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## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 39

**[Docket No. FAA–2012–0494; Directorate Identifier 2012–NM–088–AD; Amendment 39–17069; AD 2012–11–06]**

**RIN 2120–AA64**

## Airworthiness Directives; Gulfstream Aerospace Corporation Airplanes

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule; request for comments.

**SUMMARY:** We are adopting a new airworthiness directive (AD) for all Gulfstream Aerospace Corporation Model G–1159, G–1159A, and G–1159B airplanes. This AD requires, for certain airplanes, a measurement to determine the clearance (gap) of the exposed rounded portion of the doubler and clothespin fitting at the wing-to-fuselage attachment, and repair if necessary. This AD also requires, for certain other airplanes, determining if a certain aircraft service change has been incorporated, and for affected airplanes, a measurement to determine the clearance (gap) of the exposed rounded portion of the doubler and clothespin fitting at the wing-to-fuselage attachment, and repair if necessary. This AD was prompted by a report of an improper structural modification that had excessive gaps in the wing-to-fuselage attachment fittings. We are issuing this AD to detect and correct excessive gaps in the wing-to-fuselage attachment fittings, which could result in reduced structural integrity at the wing-to-fuselage attachment and consequent separation of the wing from the airplane.

**DATES:** This AD is effective May 29, 2012.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the AD as of May 29, 2012.

We must receive comments on this AD by July 13, 2012.

**ADDRESSES:** You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

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

For service information identified in this AD, contact Gulfstream Aerospace Corporation, Technical Publications Dept., P.O. Box 2206, Savannah, Georgia 31402–2206; telephone 800–810–4853; fax 912–965–3520; email p*ubs@gulfstream.com*; Internet *http://www.gulfstream.com/product_support/technical_pubs/pubs/index.htm.You* may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221.

### Examining the AD Docket

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

**FOR FURTHER INFORMATION CONTACT:** Michael Cann, Senior Aerospace Engineer, Airframe Branch, ACE–117A, Atlanta Aircraft Certification Office, FAA, 1701 Columbia Avenue, College Park, GA 30337; phone: (404) 474–5548; fax (404) 474–5606; email: *michael.cann@faa.gov.*

**SUPPLEMENTARY INFORMATION:**

### Discussion

We received a report of an improper structural modification that resulted in excessive gaps in the wing-to-fuselage attachment fittings on a number of airplanes. The modification specified in Gulfstream Model G–1159A (also known as (aka) G–III) and G–1159B (aka G–IIB) Aircraft Service Change (ASC) 229 and G–1159 (aka G–II) ASC 426 installs a new three-piece box fitting on the left and right side wing-to-fuselage installations, including new part number 1159SB30175–11/–12 doublers.

During a routine corrosion inspection on a Model G–1159A (G–III) airplane, it was observed that the aft wing-to-fuselage attach fitting had an assembly gap exceeding the gap allowed by type design. This condition results in a transfer of wing loads through a different load path resulting in negative margins of safety in the upper bolt and lower bolt in bearing.

A records review revealed that this condition was the result of an improper structural modification. This records search also revealed that six other Model G–1159 (G–II) and G–1159A (G–III) airplanes incorporated the modification. All seven airplanes have been inspected, and four airplanes were found not to be in conformity with the type design, two are in conformity to the type design, and no data are available on the other. A further search has revealed that a similar nonconforming condition was found on a total of six airplanes. Of those, one airplane does not conform to type design, and no further information is available for the other five airplanes. Based on this information, it is possible that other Model G–1159 (G–II), G–1159B (G–IIB), and G–1159A (G–III) airplanes could potentially exhibit the same condition.

The excessive clearance between the structural members results in a change in load path and reduced structural strength of the assembly below certified limits. This condition, if not corrected, could result in reduced structural integrity at the wing-to-fuselage attachment and consequent separation of the wing from the airplane.

**Relevant Service Information**

We reviewed Gulfstream III Alert Customer Bulletin 21, including Service Reply Card, dated May 18, 2012 (for Model G–1159A airplanes); and Gulfstream II/IIB Alert Customer Bulletin 36, including Service Reply Card, dated May 18, 2012 (for Model G–1159 and G–1159B airplanes). This service information describes procedures for a measurement to determine the clearance (gap) of the exposed rounded portion of the doubler and clothespin fitting at the wing-to-fuselage attachment, and contacting Gulfstream if necessary.

We have also reviewed Gulfstream III Alert Customer Bulletin 22, including Service Reply Card, dated May 18, 2012 (for Model G–1159A airplanes); and Gulfstream II/IIB Alert Customer Bulletin 37, including Service Reply Card, dated May 18, 2012 (for Model G–1159 and G–1159B airplanes). This service information describes procedures for determining if a certain airplane service change has been incorporated, and, for affected airplanes, a measurement to determine the clearance (gap) of the exposed rounded portion of the doubler and clothespin fitting at the wing-to-fuselage attachment, and contacting Gulfstream if necessary.

**FAA's Determination**

We are issuing this AD because we evaluated all the relevant information and determined the unsafe condition described previously is likely to exist or develop in other products of these same type designs.

**AD Requirements**

This AD requires accomplishing the actions specified in the service information described previously, except as discussed under ''Differences Between the AD and the Service Information.'' The AD also requires sending the measurement results to Gulfstream.

**Differences Between the AD and the Service Information**

Although the service information specifies that operators may contact the manufacturer for disposition of certain repair conditions, this AD requires operators to repair those conditions in accordance with a method approved by the FAA.

**Interim Action**

We consider this AD interim action. The manufacturer is currently developing a modification intended to address the unsafe condition identified in this AD. Once this modification is developed, approved, and available, we might consider additional rulemaking.

**FAA's Justification and Determination of the Effective Date**

An unsafe condition exists that requires the immediate adoption of this AD. The FAA has found that the risk to the flying public justifies waiving notice and comment prior to adoption of this rule because of the discovery of an improper structural modification that had excessive gaps in the wing-to-fuselage attachment fittings. We are issuing this AD to detect and correct excessive gaps in the wing-to-fuselage attachment fittings, which could result in reduced structural integrity at the wing-to-fuselage attachment. Therefore, we find that notice and opportunity for prior public comment are impracticable and that good cause exists for making this amendment effective in less than 30 days.

**Comments Invited**

This AD is a final rule that involves requirements affecting flight safety and was not preceded by notice and an opportunity for public comment. However, we invite you to send any written data, views, or arguments about this AD. Send your comments to an address listed under the **ADDRESSES** section. Include the docket number FAA–2012–0494 and Directorate Identifier 2012–NM–088–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.

**Costs of Compliance**

We estimate that this AD affects 223 airplanes of U.S. registry.

We estimate the following costs to comply with this AD:

ESTIMATED COSTS

| Action | Labor cost | Parts cost | Cost per product | Number of U.S. operators | Cost on U.S. operators |
|---|---|---|---|---|---|
| Records Review | 1 work-hour × $85 per hour = $85 | $0 | $85 | 210 | $17,850 |
| Measurement | 4 work-hours × $85 per hour = $340 | 0 | 340 | 13 | 4,420 |

We estimate the following costs to do any necessary measurements and repairs that would be required based on the results of the measurement. We have no way of determining the number of aircraft that might need these actions:

ON-CONDITION COSTS

| Action | Labor cost | Parts cost | Cost per product |
|---|---|---|---|
| Measurement | 4 work-hours | $0 | $340 |

We have received no definitive data that would enable us to provide cost estimates for the on-condition repair specified in 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

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

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

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

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

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

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

## List of Subjects in 14 CFR Part 39

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

## Adoption of the Amendment

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

### § 39.13 [Amended]

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

**2012–11–06 Gulfstream Aerospace Corporation:** Amendment 39–17069; Docket No. FAA–2012–0494; Directorate Identifier 2012–NM–088–AD.

**(a) Effective Date**

This AD is effective May 29, 2012.

**(b) Affected ADs**

None.

**(c) Applicability**

This AD applies to all Gulfstream Aerospace Corporation Model G–1159, G–1159A, and G–1159B airplanes; certificated in any category.

**(d) Subject**

Joint Aircraft System Component (JASC)/Air Transport Association (ATA) of America Code 57, Wings; and 53, Fuselage.

**(e) Unsafe Condition**

This AD was prompted by a report of an improper structural modification that had excessive gaps in the wing-to-fuselage attachment fittings. We are issuing this AD to detect and correct excessive gaps in the wing-to-fuselage attachment fittings, which could result in reduced structural integrity at the wing-to-fuselage attachment and consequent separation of the wing from the airplane.

**(f) Compliance**

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

**(g) Measurement and Repair**

For airplanes identified in paragraphs (g)(1) and (g)(2) of this AD: Before further flight, measure to determine the clearance (gap) of the exposed rounded portion of the doubler and clothespin fitting at the wing-to-fuselage attachment, in accordance with Gulfstream III Alert Customer Bulletin 21, including Service Reply Card, dated May 18, 2012 (for Model G–1159A airplanes); or Gulfstream II/IIB Alert Customer Bulletin 36, including Service Reply Card, dated May 18, 2012 (for Model G–1159 and G–1159B airplanes). If the clearance exceeds the limit specified in Gulfstream III Alert Customer Bulletin 21, including Service Reply Card, dated May 18, 2012 (for Model G–1159A airplanes); or Gulfstream II/IIB Alert Customer Bulletin 36, including Service Reply Card, dated May 18, 2012 (for Model G–1159 and G–1159B airplanes); before further flight, repair in accordance with a method approved by the Manager, Atlanta Aircraft Certification Office (ACO), FAA. For a repair method to be approved by the Manager, Atlanta ACO, as required by this paragraph, the Manager's approval letter must specifically refer to this AD.

(1) Model G–1159, and G–1159B airplanes, having serial numbers (S/N) 083, 084, 096, 130, 176, 202, 238, 239, and 240.

(2) Model G–1159A airplanes, having S/N 346, 355, 385, and 486.

**(h) Records Review, Measurement, and Repair**

For all airplanes except those identified in paragraph (g) of this AD: Within 10 flight hours or 60 days after the effective date of this AD, whichever occurs first, do a review of airplane maintenance records to determine if the aircraft service change specified in Gulfstream III Alert Customer Bulletin 22, including Service Reply Card, dated May 18, 2012 (for Model G–1159A airplanes); or Gulfstream II/IIB Alert Customer Bulletin 37, including Service Reply Card, dated May 18, 2012 (for Model G–1159 and G–1159B airplanes); has been incorporated.

(1) For airplanes on which the aircraft service change specified in Gulfstream III Alert Customer Bulletin 22, including Service Reply Card, dated May 18, 2012 (for Model G–1159A airplanes); or Gulfstream II/IIB Alert Customer Bulletin 37, including Service Reply Card, dated May 18, 2012 (for Model G–1159 and G–1159B airplanes); has not been incorporated: No more work is required by this AD.

(2) For airplanes on which the aircraft service change specified in Gulfstream III Alert Customer Bulletin 22, including Service Reply Card, dated May 18, 2012 (for Model G–1159A airplanes); or Gulfstream II/IIB Alert Customer Bulletin 37, including Service Reply Card, dated May 18, 2012 (for Model G–1159 and G–1159B airplanes); has been incorporated: Within 10 flight hours or 60 days after the effective date of this AD, whichever occurs first, measure to determine the clearance (gap) of the exposed rounded portion of the doubler and clothespin fitting at the wing-to-fuselage attachment, in accordance with Gulfstream III Alert Customer Bulletin 22, including Service Reply Card, dated May 18, 2012 (for Model G–1159A airplanes); or Gulfstream II/IIB Alert Customer Bulletin 37, including Service Reply Card, dated May 18, 2012 (for Model G–1159 and G–1159B airplanes). If the clearance exceeds the limit specified in Gulfstream III Alert Customer Bulletin 22, including Service Reply Card, dated May 18, 2012 (for Model G–1159A airplanes); or Gulfstream II/IIB Alert Customer Bulletin 37, including Service Reply Card, dated May 18, 2012 (for Model G–1159 and G–1159B airplanes); before further flight, repair in accordance with a method approved by the Manager, Atlanta ACO, FAA. For a repair method to be approved by the Manager, Atlanta, ACO, as required by this paragraph, the Manager's approval letter must specifically refer to this AD.

