new components exceeds 50 percent of the fixed capital cost that would be required to construct a comparable entirely new facility, and

(2) It is technologically and economically feasible to meet the applicable standards set forth in this part.

40 CFR 60.15(b). Thus, a reconstruction occurs if the existing source replaces components to such an extent that the capital costs of the new components exceed 50 percent of the capital costs of an entirely new facility, even if the existing source does not increase emissions. In addition, the component replacement constitutes a reconstruction only if it is technologically and economically feasible for the source to meet the applicable standards.

The regulations go on to require the owner or operator of an existing source that proposes to replace components to an extent that exceeds the 50 percent level, to notify the EPA and to provide specified information, including ''a discussion of any economic or technical limitations the facility may have in complying with the applicable standards of performance after the proposed replacements.'' In addition, the regulations require the EPA to determine, within a specified time period, whether the proposed replacement constitutes a reconstruction. 40 CFR 60.15(d)–(e).

b. Reconstructions. As with modifications, our base of knowledge concerning reconstructions has depended largely on the enforcement actions brought against power plants and on self-reporting by power plants. Over the lengthy history of the NSPS program, those have been too few in number to allow us to develop a sufficiently robust base of knowledge to propose a standard of performance for reconstructions for GHGs at this time. The EPA is not aware that any power plants are presently planning any project that could meet the requirements for a reconstruction.

2. Options

In this action, the EPA is not issuing a proposal for affected sources that undertake reconstructions. Our reasoning is much the same as with NSPS modifications, which is that the lack of adequate information about the type of source; the type of changes; the extent of emissions increases; and the type of control measures, including their cost and emissions reductions, precludes proposing a standard of performance. Instead of issuing a proposal, the EPA solicits comment on all issues related to reconstructions, including the aspects just noted. Depending on the information the EPA acquires about reconstructions, the EPA may, in the future, propose and promulgate standards of performance for them.

VI. Implications for PSD and Title V Programs

A. Overview

The proposal in this rulemaking would, for the first time, regulate GHGs under CAA section 111. Under the EPA's regulations for the CAA PSD preconstruction permit program, and the CAA Title V operating permit program, regulation of GHGs under CAA section 111 triggers the applicability of PSD. Even so, today's proposal should not require any additional SIP revisions to make clear that the Tailoring Rule thresholds—described below—continue to apply to the PSD program.

This issue arises because States with approved PSD programs in their state implementation plans (SIPs) implement PSD, and most of these States have recently revised their SIPs to incorporate the higher thresholds for PSD applicability to GHGs that the EPA promulgated under what we call the Tailoring Rule.[76] Commenters have queried whether under the EPA's PSD regulations, promulgation of a section 111 standard of performance GHGs would require these states to revise their SIPs again to incorporate the Tailoring Rule thresholds again. The EPA included an interpretation in the Tailoring Rule preamble, which makes clear that the Tailoring Rule thresholds continue to apply if and when the EPA promulgates requirements under CAA section 111. Even so, in today's proposal, the EPA is including a provision in the CAA section 111 regulations that confirms this interpretation.

However, if a state with an approved PSD SIP program that applies to GHGs believes that were the EPA to finalize the rulemaking proposed today, the state would be required to revise its SIP to make clear that the Tailoring Rule thresholds continue to apply, then (i) the EPA encourages the state to do so as soon as possible, and (ii) the EPA will proceed with a separate rulemaking action to narrow its approval of that state's SIP so as to assure that for federal purposes, the Tailoring Rule thresholds will continue to apply as of the effective date of today's rulemaking.

In the alternative, if the Tailoring Rule thresholds did not continue to apply when the EPA promulgates requirements under CAA section 111, then the EPA would shortly proceed with a separate rulemaking action to narrow its approval of all of the State's approved SIP PSD programs to assure that for federal purposes, the Tailoring Rule thresholds will continue to apply as of the effective date of today's proposal.

As discussed below, in the case of title V, today's rulemaking does not have implications for the Tailoring Rule thresholds established with respect to sources subject to title V requirements.

B. Implications for PSD Program

Under the PSD program in part C of title I of the CAA, in areas that are classified as attainment or unclassifiable for NAAQS pollutants, a new or modified source that emits any air pollutant subject to regulation at or above specified thresholds, is required to obtain a preconstruction permit. This permit assures that the source meets specified requirements, including application of best available control technology. States authorized for the PSD program may issue PSD permits. If a state is not authorized, then the EPA issues the PSD permits.

Regulation of GHG emissions in the Light Duty Vehicle Rule (75 FR 25324) triggered applicability of stationary sources to regulations for GHGs under the PSD and title V provisions of the CAA. Hence, on June 3, 2010 (75 FR 31514), the EPA issued the ''Tailoring Rule,'' which establishes thresholds for GHG emissions in order to define and limit when new and modified industrial facilities must have permits under the PSD and title V programs. The rule addresses emissions of six GHGs: CO_2, CH_4, N_2O, HFCs, PFCs and SF_6. On January 2, 2011, large industrial sources, including power plants, became subject to permitting requirements for their GHG emissions if they were already are required to obtain PSD or title V permits due to emissions of other (non-GHG) air pollutants.

Commenters have queried whether, because of the way that the EPA's PSD regulations are written, promulgating the rule we propose today may raise questions as to whether the EPA must revise its PSD regulations—and, by the same token, whether states must revise their SIPs—to assure that the Tailoring Rule thresholds will continue to apply to sources subject to PSD. That is, under the EPA's regulations, PSD applies to a ''major stationary source'' that

[76] ''Prevention of Significant Deterioration and Title V Greenhouse Gas Tailoring Rule; Final Rule,'' 75 FR 31514 (June 3, 2010). In the Tailoring Rule, EPA established a process for phasing in PSD and Title V applicability to sources based on the amount of their GHG emissions, instead of immediately applying PSD and title V at the 100 or 250 ton per year or thresholds included under the PSD and title V applicability provisions.

undertakes construction, 40 CFR 51.166(a)(7)(i), and to a ''major modification.'' 40 CFR 51.166(a)(7)(iii). A ''major modification'' is defined as ''any physical change in or change in the method of operation of a major stationary source that would result in a significant emissions increase * * * and a significant net emissions increase. * * *'' Thus, for present purposes, the key component of these applicability provisions is that PSD applies to a ''major stationary source.'' This term is the regulatory replacement for the term ''major emitting facility,'' which is central to the PSD applicability requirements established in the CAA itself, under sections 165(a)(1) and 169(1).

The EPA's regulations define the term ''major stationary source'' as a ''stationary source of air pollutants which emits, or has the potential to emit, 100 [or, depending on the source category, 250] tons per year or more of any regulated NSR pollutant.'' 40 CFR 51.166(b)(1)(i)(*a*). The EPA's regulations go on to define ''regulated NSR pollutant'' to include, among other things, ''Any pollutant that is subject to any standard promulgated under section 111 of the Act.'' 40 CFR 51.166(b)(49)(ii).

Thus, the PSD regulations contain a separate PSD trigger for pollutants regulated under the NSPS, 40 CFR 51.166(b)(49)(ii) (the ''NSPS trigger provision''), so that as soon as the EPA promulgates the first NSPS for a particular air pollutant, as we are doing in this rulemaking with respect to the GHG air pollutant, then PSD is triggered for that air pollutant.

The Tailoring Rule, on the face of its regulatory provisions, incorporated the revised thresholds it promulgated into only the fourth prong (''[a]ny pollutant that otherwise is subject to regulation under the Act''), and not the second prong (''[a]ny pollutant that is subject to any standard promulgated under section 111 of the Act''). For this reason, a question may arise as to whether the Tailoring Rule thresholds apply to the PSD requirement as triggered by the NSPS that the EPA is promulgating in this rulemaking.

However, although the Tailoring Rule thresholds on their face apply to only the term, ''subject to regulation'' in the definition of ''regulated NSR pollutant,'' the EPA stated in the Tailoring Rule preamble that the thresholds should be interpreted to apply to other terms in the definition of ''major stationary source'' and in the statutory provision, ''major emitting facility.'' Specifically, the EPA stated:

3. Other Mechanisms

As just described, we selected the ''subject to regulation'' mechanism because it most readily accommodated the needs of States to expeditiously revise—through interpretation or otherwise—their state rules. Even so, it is important to recognize that this mechanism has the same substantive effect as the mechanism we considered in the proposed rule, which was revising numerical thresholds in the definitions of major stationary source and major modification. Most importantly, although we are codifying the ''subject to regulation'' mechanism, that approach is driven by the needs of the states, and our action in this rulemaking should be interpreted to rely on any of several legal mechanisms to accomplish this result. Thus, our action in this rule should be understood as revising the meaning of several terms in these definitions, including: (1) The numerical thresholds, as we proposed; (2) the term, ''any source,'' which some commenters identified as the most relevant term for purposes of our proposal; (3) the term, ''any air pollutant; or (4) the term, ''subject to regulation.'' The specific choice of which of these constitutes the nominal mechanism does not have a substantive legal effect because each mechanism involves one or another of the components of the terms ''major stationary source''—which embodies the statutory term, ''major emitting facility''—and ''major modification,'' which embodies the statutory term, ''modification,'' and it is those statutory and regulatory terms that we are defining to exclude the indicated GHG-emitting sources. [Footnote]

[**Footnote:** We also think that this approach better clarifies our long standing practice of interpreting open-ended SIP regulations to automatically adjust for changes in the regulatory status of an air pollutant, because it appropriately assures that the Tailoring Rule applies to both the definition of ''major stationary source'' and ''regulated NSR pollutant.'']

75 FR 31582.

Thus, according to the preamble, the definition of ''major stationary source'' itself already incorporates the Tailoring Rule thresholds, and not just through one component (the ''subject to regulation'' prong of the term ''regulated NSR pollutant'') of that definition. For this reason, it is the EPA's position that the Tailoring Rule thresholds continue to apply even when the EPA promulgates the first NSPS for GHGs (which, as noted above, triggers the PSD requirement under the NSPS trigger provision in the definition of ''regulated NSR pollutant'').[77] To clarify and confirm that the Tailoring Rule thresholds apply to the section 111 prong of the definition of regulated NSR pollutant, in this proposed rulemaking, the EPA is proposing to revise the NSPS regulations, although not the PSD regulations, to explicitly make clear that the NSPS trigger provision in the PSD regulations incorporate the Tailoring Rule thresholds.

As a result, the EPA believes that states that incorporated the Tailoring Rule thresholds into their SIPs may take the position that they also incorporated the EPA's interpretation in the preamble that the thresholds apply to the definition ''major stationary source.''

The EPA requests that all States with approved SIP PSD programs that apply to GHGs indicate during the comment period on this rule whether they can interpret their SIPs already to apply the Tailoring Rule thresholds to the NSPS prong or whether they must revise their SIPs. For any State that says it must revise its SIP (or that does not respond), the EPA expects to propose a rule that is comparable to the SIP PSD Narrowing Rule shortly after the close of the comment period, and expects to finalize that rule at the same time that it finalizes this NSPS rule.

C. Implications for Title V Program

Under the title V program, a source that emits any air pollutant subject to regulation at or above specified thresholds (along with certain other sources) is required to obtain an operating permit. This permit includes all of the CAA requirements applicable to the source. These permits are generally issued through EPA-approved State title V programs.

As the EPA explained in the Tailoring Rule preamble, title V applies to a ''major source,'' CAA section 502(a), which is defined to include, among other things, certain sources, including any ''major stationary source,'' CAA section 501(2)(B), which, in turn, is defined to include a stationary source of ''any air pollutant'' at or above 100 tpy. CAA section 302(j). The EPA's regulations under title V define the term ''major source,'' and in the Tailoring Rule, the EPA revised that definition to make clear that the term is limited to stationary sources that emit any air pollutant ''subject to regulation.'' The EPA incorporated the Tailoring Rule threshold within this definition of ''subject to regulation.'' The EPA

[77] This position reads the regulations to be consistent with the CAA PSD provisions themselves. Under those provisions, PSD applies to any ''major emitting facility,'' which is defined to mean stationary sources that emit or have the potential to emit ''any air pollutant'' at either 100 or 250 tons per year, depending on the source category. CAA section 165(a), 169(1). EPA has long interpreted these provisions to apply PSD to a stationary source that emits the threshold amounts of any air pollutant subject to regulation. See Tailoring Rule, 75 FR 31579. Under these provisions, at present, PSD is already applicable to GHGs because GHGs are already subject to regulation, and regulating GHGs under CAA section 111 does not any additional type of PSD trigger.

described its action as follows in the preamble to the Tailoring Rule:

> Thus, EPA is adding the phrase ''subject to regulation'' to the definition of ''major source'' under 40 CFR 70.2 and 71.2. EPA is also adding to these regulations a definition of ''subject to regulation.'' Under the part 70 and part 71 regulatory changes adopted, the term ''subject to regulation,'' for purposes of the definition of ''major source,'' has two components. The first component codifies the general approach EPA recently articulated in the ''Reconsideration of Interpretation of Regulations That Determine Pollutants Covered by Clean Air Act Permitting.'' 75 FR 17704. Under this first component, a pollutant ''subject to regulation'' is defined to mean a pollutant subject to either a provision in the CAA or regulation adopted by EPA under the CAA that requires actual control of emissions of that pollutant and that has taken effect under the CAA. *See id.* at 17022–23; Wegman Memorandum at 4–5. To address tailoring for GHGs, EPA includes a second component of the definition of ''subject to regulation,'' specifying that GHGs are not subject to regulation for purposes of defining a major source, unless as of July 1, 2011, the emissions of GHGs are from a source emitting or having the potential to emit 100,000 tpy of GHGs on a CO_2e basis.

75 FR at 31,583.

Unlike the PSD regulations described above, the title V definition of ''major source'', as revised by the Tailoring Rule, does not on its face distinguish among types of regulatory triggers for title V. Because title V has already been triggered for GHG-emitting sources, the promulgation of CAA section 111 requirements has no further impact on title V requirements for major sources of GHGs. Accordingly, today's rulemaking has no title V implications with respect to the Tailoring Rule threshold. Of course, unless exempted by the Administrator through regulation under CAA section 502(a), sources subject to a NSPS are required to apply for, and operate pursuant to, a title V permit that assures compliance with all applicable CAA requirements for the source, including any GHG-related requirements. We have concluded that this rule will not affect non-major sources and there is no need to consider whether to exempt non-major sources

VII. Impacts of the Proposed Action

A. What are the air impacts?

The EPA believes that electric power companies would choose to build new EGUs that comply with the regulatory requirements of this proposal even in the absence of this proposal, because of existing and expected market conditions. We do not project any new coal-fired EGUs without CCS to be built in the absence of this proposal. Accordingly, the EPA believes that this proposed rule is not likely to produce changes in emissions of greenhouse gases or other pollutants although it does encourage the current trend towards cleaner generation.

B. What are the energy impacts?

This proposed rule is not anticipated to have a notable effect on the supply, distribution, or use of energy. As previously stated, we believe that electric power companies would choose to build new EGUs that comply with the regulatory requirements of this proposal even in the absence of the proposal, because of existing and expected market conditions. In addition, we do not project any new coal-fired EGUs without CCS to be built in the absence of this proposal.

C. What are the compliance costs?

The EPA believes this proposed rule will have no notable compliance costs associated with it, because electric power companies would be expected to build new EGUs that comply with the regulatory requirements of this proposal even in the absence of the proposal, due to existing and expected market conditions. The EPA does not project any new coal-fired EGUs without CCS to be built in the absence of the proposal.

D. How will this proposal contribute to climate change protection?

As previously explained, the special characteristics of GHGs make it important to take initial steps to control the largest emissions categories without delay. Unlike most traditional air pollutants, GHGs persist in the atmosphere for time periods ranging from decades to millennia, depending on the gas. Fossil-fueled power plants emit more GHG emissions than any other stationary source category in the United States, and among new GHG emissions sources, the largest individual sources are in this source category.

This proposed rule will limit GHG emissions from new sources in this source category to levels consistent with current projections for new fossil-fuel-fired generating units. The proposed rule will also serve as a necessary predicate for the regulation of existing sources within this source category under CAA section 111(d). In these ways, the proposed rule will contribute to the actions required to slow or reverse the accumulation of GHG concentrations in the atmosphere, which is necessary to protect against projected climate change impacts and risks.

E. What are the economic and employment impacts?

The EPA does not anticipate that this proposed rule will result in notable CO_2 emission changes, energy impacts, monetized benefits, costs, or economic impacts by 2020. Essentially the EPA believes that owners of newly built electric generating units will choose technologies that meet these standards even in the absence of this proposal due to existing economic conditions as normal business practice. Likewise, we believe this rule will not have any impacts on the price of electricity, employment or labor markets, or the US economy.

F. What are the benefits of the proposed standards?

As previously stated, the EPA does not anticipate that the power industry will incur compliance costs as a result of this proposal and we do not anticipate any notable CO_2 emission changes resulting from the rule. Therefore, there are no direct monetized climate benefits in terms of CO_2 emission reductions associated with this rulemaking. However, by clarifying that in the future, new coal-fired power plants will be required to install CCS, this rulemaking eliminates uncertainty about the status of coal and may well enhance the prospects for new coal-fired generation and the deployment of CCS, and thereby promote energy diversity.

VIII. Request for Comments

We request comments on all aspects of the proposed rulemaking including the RIA. All significant comments received will be considered in the development and selection of the final rule. We specifically solicit comments on additional issues under consideration as described below.

CEMS. We are considering and requesting comment on requiring the use of CO_2 CEMS including stack gas flow rate monitoring for all new affected facilities, including those burning exclusively natural gas and/or distillate oil. In addition, we are requesting comment on requiring the use the following measurement procedures in conducting CEMS relative accuracy testing:

a. EPA Method 2F of 40 CFR part 60 for flow rate measurement during the relative accuracy test audit and performance testing. Method 2F provides velocity data for three dimensions and provides measurements more representative of actual gas flow rates than EPA Method 2 or 2G of 40 CFR part 60.

b. EPA Method 2H of 40 CFR part 60 or Conditional Test Method (CTM)–041

(see: *http://www.epa.gov/airmarkets/emissions/docs/square-ducts-wall-effects-test-method-ctm-041.pdf*) to account for wall effects on for stack gas flow rate calculations during CEMS relative accuracy determinations and for performance testing.

c. EPA Method 4 of 40 CFR part 60 to determine moisture for flow rate during CEMS relative accuracy determinations and for performance test calculations.

d. EPA Method 3A of 40 CFR part 60 for CO_2 concentration measurement and for molecular weight determination during CEMS relative accuracy determinations or for performance testing. Account for ambient air argon concentration of 0.93 percent [78] and a molecular weight of 39.9 lb/lb-mol in calculating the dry gas molecular weight.

e. Measure the stack diameter at the CEMS measurement site and the reference method sampling site with a laser distance measurement device. Determine the mean average of three separate diameter measurements for circular stack areas or the mean average of three depth and width measurements for rectangular measurement areas. Calculate the effective stack area for all flow rate measurements, both CEMS system and Reference Method, using this measurement data. This would be a one-time measurement that would fix the effective area of the stack emissions point unless a new location is chosen for the CEMS or Reference Method measurement point. All calculations involving pi would use a value of 3.14159.

f. Apply a daily calibration drift criteria not to exceed 0.3 percent CO_2 for CO_2 CEMS.

g. Do not exceed a relative accuracy specification of 2.5 percent for both CO_2 and flow rate measurement CEMS.

We also request comment on whether Method 3B of 40 CFR part 60 (integrated bag sample), in addition to Method 3A, should be allowed for CO_2 concentration measurement and for molecular weight determination during CEMS relative accuracy determinations or for performance testing.

Coal refuse. Due to the multiple environmental benefits of remediating coal refuse piles, we are considering and requesting comment on subcategorizing EGUs that burn over 75 percent coal refuse on an annual basis. As part of the GHG listening sessions, one commenter mentioned the advantages of utilizing coal refuse to create electricity. The commenter stated that if net emissions caused by using mining waste to generate electricity are calculated, then mining waste facility would produce no net GHG emissions in the long term and emissions would be no greater than the short term emissions of a combined cycle gas plant in. The comment states that due to the size of the piles, mining waste pile exposure to atmospheric oxygen and pressure promotes heat-generating reactions, primarily oxidation of the mining waste itself (i.e., the coal refuse piles are slowly burning). This process emits CO_2 and other air pollutants. Remediation would stop current and future CO_2 emissions resulting from the uncontrolled combustion of waste piles.

Coordinates. We realize that geographic latitude and longitude coordinates of each stack in terms of decimal degrees are presently reported to the EPA's Clean Air Markets Division in terms of four decimal points to the right of the decimal point. We are requesting comment on whether we should require owners/operators of affected facilities to submit to the EPA Administrator the geographic latitude and longitude coordinates of each stack to have at least six values to the right of the decimal for each location. By way of example, the coordinates for the monument next to Zachary Taylor's tomb in Louisville, KY are 38.279401 latitude and -85.643751 longitude.

Combined Heat and Power. We are also considering and requesting comment on if exempting all CHP facilities where useful thermal output accounts for at least 20 percent of the total useful output from this proposed rule would recognize the environmental benefit of CHP and result in additional installations that would otherwise no occur. In considering exemption of CHP units, the EPA is particularly interested in the overall impact this would have on the composition of new builds. The definition of affected sources under this rule already exempts CHP sources that primarily generate on-site power. Therefore, as explained earlier, today's proposal does not impact any of the small amount of projected coal-fired CHP in EIA's AEO 2011. CHPs that would be covered by this rule generate and sell large quantities of electricity. While building such units is more energy efficient and results in some GHG reductions, building new coal-fired units to meet a standard of 1,000 lb CO_2/MWh would likely result in greater reductions. If potential developers of new coal-fired generation opted instead to build coal-fired CHP to avoid the CO_2 limitations proposed under today's rule, it could result in greater emissions of CO_2. Furthermore, requiring such units to meet a standard of 1,000 lb CO_2/MWh does not preclude new coal-fired units from being CHP units.

Format of the Proposed Standards. Although we have proposed gross output-based emission standards, the EPA believes that the net power supplied to the end user is a better indicator of environmental performance than gross output from the power producer. Net output is the combination of the gross electrical output of the electric generating unit minus the parasitic power requirements. A parasitic load for an electric generating unit is any of the loads or devices powered by electricity, steam, hot water, or directly by the gross output of the electric generating unit that does not contribute electrical, mechanical, or thermal output. In general, less than 7.5 percent of coal-fired station power output, and about 2.5 percent of a combined cycle station power output, is used internally by parasitic energy demands, but the amount of these parasitic loads vary from source to source. Reasons for using net output include (1) recognizing the efficiency gains of selecting EGU designs and control equipment that require less auxiliary power, (2) selecting fuels that require less emissions control equipment, and (3) recognizing the environmental benefit of higher efficiency motors, pumps, and fans. In addition, use of a gross output-based standard could potentially drive the installation of electrically driven feed pumps instead of steam driven feed pumps, even though from an overall net efficiency basis, it may be more efficient to use steam-driven feed pumps. Further, monitoring net output for new and reconstructed facilities can be designed into the facility at low costs. Thus, we are requesting comment on the use of net output-based emission standards for owners/operators of new facilities.

Stationary Simple Cycle Turbines. As stated in the preamble, the intent of the proposed regulations is to cover stationary combustion turbines use for intermediate and base load electric power generation and to exempt stationary combustion turbines used for peaking operations (i.e., simple cycle turbines). We are considering and requesting comment on not including a definition of simple cycle turbines in the final rule. The potential electric output requirement in the definition of electric generating unit would already exclude facilities with permit restricting limiting operation to less than ⅓ of their potential electric output, approximately 2,900 hours of full load

[78] *http://www.physicalgeography.net/fundamentals/7a.html.*

operation annually. The peaking season is generally considered to be less than 2,500 hours annually, and we are requesting comment on if the capacity factor exemption is sufficient such that specifically exempting simple cycle turbine is unnecessary. We are also requesting comment on whether the exemption would provide a perverse incentive to build less efficient simple cycle combustion turbines in order to avoid applicability with the proposed rule. While few existing simple cycle turbines presently generate greater than ⅓ of their potential electric output for sale, we are requesting comment on whether the exemption for simple cycle turbines would result in the greater use of simple cycle turbines for intermediate load applications when more efficient combined cycle facilities would have otherwise been built. In addition, it is our understanding that combined cycle facilities are sometimes built in stages with the combustion turbine engine installation occurring first and the heat recovery steam generator being installed in later years as electricity demand increases. We are requesting comment on whether the exemption would potentially delay the installation of the heat recovery steam generator portion of new combined cycle facilities. Finally, in the event we use the definition approach in the final rule, we are requesting comment on whether a CHP facility that uses the recovered exhaust heat for purposes other than to generate steam and recuperated combustion turbines should be considered simple or combined cycle combustion turbines.

IX. Statutory and Executive Order Reviews

A. Executive Order 12866, Regulatory Planning and Review, and Executive Order 13563, Improving Regulation and Regulatory Review

Under Executive Order (EO) 12866 (58 FR 51,735, October 4, 1993), this action is a ''significant regulatory action'' because it ''raises novel legal or policy issues arising out of legal mandates''. Accordingly, the EPA submitted this action to the Office of Management and Budget (OMB) for review under Executive Orders 12866 and 13563 (76 FR 3821, January 21, 2011) and any changes made in response to OMB recommendations have been documented in the docket for this action. In addition, the EPA prepared an analysis of the potential costs and benefits associated with this action. This analysis is contained in the Regulatory Impact Analysis for the Standards of Performance for Greenhouse Gas Emissions for New Stationary Sources: Electric Utility Generating Units.

The EPA believes this rule will have no notable compliance costs associated with it over a range of likely sensitivity conditions because electric power companies would choose to build new EGUs that comply with the regulatory requirements of this proposal even in the absence of the proposal, because of existing and expected market conditions. (See the RIA for further discussion of sensitivities.) Because our modeling shows that natural gas-fired plants are the facilities of choice, the proposed standard of performance—which is based on the emission rate of a new NGCC unit—would not add costs. The EPA does not project any new coal-fired EGUs without CCS to be built in the absence of this proposal.

B. Paperwork Reduction Act

The information collection requirements in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB) under the *Paperwork Reduction Act,* 44 U.S.C. 3501 *et seq.* The Information Collection Request (ICR) document prepared by the EPA has been assigned EPA ICR number 2465.01.

This proposed action would impose minimal new information collection burden on affected sources beyond what those sources would already be subject to under the authorities of CAA parts 75 and 98. OMB has previously approved the information collection requirements contained in the existing part 75 and 98 regulations (40 CFR part 75 and 40 CFR part 98) under the provisions of the *Paperwork Reduction Act,* 44 U.S.C. 3501 *et seq.* and has assigned OMB control numbers 2060–0626 and 2060–0629, respectively. Apart from certain reporting costs based on requirements in the NSPS General Provisions (40 CFR part 60, subpart A), which are mandatory for all owners/operators subject to CAA section 111 national emission standards, there are no new information collection costs, as the information required by this proposed rule is already collected and reported by other regulatory programs. The recordkeeping and reporting requirements are specifically authorized by CAA section 114 (42 U.S.C. 7414). All information submitted to the EPA pursuant to the recordkeeping and reporting requirements for which a claim of confidentiality is made is safeguarded according to Agency policies set forth in 40 CFR part 2, subpart B.

The EPA believes that electric power companies will choose to build new EGUs that comply with the regulatory requirements of this proposal because of existing and expected market conditions. The EPA does not project any new coal-fired EGUs that commence construction after this proposal to commence operation over the 3-year period covered by this ICR. We estimate that 17 new affected NGCC units would commence operation during that time period. As a result of this proposal, those units would be required to prepare a summary report, which includes reporting of excess emissions and downtime, every 6 months.

When a malfunction occurs, sources must report them according to the applicable reporting requirements of 40 CFR part 60, subpart TTTT. An affirmative defense to civil penalties for exceedances of emission limits that are caused by malfunctions is available to a source if it can demonstrate that certain criteria and requirements are satisfied. The criteria ensure that the affirmative defense is available only where the event that causes an exceedance of the emission limit meets the narrow definition of malfunction (sudden, infrequent, not reasonable preventable, and not caused by poor maintenance and or careless operation) and where the source took necessary actions to minimize emissions. In addition, the source must meet certain notification and reporting requirements. For example, the source must prepare a written root cause analysis and submit a written report to the Administrator documenting that it has met the conditions and requirements for assertion of the affirmative defense.

To provide the public with an estimate of the relative magnitude of the burden associated with an assertion of the affirmative defense position adopted by a source, the EPA has estimated what the notification, recordkeeping, and reporting requirements associated with the assertion of the affirmative defense might entail. The EPA's estimate for the required notification, reports, and records, including the root cause analysis, associated with a single incident totals approximately totals $3,141, and is based on the time and effort required of a source to review relevant data, interview plant employees, and document the events surrounding a malfunction that has caused an exceedance of an emission limit. The estimate also includes time to produce and retain the record and reports for submission to the EPA. The EPA provides this illustrative estimate of this burden, because these costs are only incurred if there has been a violation, and a source chooses to take advantage of the affirmative defense.

The EPA provides this illustrative estimate of this burden because these costs are only incurred if there has been a violation and a source chooses to take advantage of the affirmative defense. Given the variety of circumstances under which malfunctions could occur, as well as differences among sources' operation and maintenance practices, we cannot reliably predict the severity and frequency of malfunction-related excess emissions events for a particular source. It is important to note that the EPA has no basis currently for estimating the number of malfunctions that would qualify for an affirmative defense. Current historical records would be an inappropriate basis, as source owners or operators previously operated their facilities in recognition that they were exempt from the requirement to comply with emissions standards during malfunctions. Of the number of excess emissions events reported by source operators, only a small number would be expected to result from a malfunction (based on the definition above), and only a subset of excess emissions caused by malfunctions would result in the source choosing to assert the affirmative defense. Thus, we believe the number of instances in which source operators might be expected to avail themselves of the affirmative defense will be extremely small. In fact, we estimate that there will be no such occurrences for any new sources subject to 40 CFR part 60, subpart TTTT over the 3-year period covered by this ICR. We expect to gather information on such events in the future, and will revise this estimate as better information becomes available.

The annual information collection burden for this collection consists only of reporting burden as explained above. The reporting burden for this collection (averaged over the first 3 years after the effective date of the standards) is estimated to be $15,570 and 396 labor hours. This estimate includes semi-annual summary reports which include reporting of excess emissions and downtime. All burden estimates are in 2010 dollars. Average burden hours per response are estimated to be 16.5 hours. The total number of respondents over the 3-year ICR period is estimated to be 36. Burden is defined at 5 CFR 1320.3(b).

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for the EPA's regulations in 40 CFR are listed in 40 CFR part 9.

To comment on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, the EPA has established a public docket for this rule, which includes this ICR, under Docket ID number EPA–HQ–OAR–2011–0660. Submit any comments related to the ICR to the EPA and OMB. See **ADDRESSES** section at the beginning of this notice for where to submit comments to the EPA. Send comments to OMB at the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, Attention: Desk Officer for EPA. Since OMB is required to make a decision concerning the ICR between 30 and 60 days after April 13, 2012, a comment to OMB is best assured of having its full effect if OMB receives it by May 14, 2012. The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

C. Regulatory Flexibility Act as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. et seq.

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of this rule on small entities, small entity is defined as:

(1) A small business that is defined by the SBA's regulations at 13 CFR 121.201 (for the electric power generation industry, the small business size standard is an ultimate parent entity defined as having a total electric output of 4 million MWh or less in the previous fiscal year. The NAICS codes for the affected industry are in Table 4 below);

(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.

TABLE 4—POTENTIALLY REGULATED CATEGORIES AND ENTITIES [a]

Category	NAICS Code	Examples of potentially regulated entities
Industry	221112	Fossil fuel electric power generating units.
Federal Government	[b] 221112	Fossil fuel electric power generating units owned by the federal government.
State/Local Government	[b] 221112	Fossil fuel electric power generating units owned by municipalities.
Tribal Government	921150	Fossil fuel electric power generating units in Indian Country.

[a] Include NAICS categories for source categories that own and operate electric power generating units (includes boilers and stationary combined cycle combustion turbines).

[b] Federal, state, or local government-owned and operated establishments are classified according to the activity in which they are engaged.

After considering the economic impacts of this proposed rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities.

We do not include an analysis of the illustrative impacts on small entities that may result from implementation of this proposed rule because we do not anticipate any compliance costs over a range of likely sensitivity conditions as a result of this proposal. Thus the cost-to-sales ratios for any affected small entity would be zero costs as compared to annual sales revenue for the entity. The EPA believes that electric power companies will choose to build new EGUs that comply with the regulatory requirements of this proposal because of existing and expected market conditions. (See the RIA for further discussion of sensitivities.) Because our modeling shows that natural gas-fired plants are the facilities of choice, the proposed standard of performance—which is based on the emission rate of a new NGCC unit—would not add costs. The EPA does not project any new coal-fired EGUs without CCS to be built. Accordingly, there are no anticipated

economic impacts as a result of this proposal.

Nevertheless, the EPA is aware that there is substantial interest in this rule among small entities (municipal and rural electric cooperatives). In light of this interest, the EPA determined to seek early input from representatives of small entities while formulating the provisions of this proposed regulation. Such outreach is also consistent with the President's January 18, 2011 Memorandum on Regulatory Flexibility, Small Business, and Job Creation, which emphasizes the important role small businesses play in the American economy. This process has enabled the EPA to hear directly from these representatives, at a very preliminary stage, about how it should approach the complex question of how to apply Section 111 of the CAA to the regulation of GHGs from these source categories. The EPA's outreach regarded planned actions for new and existing sources, but only new sources would be affected by this proposed action.

The EPA conducted an initial outreach meeting with small entity representatives on April 6, 2011. The purpose of the meeting was to provide an overview of recent EPA proposals impacting the power sector. Specifically, overviews of the Transport Rule, the Mercury and Air Toxics Standards, and the Clean Water Act 316(b) Rule proposals were presented.

The EPA conducted outreach with representatives from 20 various small entities that potentially would be affected by this rule. The representatives included small entity municipalities, cooperatives, and private investors. We distributed outreach materials to the small entity representatives; these materials included background, an overview of affected sources and GHG emissions from the power sector, an overview of CAA section 111, an assessment of CO_2 emissions control technologies, potential impacts on small entities, and a summary of the listening sessions. We met with eight of the small entity representatives, as well as three participants from organizations representing power producers, on June 17, 2011, to discuss the outreach materials, potential requirements of the rule, and regulatory areas where the EPA has discretion and could potentially provide flexibility.

A second outreach meeting was conducted on July 13, 2011. We met with nine of the small entity representatives, as well as three participants from organizations representing power producers. During the second outreach meeting, various small entity representatives and participants from organizations representing power producers presented information regarding issues of concern with respect to development of standards for GHG emissions. Specifically, topics suggested by the small entity representatives and discussed included: boilers with limited opportunities for efficiency improvements due to NSR complications for conventional pollutants; variances per kilowatt-hour and in heat rates over monthly and annual operations; significance of plant age; legal issues; importance of future determination of carbon neutrality of biomass; and differences between municipal government electric utilities and other utilities.

Small entities expressed concern regarding units making modifications being regulated as new sources. As explained above, we are not proposing a standard of performance for modifications. As a result, sources that undertake modifications would be treated as existing sources and thus would not be subject to the requirements proposed in this notice. As also explained above, the EPA is not proposing standards of performance for existing proposed EGUs, which are referred to as transitional sources, that have acquired a complete preconstruction permit by the time of this proposal and that commence construction within 12 months of this proposal. As a result, any transitional sources owned by small entities would not be subject to the standards of performance proposed in today's rule.

We invite comments on all aspects of the proposal and its impacts, including potential adverse impacts, on small entities.