**(i) Reporting**

Submit a report of the findings of any measurement required by paragraph (g) or (h) of this AD to Gulfstream, at the applicable time specified in paragraph (i)(1) or (i)(2) of this AD, using the Service Reply Card of the applicable customer bulletin specified in paragraph (g) or (h) of this AD. The report must include the measurement results, a description of any discrepancies found, the airplane serial number, and the number of landings and flight hours on the airplane. Under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.), the Office of Management and Budget (OMB) has approved the information collection requirements contained in this AD and has assigned OMB Control Number 2120–0056.

(1) If the measurement was done on or after the effective date of this AD: Submit the report within 10 days after the measurement.

(2) If the measurement was done before the effective date of this AD: Submit the report within 10 days after the effective date of this AD.

**(j) Special Flight Permit**

Special flight permits, as described in Section 21.197 and Section 21.199 of the

Federal Aviation Regulations (14 CFR 21.197 and 21.199), are not allowed.

**(k) Paperwork Reduction Act Burden Statement**

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

**(l) Alternative Methods of Compliance (AMOCs)**

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

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

**(m) Related Information**

For more information about this AD, contact Michael Cann, Senior Aerospace Engineer, Airframe Branch, ACE–117A, Atlanta Aircraft Certification Office, FAA, 1701 Columbia Avenue, College Park, GA 30337; phone: (404) 474–5548; fax (404) 474–5606; email: *michael.cann@faa.gov.*

**(n) 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.

(2) 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) Gulfstream III Alert Customer Bulletin 21, including Service Reply Card, dated May 18, 2012.

(ii) Gulfstream III Alert Customer Bulletin 22, including Service Reply Card, dated May 18, 2012.

(iii) Gulfstream II/IIB Alert Customer Bulletin 36, including Service Reply Card, dated May 18, 2012.

(iv) Gulfstream II/IIB Alert Customer Bulletin 37, including Service Reply Card, dated May 18, 2012.

(3) For service information identified in this AD, contact Gulfstream Aerospace Corporation, Technical Publications Dept., P.O. Box 2206, Savannah, Georgia 31402–2206; telephone 800–810–4853; fax 912–965–3520; email *pubs@gulfstream.com;* Internet *http://www.gulfstream.com/product_support/technical_pubs/pubs/index.htm.*

(4) 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.

(5) 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/cfr/ibr_locations.html.*

Issued in Renton, Washington, on May 22, 2012.

**Michael Kaszycki,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 2012–13034 Filed 5–25–12; 8:45 am]

BILLING CODE 4910–13–P

## DEPARTMENT OF THE INTERIOR

## Office of Surface Mining Reclamation and Enforcement

## 30 CFR Part 946

**[VA–126–FOR; OSM–2008–0012]**

## Virginia Regulatory Program

**AGENCY:** Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

**ACTION:** Final rule; approval of amendment.

**SUMMARY:** We are approving an amendment to the Virginia regulatory program under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). The amendment revises the Virginia Coal Surface Mining Reclamation Regulations pertaining to ownership and control, valid existing rights, self-bonding, and availability of records. Virginia intends to revise its program to be consistent with the corresponding Federal regulations and SMCRA and is responding, in part, to a 30 CFR part 732 letter.

**DATES:** Effective May 29, 2012.

**FOR FURTHER INFORMATION CONTACT:** Mr. Earl Bandy, Director, Knoxville Field Office, Telephone: (865) 545–4103. Internet: *ebandy@osmre.gov.*

**SUPPLEMENTARY INFORMATION:**

I. Background on the Virginia Program
II. Submission of the Amendment
III. OSM's Findings
IV. Summary and Disposition of Comments
V. OSM's Decision
VI. Procedural Determinations

### I. Background on the Virginia Program

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its program includes, among other things, ''* * * a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of the Act * * *; and rules and regulations consistent with regulations issued by the Secretary pursuant to the Act.'' 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the Virginia program on December 15, 1981. You can find background information on the Virginia program, including the Secretary's findings, the disposition of comments, and conditions of approval of the Virginia program in the December 15, 1981, **Federal Register** (46 FR 61088). You can also find later actions concerning Virginia's program and program amendments at 30 CFR 946.12, 946.13, and 946.15.

### II. Submission of the Amendment

By letter dated June 11, 2008, the Virginia Department of Mines, Minerals, and Energy (Virginia) sent us an informal proposed amendment to its program for a pre-submission review (VA–126–INF). We reviewed the pre-submission and responded to Virginia, with comments, via electronic mail on July 2, 2008. By letter dated July 17, 2008, Virginia formally submitted the proposed amendments to its program (Administrative Record No. VA–1089).

We announced receipt of the proposed amendment in the August 29, 2008, **Federal Register** (73 FR 50915). In the same document, we opened the public comment period and provided an opportunity for a public hearing or meeting on the amendment's adequacy. We did not hold a public hearing or meeting because no one requested one. The public comment period ended on September 29, 2008. No comments were received.

OSM's review of the July 17, 2008, submittal identified several issues that we presented to Virginia. The first discussion occurred by telephone on September 4, 2008. As a result of that discussion, Virginia submitted on the same date, via electronic mail, Memorandum #13–86 which specifies application processing time limits for new permits and revision applications (Administrative Record No. VA–1093).

The complete text of the Memorandum can be found at *http://www.Virginia.virginia.gov/DMLR/docs/operatormemos*. A subsequent meeting was held on October 16, 2008 (Administrative Record No. VA–1099). In an electronic mail message dated October 29, 2008 (Administrative Record No. VA–2000), Virginia provided its position in response to OSM's comments and agreed to expeditiously submit additional changes. On November 3, 2008, Virginia responded by submitting regulation changes via electronic mail (Administrative Record No. VA–2001). OSM provided additional comments on the regulation changes on November 13, 2008 (Administrative Record No. VA–2002), and Virginia responded to these comments on November 20, 2008, by electronic mail (Administrative Record No. VA–2003). We announced receipt of the additional revisions in the April 17, 2009, **Federal Register** (74 FR 17806). The public comment period ended on May 4, 2009. Public comments were filed jointly by the Southern Appalachian Mountain Stewards (SAMS) and the Sierra Club. These comments have been addressed at the section titled SUMMARY AND DISPOSITION OF COMMENTS.

On March 25, 2011, OSM sent a letter (Administrative Record No. VA–2007) to Virginia informing them that their provisions at 4 VAC25–130–761.16(d)(1)(vii) and 4VAC25–130–761.16(d)(3), were inconsistent with the Federal counterparts. The language proposed by Virginia would have required that an applicant provide reasons for requesting an initial 30 day extension to the comment period.

The federal counterpart provisions, at 30 CFR 761.16(d)(1)(vii) and 761.16(d)(3), are clear that the initial 30-day extension will be granted, without cause, upon request.

Subsequent to several extensions (Administrative Record numbers VA–2008, VA–2009, VA–2010), Virginia submitted, by electronic mail, on June 13, 2011 (Administrative Record No. VA–2012), revised language that is substantially identical to the corresponding federal counterparts.

## III. OSM's Findings

The following are the findings we made concerning the amendment under SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17. We are approving the amendment. Any revisions that we do not specifically discuss below concern non-substantive wording or editorial changes.

*a. Minor Revisions to Virginia's Rules*

Virginia proposed minor wording changes to the following previously-approved rules:

| State regulation | Federal regulation | Topic |
|---|---|---|
| 4VAC25–130–773.13 | 30 CFR 773.6 | Public Participation. |
| 4VAC25–130–773.20(a) | 30 CFR 773.21(a) | Improvidently Issued Permits, General Procedures. |
| 4VAC25–130–774.12(e) | 30 CFR 774.11 | Post-Permit Issuance Requirements. |
| 4VAC25–130–774.17(a) | 30 CFR 774.17 | Transfer, Assignment, or Sale of Permit Rights. |
| 4VAC25–130–778.13(c), (d), (k), (m) | 30 CFR 778.11 | Identification of Interests. |
| 4 VAC25–130–801.13(a)(3), (a)(7), (b) | None | Self-bonding. |

Because these changes are minor, we find that they will not make Virginia's regulations less effective than the corresponding Federal regulations and can be approved.

*b. Revisions to Virginia's Rules That are Substantively Identical to, and Therefore No Less Effective Than, the Corresponding Provisions of the Federal Regulations.*

| State regulation | Federal regulation | Topic |
|---|---|---|
| 4VAC25–130–700.5 | 30 CFR 701.5 | Definition of *Applicant Violator System* or *AVS; Control or Controller; Knowing or knowingly; Own, Owner, or Ownership*. |
| 4VAC25–130–700.5. | 30 CFR 800.5 | Definition of *Self-Bond*. |
| 4VAC25–130–700.5 | 30 CFR 701.5 | Definitions of *Transfer, Assignment, or Sale of Permit Rights; Violation; Violation, Failure, or Refusal; Violation Notice; Willful or Willfully*. |
| 4VAC25–130–700.5 | 30 CFR 761.5 | Definition of *Valid Existing Rights*. |
| 4VAC25–130–761.11 | 30 CFR 761.11 | Areas Where Mining is Prohibited or Limited. |
| 4VAC25–130–761.13 | 30 CFR 761.12(a) | Exception for Existing Operations. |
| 4VAC25–130–761.16(a), (b)(1)–(4), (c), (d)(1)(i)–(viii) (d)(2),(3), (e), (f), and (g). | 30 CFR 761.16 | Submission and Processing of Requests for Valid Existing Rights Determinations. |
| 4VAC25–130–772.12(b)(14) and (d)(2)(iv) | 30 CFR 772.12(b)(14) and (d)(2)(iv) | Permit Requirements for Exploration Removing More Than 250 Tons of Coal or Occurring on Lands Designated as Unsuitable for Surface Coal Mining Operations. |
| 4VAC25–130–773.15(b)(1) | 30 CFR 773.7 | Review of Permit Applications. |
| 4VAC25–130–773.20(c)(3) | 30 CFR 773.21(c) | Improvidently Issued Permits: General Procedures. |
| 4VAC25–130–774.12(a), (d), (e) | 30 CFR 774.11(a), (b) | Post-Permit Issuance Requirements |

| State regulation | Federal regulation | Topic |
|---|---|---|
| 4VAC25–130–774.17(a) | 30 CFR 774.17(a) | Transfer, Assignment, or Sale of Permit Rights. |
| 4VAC25–130–778.13(a)–(e) | 30 CFR 778.11(a)–(d) | Identification of Interests. |
| 4VAC25–130–778.14(c) | 30 CFR 778.14(c) | Violation Information. |

Because the proposed rules contain language that is substantively identical to the corresponding Federal regulations, we find that they are no less effective than the corresponding Federal regulations and can be approved.

*c. Revisions to Virginia's Rules That Are Not the Same as the Corresponding Provisions of the Federal Regulations*

1. At 4VAC25–130–773.15—Review of Permit Applications:

(a) At subsection (a)(1) Virginia proposes to require that the Division review the application for a permit, revision, or renewal; written comments and objections; information from AVS; and records of any informal conference or hearing held on the application—and issue a written decision, within a reasonable time, either granting, requiring modification of, or denying the application. If an informal conference is held, the decision will be made within 60 days of the close of the conference.

The Federal regulations at 30 CFR 773.7(a) require that the regulatory authority must specify a reasonable time (set by the regulatory authority) for decisions in those cases where no informal conference has been requested. Virginia's Memorandum to Operators #13–86 (Administrative Record No. VA–1093) provides time limits for permit and revision applications, but does not specifically address renewal applications.

By electronic mail on November 20, 2008 (Administrative Record No. VA–2003), Virginia clarified its permit renewal review process. It stated in part, ''A permit renewal is different than a new permit or revision application, in that there is a set date in which it must be submitted to the Division * * * at least 120 days before the existing permit's expiration date. Failure to do so would subject the operation to cessation of mining operations on the expiration date if a renewal application was not timely submitted and the permittee was not acting diligently and in good faith with regard to the permit application. For timely submitted applications, the Division's decision on the renewal application is, for the most part, rendered by the existing permit's expiration date.''

In effect, Virginia must render a decision on a permit renewal application by the expiration date of the existing permit. Virginia requires that a renewal application be submitted 120 days prior to the expiration of the existing permit to accommodate the required filing and public notice procedures. Therefore, the time period for decisions is the aforementioned 120-day application timeframe. For these reasons, we find that the proposed revisions are no less effective than the corresponding Federal regulations at 30 CFR 773.7(a) and can be approved.

(b) At subsection (b)(4)(i)(C), Virginia proposes to revise its violation review procedures to delete the remining exclusion for those permits, or renewals, issued before September, 2004. We find that these revisions are no less stringent than the provisions of section 510(e) of SMCRA, as modified by the Tax Relief and Health Care Act of 2006, which address permit approval or denial and therefore can be approved.

2. At 4VAC25–130–773.21—Improvidently Issued Permits; Rescission, Virginia proposes to make the requirements of this section applicable to permit suspensions, as well as permit rescissions. Virginia is also requiring that the notice of permit suspension or rescission be posted at its offices and on its internet home page. It also provides the procedures for the challenge and review of a person's ownership and control listing. Additionally, if a permittee files for an administrative review of the notice or decision pertaining to ownership and control, Virginia is requiring that the notice of public hearing be posted at the division office located nearest to the permit.

We find that the proposed revisions are no less effective than the Federal regulations at 30 CFR 773.23(a)–(d), which address the administrative review and notification requirements for the suspension or rescission of improvidently issued permits, and can be approved.

3. At 4VAC25–130–840.14(c)(2)—Availability of Records, Virginia proposes to post a notice that specifies how and where it will maintain records pertaining to records, reports, inspection materials, permit applications, and other information for public inspection and copying. The notice will be sent to Circuit Court Clerks of coal-producing counties and will be posted at all Virginia Division of Mined Land Reclamation offices. Virginia will maintain the records at its principal office and the information will also be made available, upon request, at its field office as well as any Federal, State, or local government office(s) located in the county where the mining is, or may be proposed to occur.

Virginia is complying with the Federal regulations at 30 CFR 840.14(b) and (c) that require that all pertinent permit information be made available for public inspection by either maintaining said information at Federal, State, or local government offices in the county where mining is occurring or proposed to occur, or mailing or electronically mailing said information to a requestor based on a description maintained at the locations named above. We find that the proposed revisions are no less effective than the Federal regulations at 30 CFR 840.14(b) and (c) and therefore can be approved.

*d. Revisions to Virginia's Rules With No Corresponding Federal Regulations*

1. At 4 VAC 25–130–700.5—Definitions, Virginia proposes to delete the term and definition of *Cognovit Note.* It is replaced by *Indemnity Agreement* in 4 VAC25–130–801.13. There is no Federal counterpart to either the definition of *Cognovit Note* or *Indemnity Agreement.* However, the term *Indemnity Agreement* is used in the definitions of *Surety Bond, Collateral Bond,* and *Self-Bond,* in 30 CFR 800.5, whereas the term *Cognovit Note* does not appear in the Federal regulations. Moreover, the term *Indemnity Agreement* is defined in a manner that is consistent with its usage in the aforementioned Federal regulatory definitions. Therefore, we find that these changes are not inconsistent with the requirements of SMCRA and the Federal regulations and can be approved.

2. At 4 VAC25–130–773.15(a)(3)–(4)—Review of Permit Applications, Virginia proposes to require its review of information regarding the permit applicant's and/or operator's permit

histories, business structure, and ownership and control relationships. Virginia may also conduct other ownership and control reviews, as necessary, in those cases where the applicant has no previous mining history. While there is no direct Federal counterpart to the proposed revisions, we find that the revisions are consistent with the general Federal provisions pertaining to permit application review at 30 CFR 773.7 and therefore can be approved.

3. At 4 VAC25–130–774.12(b), (c)—Post-Permit Issuance Requirements, Virginia proposes to specify the permittee's required actions in the event: (1) Said permittee fails to comply with the remedial measures of an enforcement action, or (2) the identification of interests information in the permit application changes. While there is no direct Federal counterpart to the proposed revisions, we find that the revisions are consistent with the general Federal provisions pertaining to post-permit issuance at 30 CFR 774.11 and therefore can be approved.

4. At 4 VAC25–130–778.13(e), (f), (g)—Identification of Interests:

(a) At subsection (e), Virginia proposes to require that a permit application include a list of all names under which the applicants *et al* operate or previously operated a surface coal mining operation within a 5-year period preceding the submission date of the application.

(b) At subsection (f), Virginia proposes to require that a permit application include a list of any pending permit applications with identifying information for the applicant and operator (if different from the applicant).

(c) At subsection (g), Virginia proposes to require that a permit application include certain identifying information for the permittee and operator. This includes name, address, tax identification numbers, permits numbers, and ownership relationship.

While there are no direct Federal counterparts to the proposed revisions, we find that the revisions are consistent with the general Federal provisions pertaining to permit application review at 30 CFR 778.11 and therefore can be approved.

5. At 4 VAC 25–130–800.52—Bond Forfeiture Reinstatement Procedures:

(a) Subsection (a), Virginia proposes to delete the reference to the Board of Conservation and Economic Development, as the entity no longer exists.

(b) Subsection (a)(5), Virginia proposes to replace the term *civil penalty* with *reinstatement fee.* This revision will differentiate the fee from the civil penalty that may be assessed under 4 VAC25–130–845. Virginia also proposes to allow the use of the reinstatement fees for other investigations, research, or abatement actions relating to lands and waters affected by coal surface mining activities.

There are no Federal counterpart regulations. We find that the revisions are not inconsistent with the requirements of SMCRA and the Federal regulations and can be approved.

6. At 4 VAC 25–130–801.12(d)—Entrance Fee and Bond, Virginia proposes to require the annual certification of the financial solvency of a permittee during the term of the permit. There is no Federal counterpart regulation. We find that the revision is not inconsistent with the requirements of SMCRA and the Federal regulations and can be approved.

7. At 4 VAC 25–130–801.13—Self-Bonding:

(a) Subsection (a), Virginia proposes to allow self-bonds from applicants of proposed surface coal mining operations in the form of an indemnity agreement. Virginia also proposes to change ''paragraph'' to ''subdivision'' in subsections (a)(3), (a)(7), and (b).

(b) Subsection (a)(1)(iv), Virginia proposes to require that an applicant of a proposed surface coal mining operation provide evidence indicating a history of satisfactory continuous operation.

(c) Subsection (a)(3), Virginia proposes to require that an applicant of a proposed surface mining operation or associated facility submit evidence substantiating the applicant's financial solvency, with appropriate financial documentation.

(d) Virginia proposes to replace *cognovits note* with *indemnity agreement (agreement)* throughout the section.

(e) Virginia proposes to delete existing subsection (b) pertaining to self-bonding provisions for surface coal mining operations. The surface coal mining permit requirements for self-bonding are addressed in subsection (a).

While there are no direct Federal counterparts to the proposed revisions, we find that the revisions are consistent with the general Federal provisions pertaining to self-bonding at 30 CFR 800.23 and therefore can be approved.

## IV. Summary and Disposition of Comments

*Public Comments*

We asked for public comments on the amendment (Administrative Record No. VA- 1090). The Virginia Department of Historic Resources commented that no historic properties will be affected by the provisions of the proposed amendment (Administrative Record No.VA–1095). We received several comments filed jointly by the Southern Appalachian Mountain Stewards (SAMS) and the Sierra Club (Administrative Record No.VA–2006). Responses to those comments follow. The joint commenters are referred to as ''SAMS/Sierra Club'' or ''the commenters.'' SAMS/Sierra Club contend that OSM must disapprove the portion of the amendment that, according to them, ''would effectively require any person who disputes the property rights assertion at the root of a [valid existing rights] VER claim either to commence litigation against the permit applicant prior to the expiration of the comment period on the VER request or else allow [the Virginia Department of Mines, Minerals & Energy] DMME to 'evaluate the merits of the information in the record' with respect to disputed property rights and then to 'determine whether the [permit applicant] has demonstrated that the requisite property rights exist.' '' The Virginia proposed provision SAMS/Sierra Club refer to is at 4 VAC 25–130–130–761.16(e)(3). They argue that this provision is ''fundamentally flawed in at least two respects.'' *SAMS/Sierra Club Comment #1:* First, SAMS/Sierra Club state that the amendment would unlawfully shift the burden of commencing property rights dispute litigation to persons who oppose approval of the permit application, rather than placing the burden on the permit applicant, which, according to SAMS/Sierra Club, is mandated by SMCRA at 30 U.S.C. 1260(a). This statutory provision states that ''[t]he applicant for a permit, or revision of a permit, shall have the burden of establishing that his application is in compliance with all the requirements of the applicable State or Federal program.'' Thus, according to the commenters, a permit applicant must seek judicial resolution of a property rights dispute in order to satisfy the property rights component of a VER determination; SMCRA does not, they contend, allow a State regulatory authority to undertake such an adjudication. For these reasons, SAMS/Sierra Club insist that OSM is required, pursuant to 30 CFR 732.17(h)(10), to disapprove 4 VAC 25–130–130–761.16(e)(3)(i) and clarify that ''federal law does not permit DMME to adopt any regulation that would relieve permit applicants of the obligation to obtain a

valid adjudication of any property rights dispute pertinent to the 'right to mine' demonstration that each permit applicant must make, including any claim to VER that may be a part of the applicant's 'right to mine' demonstration. Permit applicants must commence and complete such proceedings in order to submit a complete application; state regulatory authorities may not shift that burden to persons who dispute the applicant's right to mine, including any property-rights based claim to VER that an applicant may make.''

*OSM's Response:* We disagree with SAMS/Sierra Club. The Virginia provision is identical in substance to the counterpart Federal regulation at 30 CFR 761.16(e)(3)(i), which states as follows:

> The agency must issue a determination that you have not demonstrated valid existing rights if your property rights claims are the subject of pending litigation in a court or administrative body with jurisdiction over the property rights in question. The agency will make this determination without prejudice, meaning that you may refile the request once the property rights dispute is finally adjudicated. This paragraph applies only to situations in which legal action has been initiated as of the closing date of the comment period under paragraph (d)(1) or (d)(3) of this section.