D. Unfunded Mandates Reform Act of 1995

This proposed rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. The EPA believes this proposed rule will have no compliance costs associated with it over a range of likely sensitivity conditions because electric power companies will choose to build new EGUs that comply with the regulatory requirements of this proposal because of existing and expected market conditions. (See the RIA for further discussion of sensitivities.) As previously explained, because our modeling shows that natural gas-fired plants are the facilities of choice, the proposed standard of performance—which is based on the emission rate of a new NGCC unit—would not add costs. The EPA does not project any new coal-fired EGUs without CCS to be built. Thus, this proposed rule is not subject to the requirements of sections 202 or 205 of UMRA.

This proposed rule is also not subject to the requirements of section 203 of UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments.

In light of the interest in this rule among governmental entities, the EPA initiated consultations with governmental entities. The EPA invited the following 10 national organizations representing state and local elected officials to a meeting held on April 12, 2011, in Washington DC: (1) National Governors Association; (2) National Conference of State Legislatures, (3) Council of State Governments, (4) National League of Cities, (5) U.S. Conference of Mayors, (6) National Association of Counties, (7) International City/County Management Association, (8) National Association of Towns and Townships, (9) County Executives of America, and (10) Environmental Council of States. These 10 organizations representing elected state and local officials have been identified by the EPA as the ''Big 10'' organizations appropriate to contact for purpose of consultation with elected officials. The purposes of the consultation were to provide general background on the proposal, answer questions, and solicit input from state/local governments. The EPA's consultation regarded planned actions for new and existing sources, but only new sources would be affected by this proposed action.

During the meeting, officials asked clarifying questions regarding CAA section 111 requirements and efficiency improvements that would reduce CO_2 emissions. In addition, they expressed concern with regard to the potential burden associated with impacts on state and local entities that own/operate affected utility boilers, as well as on state and local entities with regard to implementing the rule. Subsequent to the April 12, 2011 meeting, the EPA received a letter from the National Conference of State Legislatures. In that letter, the National Conference of State Legislatures urged the EPA to ensure that the choice of regulatory options maximizes benefit and minimizes implementation and compliance costs on state and local governments; to pay particular attention to options that would provide states with as much flexibility as possible; and to take into consideration the constraints of the state legislative calendars and ensure that sufficient time is allowed for state

actions necessary to come into compliance.

E. Executive Order 13132, Federalism

This proposed action does not have federalism implications. It would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in EO 13132. This proposed action would not impose substantial direct compliance costs on state or local governments, nor would it preempt state law. Thus, Executive Order 13132 does not apply to this action. The EPA consulted with state and local officials in the process of developing the proposed rule to permit them to have meaningful and timely input into its development. The EPA's consultation regarded planned actions for new and existing sources, but only new sources would be affected by this proposed action. The EPA met with 10 national organizations representing state and local elected officials to provide general background on the proposal, answer questions, and solicit input from state/local governments. The UMRA discussion in this preamble includes a description of the consultation. In the spirit of EO 13132, and consistent with EPA policy to promote communications between the EPA and state and local governments, the EPA specifically solicits comment on this proposed action from state and local officials.

F. Executive Order 13175, Consultation and Coordination With Indian Tribal Governments

Subject to the EO 13175 (65 FR 67249, November 9, 2000) the EPA may not issue a regulation that has tribal implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by tribal governments, or the EPA consults with tribal officials early in the process of developing the proposed regulation and develops a tribal summary impact statement.

The EPA has concluded that this proposed action would not have tribal implications. It would neither impose substantial direct compliance costs on tribal governments, nor preempt Tribal law. This proposed rule would impose requirements on owners and operators of new EGUs. The EPA is aware of three coal-fired EGUs located in Indian Country but is not aware of any EGUs owned or operated by tribal entities. The EPA notes that this proposal does not affect existing sources such as the three coal-fired EGUs located in Indian Country, but addresses CO_2 emissions for new EGU sources only.

Because the EPA is aware of Tribal interest in this proposed rule, the EPA offered consultation with tribal officials early in the process of developing this proposed regulation to permit them to have meaningful and timely input into its development. The EPA's consultation regarded planned actions for new and existing sources, but only new sources would be affected by this proposed action.

Consultation letters were sent to 584 tribal leaders. The letters provided information regarding the EPA's development of NSPS and emission guidelines for EGUs and offered consultation. A consultation/outreach meeting was held on May 23, 2011, with the Forest County Potawatomi Community, the Fond du Lac Band of Lake Superior Chippewa Reservation, and the Leech Lake Band of Ojibwe. Other tribes participated in the call for information gathering purposes. In this meeting, the EPA provided background information on the GHG emission standards to be developed and a summary of issues being explored by the Agency. Tribes suggested that the EPA consider expanding coverage of the GHG standards to include combustion turbines, lowering the 250 MMBtu per hour heat input threshold so as to capture more EGUs, and including credit for use of renewables. The tribes were also interested in the scope of the emissions averaging being considered by the Agency (e.g., over what time period, across what units). In addition, the EPA held a series of listening sessions on this proposed action. Tribes participated in a session on February 17, 2011 with the state agencies, as well as in a separate session with tribes on April 20, 2011.

The EPA will also hold additional meetings with tribal environmental staff to inform them of the content of this proposal as well as provide additional consultation with tribal elected officials where it is appropriate. We specifically solicit additional comment on this proposed rule from tribal officials.

G. Executive Order 13045, Protection of Children From Environmental Health Risks and Safety Risks

The EPA interprets EO 13045 (62 FR 19885, April 23, 1997) as applying to those regulatory actions that concern health or safety risks, such that the analysis required under section 5–501 of the Order has the potential to influence the regulation. This proposed action is not subject to EO 13045 because it is based solely on technology performance. The proposal is not expected to produce notable changes in emissions of greenhouse gases or other pollutants but does encourage the current trend towards cleaner generation, helping to protect air quality and children's health. The Agency recognizes that children are among the groups most vulnerable to climate change impacts and the public is invited to submit comments or identify peer reviewed studies relevant to this proposal.

H. Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

This proposed action is not a ''significant energy action'' as defined in EO 13211 (66 FR 28355 (May 22, 2001)) because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. This proposed action is not anticipated to have notable impacts on emissions, costs or energy supply decisions for the affected electric utility industry.

I. National Technology Transfer and Advancement Act

Section 12(d) of the NTTAA of 1995 (Pub. L. 104–113; 15 U.S.C. 272 note) directs the EPA to use Voluntary Census Standards in their regulatory and procurement activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, business practices) developed or adopted by one or more voluntary consensus bodies. The NTTAA directs the EPA to provide Congress, through annual reports to the OMB, with explanations when an agency does not use available and applicable VCS.

This proposed rulemaking involves technical standards. The EPA cites the following standards in this proposed rule: D5287–08 (Standard Practice for Automatic Sampling of Gaseous Fuels), D4057–06 (Standard Practice for Manual Sampling of Petroleum and Petroleum Products), and D4177–95(2010) (Standard Practice for Automatic Sampling of Petroleum and Petroleum Products). The EPA is proposing use of Appendices B, D, F, and G to 40 CFR part 75; these Appendices contain standards that have already been reviewed under the NTTAA.

The EPA welcomes comments on this aspect of the proposed rulemaking and, specifically, invites the public to identify potentially-applicable VCS and to explain why such standards should be used in this action.

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 U.S.

The EPA has determined that this proposed rule would not result in disproportionately high and adverse human health or environmental effects on minority or low-income populations, including any minority, low-income population or indigenous populations.

List of Subjects in 40 CFR Part 60

Environmental protection, Administrative practice and procedure, Air pollution control, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: March 27, 2012.

Lisa P. Jackson,

Administrator.

For the reasons stated in the preamble, title 40, chapter I, part 60 of the Code of the Federal Regulations is proposed to be amended as follows:

PART 60—[AMENDED]

1. The authority citation for part 60 continues to read as follows:

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

2. Part 60 is amended by adding subpart TTTT to read as follows:

Subpart TTTT Standards of Performance for Greenhouse Gas Emissions for Electric Utility Generating Units

Applicability

Sec.
60.5508 What is the purpose of this subpart?
60.5509 Am I subject to this subpart?
60.5510 What is the affected EGU of this subpart?

Emissions Standards

60.5515 What greenhouse gases are regulated by this subpart?
60.5520 What CO_2 emissions standards must I meet?

General Compliance Requirements

60.5525 What are my general requirements for complying with this subpart?
60.5530 Affirmative Defense for Exceedance of Emission Limit During Malfunction

Monitoring and Compliance Determination Procedures

60.5535 How do I monitor and collect data to demonstrate compliance?
60.5540 How do I demonstrate compliance and determine excess emissions with my CO_2 emissions limit?

Notifications, Reports, and Records

60.5550 What notifications must I submit and when?
60.5555 What reports must I submit and when?
60.5560 What records must I keep?
60.5565 In what form and how long must I keep my records?

Other Requirements and Information

60.5570 What parts of the General Provisions apply to me?
60.5575 Who implements and enforces this subpart?
60.5580 What definitions apply to this subpart?
Table 1 to Subpart TTTT of Part 60—Applicability of Subpart A General Provisions to Subpart TTTT

Applicability

§ 60.5508 What is the purpose of this subpart?

This subpart establishes emission standards and compliance schedules for the control of greenhouse gas (GHG) emissions from electric utility generating units that commenced construction after April 13, 2012.

§ 60.5509 Am I subject to this subpart?

You are subject to this subpart if you own or operate an electric utility generating unit that commences construction after April 13, 2012 with a base load rating of more than 73 megawatts (MW) (250 million British thermal units per hour (MMBtu/h)) heat input of fossil fuel except as specified under § 60.5510(b).

§ 60.5510 What is the affected EGU of this subpart?

(a) The affected facility to which this subpart applies is each electric utility generating unit (EGU) except as provided for in paragraph (b) of this section.

(b) An electric utility generating unit that meets the conditions specified in paragraphs (b)(1) through (b)(3) of this section is exempt from this subpart.

(1) A steam electric generating unit that meets the definition of municipal waste combustor unit and is subject to subpart Eb of this part.

(2) A steam electric generating unit that meets the definition of a commercial or industrial solid waste incineration unit and is subject to subpart CCCC of this part.

(3) Transitional sources.

(i) You are not subject to this subpart if you own or operate a transitional source that commences construction within 12 months after April 13, 2012.

(ii) For purposes of paragraph (b)(3)(ii) a ''transitional source'' is defined as an EGU with a base load rating of more than 73 megawatts (MW) (250 million British thermal units per hour (MMBtu/h)) heat input of fossil fuel, except as provided for in § 60.5510(b)(1) and (2), and that received a complete permit that meets the requirements of the Prevention of Significant Deterioration Program under part C of Title I of the Clean Air Act prior to April 13, 2012 *(or that had an approved PSD permit that has expired and is in the process of being extended, if the source is participating in a Department of Energy CCS funding program).*

Emissions Standards

§ 60.5515 What greenhouse gases are regulated by this subpart?

The greenhouse gas regulated by this subpart is carbon dioxide (CO_2).

§ 60.5520 What CO_2 emissions standards must I meet?

(a) You must not discharge any gases that contain CO_2 from any affected EGU into the atmosphere in excess of 454 kilograms (kg) of CO_2 per gross output in Megawatt-hours (MWh) (454 kg/MWh) (1,000 lb/MWh) on a 12-operating month annual average basis, except as provided for in paragraphs (b) through (d) of this section.

(b) If the affected EGU utilizes coal or petroleum coke for fuel and is designed to allow installation and operation of a carbon capture and storage (CCS) system, you may comply with each standard in paragraphs (b)(1) through (3) as an alternative to complying with paragraph (a) of this section.

(1) For each year until the 11th year of operation, you must not discharge any gases that contain CO_2 from the affected EGU into the atmosphere in excess of 816 kg/MWh (1,800 lb/MWh) gross output on a 12-operating month annual average basis, and

(2) Beginning with the 11th year of operation, the CCS system must be operational and you must not discharge any gases that contain CO_2 from the affected EGU into the atmosphere in excess of 272 kg/MWh (600 lb/MWh) gross output on a 12-operating month annual average basis, and

(3) You must not discharge any gases that contain CO_2 from the affected EGU into the atmosphere in excess of 454 kg/MWh gross output on a 30-year average basis.

(c) Electric utility generating units located in a non-continental area are not subject to the requirements of this subpart.

(d) Simple cycle combustion turbines are not subject to the requirements of this subpart.

General Compliance Requirements

§ 60.5525 What are my general requirements for complying with this subpart?

(a) You must be in compliance with the emissions limits in this subpart applicable to your affected EGU. These limits apply at all times.

(b) At all times you must operate and maintain each affected EGU, including associated equipment and monitoring equipment, in a manner consistent with safety and good practices for minimizing CO_2 emissions. Determination of whether such operation and maintenance procedures are being used will be based on information available to the Administrator which may include, but is not limited to, fuel use records, monitoring results, review of operation and maintenance procedures, review of operation and maintenance records, review of reports required by this subpart, and inspection of the facility.

(c) For each affected EGU subject to the CO_2 emissions limits in § 60.5520, you must measure or calculate a 12 month rolling average CO_2 emission rate, calculated per calendar month, in terms of tons/MWh.

(1) If your EGU is subject to the requirements of 40 CFR 75.10(a)(3)(i), you must use the CO_2 CEMS to measure the 12 month rolling average CO_2 emissions rate.

(d) You must conduct an initial compliance determination for your affected EGU according to the requirements in this subpart within 30 days following the first day of the 13th operating month following the date of initial operations. Thereafter, you must demonstrate continuous compliance according to the requirements in this subpart each calendar month determined to be an operating month.

§ 60.5530 Affirmative Defense for Exceedance of Emission Limit During Malfunction.

In response to an action to enforce the standards you may assert an affirmative defense to a claim for civil penalties for exceedances of such standards that are caused by malfunction, as defined at 40 CFR 60.2. Appropriate penalties may be assessed, however, if the respondent fails to meet its burden of proving all of the requirements in the affirmative defense. The affirmative defense shall not be available for claims for injunctive relief.

(a) To establish the affirmative defense in any action to enforce such a limit, the owners or operators of facilities must timely meet the notification requirements in paragraph (b) of this section, and must prove by a preponderance of evidence that:

(1) The excess emissions:

(i) Were caused by a sudden, infrequent, and unavoidable failure of air pollution control and monitoring equipment, process equipment, or a process to operate in a normal or usual manner;

(ii) Could not have been prevented through careful planning, proper design or better operation and maintenance practices; and

(iii) Did not result from any activity or event that could have been foreseen and avoided, or planned for; and

(iv) Were not part of a recurring pattern indicative of inadequate design, operation, or maintenance;

(2) Repairs were made as expeditiously as practicable when the applicable emission limitations were being exceeded. Off-shift and overtime labor were used, to the extent practicable to make these repairs;

(3) The frequency, amount and duration of the excess emissions (including any bypass) were minimized to the maximum extent practicable during periods of such emissions;

(4) If the excess emissions resulted from a bypass of control equipment or a process, then the bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;

(5) All practicable steps were taken to minimize the impact of the excess emissions on ambient air quality, the environment and human health;

(6) All emissions monitoring and control systems were kept in operation if at all practicable, consistent with safety and good air pollution control practices;

(7) All of the actions in response to the excess emissions were documented by properly signed, contemporaneous operating logs;

(8) At all times, the facility was operated in a manner consistent with good practices for minimizing emissions; and

(9) A written root cause analysis has been prepared, the purpose of which is to determine, correct, and eliminate the primary causes of the malfunction and the excess emissions resulting from the malfunction event at issue. The analysis shall also specify, using best monitoring methods and engineering judgment, the amount of excess emissions that were the result of the malfunction.

(b) The owner or operator of an affected EGU experiencing an exceedance of its emission limit(s) during a malfunction shall notify the Administrator by telephone or facsimile (FAX) transmission as soon as practicable, but no later than two (2) business days after the initial occurrence of the malfunction, if it wishes to avail itself of an affirmative defense to civil penalties for that malfunction. The owner or operator seeking to assert an affirmative defense shall also submit a written report to the Administrator within 45 days of the initial occurrence of the exceedance of the standard to demonstrate, with all necessary supporting documentation, that it has met the requirements set forth in paragraph (a) of this section. The owner or operator may seek an extension of this deadline for up to 30 additional days by submitting a written request to the Administrator before the expiration of the 45-day period. Until a request for an extension has been approved by the Administrator, the owner or operator is subject to the requirement to submit such report within 45 days of the initial occurrence of the exceedances.

Monitoring and Compliance Determination Procedures

§ 60.5535 How do I monitor and collect data to demonstrate compliance?

(a) You must prepare a site-specific monitoring plan that addresses the monitoring system design, data collection and the quality assurance and quality control elements consistent with the applicable requirements in § 60.13, 40 CFR part 75, and this section.

(b) Follow the applicable quality assurance procedures for CO_2 emissions in appendices B, D, and G to 40 CFR part 75.

(c) If you determine the your affected EGU's CO_2 mass emissions rate by monitoring fuel combusted in the affected EGU and periodic fuel sampling as allowed under § 60.5525(c)(2), you must use the procedures specified in 40 CFR part 75, appendix G.

(1) Determine a site-specific F factor using the ultimate analysis and GCV in equation F–7a of 40 CFR part 75, Appendix F; and

(2) Monitor and determine the affected EGU's daily fuel consumption for each type of fuel combusted in the affected EGU.

(3) Use ASTM D5287–08 (Standard Practice for Automatic Sampling of Gaseous Fuels) to collect a representative gaseous fuel sample.

(4) Use one of the following methods to collect a representative liquid oil fuel sample:

(i) ASTM D4057–06 (Standard Practice for Manual Sampling of Petroleum and Petroleum Products) or

(ii) ASTM D4177–95 (2010) (Standard Practice for Automatic Sampling of Petroleum and Petroleum Products).

(d) You must monitor and record the applicable data needed to determine your affected EGU's gross output for each operating month.

(e) Follow the applicable missing data substitution procedures in 40 CFR part 75 for CO_2 concentration, stack gas flow rate, fuel flow rate, high heating value, and fuel carbon content.

§ 60.5540 How do I demonstrate compliance and determine excess emissions with my CO_2 emissions limit?

(a) If you use a CO_2 CEMS to demonstrate compliance you must use the procedure specified in paragraphs (a)(1) through (5) of this section to determine the 12-operating month rolling average CO_2 emissions rate for your affected EGU.

(1) Calculate hourly CO_2 mass emissions for each hour of the operating month in terms of kilograms CO_2 using CFR 40 part 75 appendix G.

(2) Determine hourly gross output in terms of MWh for each hour of the operating month.

(3) Sum the hourly CO_2 mass emissions for the operating month, and sum the hourly gross output for the operating month.

(4) Divide the total CO_2 mass emissions calculated for the month by the total hourly gross output calculated for the operating month.

(5) Add the quotient to the sum of the quotients of the previous 11 operating months and divide by 12 to determine the 12-operating month rolling average.

(6) If the 12-operating month rolling average value does not exceed the applicable emissions limit in § 60.5520, your affected EGU is determined to be in compliance with the emissions limit. Otherwise, your affected EGU is determined to have excess emissions.

(b) If you use fuel sampling to demonstrate compliance, you must use the procedure specified in paragraphs (b)(1) through (5) of this section to determine the 12-operating month rolling average CO_2 emissions rate for your affected EGU.

(1) Calculate monthly CO_2 mass emissions by multiplying the monthly F factor by the monthly fuel consumption.

(2) Sum the hourly gross output in terms of MWh for the month.

(3) Divide the monthly CO_2 mass emissions by the sum of the hourly gross output for the month.

(4) Add the quotient to the sum of the quotients of the previous 11 operating months to determine the 12-operating month rolling average.

(5) If the 12-operating month rolling average value does not exceed the applicable emissions limit in § 60.5520, your affected EGU is determined to be in compliance with the emissions limit. Otherwise, your affected EGU is determined to have excess emissions.

(c) If you elect to comply with § 60.5520(b), the 30-year average CO_2 emissions rate for your affected EGU is the sum of the monthly CO_2 emissions for each operating month for the 30-year period divided by the sum of the monthly gross output in terms of MWh for the 30-year period. Use the procedure specified in paragraphs (c)(1) through (4) of this section to determine the 12-month annual average CO_2 emissions rate for your affected EGU.

(1) If you do not use a CO_2 CERMS to demonstrate compliance with § 60.5520(b), you must calculate hourly CO_2 mass emissions for each hour of the 12-month annual period in terms of kilograms CO_2 using CFR 40 Part 75 Appendix G. If you use a CO_2 CERMS to demonstrate compliance with § 60.5520(b) you must calculate hourly CO_2 mass emissions for each hour of the 12-month annual period in terms of kilograms CO_2 using the CERMS hourly mass emissions measurements.

(2) Determine hourly gross output in terms of MWh for each hour of the 12-month annual period.

(3) Sum the hourly CO_2 mass emissions for the 12-month annual operating period, and sum the hourly gross output for the 12-month annual operating period.

(4) Divide the total CO_2 mass emissions calculated for the 12-month annual operating period by the total hourly gross output calculated for the 12-month annual operating period.

(5) If the 12-month annual average value does not exceed the applicable emissions limit in § 60.5520, your affected EGU is determined to be in compliance with the emissions limit. Otherwise, your affected EGU is determined to have excess emissions.

Notification, Reports, and Records

§ 60.5550 What notifications must I submit and when?

(a) You must prepare and submit notifications specified in § 60.7(a) and § 60.19, as applicable to your affected EGU.

(b) You must prepare and submit notifications specified in 40 CFR part 75.61, as applicable to your affected EGU.

§ 60.5555 What reports must I submit and when?

(a) You must prepare and submit reports specified in § 60.7(c) through (e) and § 60.19, as applicable to your affected EGU. All reports required under § 60.7 must be submitted by the 30th day following the end of each 6-month period.

(1) The excess emissions and continuous monitoring systems performance reports and-or summary report forms required in § 60.7(c) must be submitted to the EPA's WebFIRE database by using the Compliance and Emissions Data Reporting Interface (CEDRI) that is accessed through the EPA's Central Data Exchange (CDX)(*www.epa.gov/cdx*). In CEDRI, the owner or operator shall use the appropriate electronic reporting form for this subpart or provide an alternate electronic file consistent with EPA's form output format.

(b) You must follow the applicable reporting requirements and submit reports as required in subpart G of 40 CFR part 75. You must report CO_2 mass emissions data, and other related data electronically using the Emissions Collection and Monitoring Plan System (ECMPS).

§ 60.5560 What records must I maintain?

(a) You must maintain records of your information used to demonstrate compliance with this subpart as specified in § 60.7 (b) and (f).

(1) Notwithstanding the requirements of this section you do not need to maintain records of the reports that have been submitted to the EPA's WebFIRE database as required in § 60.5555(a)(1).

(b) You must follow the applicable recordkeeping requirements and maintain records as required in subpart F of 40 CFR part 75.

(c) If you determine the CO_2 mass emissions rate by monitoring fuel combusted in an affected EGU and periodic fuel sampling according to the requirements in this rule then you must maintain records of fuel type and quantity combusted in the affected EGU for each operating month the information specified in paragraphs (c)(1) and (2) of this section.

(1) Records of fuel type and quantity combusted in the affected EGU for each operating month.

(2) Records of the calculations performed to determine the site-specific F factor and monthly total CO_2 mass emissions rates.

(d) Records of the applicable data recorded and calculations performed used to determine your affected EGU's gross output for each operating month.

§ 60.5565 In what form and how long must I keep my records?

(a) Your records must be in a form suitable and readily available for expeditious review.

(b) You must keep each record for 5 years following the date of each occurrence, measurement, maintenance, corrective action, report, or record except those records required to demonstrate compliance with the emissions limits in § 60.5520(b). Records required to demonstrate compliance with the emissions limits in § 60.5520(b) must be kept for at least 40 years following the date of initial startup of the affected EGU.

(c) You must keep each record on site for at least 2 years after the date of each occurrence, measurement, maintenance, corrective action, report, or record, according to § 60.10. You can keep the records off site for the remaining years as required by this subpart.

Other Requirements and Information

§ 60.5570 What parts of the General Provisions apply to me?

Table 1 to this subpart shows which parts of the General Provisions in §§ 60.1 through 60.19 apply to you.

§ 60.5575 Who implements and enforces this subpart?

(a) This subpart can be implemented and enforced by the EPA, or a delegated authority such as your state, local, or tribal agency. If the Administrator has delegated authority to your state, local, or tribal agency, then that agency (as well as the EPA) has the authority to implement and enforce this subpart. You should contact your EPA Regional Office to find out if this subpart is delegated to your state, local, or tribal agency.

(b) In delegating implementation and enforcement authority of this subpart to a state, local, or tribal agency, the authorities listed in paragraphs (b)(1) through (5) of this section are retained by the Administrator and are not transferred to the state, local, or tribal agency; however, the EPA retains oversight of this subpart and can take enforcement actions, as appropriate.

(1) Approval of alternatives to the emission standards.

(2) Approval of major alternatives to test methods.

(3) Approval of major alternatives to monitoring.

(4) Approval of major alternatives to recordkeeping and reporting.

(5) Performance test and data reduction waivers under § 60.8(b).

§ 60.5580 What definitions apply to this subpart?

As used in this subpart, all terms not defined herein will have the meaning given them in the Clean Air Act and in subpart A (General Provisions of this part).

Affirmative defense means, in the context of an enforcement proceeding, a response or defense put forward by a defendant, regarding which the defendant has the burden of proof, and the merits of which are independently and objectively evaluated in a judicial or administrative proceeding.

Base load rating means the maximum amount of heat input (fuel) that a steam generating unit can combust on a steady state basis, as determined by the physical design and characteristics of the steam generating unit at ISO conditions. For a stationary combustion turbine *base load* means 100 percent of the design heat input capacity of the stationary combustion turbine engine at ISO conditions.

Carbon capture and storage (CCS) means a process that includes capture and compression of CO_2 produced by an electric utility generating unit before release to the atmosphere; transport of the captured CO_2 (usually in pipelines); and storage of that CO_2 in geologic formations, such as deep saline formations, oil and gas reservoirs, and unmineable coal seams.

Coal means all solid fuels classified as anthracite, bituminous, subbituminous, or lignite by the American Society of Testing and Materials in ASTM D388 (incorporated by reference, see § 60.17), coal refuse, and petroleum coke. Synthetic fuels derived from coal for the purpose of creating useful heat, including but not limited to solvent-refined coal, gasified coal (not meeting the definition of natural gas), coal-oil mixtures, and coal-water mixtures are included in this definition for the purposes of this subpart.

Coal refuse means waste products of coal mining, physical coal cleaning, and coal preparation operations (*e.g.* culm, gob, etc.) containing coal, matrix material, clay, and other organic and inorganic material.

Combined cycle means a stationary turbine combustion system where heat from the turbine exhaust gases is recovered by a heat recovery steam generating unit.

Combined heat and power, also known as ''cogeneration,'' means a steam-generating unit that simultaneously produces both electric (and mechanical) and useful thermal energy from the same primary energy source.

Distillate oil means fuel oils that contain 0.05 weight percent nitrogen or less and comply with the specifications for fuel oil numbers 1 and 2, as defined by the American Society of Testing and Materials in ASTM D396 (incorporated by reference, see § 60.17), diesel fuel oil numbers 1 and 2, as defined by the American Society for Testing and Materials in ASTM D975 (incorporated by reference, see § 60.17), kerosene, as defined by the American Society of Testing and Materials in ASTM D3699 (incorporated by reference, see § 60.17), biodiesel as defined by the American Society of Testing and Materials in ASTM D6751 (incorporated by reference, see § 60.17), or biodiesel blends as defined by the American Society of Testing and Materials in ASTM D7467 (incorporated by reference, see § 60.17).

Electric utility generating unit or *EGU* means any steam electric generating unit or stationary combustion turbine that is constructed for the purpose of supplying more than one-third of its potential electric output capacity and more than 25 MW net-electrical output to any utility power distribution system for sale. Also, any steam supplied to a steam distribution system for the purpose of providing steam to a steam-electric generator that would produce electrical energy for sale is considered in determining the electrical energy output capacity of the affected EGU.

Excess emissions means a specified averaging period over which the CO_2 emissions rate are higher than the applicable emissions standard.

Federally enforceable means all limitations and conditions that are enforceable by the Administrator, including the requirements of 40 CFR parts 60 and 61, requirements within any applicable State implementation plan, and any permit requirements established under 40 CFR 52.21 or under 40 CFR 51.18 and 51.24.

Fossil fuel means natural gas, petroleum, coal, and any form of solid, liquid, or gaseous fuel derived from such material for the purpose of creating useful heat.

Gaseous fuel means any fuel that is present as a gas at standard conditions and includes, but is not limited to, natural gas, refinery fuel gas, process gas, coke-oven gas, synthetic gas, and gasified coal.

Gross output means the gross electrical or mechanical output from the unit plus 75 percent of the useful thermal output measured relative to ISO conditions that is not used to generate additional electrical or mechanical output or to enhance the performance of

the unit (*i.e.,* steam delivered to an industrial process).

Integrated gasification combined cycle electric utility generating unit means an electric utility combined cycle gas turbine that is designed to burn fuels containing 50 percent (by heat input) or more solid-derived fuel not meeting the definition of natural gas. The Administrator may waive the 50 percent solid-derived fuel requirement during periods of the gasification system construction or repair. No solid fuel is directly burned in the unit during operation.

ISO conditions means 288 Kelvin (15° C), 60 percent relative humidity and 101.3 kilopascals pressure.

Natural gas means a fluid mixture of hydrocarbons (e.g., methane, ethane, or propane), composed of at least 70 percent methane by volume or that has a gross calorific value between 35 and 41 megajoules (MJ) per dry standard cubic meter (950 and 1,100 Btu per dry standard cubic foot), that maintains a gaseous state under ISO conditions. In addition, natural gas contains 20.0 grains or less of total sulfur per 100 standard cubic feet. Finally, natural gas does not include the following gaseous fuels: landfill gas, digester gas, refinery gas, sour gas, blast furnace gas, coal-derived gas, producer gas, coke oven gas, or any gaseous fuel produced in a process which might result in highly variable sulfur content or heating value.

Net-electric output means the gross electric sales to the utility power distribution system minus purchased power on a calendar year basis.

Non-continental area means the State of Hawaii, the Virgin Islands, Guam, American Samoa, the Commonwealth of Puerto Rico, or the Northern Mariana Islands.

Operating month means a calendar month during which any fuel is combusted in the electric utility generating unit at any time.

Out-of-control period means any period beginning with the quadrant corresponding to the completion of a daily calibration error, linearity check, or quality assurance audit that indicates that the instrument is not measuring and recording within the applicable performance specifications and ending with the quadrant corresponding to the completion of an additional calibration error, linearity check, or quality assurance audit following corrective action that demonstrates that the instrument is measuring and recording within the applicable performance specifications.

Potential electric output means 33 percent of the maximum design heat input capacity of the steam generating unit, divided by 3,413 Btu/KWh, divided by 1,000 kWh/MWh, and multiplied by 8,760 h/yr (e.g., a steam generating unit with a 100 MW (340 MMBtu/h) fossil-fuel heat input capacity would have a 289,080 MWh 12 month potential electrical output capacity).

Simple cycle combustion turbine means a stationary combustion turbine that which does not recover heat from the combustion turbine exhaust gases for purposes other than enhancing the performance of the combustion turbine itself.

Solid fuel means any fuel that has a definite shape and volume, has no tendency to flow or disperse under moderate stress, and is not liquid or gaseous at ISO conditions. This includes, but is not limited to, coal, biomass, and pulverized solid fuels.

Stationary combustion turbine means all equipment, including but not limited to the turbine, the fuel, air, lubrication and exhaust gas systems, control systems (except emissions control equipment), heat recovery system, fuel compressor, heater, and/or pump, post-combustion emission control technology, and any ancillary components and sub-components comprising any simple cycle stationary combustion turbine, any combined cycle combustion turbine, and any combined heat and power combustion turbine based system. Stationary means that the combustion turbine is not self propelled or intended to be propelled while performing its function. It may, however, be mounted on a vehicle for portability.

Steam electric generating unit means any furnace, boiler, or other device used for combusting fuel for the purpose of producing steam (including fossil fuel-fired steam generators associated with combined cycle gas turbines; nuclear steam generators are not included) plus any integrated device that provides electricity or useful thermal output to either the boiler or to power auxiliary equipment.

Useful thermal output means the thermal energy made available for use in any industrial or commercial process, or used in any heating or cooling application, i.e., total thermal energy made available for processes and applications other than electrical generation or to enhance the performance of the stationary combustion turbine. Thermal output for this subpart means the energy in recovered thermal output measured against the energy in the thermal output at ISO conditions.

TABLE 1 TO SUBPART TTTT OF PART 60—APPLICABILITY OF SUBPART A GENERAL PROVISIONS TO SUBPART TTTT

General provisions citation	Subject of citation	Applies to subpart TTTT	Explanation
§ 60.1	Applicability	Yes.	
§ 60.2	Definitions	Yes	Additional terms defined in § 60.5580.
§ 60.3	Units and Abbreviations	Yes.	
§ 60.4	Address	Yes.	
§ 60.5	Determination of construction or modification.	Yes.	
§ 60.6	Review of plans	Yes.	
§ 60.7	Notification and Recordkeeping	Yes	Except for the requirements to submit written excess emissions reports under § 60.7(c).
§ 60.8	Performance tests	No.	
§ 60.9	Availability of Information	Yes.	
§ 60.10	State authority	Yes.	
§ 60.11	Compliance with standards and maintenance requirements.	No.	
§ 60.12	Circumvention	Yes.	
§ 60.13	Monitoring requirements	Yes.	
§ 60.14	Modification	No.	
§ 60.15	Reconstruction	No.	

TABLE 1 TO SUBPART TTTT OF PART 60—APPLICABILITY OF SUBPART A GENERAL PROVISIONS TO SUBPART TTTT—Continued

General provisions citation	Subject of citation	Applies to subpart TTTT	Explanation
§ 60.16	Priority list	No.	
§ 60.17	Incorporations by reference	Yes.	
§ 60.18	General control device requirements	No.	
§ 60.19	General notification and reporting requirements.	Yes.	

[FR Doc. 2012–7820 Filed 4–12–12; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL REGISTER

Vol. 77 Friday,

No. 72 April 13, 2012

Part III

Department of Agriculture

Farm Service Agency

7 CFR Parts 761, 762, 765, et al.

Farm Loan Programs; Clarification and Improvement; Proposed Rule

DEPARTMENT OF AGRICULTURE

Farm Service Agency

7 CFR Parts 761, 762, 765, 766, and 772

RIN 0560–AI14

Farm Loan Programs; Clarification and Improvement

AGENCY: Farm Service Agency, USDA.

ACTION: Proposed rule.

SUMMARY: The Farm Service Agency (FSA) is proposing to amend the Farm Loan Programs (FLP) regulations for loan making and servicing, specifically those on real estate appraisals, lease, subordination and disposition of security, and Conservation Contract requirements. FSA is proposing the changes to streamline the loan making and servicing process and give the borrower greater flexibility while protecting the financial interests of the Government.

DATES: We will consider comments that we receive by June 12, 2012.

ADDRESSES: We invite you to submit written comments on this proposed rule. In your comment, include the Regulation Identifier Number (RIN) and volume, date, and page number of this issue of the **Federal Register**. You may submit comments by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Mail:* Director, Loan Servicing and Property Management Division, FLP, FSA, U.S. Department of Agriculture, 1400 Independence Avenue SW., Stop 0523, Washington, DC 20250–0523.

Comments will be available for inspection online at *www.regulations.gov* and at the mail address listed above between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. A copy of this proposed rule is also available through the FSA home page at *http://www.fsa.usda.gov/.*

FOR FURTHER INFORMATION CONTACT: Michael C. Cumpton, telephone: (202) 690–4014. Persons with disabilities or who require alternative means for communications should contact the USDA Target Center at (202) 720–2600 (voice and TDD).