The VER regulations published by OSM on December 17, 1999 (64 FR 70766–70838), which include the provision quoted above, were challenged by the National Mining Association and upheld by the United States Court of Appeals for the District of Columbia Circuit in *Nat'l Mining Ass'n* v. *Kempthorne,* 512 F.3d 702 (D. C. Cir. 2008), *cert. denied* 172 L. Ed. 2d 639 (U.S. Dec. 1, 2008). Thus, as noted in Finding III(b) above, the Virginia provision at 4 VAC 25–130–130–761.16(e)(3)(i) is substantively identical to, and no less effective than, its Federal counterpart, and is therefore approved.

*SAMS/Sierra Club Comment #2:* Second, the commenters assert that the Virginia regulation at 4 VAC 25–130–130–761.16(e)(3)(ii), which would permit the DMME ''to evaluate the merits of the information in the record and determine whether the person has demonstrated that the requisite property rights exist under subdivision (a), (c)(1), or (c)(2) of the valid existing rights definition * * *, as appropriate,'' is ''flatly inconsistent with SMCRA's dictate that 'nothing in this Act shall be construed to authorize the regulatory authority to adjudicate property rights disputes.'' 30 U.S.C. 1260(b)(6). Instead, SAMS/Sierra Club argues, SMCRA requires the regulatory authority to ''withhold approval of the pertinent permit application unless and until the permit applicant obtains a favorable adjudication of that dispute in accordance with pertinent state law[.]'' For this reason, they contend, the DMME may not ''evaluate the merits of information in the record'' to ''determine whether the [permit applicant] has demonstrated that requisite property rights exist, as provided for in paragraph (e)(3)(ii), because to do so would ''constitute an administrative adjudication of property rights that SMCRA flatly prohibits a regulatory authority from undertaking.'' Therefore, the commenters conclude, OSM must disapprove 4 VAC 25–130–130–761.16(e)(3)(ii), and ''make clear that federal law does not permit DMME to adopt any regulation that would empower it to adjudicate any property rights dispute pertinent to any of its activities under the approved Virginia state program.''

*OSM's Response:* We disagree with SAMS/Sierra Club, based precisely on the rationale set forth in our response to SAMS/Sierra Club Comment #1, above. The Virginia provision is substantively identical to, and therefore no less effective than, its Federal counterpart addressing valid existing rights claims at 30 CFR 761.16(e)(3)(ii), which states:

> If the record indicates disagreement as to the accuracy of your property rights claims, but this disagreement is not the subject of pending litigation in a court or administrative agency of competent jurisdiction, the agency must evaluate the merits of the information in the record and determine whether you have demonstrated that the requisite property rights exist under paragraph (a), (c)(1), or (c)(2) of the definition of valid existing rights in § 761.5, as appropriate. The agency must then proceed with the decision process under paragraph (e)(2) of this section.

This Federal provision was part of the same VER challenge that resulted in the upholding of all of the Federal VER regulations promulgated by OSM on December 17, 1999 (64 FR 70766–70838). *Nat'l Mining Ass'n v. Kempthorne, supra.* The Federal regulation provides, if there is no pending litigation in a court or administrative agency of competent jurisdiction on the question of property rights, the regulatory agency must evaluate the merits of the information submitted and determine if the applicable regulatory provisions for demonstrating requisite property rights under the definition of valid existing rights have been satisfied. As indicated, the Virginia provision is substantively identical to the Federal provision. For these reasons, we approve the Virginia regulation at 4 VAC 25 130 130 761.16(e)(3)(ii).

*SAMS/Sierra Club Comment #3:* The commenters also objected to the comment period provided for by 4 VAC 25–130–761.16(d)(3). The commenters contend that the 30 day comment period for a VER determination, which may be expanded to 60 days at the DMME's discretion, ''establishes an unreasonably brief period within which coalfield citizens who wish to challenge a VER claim must commence litigation to resolve an underlying property rights dispute,'' as set forth in 4 VAC 25–130–130–761.16(e)(3)(ii). The comment period would, according to SAMS/Sierra Club, ''have the effect of limiting citizen access to necessary legal services, or even foreclosing such access altogether, due to the likely refusal of attorneys to accept matters on such an emergency footing [.]'' Thus, according to the commenters, even if it were lawful to require citizens to commence property rights dispute litigation (which the commenters say is certainly not the case), ''OSM's duty to foster participation in the Virginia program would require * * * [it] to withhold approval of DMME's proposed permit amendment unless and until DMME provides at least a 90-day public comment period * * *, together with provision for mandatory extension * * * for an additional 30 days if an attorney representing a person who intends to file a property rights dispute establishes a good faith need for additional time to prepare and file litigation.''

*OSM's Response:* SAMS/Sierra Club provides no rationale for requiring DMME to establish a minimum comment period of 90 days for a VER determination, with a mandatory 30 day extension based upon a good faith need for more time by an attorney representing the would-be plaintiff in a property rights dispute. Indeed, the Federal regulation at 30 CFR 761.16(d)(3), which is now settled law, establishes a 30 day period, with an additional 30 days upon request, followed by the possibility of further extensions at the discretion of the regulatory authority, based upon a showing of good cause by the requestor; it does not, however, mandate a comment period longer than 60 days, as requested by SAMS/Sierra Club. Therefore, we disagree with the commenters that Virginia must provide a longer comment period than is allowed under the Federal regulatory counterpart.

*SAMS/Sierra Club Comment #4:* Finally, the commenters request that, if it has not done so, OSM must submit

the proposed amendment to Virginia's State Historic Preservation Officer (SHPO) and to the Advisory Council on Historic Preservation (ACHP) for comment, pursuant to 30 CFR 732.17(h)(4).

*OSM's Response:* We sent letters to both the Virginia SHPO and the ACHP on August 12, 2008 (Administrative Record No.VA–1090). By letter dated September 9, 2008, the SHPO notified us that no impacts to historic properties were anticipated if we were to approve this amendment (Administrative Record No.VA–1095).

*Federal Agency Comments*

Under 30 CFR 732.17(h)(11)(i) and section 503(b) of SMCRA, on August 12, 2008, we requested comments on the amendments from various Federal agencies with an actual or potential interest in the Virginia program (Administrative Record No. VA–1090). The United States Department of the Interior, Bureau of Land Management responded and stated that they found no inconsistencies with the proposed changes and the Federal Laws, which govern mining (Administrative Record No. 1067). The United States Department of Agriculture, Natural Resources Conservation Services responded and stated that they did not object to the amendment and deemed the changes appropriate.

*Environmental Protection Agency (EPA) Concurrence and Comments*

Under 30 CFR 732.17(h)(11)(i), we requested comments on the amendment from the EPA (Administrative Record No. VA–1090). No comments were received.

Under 30 CFR 732.17(h)(11)(ii), we are required to get a written concurrence from EPA for those provisions of the program amendment that relate to air or water quality standards issued under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*). None of the revisions that Virginia proposed to make in this amendment pertain to air or water quality standards. Therefore, we did not ask EPA to concur on the amendment.

## V. OSM's Decision

Based on the above findings, we are approving the amendment sent to us by Virginia on July 17, 2008. To implement this decision, we are amending the Federal regulations at 30 CFR part 946, which codify decisions concerning the Virginia program. Pursuant to 5 U.S.C. 553(d)(3), an agency may, upon a showing of good cause, waive the 30 day delay of the effective date of a substantive rule following publication in the **Federal Register**, thereby making the final rule effective immediately.

We find that good cause exists under 5 U.S.C. 553(d)(3) to make this final rule effective immediately. Because Section 503(a) of SMCRA requires that the State's program demonstrate that the State has the capability of carrying out the provisions of the Act and meeting its purposes, making this regulation effective immediately will expedite that process.

## VI. Procedural Determinations

*Executive Order 12630—Takings*

The provisions in the rule based on counterpart Federal regulations do not have takings implications. This determination is based on the analysis performed for the counterpart Federal regulations. The revisions made at the initiative of the State that do not have Federal counterparts have also been reviewed and a determination made that they do not have takings implications. This determination is based on the fact that the provisions are administrative and procedural in nature and are not expected to have a substantive effect on the regulated industry.

*Executive Order 12866—Regulatory Planning and Review*

This rule is exempt from review by the Office of Management and Budget under Executive Order 12866.

*Executive Order 12988—Civil Justice Reform*

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments because each program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR parts 730, 731, and 732 have been met.

*Executive Order 13132—Federalism*

This rule does not have Federalism implications. SMCRA delineates the roles of the Federal and State governments with regard to the regulation of surface coal mining and reclamation operations. One of the purposes of SMCRA is to ''establish a nationwide program to protect society and the environment from the adverse effects of surface coal mining operations.'' Section 503(a)(1) of SMCRA requires that State laws regulating surface coal mining and reclamation operations be ''in accordance with'' the requirements of SMCRA, and section 503(a)(7) requires that State programs contain rules and regulations ''consistent with'' regulations issued by the Secretary pursuant to SMCRA.

*Executive Order 13175—Consultation and Coordination With Indian Tribal Governments*

In accordance with Executive Order 13175, we have evaluated the potential effects of this rule on Federally-recognized Indian tribes and have determined that the 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. The basis for this determination is that our decision is on a State regulatory program and does not involve Federal regulations involving Indian lands.

*Executive Order 13211—Regulations That Significantly Affect The Supply, Distribution, Or Use Of Energy*

On May 18, 2001, the President issued Executive Order 13211 which requires agencies to prepare a Statement of Energy Effects for a rule that is (1) considered significant under Executive Order 12866, and (2) likely to have a significant adverse effect on the supply, distribution, or use of energy. Because this rule is exempt from review under Executive Order 12866 and is not expected to have a significant adverse effect on the supply, distribution, or use of energy, a Statement of Energy Effects is not required.

*National Environmental Policy Act*

This rule does not require an environmental impact statement because section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

*Paperwork Reduction Act*

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

*Regulatory Flexibility Act*

The Department of the Interior certifies that the provisions in this rule that are based on counterpart Federal regulations will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This determination is based on an analysis prepared for the counterpart Federal regulations and the certification made that such regulations would not have a significant economic impact upon a substantial number of small entities. The Department of the Interior also certifies that the provisions in this rule that are not based upon counterpart Federal regulations will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This determination is based on the fact that the provisions are administrative and procedural in nature and are not expected to have a substantive effect on the regulated industry.

*Small Business Regulatory Enforcement Fairness Act*

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule: (a) Does not have an annual effect on the economy of $100 million; (b) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and (c) Does 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. This determination is based upon the fact that a portion of the State provisions are based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation was not considered a major rule. For the portion of the State provisions that is not based upon counterpart Federal regulations, this determination is based upon the fact that the State provisions are administrative and procedural in nature and are not expected to have a substantive effect on the regulated industry.

*Unfunded Mandates*

This rule will not impose an unfunded mandate on State, local, or tribal governments or the private sector of $100 million or more in any given year. This determination is based upon the fact that a portion of the State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation did not impose an unfunded mandate. For the portion of the State provisions that is not based upon counterpart Federal regulations, this determination is based upon the fact that the State provisions are administrative and procedural in nature and are not expected to have a substantive effect on the regulated industry.

**List of Subjects in 30 CFR Part 946**

Intergovernmental relations, Surface mining, Underground mining.

Dated: July 21, 2011.