SUPPLEMENTARY INFORMATION:

Background

This rule proposes changes concerning certain loan making and servicing provisions of FSA's direct and guaranteed loan programs. FSA direct loans and loan guarantees are a means of providing credit to farmers whose financial risk exceeds a level acceptable to commercial lenders. Through direct and guaranteed Farm Ownership (FO), Operating Loans (OL), and Conservation Loans (CL), as well as direct Emergency Loans (EM), FSA assists tens of thousands of family farmers each year in starting and maintaining profitable farm businesses. FSA loan funds may be used to pay normal operating or family living expenses; make capital improvements; refinance certain debts; and purchase farmland, livestock, equipment, feed and other materials essential to farm and ranch operations. FSA services extend beyond the typical loan by offering customers ongoing consultation, advice, and creative ways to make their farm successful. These programs are a temporary source of credit. Direct borrowers generally are required to graduate to other credit when their financial condition will allow them to do so.

FSA proposes to amend the FSA regulations for several FLP loan making and servicing issues, including real estate appraisals, leases, disposition, and release of security, and Conservation Contracts. FSA is proposing the changes to streamline the loan making and servicing process and give the borrower greater flexibility while protecting the financial interests of the Government.

First, FSA proposes changes for various issues related to appraisals. Section 307(d) of the Consolidated Farm and Rural Development Act (CONACT, 7 U.S.C. 1927(d)) requires that in order for FSA to have the rights to oil, gas, or other minerals as FO loan collateral, the products' value must have been considered in the appraised value of collateral securing the loan. The section only applies to FO loans made after the date of enactment (December 23, 1985), but FSA administratively extended this requirement to any type of FLP loan. FSA now proposes to modify its regulations to mirror the CONACT by applying the requirement only to FO loans.

FSA also proposes to clarify its regulation on appraisal appeal rights by specifying that the appeal of real estate appraisals used by FSA in non-primary loan servicing contexts is limited to the question of whether the appraisal is compliant with the Uniform Standards of Professional Appraisal Practice (USPAP), and that the appellant must submit a technical appraisal review of the appraisal that has been prepared by a State Certified General Appraiser. Appeals of real estate appraisals in the primary loan servicing context can include either a technical appraisal review prepared by a State Certified General Appraiser or an independent appraisal. For chattel appeal appraisals, FSA proposes to amend the regulation to reflect current policy that the borrower may obtain an independent appraisal to help determine the question of whether the appraisal in question is consistent with present market values of similar items in the area.

Furthermore, FSA proposes to not require a new appraisal for guaranteed loans if updates can be made to an existing appraisal, or if the guaranteed loan amount is less than $250,000.

Second, FSA proposes changes related to leases of borrowers' property for mineral production, communication towers, and wind and solar energy installations. The revisions and clarifications proposed by this rule would provide flexibility for these leases while also implementing standards for consistent treatment by FSA.

Third, for borrowers with chattel security, FSA proposes limiting the tracking of chattel proceeds to those that will be applied to FSA loans, instead of having detailed agreements on the use of all chattel proceeds. FSA also proposes giving the State Executive Director (SED) the authority to release security in certain situations if stringent security and graduation requirements are met.

Fourth, on Conservation Contracts, in which a borrower's debt is reduced for taking certain conservation actions, FSA proposes changes that will reduce the costs to FSA and the time needed to administer the program while still ensuring the conservation intent is met.

These changes are discussed in more detail below.

Appraisals

Section 307(d) of the CONACT (7 U.S.C. 1927(d)), requires that for farm ownership loans made after December 23, 1985 (the date of enactment), the value of oil, gas, or other minerals must be included in the appraised value of the security collateral in order for FSA to have a valid security interest in those products. FSA administratively extended this requirement in the regulations to require that real estate appraisals used by FSA for any type of FLP loan include the value of any oil, gas, or other minerals. This has resulted in the following issues:

- In loan making, FSA's general policy is to obtain and pay for an appraisal. This may occur even when a third party appraisal, completed by a qualified appraiser, may already be available. Not only does this

substantially increase the cost to FSA, but it can also delay application processing and increase the applicant's wait for loan funds.

• In loan servicing, this mineral appraisal requirement puts FSA security at risk on non-FO loans because not stating the value of minerals in an appraisal, usually because they have no known value at the time of the appraisal, could prevent FSA from getting the mineral security interest in special loan servicing, where the best lien obtainable is taken on the borrower's security, or in a voluntary conveyance or foreclosure. This could increase FSA program losses.

This rule therefore proposes to remove this mineral appraisal requirement in 7 CFR 761.7, 765.252, and 765.351 for all future FLP loans except direct FO loans, where it is required by law. This change would not be retroactive. For all non-FO loans made after the effective date of this rule, FSA will have a security interest in oil, gas, or other minerals on or under the property regardless of whether the value of those products were included in the appraisal value of the property. This security interest is reflected in the FSA mortgage forms.

Appeals of Appraisals

In making direct loans, FSA obtains real estate appraisals to ensure adequate security for the loan. If FSA makes an adverse decision that involves the appraisal, applicants generally have the right to appeal the decision and the appraisal under 7 CFR part 11. When an applicant appeals the decision regarding the appraised value, it has been FSA's policy to limit the appeal to the question of whether the appraisal complied with USPAP, and the borrower or applicant who filed the appeal may obtain a technical appraisal review prepared by a State Certified General Appraiser to help determine USPAP compliance. FSA proposes to amend 7 CFR 761.7 to reflect this policy. The change is proposed because submission of an independent appraisal by an applicant or borrower is not useful as two appraisals that both comply with USPAP can still differ, but there is no basis for the appeal hearing officer to choose one over the other, or some other value. The proposed change will allow the borrower or applicant to submit a technical appraisal review prepared by a State Certified General Appraiser to determine if FSA's appraisal complies with USPAP. The proposed change would also require that the technical appraisal review be prepared in accordance with USPAP, and paid for by the borrower or applicant.

For appeals of real estate appraisals in primary loan servicing cases, FSA proposes to amend 7 CFR 766.115 to clarify that the technical appraisal reviews must be prepared by a State Certified General Appraiser. The borrower in a primary loan servicing case may still obtain an independent appraisal as provided for by 7 CFR 766.115(a)(2) and CONACT section 353(j) (7 U.S.C. 2001).

For appeals of chattel appraisals, FSA's current policy is to limit the question to whether FSA's appraisal is consistent with present market value of similar items in the area, and to allow the applicant or borrower to submit an independent appraisal review to help determine that question. FSA proposes amending 7 CFR 761.7 to reflect this policy.

FSA proposes to remove 7 CFR 761.7(d) regarding FSA's internal administrative appraisal and technical reviews since the provisions are for internal procedures and therefore not required to be in the *Code of Federal Regulations.*

Appraisal Requirements for Guaranteed Loans

FSA currently requires an appraisal of the security for all guaranteed loans in excess of $50,000 in accordance with 7 CFR 762.127. The $50,000 threshold has not changed since the start of the program in the early 1980's. FSA proposes to increase the minimum guaranteed loan amount for which a real estate appraisal will be required.

OMB Circular A–129 states, ''Agencies should ensure that a State licensed or certified appraiser prepares an appraisal for all credit transactions over $100,000 ($250,000 for business loans).'' The lending industry's regulators, such as the Federal Deposit Insurance Corporation and the Farm Credit Administration, currently allow $250,000 as their threshold for business type (agricultural purpose) loans. Therefore, FSA proposes to increase the minimum guaranteed loan amount required for a real estate appraisal from $50,000 to the minimum level of $250,000. There is no comparable proposal to raise the limit for direct FSA loans because direct loans typically display more serious financial stress, pose significantly more risk of loss to FSA, and warrant stricter safeguards.

For loans of $250,000 or less, lenders may document value in the same manner as for their unguaranteed loans, for example statement of value, tax assessment, automated valuation model, and so on. If an appraisal is completed voluntarily for loans of $250,000 or less, it is not required to be USPAP compliant. The security for the loan must still meet the requirements specified in 7 CFR 762.126 to ensure that proper and adequate security is obtained to protect the interests of the lender and FSA. This change will merely allow lenders to follow industry standards to document collateral value.

Amending the appraisal regulations to increase the minimum loan amount to $250,000 will benefit lenders, guaranteed loan applicants, and FSA. Some of the applicants are small or family farms for whom appraisal fees can be a significant burden. Due to the relatively small size of these loans, FSA can expeditiously provide financial assistance to these borrowers. Appraisal fees will be reduced, if not eliminated, as there will be no cost for an appraisal on loans under $250,000.

Application processing times also are expected to be reduced because of the proposed change, due to the fact that the appraisal will not need to be conducted under the new threshold, and this will also help make FSA's guaranteed loan program more attractive to lenders and their applicants. Faster access to capital is expected to promote operation viability and a higher probability of loan repayment.

Guaranteed loans greater than $250,000 still require a current appraisal completed by a State Certified General Appraiser in accordance with USPAP in the previous 12 months. As an alternative, FSA also proposes to revise 7 CFR 762.127 to allow FSA to waive the requirement for loans greater than $250,000 if there is an existing appraisal that is more than 12 months old and:

• Overall market conditions have remained stable or improved;

• The condition of the property in question is comparable to the time of the appraisal; and

• The value of the property has remained the same or increased.

This change would relieve the applicant of the cost of a new appraisal. Further, with stable or improving market conditions, there would be no additional risk to FSA when collateralizing a loan with security that has not had an updated appraisal. No appeal will be available on FSA's decision to waive this regulatory requirement.

The proposed increase from $50,000 to $250,000 would apply to real estate appraisals, not chattel appraisals. FSA's policy to not require chattel appraisals for loans of $50,000 or less where a strong equity position exists would remain.

FSA also proposes clarifying in 7 CFR 762.127 that while a formal appraisal is not necessary for chattel or real estate that will serve as additional security, an estimated value is still required.

Lastly, the terms ''complete'' and ''limited appraisal'' have been determined to be obsolete in the industry. Therefore, FSA proposes to remove the references of ''complete'' and ''limited appraisal'' from the regulations in 7 CFR part 762.

Leases

With the increased emphasis on wireless communication, finding traditional energy sources, and developing alternative energy sources, FSA is receiving more requests to allow borrowers to lease portions of their farm for communication towers, wind energy installations, and mineral exploration. While usually beneficial to landowners and their lenders, these leases may create a financial burden to the borrower as a result of unanticipated costs, such as removal of the equipment or mitigation of damages. The installations can also make the land difficult or impossible to farm, and FSA farm loan borrowers are required by law to operate, not lease, the farmland they own and use as security.

Such leases, however, can provide flexibility for farm loan borrowers in the form of increased cash flows, reduced debt load, and quicker debt reduction that can lead to graduation from FSA credit to commercial credit. Each of these situations is unique, and legal counsel is often required. Therefore, instructions to cover every circumstance cannot be issued in this rule; however, FSA proposes certain revisions and clarifications to 7 CFR 765.205(b), 765.252(a), and 765.252(b) to allow consistent treatment of such lease requests. For example, the proposed change provides that a lease must not adversely affect FSA's security interest or the successful operation of the farm, and requires FSA review of contracts or agreements related to the lease.

FSA also proposes changes in 7 CFR 765.252 to allow these nonfarm type leases be made for any term, instead of the 3- to 5-year limit in the present regulations. FSA proposes removing the time limit in order to allow qualified nonfarm leases to continue for longer periods since these leases provide flexibility and cash flow to the borrower, but do not interfere with the successful operation of the farm or adversely affect the Government's interest. These standards are central to FSA's mission as FSA is required to supply agricultural financing to farm operators who cannot obtain funds elsewhere until they are in a position to move to commercial credit.

Subordinations

In a subordination, a lender will give another entity, often another lender, its superior lien position. FSA often executes subordinations for its direct loans so another lender can provide financing to an FSA borrower. This subordination of the lien on FSA security allows the borrower to produce a crop, build a house on the farm, or do other things that are beneficial to the family farm. These FSA subordinations are almost always to another lender that is making a loan to the borrower, and the present FSA regulations address this circumstance. However, FSA proposes expanding the definition in 7 CFR 761.2(b) to allow for leases to companies who want to use the land for purposes such as alternative energy.

Subordinations of real estate to a lessee must meet the following conditions (all of which also apply to subordinations of real estate to creditors):

- The borrower is not in default or will not be in default on FLP loans by the time the subordination closing is complete;
- The borrower can demonstrate, through a current farm operating plan, the ability to repay all debt payments scheduled, and to be scheduled, during the production cycle;
- Except for CL, the borrower is unable to partially or fully graduate;
- The borrower must not be ineligible as a result of a conviction for controlled substances according to 7 CFR part 718;
- The borrower must not be ineligible due to disqualification resulting from Federal crop insurance violation according to 7 CFR part 718;
- The borrower will not use loan funds in a way that will contribute to erosion of highly erodible land or conversion of wetlands as described in subpart G of 7 CFR part 1940;
- Any planned development of real estate security will be performed as directed by the lessor or creditor, as approved by FSA, and will comply with the terms and conditions of 7 CFR 761.10;
- Subordinations of shared appreciation agreement (SAA) mortgages may only be approved when there is no increase in the debt that is prior to the SAA debt; and
- FSA may subordinate non-program security only when it is also security for a program loan with the same borrower.

FSA proposes amending 7 CFR 765.205(b) to extend subordination authority to include leases, as the contracts presented to borrowers by companies who want to use the land for alternative energy or communication towers often contain subordination language in addition to the terms of the lease.

FSA also proposes amending 7 CFR 765.205(b)(1) to allow a subordination of real estate security to creditors if the loan will be used to refinance a loan originally made for an authorized loan purpose by FSA or another creditor. This will allow FSA to help an existing borrower refinance a farm loan with another loan more beneficial to the operation. This type of financing is often used when a lower interest rate becomes available.

Disposition of Chattel Proceeds

Section 335(f)(6) of the CONACT (7 U.S.C. 1985(f)(6)) allows FSA to require borrowers to plan for, or report on, how proceeds from the sale of collateral property will be used. Currently, FSA requires borrowers with chattel security to sign detailed annual agreements on the use of all chattel proceeds, even beyond those required for payment of FLP loans, and to immediately report to FSA all proceeds from the sale of chattel security. FSA proposes to limit these agreements to proceeds from the disposition of normal income security and will be applied to the FSA indebtedness in order to save time for both the borrower and FSA. This change would mean that for proceeds that will not be applied to FSA loans, borrowers who live some distance from the nearest FSA office could save time and expense required for ''in person'' reporting and submission of chattel proceeds. FSA personnel will also be free to perform other duties instead of tracking proceeds used to pay other creditors. The borrower will still be informed of their rights and responsibilities regarding the security. FSA will continue to comply with the statutory release requirements in Section 335(f) of the CONACT, including release of normal income security prior to acceleration in an amount sufficient to pay for essential household and farm operating expenses, while not reducing the oversight of chattel security. FSA proposes to change 7 CFR 765.302 to track only normal income security proceeds that are planned for release or applied to FSA FLP payments instead of attempting real time monitoring of all proceeds. This will be accomplished with the use of an agreement for each production cycle (with revisions as necessary) on which the borrower and FSA agree to the use of proceeds that will be used to make payments. With the proposed change, FSA will use an internal form that records the proceeds of both normal income and basic security as they are

submitted. To reflect this change to the regulation, FSA proposes to conform the current definition of the agreement for the use of proceeds in 7 CFR 761.2(b).

FSA further proposes removing 7 CFR 765.302(b), which provides that an agreement for the use of proceeds is in effect until the proper disposition of all listed chattel security has been accomplished or a new agreement is executed. The duration of the agreement is specified in the agreement itself and 7 CFR 765.302(b) is unnecessary.

FSA also proposes to remove 7 CFR 765.302(h), which requires the borrower to maintain documentation of all dispositions of chattel proceeds, because it goes beyond the scope of the new proposed definition of the agreement, which is limited to proceeds that will be applied to loan payments. The recordkeeping requirement of all chattel proceeds, regardless of whether applied to loan payments, is still important for annual planning purposes, however, so FSA proposes to incorporate the recordkeeping requirement into 7 CFR 765.301(a).

Release

Due the changing needs of many in the rural community, FSA is proposing to amend 7 CFR 765.305 and 765.351(f) to expand releases of its liens. The proposed change would allow FSA to release some security without compensation for borrowers who have not had primary loan servicing within the last 3 years if the loan security margin would be 150 percent or more after the release, and the borrower is:

- Graduating on all chattel or all real estate debt (that is, partial graduation);
- Using the security to obtain other credit; or
- Transferring a small tract of real estate to a person related by blood or marriage.

Loans of borrowers in these circumstances have a low risk of loss to the Government, and the partial release of security without compensation would be acceptable when weighed against the benefits that would accrue to the borrower. In addition, supporting this change is the fact that at the end of fiscal year 2010, the dollar delinquency on the FLP direct loan program as a whole was 5.9 percent and the loss rate was 1.2 percent. These are remarkably positive statistics in light of FSA's mission to serve those who cannot get credit elsewhere. This success is, of course, partially due to the nature and resilience of farmers, but beyond that, there have been several policies that have brought the delinquencies and losses down:

- The extensive servicing options originally made available through the Agricultural Credit Act of 1987;
- The Treasury Offset Program (TOP) brought about by the Debt Collection and Improvement Act of 1996 and the continuation of administrative offsets;
- Continued financial support by the various FSA farm programs (commodity and price support);
- Stable FLP credit policies; and
- Continued emphasis on looking at cash flow and not just collateral when making credit decisions.

As the average age for farmers increases and their numbers diminish, FSA is encountering instances where farmers with loans that have security margins of 150 percent or more are requesting releases of security for partial graduations (when a borrower obtains commercial credit on all real estate or all chattel loans), to obtain financing for non-farm businesses, to facilitate gradual generational transfers of farm property to family members, or to manage future taxes by transferring assets to family members. These proposed changes may allow successful farmers to expand into businesses such as selling seed and feed retail, trucking or welding, that while not eligible for FSA financing, still contribute to their income and provide services to the local community. Further, the proposed changes allow borrowers to transfer small tracts to family members related by blood or marriage to start a business, or build a house, or any number of things that could spur economic activity in the area. Although these borrowers have successful operations and their loans are better secured than most direct borrowers, graduation requirements will still ensure that they are unable to move entirely to commercial credit before FSA releases security. This policy will help support the rural population while still protecting the Government.

Conservation Contracts

The Conservation Contract Program provides debt cancellation for FLP borrowers in exchange for them taking land out of production for conservation purposes. The proposed changes noted below will reduce the costs to FSA and the burden of administering the Conservation Contract Program while still ensuring the conservation objective is met by clarifying and revising the Conservation Contract Program regulations in 7 CFR 766.110.

There are many instances where land proposed for a Conservation Contract is encumbered under another conservation program for which the borrower receives compensation. If the conservation program, whether administered by Federal, State, or local government, compensates the borrower for similar conservation, wildlife or recreation benefits on the same land, FSA proposes that the land generally will not be eligible for a Conservation Contract. The borrower, who has already received payment for the conservation benefit, should not receive additional payments on land in the form of a debt cancellation with a Conservation Contract. This change would, thus, eliminate inadvertent duplicative payments, sometimes referred to as ''double-dipping.'' However, cost-share payments from other sources for practices that improve the property as opposed to solely conserving the property, such as pesticide application, diking, or noxious weed removal, are not considered a duplication of benefits as long as such practices are consistent with with the Conservation Contract management plan. Borrowers would be required to certify on the Conservation Contract as to any participation in other conservation programs for the Conservation Contract land. Any portion of the land that was already encumbered by another conservation program would be ineligible for a Conservation Contract.

FSA also proposes to clarify in 7 CFR 766.110(m) that FSA would not grant subordinations of the Conservation Contract. This will ensure that the contract is not lost through foreclosure of a lien by a holder who obtains a superior lien through a subordination.

FSA proposes to require in 7 CFR 766.110(c) a legal right-of-way or other legal, permanent access to the Conservation Contract property for the life of the Conservation Contract. The current regulation is silent on this issue. On Conservation Contract properties that are land-locked with no legal right of access, FSA officials or the management authority cannot verify compliance with the Conservation Contract. The Conservation Contract form FSA–2535 includes the following statement in paragraph 11.B: ''Grantee has a right of reasonable ingress and egress to the contract area over the Grantor's property, whether or not the property is adjacent to the contract area, for the exercise of any of the rights of Grantee under this contract,'' but this does not give FSA or the management authority the legal right to access the property through a third party's property. In addition, if the land is transferred to a subsequent landowner, it is possible that access may be refused by the subsequent landowner despite the contract's language. A legal right-of-way that is recorded, in addition to the

Conservation Contract, will assure that FSA or the management authority will have access to inspect the property for the life of the Conservation Contract.

FSA is proposing to change 7 CFR 766.110 to require a minimum parcel size of 10 contiguous acres to better manage Conservation Contracts. Presently, there are numerous small parcels with Conservation Contracts that are not suitable for the purposes of the program as they are too small for conservation, recreation, or wildlife purposes. In addition, they are difficult to identify, access, and manage. Establishing a minimum size as a general requirement has minimal adverse effect on the borrowers or FSA, and FSA or the management authority will be better able to inspect the property for contract compliance, to ensure protection of the natural resource and recreational areas.

Further, FSA proposes to require subordinations from prior lienholders before approval of the Conservation Contract. Under the existing regulations, if a borrower with a Conservation Contract defaults on a debt with another lender that is secured by the same land as that subject to the Conservation Contract, that creditor could foreclose on the property and effectively remove the Conservation Contract. The intent of the program is to establish long-term conservation, wildlife, or recreation benefits. Requiring a subordination from a prior lienholder would ensure that the Conservation Contract will stay with the land for the duration of the contract.

FSA is proposing new damages for a breach of contract in this rule. Currently a grantor who breaches the Conservation Contract by using the land in a manner not permitted under the contract, such as building an unauthorized structure or cutting down timber, must either restore damaged or altered land, or repay the amount of the debt cancellation. FSA has determined that this does not provide sufficient incentive to ensure the grantor's compliance with the terms of the Conservation Contract as the original debt is reinstated, but the public still loses the benefit of the conservation of the land. The purpose of the Conservation Contract Program is to place at-risk land under a conservation contract for a set period of time, protect the land, and enhance its conservation, wildlife or recreation value. The consequences of a breach of the Conservation Contract must discourage violations and abuse of the program. Therefore, FSA proposes to require any violator to restore damaged or altered areas or, if the land is not restored within 90 days, pay FSA the amount of the debt previously cancelled, plus interest to the date of payment, plus any actual expenses incurred by FSA in enforcing the Conservation Contract, plus a penalty in the amount of 25 percent of the amount of the debt cancelled. Such interest will accrue either at the note rate for a grantor indebted to FSA or at the non-program interest rate for a grantor who is no longer indebted to FSA or a successor-in-interest. Also, grantors who still have an FSA loan and breach a Conservation Contract will be considered to be in non-monetary default on their loan if the violation is not timely cured, and FSA will take collection actions accordingly. These changes are expected to reduce the number of Conservation Contract breaches and help to ensure that the Conservation Contract Program accomplishes its important purpose of protecting the land and enhancing its conservation, wildlife, or recreation value. Conservation Contracts executed prior to the implementation of this rule will be enforced according to the terms and regulations in force at the time of their execution.

Lastly, FSA proposes to clarify that uplands eligible for Conservation Contracts include buffer areas necessary not only for the protection of proposed Conservation Contract areas, but also for protection of the area enrolled in other conservation programs.

Technical Amendments

FSA proposes to remove § 761.103(b)(8) requiring loan evaluation as part of the farm assessment. The farm assessment helps determine the appropriate level of FSA oversight, credit counseling, and training needs of the applicant. A loan evaluation is also completed by FSA when a loan request is processed and is intended to be a narrative to address eligibility, collateral, capacity, capital, and loan conditions of the specific loan. Therefore, it is duplicative to include a loan evaluation as part of the farm assessment. A loan evaluation also should not be a burden on the applicant. Therefore, FSA proposes to remove the requirement for a loan evaluation to be part of the initial farm assessment.

Appendix A to Subpart C of part 766, Notice of Availability of Loan Servicing to Borrowers who are Current, Financially Distressed, or Less Than 90 Days Past Due, does not match the requirement established in § 766.104(a)(5). The paragraph requires borrowers who are financially distressed or current to pay a portion of the interest due on their loans to qualify for primary loan servicing. Appendix A section (a)(4), paragraph entitled ''payment of interest,'' however, implies that the borrower will always have to pay a portion of the interest that has accrued on FLP loans when a restructuring is closed. FSA proposes to revise Appendix A to remove this inconsistency and reflect that the requirement to pay some interest on the account only applies to borrowers who are not delinquent at closing.

Previously, definitions applicable to 7 CFR parts 761 through 767 were moved to 7 CFR 761.2(b); however, several conforming changes to 7 CFR part 762 were not made at that time. FSA proposes conforming changes to 7 CFR part 762 to properly cite the location of the definitions and remove ''or ranching'' from 7 CFR 762.146(b)(1). Lastly, this rule proposes to remove obsolete CFR references for FLP and to replace them with current references that were missed when FSA published the Regulatory Streamlining regulation on November 8, 2007 (72 FR 63242–63361).

Executive Orders 12866 and 13563

Executive Order 12866, ''Regulatory Planning and Review,'' and Executive Order 13563, ''Improving Regulation and Regulatory Review,'' 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 emphasized the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility.

The Office of Management and Budget (OMB) designated this rule as not significant under Executive Order 12866 and, therefore, OMB was not required to review this proposed rule.

Clarity of the Regulation

Executive Order 12866, as supplemented by Executive Order 13563, requires each agency to write all rules in plain language. In addition to your substantive comments on these proposed rules, we invite your comments on how to make them easier to understand. For example:

- Are the requirements in the rule clearly stated? Are the scope and intent of the rule clear?
- Does the rule contain technical language or jargon that is not clear?
- Is the material logically organized?
- Would changing the grouping or order of sections or adding headings make the rule easier to understand?
- Could we improve clarity by adding tables, lists, or diagrams?

• Would more, but shorter, sections be better? Are there specific sections that are too long or confusing?

• What else could we do to make the rule easier to understand?

Regulatory Flexibility Act

In accordance with the Regulatory Flexibility Act (5 U.S.C. 601), FSA is certifying that there would not be a significant economic impact on a substantial number of small entities. All FSA direct loan borrowers and all farm entities affected by this rule are small businesses according to the North American Industry Classification System and the U.S. Small Business Administration. There is no diversity in size of the entities affected by this rule, and the costs to comply with it are the same for all entities.

In this rule, FSA is proposing to revise regulations that affect both loan making and loan servicing. FSA does not expect these changes to impose any additional cost to the borrowers, and in fact, FSA expects some Government, borrower, and lender costs could be saved because:

• Third party appraisals could be used in some cases in which FSA currently has to pay for new appraisals that include the mineral's value in real estate appraisals.

• A waiver for some guaranteed loan appraisals will save lenders and guaranteed borrowers the expense of ordering new appraisals when it is not necessary to protect Government interests.

• FSA will allow the release of security for other credit or generational transfers when FSA is very well secured.

• Planning for the disposition of chattel proceeds will be simplified, while FSA still tracks all proceeds to be applied on FLP loans.

• Elimination of double-dipping and strengthening the oversight of the real estate entered into the Conservation Contract program will allow the Government to fairly compensate the owners of the valuable natural resources without the risk of losing usage restrictions which have been paid for by the taxpayers.

Therefore, FSA certifies that this rule will not have a significant economic impact on a substantial number of small entities.

Environmental Review

The environmental impacts of this proposed rule have been considered in a manner consistent with the provisions of the National Environmental Policy Act (NEPA, 42 U.S.C. 4321–4347), the regulations of the Council on Environmental Quality (40 CFR parts 1500–1508), and the FSA regulations for compliance with NEPA (7 CFR part 799 and 7 CFR part 1940, subpart G). FSA concluded that the changes to streamline the servicing process and give the borrower greater flexibility explained in this proposed rule are administrative in nature and will not have a significant impact on the quality of the human environment either individually or cumulatively. The environmental responsibilities for each prospective applicant will not change from the current process followed for all Farm Loan Program actions (7 CFR 1940.309). Therefore FSA will not prepare an environmental impact statement on this proposed rule.

Executive Order 12372

Executive Order 12372, ''Intergovernmental Review of Federal Programs,'' requires consultation with State and local officials. The objectives of the Executive Order are to foster an intergovernmental partnership and a strengthened Federalism, by relying on State and local processes for State and local government coordination and review of proposed Federal Financial assistance and direct Federal development. For reasons set forth in the Notice to 7 CFR part 3015, subpart V (48 FR 29115, June 24, 1983), the programs and activities within this rule are excluded from the scope of Executive Order 12372.

Executive Order 12988

This proposed rule has been reviewed in accordance with Executive Order 12988, ''Civil Justice Reform.'' As proposed, this rule preempts State and local laws and regulations that are in conflict with this rule. Before any judicial action may be brought concerning the provisions of this rule the administrative appeal provisions of 7 CFR parts 11 and 780 must be exhausted.

Executive Order 13132

This rule has been reviewed under Executive Order 13132, ''Federalism.'' The policies contained in this rule do not have any substantial direct effect on States, the relationship between the Federal government and the States, or the distribution of power and responsibilities among the various levels of government. Nor does this proposed rule impose substantial direct compliance costs on State and local governments. Therefore, consultation with the States is not required.

Executive Order 13175

This rule has been reviewed for compliance with Executive Order 13175, ''Consultation and Coordination with Indian Tribal Governments.'' The Executive Order imposes requirements on the development of regulatory policies that have Tribal implications or preempt Tribal laws. The policies contained in this rule do not impose substantial unreimbursed direct compliance costs on Indian Tribal governments or have Tribal implications that preempt Tribal law. USDA will undertake, within 6 months after this rule becomes effective, a series of regulation Tribal consultation sessions to gain input by Tribal officials concerning the impact of this rule on Tribal governments, communities, and individuals. These sessions will establish a baseline of consultation for future actions, should any become necessary, regarding this rule. Reports from these sessions for consultation will be made part of the USDA annual reporting on Tribal Consultation and Collaboration. USDA will respond in a timely and meaningful manner to all Tribal government requests for consultation concerning this rule and will provide additional venues, such as Webinars and teleconferences, to periodically host collaborative conversations with Tribal leaders and their representatives concerning ways to improve this rule in Indian country.

Unfunded Mandates

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA, Pub. L. 1044) requires Federal agencies to assess the effects of their regulatory actions on State, local, or Tribal governments or the private sector. Agencies generally must prepare a written statement, including a cost benefit analysis, for proposed and final rules with Federal mandates that may result in expenditures of $100 million or more in any 1 year for State, local, or Tribal governments, in the aggregate, or to the private sector. UMRA generally requires agencies to consider alternatives and adopt the more cost effective or least burdensome alternative that achieves the objectives of the rule. This rule contains no Federal mandates under the regulatory provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA, Pub. L. 104–4) for State, local, or Tribal governments, or private sector. Therefore, this rule is not subject to the requirements of sections 202 and 205 of UMRA.

Paperwork Reduction Act

The proposed amendments are either revisions of internal operations or modifications to existing responses that will have no net effect on paperwork burden. For example, the proposed new requirement for documentation to permit the use of guaranteed loan appraisals over 12 months old in certain situations is offset by waiving the requirement for a new appraisal in every situation where the current appraisal is more than 12 months old.

The borrower certification regarding double dipping in the Conservation Contract is a statement on an existing form that does not add burden.

Therefore, the amendments proposed for 7 CFR parts 761, 762, 765, 766, and 772 require no changes or new collection to the currently approved information collections by OMB under the control numbers of 0560–0155, 0560–0233, 0560–0236, 0560–0237, 0560–0238 and 0560–0230.

E-Government Act Compliance

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

Federal Assistance Programs

The title and number of the Federal assistance programs, as found in the Catalog of Federal Domestic Assistance, to which this proposed rule would apply are:

10.099 Conservation Loans
10.404 Emergency Loans
10.406 Farm Operating Loans
10.407 Farm Ownership Loans

List of Subjects

7 CFR Part 761

Accounting, Loan programs—agriculture, Rural areas.

7 CFR Part 762

Agriculture, Banks, banking, Credit, Loan programs—agriculture.

7 CFR Part 765

Agriculture, Agricultural commodities, Credit, Livestock, Loan programs—agriculture.

7 CFR Part 766

Agriculture, Agricultural commodities, Credit, Livestock, Loan programs—agriculture.

7 CFR Part 772

Agriculture, Credit, Loan programs—agriculture, Rural areas.

For the reasons discussed above, FSA proposes to amend 7 CFR chapter VII as follows:

PART 761—FARM LOAN PROGRAM; GENERAL PROGRAM ADMINISTRATION

1. The authority citation for part 761 continues to read as follows:

Authority: 5 U.S.C. 301 and 7 U.S.C. 1989.

Subpart A—General Provisions

2. In § 761.2(b) revise the definitions of ''Agreement for the use of proceeds'' and ''Subordination'' to read as follows:

§ 761.2 Abbreviations and definitions.

* * * * *

(b) * * *

Agreement for the use of proceeds is an agreement between the borrower and the Agency for each production cycle that reflects the proceeds from the sale of normal income security that will be used to pay scheduled FLP loan installments, including any past due installments, during the production cycle covered by the agreement.

* * * * *

Subordination is a creditor's temporary relinquishment of all or a portion of its lien priority to another party providing the other party with a priority lien on the collateral.

* * * * *

3. Amend § 761.7 as follows:

a. Revise paragraph (b)(1);

b. Add paragraph (b)(3); and

c. Revise paragraph (d).

The revisions and addition read as follows:

§ 761.7 Appraisals.

* * * * *

(b) * * *

(1) Real estate appraisals, technical appraisal reviews and their respective forms must comply with the standards contained in USPAP, as well as applicable Agency regulations and procedures for the specific FLP activity involved. Applicable appraisal procedures and regulations are available for review in each Agency State Office.

* * * * *

(3) For direct FO loans secured by real estate after December 23, 1985, the appraisal must include the value of oil, gas, and other minerals even if the minerals have no known or nominal value.

* * * * *

(d) *Appraisal appeals.* Challenges to an appraisal used by the Agency are limited as follows:

(1) When an applicant or borrower challenges a real estate appraisal used by the Agency for any loan making or loan servicing decision, except primary loan servicing decisions as specified in § 766.115 of this chapter, the issue for review is limited to whether the appraisal used by the Agency complies with USPAP. The applicant or borrower must submit a technical appraisal review prepared by a State Certified General Appraiser that will be used to determine whether the Agency's appraisal complies with USPAP. The applicant or borrower is responsible for obtaining and paying for the technical appraisal review.

(2) When an applicant or borrower challenges a chattel appraisal used by the Agency for any loan making or loan servicing decision, except for primary loan servicing decisions as specified in § 766.115 of this chapter, the issue for review is limited to whether the appraisal used by the Agency is consistent with present market values of similar items in the area. The applicant or borrower must submit an independent appraisal that will be used to determine whether the appraisal is consistent with present market values of similar items in the area. The applicant or borrower is responsible for obtaining and paying for the independent appraisal.

Subpart C—Supervised Credit

§ 761.103 [Amended]

4. Amend § 761.103 by removing paragraph (b)(8) and redesignating paragraphs (b)(9), (10), and (11) as paragraphs (b)(8), (9), and (10), respectively.

PART 762—GUARANTEED FARM LOANS

5. The authority citation for part 762 continues to read as follows:

Authority: 5 U.S.C. 301 and 7 U.S.C. 1989.

§ 762.120 [Amended]

6. Amend § 762.120 as follows:

a. In paragraph (a)(2) introductory text, remove the phrase ''and ranch'';

b. In paragraphs (k)(3) and (l)(2), remove the phrase ''or ranching''; and

c. In paragraph (m), remove the phrase ''or ranchers''.

§ 762.121 [Amended]

7. In § 762.121(a)(1)(v), remove the words ''and ranch''.

8. Revise § 762.127 to read as follows:

§ 762.127 Appraisal requirements.