**Thomas D. Shope,**

*Regional Director, Appalachian Region.*

**Editor's note:** This document was received by the Office of the Federal Register on May 23, 2012.

For the reasons set out in the preamble, 30 CFR part 946 is amended as set forth below:

## PART 946—VIRGINIA

■ 1. The authority citation for part 946 continues to read as follows:

**Authority:** 30 U.S.C. 1201 *et seq.*

■ 2. Section 946.15 is amended in the table by adding a new entry in chronological order by ''Date of final publication'' to read as follows:

**§ 946.15 Approval of Virginia regulatory program amendments.**

* * * * *

| Original amendment submission date | Date of final publication | Citation/description |
|---|---|---|
| * | * | * |
| July 17, 2008 | May 29, 2012 | 4VAC 25–130–700.5, 4VAC25–130–761.11, 4VAC25–130–761.13, 4VAC25–130–761.16, 4VAC25–130–772.12, 4VAC 25–130–773.13, 4VAC 25–130–773.15, 4VAC 25–130–773.20(c)(3), 4VAC 25–130–773.21, 4VAC 25–130–774.12, 4VAC 25–130–774.17(a), 4VAC 25–130–778.13, 4VAC 25–130–778.14(c), 4VAC 25–130–800.52(a) and (a)(5), 4VAC 25–130–801.12(c) and (d), 4VAC 25–130–801.13, 4VAC 25–130–840.14(c)(2), 4VAC 25–130–846.2. |

[FR Doc. 2012–12933 Filed 5–25–12; 8:45 am]
BILLING CODE 4310–05–P

## DEPARTMENT OF HOMELAND SECURITY

## Coast Guard

## 33 CFR Parts 100 and 165

**[Docket No. USCG–2012–0373]**

**RIN 1625–AA08**
**RIN 1625–AA00**

## Eighth Coast Guard District Annual Marine Events and Safety Zones; Billy Bowlegs Pirate Festival; Santa Rosa Sound; Ft. Walton Beach, FL

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of enforcement of regulation.

**SUMMARY:** The Coast Guard will enforce a Special Local Regulation and a Safety Zone for the Billy Bowlegs Pirate Festival in the Santa Rosa Sound, Ft. Walton Beach, FL on June 1 and June 2, 2012. This action is necessary to safeguard participants and spectators, including all crews, vessels, and persons on navigable waters during the Billy Bowlegs Pirate Festival. During the enforcement period, entry into, transiting or anchoring in the regulated area is prohibited to all vessels not registered with the sponsor as participants or official patrol vessels, unless specifically authorized by the Captain of the Port (COTP) Mobile or a designated representative.

**DATES:** The regulations in 33 CFR 100.801, Table 1, Table No. 99 and Sector Mobile No. 12; and 33 CFR 165.801, Table 1, Table No. 144 and Sector Mobile No. 3 will be enforced on June 1 and June 2, 2012.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this notice of enforcement, call or email LT Lenell J. Carson, Coast Guard Sector Mobile, Waterways Division; telephone 251–441–5940 or email *Lenell.J.Carson@uscg.mil.*

**SUPPLEMENTARY INFORMATION:** On June 1 and June 2, 2012, the Coast Guard will enforce the Special Local Regulation in 33 CFR 100.801, Table 1, Table No. 99 and Sector Mobile No. 12, and the Safety Zone in 33 CFR 165.801, Table 1, Table No. 144 and Sector Mobile No. 3 for the annual Billy Bowlegs Pirate Festival.

Under the provisions of 33 CFR 100.801, all persons and vessels not registered with the sponsor as participants or official patrol vessels are considered spectators. The ''official patrol vessels'' consist of any Coast Guard, state or local law enforcement and sponsor provided vessels assigned or approved by the Commander, Eighth Coast Guard District, to patrol the event. Spectator vessels desiring to transit the regulated area listed in § 100.801 Table 1, Table No. 99 and Sector Mobile No. 12 may do so only with prior approval of the Patrol Commander and when so directed by that officer and will be operated at a no wake speed in a manner which will not endanger participants in the event or any other craft. No spectator shall anchor, block, loiter, or impede the through transit of participants or official patrol vessels in the regulated area during the effective dates and times, unless cleared for entry by or through an official patrol vessel. The Patrol Commander may forbid and control the movement of all vessels in the regulated area. When hailed or signaled by an official patrol vessel, a vessel shall come to an immediate stop and comply with the directions given. Failure to do so may result in expulsion from the area, citation for failure to comply, or both. Any spectator vessel may anchor outside the regulated area, but may not anchor in, block, or loiter in a navigable channel. The Patrol Commander may terminate the event or the operation of any vessel at any time it is deemed necessary for the protection of life or property. The Patrol Commander will terminate enforcement of the special regulations at the conclusion of the event.

Under the provisions of 33 CFR 165.801, entry into the safety zone listed in Table 1, Table No. 144 and Sector Mobile No. 3 is prohibited unless authorized by the Captain of the Port or a designated representative. Persons or vessels desiring to enter into or passage through the safety zone must request permission from the Captain of the Port or a designated representative. If permission is granted, all persons and vessels shall comply with the instructions of the Captain of the Port or designated representative.

This notice is issued under authority of 5 U.S.C. 552(a). In addition to this notice in the **Federal Register**, the Coast Guard will provide the maritime community with advance notification of this enforcement period via Local Notice to Mariners and Marine Information Broadcasts.

If the Captain of the Port Mobile or Patrol Commander determines that the regulated area need not be enforced for the full duration stated in this notice of enforcement, he or she may use a Broadcast Notice to Mariners to grant general permission to enter the regulated area.

Dated: May 7, 2012.

**K.D. Ivery,**

*Captain, U.S. Coast Guard, Captain of the Port Mobile, Acting.*

[FR Doc. 2012–12951 Filed 5–25–12; 8:45 am]
BILLING CODE 9110–04–P

## DEPARTMENT OF HOMELAND SECURITY

## Coast Guard

## 33 CFR Part 165

**[Docket No. USCG–2012–0384]**

**RIN 1625–AA00**

## Safety Zones; Fourth of July Fireworks Displays Within the Captain of the Port Charleston Zone, SC

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing five temporary safety zones during Fourth of July Fireworks Displays on certain navigable waterways in Hilton Head Island, Mount Pleasant, Murrells Inlet, North Charleston, and North Myrtle Beach, South Carolina. These safety zones are necessary to protect the public from the hazards associated with launching fireworks over navigable waters of the United States. Persons and vessels are prohibited from entering, transiting through, anchoring in, or remaining within any of the safety zones unless authorized by the Captain of the Port Charleston or a designated representative.

**DATES:** This rule is effective from 8:30 p.m. until 10:30 p.m. on July 4, 2012.

**ADDRESSES:** Documents indicated in this preamble as being available in the docket are part of docket USCG–2012–0384 and are available online by going to *http://www.regulations.gov,* inserting USCG–2012–0384 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 final rule, call or email Ensign John R. Santorum, Sector Charleston Office of Waterways Management, Coast Guard; telephone (843) 740–3184, email

*John.R.Santorum@uscg.mil.* If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone (202) 366–9826.

**SUPPLEMENTARY INFORMATION:**

## Regulatory Information

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because the Coast Guard did not receive necessary information regarding the fireworks displays until April 30, 2012. As a result, the Coast Guard did not have sufficient time to publish an NPRM and to receive public comments prior to the fireworks displays. Any delay in the effective date of this rule would be contrary to the public interest because immediate action is needed to minimize potential danger to the public during the fireworks displays.

## Basis and Purpose

The legal basis for the rule is the Coast Guard's authority to establish regulated navigation areas and other limited access areas: 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, 160.5; Public Law 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

The purpose of the rule is to protect the public from the hazards associated with launching fireworks over navigable waters of the United States.

## Discussion of Rule

Multiple fireworks displays are planned for Fourth of July celebrations throughout the Captain of the Port Charleston Zone. The fireworks will be launched from land, piers, or barges. The fireworks will explode over navigable waters of the United States.

The Coast Guard is establishing five temporary safety zones for Fourth of July Fireworks Displays on navigable waters of the United States within the Captain of the Port Charleston Zone. The five safety zones, with the specific enforcement period for each safety zone, are listed below.

1. *Hilton Head Island, South Carolina.* All waters within a 500 yard radius around the barge from which the fireworks will be launched, located on the Atlantic Intracoastal Waterway. This safety zone will be enforced from 8:30 p.m. until 10:30 p.m. on July 4, 2012.

2. *Mount Pleasant, South Carolina.* All waters within a 500 yard radius around the barge from which the fireworks will be launched, located on the Cooper River. This safety zone will be enforced from 8:30 p.m. until 9:50 p.m. on July 4, 2012.

3. *Murrells Inlet, South Carolina.* All waters within a 1,000 yard radius around Veterans Pier, from which the fireworks will be launched, located on the Atlantic Intracoastal Waterway. This safety zone will be enforced from 8:30 p.m. until 10:30 p.m. on July 4, 2012.

4. *North Charleston, South Carolina.* All waters within a 500 yard radius around the barge from which the fireworks will be launched, located on the Cooper River. This safety zone will be enforced from 8:30 p.m. until 10 p.m. on July 4, 2012.

5. *North Myrtle Beach, South Carolina.* All waters within a 500 yard radius around Cherry Grove Pier, from which the fireworks will be launched, located on the Atlantic Ocean. This safety zone will be enforced from 9 p.m. until 10:30 p.m. on July 4, 2012.

Persons and vessels are prohibited from entering, transiting through, anchoring in, or remaining within any of the safety zones unless authorized by the Captain of the Port Charleston or a designated representative. Persons and vessels desiring to enter, transit through, anchor in, or remain within any of the safety zones may contact the Captain of the Port Charleston via telephone at (843) 740–7050, or a designated representative via VHF radio on channel 16, to request authorization. If authorization to enter, transit through, anchor in, or remain within any of the safety zones is granted by the Captain of the Port Charleston or a designated representative, all persons and vessels receiving such authorization must comply with the instructions of the Captain of the Port Charleston or a designated representative. The Coast Guard will provide notice of the safety zones by Broadcast Notice to Mariners, Marine Safety Information Bulletins, and on-scene designated representatives.

## 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

Executive Orders 13563, Improving Regulation and Regulatory Review, and 12866, Regulatory Planning and Review, direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has not been designated a significant regulatory action under section 3(f) of Executive Order 12866. Accordingly, the Office of Management and Budget has not reviewed this regulation under Executive Order 12866.

The economic impact of this rule is not significant for the following reasons: (1) Each safety zone will be enforced for a maximum of 2 hours; (2) vessel traffic in the areas is expected to be minimal during the enforcement periods; (3) although persons and vessels will not be able to enter, transit through, anchor in, or remain within any of the safety zones without authorization from the Captain of the Port Charleston or a designated representative, they may operate in the surrounding areas during the enforcement periods; (4) persons and vessels may still enter, transit through, anchor in, or remain within the safety zones if authorized by the Captain of the Port Charleston or a designated representative; and (5) the Coast Guard will provide advance notification of the safety zones to the local maritime community by Broadcast Notice to Mariners and Marine Safety Information Bulletins.

### Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule may affect the following

entities, some of which may be small entities: the owners or operators of vessels intending to enter, transit through, anchor in, or remain within any of the safety zones described in this rule during the respective enforcement periods. For the reasons discussed in the Regulatory Planning and Review section above, this rule will not have a significant economic impact on a substantial number of small entities.

**Assistance for Small Entities**

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offer to assist small entities in understanding the rule so that they can better evaluate its effects on them and participate in the rulemaking process.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

**Collection of Information**

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

**Federalism**

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

**Unfunded Mandates Reform Act**

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or Tribal government, in the aggregate, or by the private sector of $100,000,000 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 effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

**Civil Justice Reform**

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

**Protection of Children**

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

**Indian Tribal Governments**

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

**Energy Effects**

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

**Technical Standards**

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

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

**Environment**

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction. This rule involves establishing five temporary safety zones that will be enforced for no more than two hours. 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, 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add a temporary § 165.T07–0384 to read as follows:

**§ 165.T07–0384 Safety Zones; Fourth of July Fireworks Displays within the Captain of the Port Charleston Zone, SC.**

(a) *Regulated Areas.* The following regulated areas are safety zones, with the specific enforcement period for each safety zone. All coordinates are North American Datum 1983.