(a) *General.* The general requirements for an appraisal are:

(1) *Value of collateral.* The lender is responsible for ensuring that the value of chattel and real estate pledged as

collateral is sufficient to fully secure the guaranteed loan.

(2) *Additional security.* The lender is not required to complete an appraisal of chattel or real estate that will serve as additional security, but the lender must provide an estimated value.

(3) *Appraisal cost.* Except for authorized liquidation expenses, the lender is responsible for all appraisal costs, which may be passed on to the borrower, or transferee in the case of a transfer and assumption.

(b) *Chattel security.* The requirements for chattel appraisals are:

(1) *Need for chattel appraisal.* A current appraisal (not more than 12 months old) of primary chattel security is required on all loans except loans or lines of credit for annual production purposes secured by crops, which require an appraisal only when the guarantee is requested late in the current production year and actual yields can be reasonably estimated. An appraisal is not required for loans of $50,000 or less if a strong equity position exists.

(2) *Basis of value.* The appraised value of chattel property will be based on public sales of the same or similar property in the market area. In the absence of such public sales, reputable publications reflecting market values may be used.

(3) *Appraisal form.* Appraisal reports may be on the Agency's appraisal of chattel property form or on any other appraisal form containing at least the same information.

(4) *Experience and training.* Chattel appraisals will be performed by appraisers who possess sufficient experience or training to establish market (not retail) values as determined by the Agency.

(c) *Real estate security.* The requirements for real estate appraisals are:

(1) *Loans of $250,000 or less.* The lender must document the value of the real estate in the same manner as their non-guaranteed loans. If an appraisal is used, it does not have to be USPAP compliant.

(2) *Loans greater than $250,000.* The lender must document the value of real estate using a current appraisal (not more than 12 months old) completed by a State Certified General Appraiser. The Agency may allow an appraisal more than 12 months old to be used only if documentation provided by the lender reflects each of the following:

(i) Market conditions have remained stable or improved based on sales of similar properties,

(ii) The property in question remains in the same or better condition, and

(iii) The value of the property has remained the same or increased.

(3) Agency determinations under paragraph (c)(2) of this section to permit appraisals more than 12 months old are not appealable.

§ 762.145 [Amended]

9. In § 762.145(b)(4) and (e)(1), remove the citation ''§ 762.102(b)'' and add in its place the citation ''§ 761.2(b) of this chapter''.

§ 762.146 [Amended]

10. In § 762.146(b)(6) and (e)(1), remove the citation ''§ 762.102(b)'' and add in its place the citation ''§ 761.2(b) of this chapter'' and in paragraph (b)(1) by removing the text ''or ranching''.

§ 762.149 [Amended]

11. In § 762.149(b)(1)(iii) introductory text, remove the citation ''§ 762.102'' and add in its place the citation ''§ 761.2(b) of this chapter''.

§ 762.150 [Amended]

12. In § 762.150(b)(5) and (d)(2), remove the text ''and ranchers'' and remove the citation ''§ 762.102'' and add in its place the citation ''§ 761.2(b) of this chapter''.

PART 765—DIRECT LOAN SERVICING—REGULAR

13. The authority citation for part 765 continues to read as follows:

Authority: 5 U.S.C. 301 and 7 U.S.C. 1989.

Subpart E—Protecting the Agency's Security Interest

§ 765.205 Subordination of liens.

14. Revise § 765.205(b), (c) introductory text, and (c)(1) to read as follows:

* * * * *

(b) *Subordination of real estate security.* (1) If a lender requires that the Agency subordinate its lien position on the borrower's existing property in order for the borrower to acquire new property, the Agency will obtain a valid mortgage and the required lien position on the new property. The Agency will require title clearance and loan closing for the property in accordance with § 764.402 of this chapter.

(2) If the borrower is an entity and the Agency has taken real estate as additional security on property owned by a member, a subordination for any authorized loan purpose may be approved when it meets the requirements in paragraph (b)(3) of this section and it is needed for the entity member to finance a separate farming operation. The subordination must not cause the unpaid principal and interest on the FLP loans to exceed the value of loan security or otherwise adversely affect the security.

(3) The Agency will approve a request for subordination of real estate to a creditor if:

(i) The loan will be used for an authorized loan purpose or is to refinance a loan made for an authorized loan purpose by the Agency or another creditor;

(ii) The credit is essential to the farming operation, and the borrower cannot obtain the credit without a subordination;

(iii) The FLP loan is still adequately secured after the subordination, or the value of the loan security will be increased by an amount at least equal to the advance to be made under the subordination;

(iv) Except as authorized by paragraph (c)(2) of this section, there is no other subordination outstanding with another lender in connection with the same security;

(v) The subordination is limited to a specific amount;

(vi) The loan made in conjunction with the subordination will be closed within a reasonable time and has a definite maturity date;

(vii) If the loan is made in conjunction with a guaranteed loan, the guaranteed loan meets the requirements of § 762.142(c) of this chapter;

(viii) The borrower is not in default or will not be in default on FLP loans by the time the subordination closing is complete;

(ix) The borrower can demonstrate, through a current farm operating plan, the ability to repay all debt payments scheduled, and to be scheduled, during the production cycle;

(x) Except for CL, the borrower is unable to partially or fully graduate;

(xi) The borrower must not be ineligible as a result of a conviction for controlled substances according to part 718 of this chapter;

(xii) The borrower must not be ineligible due to disqualification resulting from Federal crop insurance violation according to part 718 of this chapter;

(xiii) The borrower will not use loan funds in a way that will contribute to erosion of highly erodible land or conversion of wetlands as described in part 1940, subpart G of this title;

(xiv) Any planned development of real estate security will be performed as directed by the lessor or creditor, as approved by the Agency, and will comply with the terms and conditions of § 761.10 of this chapter;

(xv) If a borrower with an SAA mortgage is refinancing a loan held by

a lender, subordination of the SAA mortgage may only be approved when the refinanced loan does not increase the amount of debt; and

(xvi) In the case of a subordination of non-program loan security, the non-program loan security also secures a program loan with the same borrower.

(4) The Agency will approve a request for subordination of real estate to a lessee if the conditions in paragraphs (b)(3)(viii) through (b)(3)(xvi) of this section are met.

(c) *Chattel security.* The requirements for chattel subordinations are as follows:

(1) For loans secured by chattel, the subordination must meet the conditions contained in paragraphs (b)(3)(i) through (xiii) of this section.

* * * * *

Subpart F—Required Use and Operation of Agency Security

15. Amend § 765.252 as follows:

a. Revise paragraphs (a) heading and introductory text, (a)(1), (a)(2), (a)(4), (b)(1), and (b)(2); and

b. Add paragraphs (a)(5) and (b)(4).

The revisions and additions read as follows:

§ 765.252 Lease of security.

(a) *Real estate surface leases.* The borrower must request prior approval to lease the surface of real estate security. The Agency will approve requests provided the following conditions are met:

(1) The lease will not adversely affect the Agency's security interest;

(2) The term of consecutive leases for agricultural purposes does not exceed 3 years, or 5 years if the borrower and the lessee are related by blood or marriage. The term of surface leases for nonfarm purposes, such as wind turbines, communication towers, or similar installations can be for any term;

* * * * *

(4) The lease does not hinder the future operation or success of the farm, or, if the borrower has ceased to operate the farm, the requirements specified in § 765.253 are met; and

(5) The lease and any contracts or agreements in connection with the lease must be reviewed and approved by the Government.

(b) * * *

(1) For FO loans secured by real estate on or after December 23, 1985, and loans other than FO loans secured by real estate and made from December 23, 1985, to (effective date of the final rule), the value of the mineral rights must have been included in the original appraisal in order for the Agency to obtain a security interest in any oil, gas, and other mineral associated with the real estate security.

(2) For all other loans not covered by paragraph (b)(1) of this section, the Agency will obtain a security interest in any oil, gas, and other mineral on or under the real estate pledged as collateral in accordance with the applicable security agreement, regardless of whether such minerals were included in the original appraisal.

* * * * *

(4) The term of the mineral lease is not limited.

* * * * *

§ 765.253 [Amended]

16. Amend § 765.253 by removing paragraph (d) and redesignating paragraph (e) as paragraph (d).

Subpart G—Disposal of Chattel Security

17. Revise § 765.301(a) to read as follows:

§ 765.301 General.

(a) The borrower must account for all chattel security, and maintain records of dispositions of chattel security and the actual use of proceeds. The borrower must make these records available to the Agency upon request.

* * * * *

18. Amend § 765.302 as follows:

a. Revise paragraph (a);

b. Remove paragraphs (b) and (h);

c. Redesignate paragraphs (c), (d), (e), (f), and (g) as paragraphs (b), (c), (d), (e), and (f) respectively; and

d. Revise newly redesignated paragraphs (b) through (e).

The revisions read as follows:

§ 765.302 Use and maintenance of the agreement for the use of proceeds.

(a) The borrower and the Agency will execute an agreement for the use of proceeds.

(b) The borrower must report any disposition of basic or normal income security to the Agency as specified in the agreement for the use of proceeds.

(c) If a borrower wants to dispose of normal income security in a way different than provided by the agreement for the use of proceeds, the borrower must obtain the Agency's consent before the disposition unless all FLP payments planned on the agreement have been paid.

(d) If the borrower sells normal income security to a purchaser not listed in the agreement for the use of proceeds, the borrower must immediately notify the Agency of what property has been sold and of the name and business address of the purchaser.

(e) The borrower must provide the Agency with the necessary information to update the agreement for the use of proceeds.

* * * * *

19. Amend § 765.305 by adding paragraph (c) to read as follows:

§ 765.305 Release of security interest.

* * * * *

(c) The Agency will release its lien on chattel security without compensation, upon borrower request provided:

(1) The borrower has not received primary loan servicing within the last 3 years;

(2) The borrower will retain the security and use it as collateral for other credit, including partial graduation as specified in § 765.101;

(3) The security margin on each FLP direct loan will be 150 percent or more after the release. The value of the retained and released security will normally be based on appraisals obtained as specified in § 761.7 of this chapter; however, well documented recent sales of similar properties can be used if the Agency determines a supportable decision can be made without current appraisals; and

(4) Except for CL, the borrower is unable to fully graduate as specified § 765.101.

Subpart H—Partial Release of Real Estate Security

20. Amend § 765.351 as follows:

a. Revise paragraph (a)(3);

b. Remove paragraph (a)(4) and redesignate paragraphs (a)(5) through (10) as (a)(4) through (a)(9), respectively;

c. Revise paragraph (b)(1)(ii);

d. Remove paragraph (b)(1)(iii); and

e. Add paragraph (f).

The revisions and addition read as follows:

§ 765.351 Requirements to obtain Agency consent.

* * * * *

(a) * * *

(3) Except for releases in paragraph (f) of this section, the amount received by the borrower for the security being disposed of, or the rights being granted, is not less than the market value and will be remitted to the lienholders in the order of lien priority;

* * * * *

(b) * * *

(1) * * *

(ii) When the Agency has a security interest in oil, gas, or other minerals as provided by § 765.252(b), the sale of such products will be considered a disposition of a portion of the security by the Agency.

* * * * *

(f) *Release without compensation.* Real estate security may be released by FSA without compensation when the requirements of paragraph (a) of this section, except paragraph (a)(3) of this section, are met, and:

(1) The borrower has not received primary loan servicing within the last 3 years;

(2) The security is:

(i) To be retained by the borrower and used as collateral for other credit, including partial graduation as specified in § 765.101; or

(ii) No more than 10 acres, or the minimum size that meets all State and local requirements for a division into a separate legal lot, whichever is greater, and is transferred without compensation to a person who is related to the borrower by blood or marriage;

(3) The security margin on each FLP direct loan will be above 150 percent after the release. The value of the retained and released security will normally be based on appraisals obtained as specified in § 761.7 of this chapter; however, well documented recent sales of similar properties can be used if the Agency determines the criteria have been met and a sound decision can be made without current appraisals; and

(4) Except for CL, the borrower is unable to fully graduate as specified in § 765.101.

PART 766—DIRECT LOAN SERVICING—SPECIAL

21. The authority citation for part 766 continues to read as follows:

Authority: 5 U.S.C. 301, 7 U.S.C. 1989, and 1981d(c).

Subpart C—Loan Servicing Programs

22. Amend § 766.110 as follows:

a. Revise paragraphs (a)(6), (b)(2)(vi), (c) introductory text, and (c)(3);

b. Add paragraphs (c)(4) through (7);

c. Revise paragraph (e);

d. Amend paragraph (f), second sentence, by adding the word ''best'' before the word ''interest''; and

e. Add paragraphs (m) and (n).

The revisions and additions read as follows:

§ 766.110 Conservation Contract.

(a) * * *

(6) Only loans secured by the real estate that will be subject to the Conservation Contract may be considered for debt reduction under this section.

(b) * * *

(2) * * *

(vi) Buffer areas necessary for the adequate protection of proposed Conservation Contract areas, or other areas enrolled in other conservation programs;

* * * * *

(c) *Unsuitable acreage.* Notwithstanding paragraph (b) of this section, acreage is unsuitable for a Conservation Contract if:

* * * * *

(3) The Conservation Contract review team determines that the land does not provide measurable conservation, wildlife, or recreational benefits;

(4) There would be a duplication of benefits as determined by the Conservation Contract review team because the acreage is encumbered under another Federal, State, or local government program for which the borrower has been or is being compensated for conservation, wildlife, or recreation benefits;

(5) The acreage subject to the proposed Conservation Contract is encumbered under a Federal, State, or local government cost share program that is inconsistent with the purposes of the proposed Conservation Contract, or the required practices of the cost share program are not identified in the conservation management plan;

(6) The tract does not contain a legal right of way or other permanent access for the term of the contract that can be used by the Agency or its designee to carry out the contract; or

(7) The tract, including any buffer areas, to be included in a Conservation Contract is less than 10 acres.

* * * * *

(e) *Conservation management plan.* The Agency, with the recommendations of the Conservation Contract review team, is responsible for developing a conservation management plan. The conservation management plan will address the following:

(1) The acres of eligible land and the approximate boundaries, and

(2) A description of the conservation, wildlife, or recreation benefits to be realized.

* * * * *

(m) *Subordination.* For real estate with a Conservation Contract:

(1) Subordination will be required for all liens that are in a prior lien position to the Conservation Contract.

(2) The Agency will not subordinate Conservation Contracts to liens of other lenders or other Governmental entities.

(n) *Breach of Conservation Contract.* If the borrower or a subsequent owner of the land under the Conservation Contract fails to comply with any of its provisions, the Agency will declare the Conservation Contract breached. If the Conservation Contract is breached, the borrower or subsequent owner of the land must restore the land to be in compliance with the Conservation Contract and all terms of the conservation management plan within 90 days. If this cure is not completed, the Agency will take the following actions:

(1) For borrowers who have or had a loan in which debt was exchanged for the Conservation Contract and breach the Conservation Contract, the Agency may reinstate the debt that was cancelled, plus interest to the date of payment at the rate of interest in the promissory note, and assess liquidated damages in the amount of 25 percent of the debt cancelled, plus any actual expenses incurred by the Agency in enforcing the terms of the Conservation Contract. The borrower's account will be considered in non-monetary default; and

(2) Subsequent landowners who breach the Conservation Contract must pay the Agency the amount of the debt cancelled when the contract was executed, plus interest at the non-program interest rate to the date of payment, plus liquidated damages in the amount of 25 percent of the cancelled debt, plus any actual expenses incurred by the Agency in enforcing the terms of the Conservation Contract.

23. Revise § 766.115(a)(1) and (b) to read as follows:

§ 766.115 Challenging the Agency appraisal.

(a) * * *

(1) Obtain a USPAP compliant technical appraisal review prepared by a State Certified General Appraiser of the Agency's appraisal and provide it to the Agency prior to reconsideration or the appeal hearing;

* * * * *

(b) If the appraised value of the borrower's assets change as a result of the challenge, the Agency will reconsider its previous primary loan servicing decision using the new appraisal value.

* * * * *

24. Revise Appendix A to read as follows:

Appendix A to Subpart C of Part 766—FSA–2512, Notice of Availability of Loan Servicing to Borrowers Who Are Current, Financially Distressed, or Less Than 90 Days Past Due

BILLING CODE P

This form is available electronically.

FSA-2512 (09-27-11)	U.S. DEPARTMENT OF AGRICULTURE Farm Service Agency	Position 4

NOTICE OF AVAILABILITY OF LOAN SERVICING TO BORROWERS WHO ARE CURRENT, FINANCIALLY DISTRESSED, OR LESS THAN 90 DAYS PAST DUE

Date

[Borrower's Name]
[Borrower Name/Address]
[Borrower Address]
[City, State, Zip Code]

This notice informs you of servicing options that may be available to current borrowers, financially distressed borrowers, or borrowers less than 90 days past due. The Agency's primary loan servicing programs, Conservation Contract Program, Homestead Protection Program, and debt settlement programs may help you resolve your financial distress, repay your loan, retain your farm property or settle your Farm Loan Programs (FLP) debt.

How to apply

To apply, you must complete, where applicable, and provide all items required in paragraph (f).

Help in responding to this notice

The servicing options available to you may become complicated. You may need help to understand them and their impact on your operation. You may want to ask an attorney to help you or there are organizations that give free or low-cost advice to farmers. You may contact your State Department of Agriculture or the U. S. Department of Agriculture (USDA) Extension Service for available services in your State.

Note: Agency employees cannot recommend a particular attorney or organization.

Who will decide if you qualify?

After you submit a complete application, the Agency will determine if you meet all eligibility requirements and can develop a farm operating plan that shows that you can pay all debts and expenses.

What happens if you do not apply?

If you do not timely apply to this notice and you become 90 days past due on your loans, the Agency will notify you of available loan servicing by sending you FSA-2510, "Notice of Availability of Loan Servicing to Borrowers Who Are 90 Days Past Due."

The U.S. Department of Agriculture (USDA) prohibits discrimination in all its program 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). To file a complaint of Discrimination, write to USDA, Director, Office of Civil Rights, 1400 Independence Avenue, SW., Washington, DC 20250-9410, or call (800) 795-3272 (voice) or (202) 720-6382 (TDD). USDA is an equal opportunity provider and employer.