(1) *Hilton Head Island, South Carolina.* All waters within a 500 yard radius around the barge from which the fireworks will be launched, located on the Atlantic Intracoastal Waterway at approximate position 32°13′57″ N, 80°45′06″ W. This safety zone will be enforced from 8:30 p.m. until 10:30 p.m. on July 4, 2012.

(2) *Mount Pleasant, South Carolina.* All waters within a 500 yard radius around the barge from which the fireworks will be launched, located on the Cooper River at approximate position 32°47′32″ N, 79°54′33″ W. This safety zone will be enforced from 8:30 p.m. until 9:50 p.m. on July 4, 2012.

(3) *Murrells Inlet, South Carolina.* All waters within a 1,000 yard radius around Veterans Pier, from which the fireworks will be launched, located on the Atlantic Intracoastal Waterway at approximate position 33°33′23″ N, 79°01′48″ W. This safety zone will be enforced from 8:30 p.m. until 10:30 p.m. on July 4, 2012.

(4) *North Charleston, SC.* All waters within a 500 yard radius around the barge from which the fireworks will be launched, located on the Cooper River at approximate position 32°52′01″ N, 79°57′35″ W. This safety zone will be enforced from 8:30 p.m. until 10 p.m. on July 4, 2012.

(5) *North Myrtle Beach, South Carolina.* All waters within a 500 yard radius around Cherry Grove Pier, from which the fireworks will be launched, located on the Atlantic Ocean at approximate position 33°49′38″ N, 78°37′54″ W. This safety zone will be enforced from 9 p.m. until 10:30 p.m. on July 4, 2012.

(b) *Definition.* The term ''designated representative'' means Coast Guard Patrol Commanders, including Coast Guard coxswains, petty officers, and other officers operating Coast Guard vessels, and Federal, state, and local officers designated by or assisting the Captain of the Port Charleston in the enforcement of the regulated areas.

(c) *Regulations.* (1) All persons and vessels are prohibited from entering, transiting through, anchoring in, or remaining within the regulated areas unless authorized by the Captain of the Port Charleston or a designated representative.

(2) Persons and vessels desiring to enter, transit through, anchor in, or remain within the regulated areas may contact the Captain of the Port Charleston by telephone at (843) 740–7050, or a designated representative via VHF radio on channel 16, to request authorization. If authorization to enter, transit through, anchor in, or remain within the regulated areas is granted by the Captain of the Port Charleston or a designated representative, all persons and vessels receiving such authorization must comply with the instructions of the Captain of the Port Charleston or a designated representative.

(3) The Coast Guard will provide notice of the regulated areas by Broadcast Notice to Mariners, Marine Safety Information Bulletins, and on-scene designated representatives.

(d) *Effective Date.* This rule is effective from 8:30 p.m. until 10:30 p.m. on July 4, 2012.

Dated: May 14, 2012.

**M.F. White,**

*Captain, U.S. Coast Guard, Captain of the Port Charleston.*

[FR Doc. 2012–12875 Filed 5–25–12; 8:45 am]

BILLING CODE 9110–04–P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

**[EPA–R01–OAR–2011–0879; EPA–R01–OAR–2012–0076; FRL–9675.9]**

## Approval and Promulgation of Air Quality Implementation Plans; Massachusetts and New Hampshire; Determination of Attainment of the One-Hour and 1997 Eight-Hour Ozone Standards for Eastern Massachusetts

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** The EPA is making three separate and independent determinations. First, the EPA is determining that the Boston-Lawrence-Worcester (Eastern Massachusetts), MA-NH serious one-hour ozone nonattainment area met the applicable deadline of November 15, 2007, for attaining the one-hour National Ambient Air Quality Standard (NAAQS) for ozone. This final determination is based upon complete, quality-assured, certified ambient air monitoring data that show the area attained the level of the now revoked one-hour ozone NAAQS for the 2005–2007 monitoring period. Second, EPA is determining that the Boston-Lawrence-Worcester (Eastern Massachusetts) moderate 1997 eight-hour ozone nonattainment area attained the 1997 eight-hour NAAQS for ozone by its applicable attainment date (June 15, 2010), based upon complete, quality-assured, certified ambient air monitoring data for the 2007–2009 monitoring period. Third, EPA is determining that the Boston-Lawrence-Worcester (Eastern Massachusetts) moderate 1997 eight-hour ozone nonattainment area has attained the 1997 eight-hour NAAQS for ozone, based upon complete, quality-assured, certified ambient air monitoring data for 2008–2010 monitoring period, and continuing through 2011. Under the provisions of EPA's ozone implementation rule, the requirements for this area to submit an attainment demonstration, a reasonable further progress plan, contingency measures, and other planning State Implementation Plans related to attainment of the 1997 eight-hour ozone NAAQS shall be suspended for so long as the area continues to attain the 1997 ozone NAAQS.

**DATES:** This rule is effective on June 28, 2012.

**ADDRESSES:** EPA has established dockets for these actions under Docket Identification No. EPA–R01–OAR–2011–0879 and EPA–R01–OAR–2012–0076. All documents in the dockets are listed on the *www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *www.regulations.gov* or in hard copy at the Office of Ecosystem Protection, U.S. Environmental Protection Agency, EPA New England Regional Office, Office of Ecosystem Protection, Air Quality Planning Unit, 5 Post Office Square—Suite 100, Boston, MA. EPA requests that if at all possible, you contact the contact listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding legal holidays.

**FOR FURTHER INFORMATION CONTACT:** Richard P. Burkhart, Air Quality Planning Unit, U.S. Environmental Protection Agency, EPA New England Regional Office, 5 Post Office Square, Suite 100, Boston, MA 02109–3912, telephone number (617) 918–1664, fax number (617) 918–0664, email *Burkhart.Richard@epa.gov.*

**SUPPLEMENTARY INFORMATION:** Throughout this document whenever ''we,'' ''us,'' or ''our'' is used, we mean EPA.

Organization of this document. The following outline is provided to aid in locating information in this preamble.

I. What actions is EPA taking?

II. What is the background for these actions?
III. What is the effect of these actions?
IV. Final Actions
V. Statutory and Executive Order Reviews

## I. What actions is EPA taking?

EPA is making three separate and independent final determinations for the Boston-Lawrence-Worcester (Eastern Massachusetts), MA–NH serious one-hour ozone nonattainment area, and the Boston-Lawrence-Worcester (Eastern Massachusetts) moderate 1997 eight-hour ozone nonattainment area.

### *A. Determination of Attainment for the One-Hour Ozone Standard*

First, EPA is determining that the Boston-Lawrence-Worcester (Eastern Massachusetts), MA–NH serious one-hour ozone nonattainment area has attained the one-hour ozone NAAQS, by the area's applicable attainment date of November 15, 2007 based upon complete, quality-assured and certified ambient air monitoring data for the 2005–2007 monitoring period. The Boston-Lawrence-Worcester, MA–NH one-hour ozone nonattainment area consists of Barnstable, Bristol, Dukes, Essex, Middlesex, Nantucket, Norfolk, Plymouth, Suffolk and Worcester Counties in Massachusetts; along with parts of Hillsborough and Rockingham Counties in southern New Hampshire. (See 40 CFR 81.322, and 81.330.)

### *B. Determinations of Attainment for the 1997 Eight-Hour Ozone Standard*

Second, EPA is determining, under section 181(b)(2)(A) of the Clean Air Act (CAA), that the Boston-Lawrence-Worcester (Eastern Massachusetts) moderate 1997 eight-hour ozone nonattainment area attained the 1997 eight-hour ozone NAAQS by its applicable attainment date (June 15, 2010). The Eastern Massachusetts 1997 eight-hour ozone nonattainment area consists of Barnstable, Bristol, Dukes, Essex, Middlesex, Nantucket, Norfolk, Plymouth, Suffolk and Worcester Counties, in Massachusetts.

Finally, EPA is determining that the Boston-Lawrence-Worcester (Eastern Massachusetts) moderate 1997 eight-hour ozone nonattainment area has attained the 1997 eight-hour ozone NAAQS, based upon complete, quality-assured and certified ambient air monitoring data for the 2008–2010 and 2009–2011 monitoring periods.

## II. What is the background for these actions?

On December 14, 2011 (76 FR 77739), EPA published in the **Federal Register** a Notice of Proposed Rulemaking (NPR) proposing its determination under section 181(b)(2) that the Boston-Lawrence-Worcester (Eastern Massachusetts), MA-NH serious one-hour ozone nonattainment area attained the one-hour ozone NAAQS by November 15, 2007, the area's applicable attainment deadline. The rationale and bases for EPA's proposed determination are set forth in the December 14, 2011 NPR, and need not be restated here. EPA received no comments on the NPR.

On March 13, 2012 (77 FR 14712), EPA published in the **Federal Register** an NPR proposing its determinations that the Boston-Lawrence-Worcester (Eastern Massachusetts), MA moderate eight-hour ozone nonattainment area attained the 1997 eight-hour ozone NAAQS by June 15, 2010, the area's applicable attainment deadline, and that the area continues to attain the 1997 8-hour ozone NAAQS. The rationale and bases for EPA's proposed determinations are set forth in the March 13, 2012 NPR, and need not be restated here. EPA received no comments on the NPR.

## III. What is the effect of these actions?

### *A. For the One-Hour Ozone Standard*

After revocation of the one-hour ozone standard, EPA must continue to provide a mechanism to give effect to the one-hour anti-backsliding requirements. See *SCAQMD* v. *EPA,* 472 F.3d 882, at 903 (DC Cir. 2006). In keeping with this responsibility, EPA has determined that the Boston-Lawrence-Worcester, MA–NH serious one-hour ozone nonattainment area attained the one-hour ozone standard by the area's applicable attainment date of November 15, 2007. In this context, EPA has also determined that there are no additional obligations under the revoked one-hour standard, including those relating to one-hour ozone contingency measures, for the Boston-Lawrence-Worcester, MA–NH one-hour ozone nonattainment area.

### *B. For the Eight-Hour Ozone Standard*

In accordance with CAA section 181(b)(2)(A), EPA is determining that the Boston-Lawrence-Worcester (Eastern Massachusetts) moderate 1997 eight-hour ozone nonattainment area attained the 1997 ozone NAAQS by its applicable attainment date of June 15, 2010. The effect of this determination of attainment by the area's attainment date is to discharge EPA's obligation under section 181(b)(2)(A), and to establish that, in accordance with that section, the area will not be reclassified for failure to attain by its applicable attainment date.

EPA is also determining that the Boston-Lawrence-Worcester (Eastern Massachusetts) moderate 1997 eight-hour ozone nonattainment area has attained the 1997 eight-hour ozone NAAQS, based upon the most recent complete, quality-assured and certified ambient air monitoring data, for the 2008–2010 and 2009–2011 monitoring periods. Under the provisions of EPA's ozone implementation rule (see 40 CFR 51.918), a determination that the area is attaining the 1997 eight-hour ozone standard suspends the requirements for the Boston-Lawrence-Worcester (Eastern Massachusetts) moderate 1997 eight-hour ozone nonattainment area to submit an attainment demonstration, a reasonable further progress plan, section 172(c)(9) contingency measures, and any other planning State Implementation Plans (SIPs) related to attainment of the 1997 eight-hour ozone NAAQS for so long as the area continues to attain the 1997 ozone NAAQS.