Included with this notice you will find information on:

(a) Primary loan servicing programs;
(b) Conservation Contract Program;
(c) Current market value buyout;
(d) Homestead Protection Program;
(e) Debt settlement programs;
(f) Forms, documentation, and information needed to apply;
(g) How to get copies of the Agency's handbooks and forms;
(h) Reconsideration, mediation, negotiation and appeal rights;
(i) The right not to be discriminated against.

(a) Primary Loan Servicing Programs

Eligibility

You must meet the following eligibility requirements to obtain primary loan servicing:

(1) You are financially distressed or delinquent due to one of the following circumstances beyond your control:
  (i) Illness, injury, or death of a borrower or other individual who operates the farm;
  (ii) Natural disaster, adverse weather, disease, or insect damage which caused severe loss of agricultural production;
  (iii) Widespread economic conditions such as low commodity prices;
  (iv) Damage or destruction of property essential to the farming operation; or
  (v) Loss of, or reduction in, your or your spouse's essential non-farm income.

(2) You do not have non-essential assets for which the net recovery value is sufficient to resolve your financial distress. The Agency cannot write down or write off debt that you could pay with the value of your equity in these assets.

(3) If you are in non-monetary default as a result of non-compliance with the Agency's loan agreements, you must resolve the non-monetary default prior to closing the servicing action.

(4) You must have acted in good faith in all past dealings with the Agency and in accordance with your loan agreements.

Time limits

If the Agency determines that you are eligible for primary loan servicing and can develop a feasible plan, you will have 45 days from notice to accept the Agency's offer for loan servicing.

Lien requirements

If you are delinquent, are offered loan servicing, and accept the offer, you must agree to give the Agency a lien on your other assets and you must provide this lien at closing.

Payment of interest

If you are current on your loan payments before the restructure is closed, you must pay a portion of the interest that has accrued on your loans at or before closing the servicing action.

Youth Loans

If you have a Youth Loan, it is not eligible for debt writedown, current market value buyout, or limited resource interest rates, but can be rescheduled or deferred. This has no effect on any other loans you may have with the Agency.

Loan consolidation, rescheduling, and reamortization

In loan consolidation, the unpaid principal and interest of two or more operating loans can be combined into one larger operating loan.

In loan rescheduling, the repayment schedule may be changed to cure the financial distress or delinquency and give you new terms to repay loans made for equipment, livestock, or annual operating purposes.

In loan reamortization, the repayment schedule may be changed to cure the financial distress or delinquency and give you a new schedule of repayment on loans made for real estate purposes.

When loans are consolidated, rescheduled or reamortized the interest rate will be the lesser of:

(1) The interest rate for that type of loan on the date a complete servicing application was received;
(2) The interest rate for that type of loan on the date of restructure; or
(3) The lowest original loan note rate on any of the original notes being restructured.

In addition, the Agency will consider the maximum loan terms.

Limited resource interest rate

Limited resource interest rates are available for certain types of loans. If you have existing loans which are not at the limited resource rate, and a limited resource rate is available, the Agency will consider reducing the rate of the loans. The limited resource interest rate can be as low as five percent, however, this rate may change depending on what it costs the Government to borrow money.

For information about current interest rates, contact this office.

Loan deferral

Partial or full payments of principal and interest may be temporarily delayed for up to 5 years. You will only be considered for loan deferral if the loan servicing programs discussed above will not allow you to pay all essential family living and farm operating expenses, maintain your property, and pay your debts.

You must be able to show through a farm operating plan that you are unable to pay all essential family living and farm operating expenses, maintain your property, and pay your debts. The farm operating plan must also show that you will be able to pay your full installment at the end of the deferral period.

The interest that accrues during the deferral period must be paid in yearly payments for the rest of the loan term after the deferral period ends.

Debt writedown

Debt writedown can reduce the principal and interest on your loan. The Agency offers a writedown only to delinquent borrowers when the loan servicing programs discussed above and the Conservation Contract Program, if requested, will not result in a feasible plan. To receive debt writedown, the value of your restructured loan must be equal to or greater than the recovery value to the Agency from foreclosure and repossession of your security property.

The recovery value is the market value of:

(1) The collateral pledged as security for your FLP loans minus expenses (such as the sale costs, attorneys' fees, management costs, taxes, and payment of prior liens) on the collateral that the Agency would have to pay if it foreclosed, or repossessed, and sold the collateral;
(2) Any collateral that is not in your possession and has not been released for sale by the Agency in writing; and
(3) Any other non-essential assets you may own.

A qualified appraiser determines the value of the collateral and any other assets you own. You may receive a writedown only if you are delinquent on your FLP loan and you have not previously received any form of debt forgiveness on any other FLP direct loan. The maximum amount of debt that can be written down on all direct loans is $300,000.

Shared Appreciation Agreement

If you own real estate and receive a debt writedown, you must sign a Shared Appreciation Agreement. The term of the agreement is 5 years. Under the terms of the agreement you must repay all or a part of the amount written down at the maturity of your Shared Appreciation Agreement if your real estate collateral increased in value.

Payment of shared appreciation will be required prior to the maturity of your Shared Appreciation Agreement if you:

(1) Sell or convey the real estate;
(2) Stop farming;
(3) Pay off your entire FLP debt; or
(4) Have your FLP accounts accelerated by the Agency.

If any of these events occur within the first 4 years of the agreement, you will have to pay 75 percent of the increase in value of the real estate. If any of these events occur after the fourth anniversary of the agreement, or if the Shared Appreciation Agreement matures without having previously been fully triggered, you will have to pay only 50 percent of the increase in value. You will not have to pay more than the amount of the debt written down.

(b) Conservation Contract Program

You may request a Conservation Contract to protect highly erodible land, wetlands, or wildlife habitats located on your real estate property that serves as security for your FLP debt. In exchange for such contract, the Agency would reduce your FLP debt. The amount of land left after the contract must be sufficient to continue your farming operation.

(c) Current Market Value Buyout

If you are delinquent and the analysis of your debt shows that you cannot achieve a feasible plan even if the present value of your FLP debt is reduced to the value of the security, the Agency may offer you buyout of your FLP debt. You would pay the market value of all FLP security and non-essential assets, minus any prior liens. The market value is determined by a current appraisal completed by a qualified appraiser. In exchange, your loans would be satisfied.

Limits

To receive a current market value buyout offer:

(1) You must not have previously received any form of debt forgiveness from the Agency on any other direct FLP loan;
(2) The maximum debt to be written off with buyout does not exceed $300,000; and
(3) You must not have non-essential assets with a net recovery value sufficient to pay your account current.

Eligibility

To qualify, you must prove that:
(1) You cannot repay your delinquent FLP debt due to circumstances beyond your control; and
(2) You have acted in good faith in all past dealings with the Agency and in accordance with your loan agreements.

Time limits

To buyout your FLP debt at the current market value, you must pay the Agency within 90 days of the date you receive the offer.

Method of payment
To buyout your FLP debt at the current market value, you must pay by cash, cashier's check, or U.S. Treasury check. The Agency will not make or guarantee a loan for this purpose.

(d) Homestead Protection Program

Under the Homestead Protection Program, you may repurchase your primary residence, certain outbuildings, and up to 10 acres of land. If you cannot pay cash or Agency financing is not available, you may lease your primary residence. The lease will include an option for you to purchase the property you lease.

This program may apply when primary loan servicing or the Conservation Contract Program are not available or are not accepted.

You must agree to give the Agency title to your land at the time the Agency signs the Homestead Protection Agreement with you. The Agency will compute the costs of taking title including the cost of paying other creditors with outstanding liens on the property. The Agency will take title only if it can obtain a positive recovery.

Eligibility requirements

(1) Your gross annual income from the farming operation must have been similar to other comparable operations in your area in at least two of the last 6 years.
(2) Sixty percent (60%) of your gross annual income in at least two of the last 6 years must have come from the farming operation.
(3) You must have lived in your homestead property for 6 years immediately before your application. If you had to leave for less than 12 months during the 6-year period and you had no control over the circumstances, you may still qualify.
(4) You must be the owner of the property immediately prior to the Agency obtaining title.

Property restrictions and easements

The Agency may place restrictions or easements on your property which restrict your use if the property is located in a special area or has special characteristics. These restrictions and easements will be placed in leases and in deeds on properties containing wetlands, floodplains, endangered species, wild and scenic rivers, historic and cultural properties, coastal barriers, and highly erodible lands.

Leasing the homestead property

(1) You must pay rent to the Agency to lease the property determined eligible for homestead protection. The rent the Agency charges will be similar to comparable property in your area.
(2) You must maintain the property in good condition during the term of the lease.
(3) You may lease the property for up to 5 years but no less than 3 years.
(4) You cannot sublease the property.
(5) If you do not make the rental payments to the Agency, the Agency will cancel the lease and take legal action to force you to leave.
(6) Lease payments are not applied toward the final purchase price of the property.

Purchasing the homestead protection property

You can repurchase your homestead property at market value at any time during the lease. The market value of the property will be decided by a qualified appraiser and will reflect the value of the land after any placement of a restriction or easement such as a wetland conservation easement.

(e) Debt Settlement Programs

You can apply for debt settlement at any time; however, these programs are usually used only after it has been determined that primary loan servicing programs and the Conservation Contract Program cannot help you. Under the debt settlement programs, the FLP debt you owe the Agency may be settled for less than the amount you owe. These programs are subject to the discretion of the Agency and are not a matter of entitlement or right. The Agency will not finance these alternatives.

Settlement alternatives

Settlement alternatives include:
(1) Compromise: A lump-sum payment of less than the total FLP debt owed;
(2) Adjustment: Two or more payments of less than the total amount owed to the Agency. Payments can be spread out over a maximum of 5 years if the Agency determines you will be able to make the payments as they become due; and
(3) Cancellation: Satisfaction of Agency debt without payment.

Processing and requirements

If you sell loan collateral, you must apply the proceeds from the sale to your FLP loans before you can be considered for debt settlement. In the case of compromise or adjustment you may keep your collateral, if you pay the Agency the market value of your collateral along with any additional amount the Agency determines you are able to pay.

Debt amounts which are collectible through administrative offset, judgment, or by the Department of the Treasury will not be settled through debt settlement procedures. You must certify that you do not have assets or income in addition to what you stated in your application. If you qualify, your application must also be approved by the State Executive Director or the Administrator, depending on the amount of the debt to be settled.

(f) Forms, documentation, and information needed to apply

A complete application for primary loan servicing must include items (1) through (10). Additional information is required as noted if you want to be considered for the Conservation Contract Program or debt settlement programs. If you need help to complete the required forms, you may request an Agency official to assist you. The forms for requirements (1) through (8) and (11) are included with this package.

(1) FSA-2513, "Borrower Response to Notice of the Availability of Loan Servicing – For Borrowers who Received FSA-2512" signed by all borrowers.
(2) FSA-2001, "Request for Direct Loan Assistance."
(3) FSA-2002, "Three Year Financial History" or other financial records, including copies of your income tax returns and any supporting documents, for each of the 3 years immediately preceding the year of application or the years you have been farming, whichever is less and if not already in the Agency case file. If your copies of tax returns are not readily available, you can obtain copies from the Internal Revenue Service.
(4) FSA-2003, "Three Year Production History," or any other format that provides production and expense history for crops, livestock, livestock products, etc., for each of the 3 years immediately preceding the year of application or the years you have been farming, whichever is less and if not already in the Agency case file. You must be able to support this information with farm records.
(5) FSA-2004, "Authorization to Release Information." The Agency will use this form to verify your debts and assets, as well as your non-farm income.
(6) FSA-2005, "Creditor List." The Agency will use this form to verify your debts. Any debts less than $1,000 can be verified by a credit report. If debts of $1,000 or more appear on your credit report and the creditor is not listed on FSA 2005, the application cannot be considered complete.
(7) FSA-2037, "Farm Business Plan Worksheet – Balance Sheet." In the case of an entity, the entity and all entity members must provide current financial statements.
(8) FSA-2038, "Farm Business Plan Worksheet – Projected/Actual Income and Expenses," or other acceptable farm operating plan.
(9) AD-1026, "Highly Erodible Land Conservation (HELC) and Wetland Conservation (WC) Certification." You will be required to complete this form if the one you have on file does not reflect all the land you own and lease.
(10) SCS-CPA-026, "Highly Erodible Land and Wetland Conservation Determination." This form must be obtained from and completed by the Natural Resources Conservation Service office, if not already on file with the Agency.
(11) RD 1956-1, "Application for Settlement of Indebtedness." Complete this form only if you wish to apply for debt settlement. You must also comply with any Agency request for additional information needed to process a debt settlement request.
(12) If you are applying for a Conservation Contract, a map or aerial photo of your farm identifying the portion of the land and approximate number of acres to be considered.

Divorced spouses

If you are an FLP borrower who has left the farming operation due to divorce, you may request release of liability. To be released of liability after a divorce, you must present the Agency with the following within 60 days of receiving this notice:
(1) A divorce decree or property settlement document which states the remaining party will be responsible for all repayment to the Agency;
(2) Evidence that you have conveyed your ownership interest in FLP security to the remaining party; and
(3) Evidence that you do not have any repayment ability for the FLP loan through cash, income, or other non-essential assets.

The Agency will make a determination on your request and will inform you of the decision within 60 days of receiving your request.

If you are not released of liability, you will need to include all of your relevant financial information if applying for primary loan servicing, homestead protection, or debt settlement programs.

(g) How to get copies of Agency handbooks and forms

Copies of the forms for requirements (f)(1) through (f)(8) and (f)(11) have been included in this package. You may obtain copies of Agency handbooks, which include the pertinent regulations, describing available programs or additional copies of forms from this office.

(h) Reconsideration, mediation, negotiation, and appeal rights

Reconsideration, mediation, negotiation, and appeal rights will be provided to you if the Agency makes an adverse decision on your request for loan servicing or prior to acceleration of your account.

Reconsideration

If you are determined by the Agency to be ineligible for loan servicing, or if you cannot develop a feasible plan, you may request a reconsideration meeting with the Agency. You must request reconsideration within 30 days of the date you receive the adverse decision. At a reconsideration meeting, you may present additional information to the Agency and explain why you believe the adverse decision to be in error. If the meeting does not change the Agency decision, you will be notified and provided 30 days to request mediation, negotiation, or appeal as outlined below.

Mediation

Mediation is a process for resolution of a disagreement. A trained neutral mediator assists two or more parties in dispute to look at the issues, consider all available options, and attempt to agree on an acceptable solution. If your State has a mediation program approved by the USDA, the Agency will participate in mediation. If there is no State mediation program, the Agency may help you to set up a meeting with your other creditors. If you wish to request mediation, you must make such request within 30 days of your receipt of an adverse Agency decision. If you request mediation prior to requesting an appeal, the 30-day time period for requesting an appeal will be temporarily suspended. If mediation fails to resolve your dispute with the Agency, only the balance of the 30 days will remain to request an appeal.

Negotiation of the appraisal

If you timely submit a complete application for primary loan servicing, but disagree with the appraisal used by the Agency for processing your primary loan servicing request, you will have 30 days to obtain, at your own expense, an independent appraisal which conforms to published Agency appraisal standards. If this independent appraised value is within five percent of the value of the Agency appraisal, you must choose one of these two appraisals for the Agency to use to continue processing your request. If the appraisals differ by more than five percent, you may request a third appraisal for which you must pay half of the cost, and the average of the two appraisals closest in value is taken as the final appraised value to be used in considering your request. If you wish to request both negotiation of the appraisal and mediation, these should be requested at the same time so the negotiation of the appraisal can be concluded prior to mediation. If not requested at the same time, negotiation of the appraisal must be requested first. Negotiated appraisals are not appealable but other issues can still be appealed after negotiation. If you request negotiation of the appraisal prior to requesting an appeal, the 30-day time period for requesting an appeal will be temporarily suspended. If negotiation of the appraisal fails to resolve your dispute with the Agency, only the balance of the 30-day time frame will remain to request an appeal on issues other than the negotiated appraisal.

Appeal

Appeal is a process under which you present evidence to USDA's National Appeals Division which demonstrates why you believe that the Agency's adverse decision is wrong. Subject to the deadline suspensions discussed above, your request for an appeal must be postmarked no later than 30 days from the date you received the Agency's adverse decision.

(i) The right not to be discriminated against

The Federal Equal Credit Opportunity Act prohibits creditors from discriminating against credit applicants on the basis of race, color, religion, national origin, sex, marital status, age (provided the applicant has the capacity to enter into a binding contract); because all or part of the applicant's income derives from any public assistance program; or because the applicant has in good faith exercised any right under the Consumer Credit Protection Act. The Federal agency that administers compliance with this law is the Federal Trade Commission, Equal Credit Opportunity, Washington, D.C. 20580.

The servicing programs described by this Notice are subject to applicable Agency regulations published at 7 CFR Part 766.

For more information or if you have any questions, please contact [this office or the specific office name]at [County Office Address] or telephone [phone number].

1A. Authorized Agency Official Name	1B. Signature	1C. Title

PART 772—SERVICING MINOR PROGRAM LOANS

25. Revise the authority citation for part 772 continues to read as follows:

Authority: 5 U.S.C. 301, 7 U.S.C. 1989, and 25 U.S.C. 490.

§ 772.5 [Amended]

26. Amend § 772.5 as follows:

a. In paragraph (c)(1), remove the reference "7 part 1962, subpart A" and add in its place the reference "part 765 of this chapter"; and

b. In paragraph (c)(3), remove the reference "7 CFR part 1965, subpart A" and add in its place the reference "part 765 of this chapter".

27. Revise § 772.8(b) to read as follows:

§ 772.8 Sale or exchange of security property.

* * * * *

(b) For IMP loans, a sale or exchange of real estate or chattel that is serving as security is governed by part 765 of this chapter.

Signed on April 5, 2012.

Bruce Nelson,

Administrator, Farm Service Agency.

[FR Doc. 2012–8827 Filed 4–12–12; 8:45 am]

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