EPA's determination that the area has attained the 1997 eight-hour ozone standard does not constitute a redesignation to attainment for that standard under CAA section 107(d)(3), because EPA has not yet approved a maintenance plan for the area, as required under section 175A of the CAA, nor determined that the area has met the other requirements for redesignation. Thus, the classification and designation status of the area remains moderate nonattainment for the 1997 eight-hour ozone NAAQS until such time as EPA determines that it meets the CAA requirements for redesignation to attainment. If EPA subsequently determines, after notice-and-comment rulemaking in the **Federal Register**, that the Boston-Lawrence-Worcester (Eastern Massachusetts) moderate 1997 eight-hour ozone area's basis for the suspension of these requirements no longer exists, then the area would thereafter have to address the pertinent requirements.

## IV. Final Actions

EPA is making three separate and independent determinations. First, EPA is determining that the Boston-Lawrence-Worcester, MA–NH one-hour ozone nonattainment area met its applicable one-hour ozone attainment date of November 15, 2007, based on 2005–2007 complete, certified, quality-assured ozone monitoring data. Second, EPA is determining, pursuant to CAA section 181(b)(2)(A), that the Boston-Lawrence-Worcester (Eastern Massachusetts) moderate 1997 eight-hour ozone nonattainment area met the applicable eight-hour ozone attainment

date of June 15, 2010, based on 2007–2009 complete, certified, quality-assured ozone monitoring data. Third, EPA is determining that the Boston-Lawrence-Worcester (Eastern Massachusetts) moderate 1997 eight-hour ozone nonattainment area has attained the applicable eight-hour ozone standard based on complete, certified, quality-assured ozone monitoring data for 2008–2010 and 2009–2011.

## IV. Statutory and Executive Order Reviews

These actions make determinations of attainment based on air quality, result in the suspension of certain Federal requirements, and/or would not impose additional requirements beyond those imposed by state law. For that reason, these actions:

- Are not ''significant regulatory actions'' subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Do not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Are 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.*);
- Do 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);
- Do not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Are not economically significant regulatory actions based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Are not significant regulatory actions subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Are not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Do 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, these actions do not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing these actions and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 30, 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 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, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: May 14, 2012.

**Ira W. Leighton,**

*Acting Regional Administrator, EPA New England.*

Part 52 of chapter I, title 40 of the Code of Federal Regulations is amended as follows:

## PART 52—[AMENDED]

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

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

## Subpart W—Massachusetts

■ 2. Section 52.1129 is amended by adding paragraphs (f) and (g) to read as follows:

### § 52.1129 Control strategy: Ozone.

* * * * *

(f) Determination of Attainment for the One-Hour Ozone Standard. Effective June 28, 2012, EPA is determining that the Boston-Lawrence-Worcester, MA–NH one-hour ozone nonattainment area met the one-hour ozone standard, by the area's applicable attainment date of November 15, 2007, based on 2005–2007 complete, certified, quality-assured ozone monitoring data at all monitoring sites in the area.

(g) *Determination of Attainment.* (1) Determination of Attainment by Attainment Date; and

(2) *Determination of Attainment.* Effective June 28, 2012.

(i) Determination of Attainment by the Area's Attainment Date. EPA is determining that the Boston-Lawrence-Worcester, MA eight-hour ozone nonattainment area met the applicable June 15, 2010 attainment deadline for the 1997 eight-hour ozone standard.

(ii) EPA is determining that the Boston-Lawrence-Worcester, MA eight-hour ozone nonattainment area has attained the 1997 eight-hour ozone standard. Under the provisions of EPA's ozone implementation rule (see 40 CFR 51.918), this determination suspends the reasonable further progress and attainment demonstration requirements of section 182(b)(1) and related requirements of section 172(c)(9) of the Clean Air Act for as long as the area continues to attain the 1997 eight-hour ozone standard. If EPA determines, after notice-and comment rulemaking, that the Boston-Lawrence-Worcester, MA area no longer meets the 1997 ozone NAAQS, this determination shall be withdrawn.

## Subpart EE—New Hampshire

■ 3. Section 52.1534 is amended by adding paragraph (f) to read as follows:

### § 52.1534 Control strategy: Ozone.

* * * * *

(f) *Determination of Attainment for the One-Hour Ozone Standard.* Effective June 28, 2012, EPA is determining that the Boston-Lawrence-Worcester, MA–NH one-hour ozone nonattainment area met the one-hour ozone standard, by the area's applicable attainment date of November 15, 2007, based on 2005–2007 complete, certified, quality-assured ozone monitoring data at all monitoring sites in the area.

[FR Doc. 2012–12505 Filed 5–25–12; 8:45 am]

BILLING CODE 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52 and Part 70

**[EPA–R02–OAR–2012–0032, FRL–9675–1]**

### Approval and Promulgation of Implementation Plans and Operating Permits Program; Commonwealth of Puerto Rico; Administrative Changes

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Withdrawal of direct final rule.

**SUMMARY:** Due to an adverse comment, EPA is withdrawing the direct final rule, published on March 22, 2012, that approved revisions to the Puerto Rico Regulations for the Control of Atmospheric Pollution. Those revisions were submitted to EPA by the Puerto Rico Environmental Quality Board on July 13, 2011, and consist of amendments to Rules 102, 111, 115, 116 and Appendix A. Generally the revisions to the regulations involve administrative changes which improve the clarity of the rules contained in the Commonwealth's Implementation Plan and Operating Permits Program.

**DATES:** The direct final rule is withdrawn as of May 29, 2012.

**ADDRESSES:** EPA has established docket number EPA–R02–OAR–2012–0032 for this action. Copies of the state submittal(s) are available at the following address for inspection during normal business hours: Environmental Protection Agency, Region 2 Office, Air Programs Branch, 290 Broadway, 25th Floor, New York, New York 10007–1866.

**FOR FURTHER INFORMATION CONTACT:** Kirk J. Wieber, Air Programs Branch, Environmental Protection Agency, 290 Broadway, 25th Floor, New York, New York 10007–1866, (212) 637–3381.

**SUPPLEMENTARY INFORMATION:** In the direct final rule published at 77 FR 16676, EPA stated that if we received adverse comments by April 23, 2012, the rule would be withdrawn and not take effect. EPA subsequently received an adverse comment. EPA will address the comment received in a subsequent final action based upon the proposed action also published on March 22, 2012 (77 FR 16795). EPA will not institute a second comment period on this action.

**List of Subjects**

*40 CFR Part 52*

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements, Volatile organic compounds.

*40 CFR Part 70*

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

Dated: May 9, 2012.

**Judith A. Enck,**

*Regional Administrator, Region 2.*

[FR Doc. 2012–12783 Filed 5–25–12; 8:45 am]

BILLING CODE 6560–50–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Medicare & Medicaid Services

### 42 CFR Parts 430, 433, 447, and 457

**[CMS–2292–F]**

**RIN 0938–AQ32**

### Medicaid and Children's Health Insurance Programs; Disallowance of Claims for FFP and Technical Corrections

**AGENCY:** Centers for Medicare & Medicaid Services (CMS), HHS.

**ACTION:** Final rule.

**SUMMARY:** This final rule reflects the Centers for Medicare & Medicaid Services' commitment to the general principles of the President's Executive Order 13563 released January 18, 2011, entitled ''Improving Regulation and Regulatory Review.'' This rule will: implement a new reconsideration process for administrative determinations to disallow claims for Federal financial participation (FFP) under title XIX of the Act (Medicaid); lengthen the time States have to credit the Federal government for identified but uncollected Medicaid provider overpayments and provide that interest will be due on amounts not credited within that time period; make conforming changes to the Medicaid and Children's Health Insurance Program (CHIP) disallowance process to allow States the option to retain disputed Federal funds through the new administrative reconsideration process; revise installment repayment standards and schedules for States that owe significant amounts; and provide that interest charges may accrue during the new administrative reconsideration process if a State chooses to retain the funds during that period. This final rule will also make a technical correction to reporting requirements for disproportionate share hospital payments, revise internal delegations of authority to reflect the term ''Administrator or current Designee,'' remove obsolete language, and correct other technical errors.

**DATES:** *Effective Date:* These regulations are effective on June 28, 2012.

**FOR FURTHER INFORMATION CONTACT:**

Robert Lane, (410) 786–2015, or Lisa Carroll, (410) 786–2696, for general information.

Edgar Davies, (410) 786–3280, for Overpayments.

Claudia Simonson, (312) 353–2115, for Overpayments resulting from Fraud.

Rory Howe, (410) 786–4878, for Upper Payment Limit and Disproportionate Share Hospital.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

Title XIX of the Social Security Act (the Act) authorizes Federal grants to States to jointly fund programs that provide medical assistance to low-income families, the elderly, and persons with disabilities. This Federal-State partnership is administered by each State in accordance with an approved State plan. States have considerable flexibility in designing their programs, but must comply with Federal requirements specified in Medicaid statute, regulations, and interpretive agency guidance. Federal financial participation (FFP) is available for State medical assistance expenditures, and administrative expenditures related to operating the State Medicaid program, that are authorized under Federal law and the approved State plan.

For a detailed description of the background of this final rule, please refer to the proposed rule published on August 3, 2011 (76 FR 46685) in the **Federal Register**.

In addition to the background described in the proposed rule, it is significant that section 6506 of the Patient Protection and Affordable Care Act (Pub. L. 111–148, enacted on March 23, 2010) (the Affordable Care Act) amended section 1903(d)(2) of the Act to extend the period from 60 days to 1 year for which a State may collect an overpayment from providers before having to return the Federal share of the funds. This section of the Affordable Care Act also provides for additional time beyond the 1 year for States to recover debts due to fraud when a final judgment (including a final determination on an appeal) is pending.

## II. Summary of the Provisions of the Proposed Rule and Response to Comments

This final rule finalizes provisions set forth in the proposed rule (76 FR 46684). The following is a summary of the provisions and the response to the comments received.

### *A. Administrative Review of Determinations to Disallow Claims for FFP*

Section 204 of the Medicare Improvements for Patients and Providers Act of 2008 (MIPPA), Public Law 110–275, entitled Review of Administrative Claim Determinations, amended section 1116 of the Act by striking ''title XIX'' from section 1116(d) of the Act, which describes a reconsideration process for disallowances of claimed Federal financial participation (FFP), and added a new section 1116(e) of the Act which provides for a new process for administrative review of Medicaid disallowances. Under the new process, a State may request a reconsideration of a Medicaid disallowance from the Secretary of the Department of Health and Human Services (Secretary) during the 60-day period following receipt of notice of the disallowance. Alternatively, or in addition, States may obtain review by the Department of Health and Human Services' (HHS) Departmental Appeals Board (Board) of either the initial agency decision or the reconsidered decision. Therefore, we proposed to revise § 430.42 to set forth new procedures to review administrative determinations to disallow claims for FFP. These new procedures will provide for the availability of an informal agency reconsideration and a formal adjudication by the HHS Board.

Specifically, we proposed to amend § 430.42(b) to provide States the option to request administrative reconsideration of an initial determination of a Medicaid disallowance.

In § 430.42(c), we proposed the procedures for such a reconsideration, in § 430.42(d) we described the option for a State to withdraw a reconsideration request, and in § 430.42(e) we described the procedures for issuing reconsideration decisions and implementing such decisions.

In § 430.42(f), we proposed that States would have the option of appeal to the Board of either an initial determination of a Medicaid disallowance, or the reconsideration of such a determination under § 430.42(b). The procedures for such an appeal are set forth in § 430.42(g).

In § 430.42(h), we proposed the procedure for issuance and implementation of the final decision. For a detailed description of these options, please refer to the proposed rule (76 FR 46685).

The following is a summary of the comments we received regarding the administrative review of determinations to disallow claims for FFP proposal, and our responses to those comments.

*Comment:* One commenter disagreed with our proposal to create a regulatory framework where lack of timely action by the Administrator to issue a decision on a request for reconsideration affirms the disallowance. The commenter believes that this provision will undermine any advantage derived from creating an administrative reconsideration process and recommends that the provision be revised so that a lack of timely action by CMS results in a decision in the State's favor.

*Response:* We do not believe that the implementation of this provision will undermine the advantage that may be provided to a State requesting an administrative reconsideration. Section 1116(e) of the Act provides that a State may appeal an unfavorable reconsideration of a disallowance. We believe that the advantage of creating an administrative reconsideration process is to help reduce legal costs, time, and resources for States and the Federal agency. We believe that the most prudent course is preserving the State's ability to proceed in the reconsideration process to the Board without impediment. This rule affords States the option to proceed to the appeals process without delay even in the event the Administrator does not provide a timely response to the reconsideration.

*Comment:* One commenter requested that CMS revise the rule so that the agency will automatically suspend its disallowance determination during the internal reconsideration period so that a State will not be liable for interest if it elects to retain disallowed FFP. The commenter also stated that CMS proposed to charge interest during the administrative review period at the Current Value of Funds Rate (CVFR).

*Response:* We work diligently to ensure that we have reviewed every option to resolve a financial issue before proceeding to the disallowance process and believe that to undo the process would be counterintuitive. The law provides for a request for reconsideration as an additional option for States in the disallowance process before proceeding to an appeal by the Board. Additionally, we believe that the language in section 1903 of the Act is clear and that we have no authority to revise current regulations to suspend a disallowance during the administrative reconsideration process.

Regarding the liability of interest during the reconsideration process, we note that States are not required to request reconsideration and have the option to return the funds to us during the disallowance process. If a State is afforded the option to, and elects to, retain disallowed FFP during the administrative review period, the State will be charged interest based on the average of the bond equivalent of the weekly 90-day treasury bill auction rates from the date of the disallowance to the date of a final determination, in accordance with section 1903(d)(5) of the Act.

Therefore, we are finalizing without change our proposed revisions to § 430.42 as stated in the proposed rule.

### *B. State Option to Retain Federal Funds Pending Administrative Review and Interest Charges on Properly Disallowed Funds Retained by the State*

We proposed to revise § 433.38 to clarify the application of interest when the State opts to retain Federal funds. In § 433.38, we proposed to add language clarifying that interest will accrue on disallowed claims of FFP during both the reconsideration process and the Board appeal process. We also proposed to clarify that, if a State chooses to retain the FFP when a claim is disallowed and appeals the disallowance, the interest will continue to accrue through the reconsideration and the Board decision. If the disallowance is upheld, we proposed that the interest would continue to accrue on outstanding balances during any installment repayment period, until the total amount is repaid.

We indicated in the preamble to the proposed rule that we were considering two options for the repayment of interest that accrues from the date of the disallowance notice until the final Board decision when a State elects repayment by installments. It has consistently been our policy that once the State has exhausted all of its administrative appeal rights and the disallowance has been upheld, the principal overpayment amount plus interest through the date of final determination becomes the new overpayment amount. We proposed to provide States with an additional option for repaying that interest during a repayment schedule. We believe that allowing greater flexibility in the repayment of interest during the

repayment schedule will assist States as they formulate their budgets.

If a State chooses to repay the overpayment by installments, the State may choose the option of:

(1) Dividing the new overpayment amount (principal plus initial interest) by the 12-quarters of repayment. The initial interest is interest from the date of the disallowance notice until the first payment. The State will still need to pay interest per quarter on the remaining balance of the overpayment until the final payment. To clarify how this option would work, we provided an example in Table 3 of the proposed rule (76 FR 46689); or

(2) Paying the first installment of the principal plus all interest accrued from the date of the disallowance notice through the first payment. The first installment would include the principal payment plus interest calculated from the date of the disallowance notice. Each subsequent payment would include the principal payment plus interest calculated on the remaining balance of the overpayment amount.

Under section 1903(d)(5) of the Act, a State that wishes to retain the Federal share of a disallowed amount will be charged interest, based on the average of the bond equivalent of the weekly 90-day treasury bill auction rates, from the date of the disallowance to the date of a final determination.

A State that has given a timely written notice of its intent to repay by installments to CMS will accrue interest during the repayment schedule on a quarterly basis at the Treasury Current Value Fund Rate (CVFR), from:

(1) The date of the disallowance notice, if the State requests a repayment schedule during the 60-day review period and does not request reconsideration by CMS or appeal to the Board within the 60-day review period.

(2) The date of the final determination of the administrative reconsideration, if the State requests a repayment schedule during the 60-day review period following the CMS final determination and does not appeal to the Board.

(3) The date of the final determination by the Board, if the State requests a repayment schedule during the 60-day review period following the Board's final determination.

The initial installment will be due by the last day of the quarter in which the State requests the repayment schedule. If the request is made during the last 30 days of the quarter, the initial installment will be due by the last day of the following quarter. Subsequent repayment amounts plus interest will be due by the last day of each subsequent quarter.

The CVFR is based on the Treasury Tax and Loan (TT&L) rate and is published annually in the **Federal Register**, usually by October 31st (effective on the first day of the next calendar year), at the following Web site: *http://www.fms.treas.gov/cvfr/index.html.*

For a detailed description of these proposed options, please refer to the proposed rule (76 FR 46686).

We solicited comments related to these approaches and the best application of interest when a State chooses repayment of FFP by installments. We were also interested in any suggestions on alternative approaches with respect to the repayment of interest during the repayment schedule.

The following describes the one timely comment we received regarding the State option to retain Federal funds pending administrative review and interest charges on properly disallowed funds retained by the State.

*Comment:* One commenter strongly recommended that CMS address what they believe to be an inherent inequity in charging interest on disputed funds when a State retains the FFP and loses on reconsideration/appeal. They stated that CMS should pay interest to a State if a State prevails on reconsideration or appeal.

*Response:* Section 1903(d)(5) of the Act gives the State the option to retain the amount of Federal payment in controversy subject to an interest charge. Section 1903(d)(5) of the Act does not provide authority for CMS to pay a State interest on disputed funds when a State prevails in reconsideration or appeal. Nor do we see any significant equity issue, since interest is only due if a State exercises the option to retain the funds pending resolution of the dispute and it is determined that the State had no entitlement to the use of those funds. Additionally, as the State controls the funds during the reconsideration of appeal, CMS is in no way inhibiting the use of those funds pending resolution of the dispute. States have substantial control over both the quality and documentation of their claims.

Therefore, we are finalizing without change our proposal to revise § 433.38 to clarify the application of interest when the State opts to retain Federal funds as stated in the proposed rule.

*C. Repayment of Federal Funds by Installments*

We proposed to amend § 430.48 to revise the repayment schedule providing more options for States electing a repayment schedule for the payment of Federal funds by installment. We proposed three schedules including schedules that recognize the unique fiscal pressures of States that are experiencing economic distress, and to make technical corrections.

The rationale for the installment repayment schedule is to enable States to continue to operate their programs effectively while repaying the Federal share.

For a detailed description of the proposed options and repayment schedules, please refer to the proposed rule (76 FR 46686).

The following is a summary of the comments we received regarding repayment of Federal funds by installments.

*Comment:* One commenter recommended that CMS clarify the use of the term ''deposits,'' and asked if a State may continue to accomplish repayment through adjustments in the State's Payment Management System (PMS) account. The commenter suggests that CMS' intent may be better reflected by adding ''or adjustments'' to the provision.

*Response:* The term ''deposit'' as used in § 430.48(c)(5)(i) refers to the State making payment by Automated Clearing House (ACH) direct deposit, by check, or by Fedwire transfer in the State's PMS account. We recognize that the current process for repayment allows for an adjustment in the quarterly grants. Under this rule, a State will no longer be allowed to make repayment (of Federal funds by installments) through adjustments in the quarterly grants (reducing State authority to draw Federal funds) over the period covered by the repayment schedule. Due to the extended repayment periods, we believe that there is a need for accountability in the repayment made to PMS that cannot be attained through adjustments other than actual repayment. Adjustment of the grant award would only ensure actual repayment of the funds at the time of the adjustment if the State were simultaneously reducing its drawdown of federal funds in the same amount as the adjustment. If the State were doing so, the net effect should be the same as actual repayment. Because it would be almost impossible to determine what a State drawdown would have been, there is no way to determine if an actual payment was made until a State has to reconcile at the end of the year. The ability to track and record transactions will be enhanced by requiring actual repayment through Automated Clearing House (ACH) direct deposit, by check, or by Fedwire transfer in the State's PMS account.

We have proposed three new repayment schedules that will allow States additional time (12 quarters) to make repayments, as well as extend the quarters for making repayment during periods of economic distress. The revisions to the repayment process in § 430.48(c)(5) are needed to ensure that we can verify when repayments are made. We believe that the revised language of the section as stated in the proposed rule will permit this verification.

*Comment:* One commenter expressed belief that it is a reasonable approach to use the Federal Reserve Bank of Philadelphia State coincident index because it is publicly available and routinely updated. The commenter, however, contended that setting the threshold at a negative percent change on each of 6 previous months sets a standard that is too stringent and does not correlate well with State budget experience. The commenter noted that because States use annual and biennial budget processes, the amount of funding a State can free up in the short term for a disallowance may not be related to the most recent 6 months of economic activity; rather, it is likely to be a function of longer term State economic conditions. The commenter also believes that the 6-month standard is unfair and may penalize States that experience a single month of growth during a period of overall economic decline. The commenter suggested that using a comparison of average annual totals based upon the monthly Federal Reserve Bank of Philadelphia State coincident index will better reflect a State's economic distress condition.

*Response:* The proposed repayment by installments in this rule was developed to provide all States more flexibility and to recognize the unique fiscal pressures of States that are required to repay large amounts to the Federal government. This rule offers three repayment schedules. The establishment of the standard repayment schedule, which will provide all States that qualify a standard 12 quarter repayment, takes into account the fact that most State legislatures will need time to enact appropriations to repay significant amounts. This schedule is intended to assist States with budget concerns that may experience difficulty in freeing up funds in the short term.

We also recognized the need for offering additional relief for States that continued to experience significant economic distress when either initiating a repayment schedule or while currently in the standard repayment process. The alternate repayment schedules were developed to assist only States that are experiencing continuous significant periods of economic distress. The National Bureau of Economic Research (NBER) recognizes that many professionals and experts around the world define a recession as two or more consecutive quarters of declining real Gross Domestic Product (GDP). Our development of a threshold set at a negative percent change on each of 6 previous months is consistent with this widely accepted definition of a recession. The use of a comparison of average annual total seems to be a good measure; however, our research did not identify a widely accepted basis for its use in determining a State's fiscal health.

In consideration of the commenter's suggestion to use a comparison of average annual totals based upon the monthly Federal Reserve Bank of Philadelphia State coincident index, we conducted an analysis to see if the methodology suggested by the commenter will produce significantly different results. The commenter did not define ''average annual totals'' so we defined it for our analysis as the average of the 12 consecutive months prior to the month in which the repayment was requested, resulting in a decline. We performed our analysis using 6 States identified by the commenter as being penalized by the use of the 6-month standard. Our analysis showed that the use of a comparison of average annual total in the States identified did not produce significantly different results. We also note that depending on the percent change identified by the index of a particular 12-month period, in some cases, the use of the average annual totals could have an adverse effect in certain circumstances. For example, if a State has 6 consecutive months of minimal decline preceded by 6 months of growth exceeding the decline, the average annual total for that State will be positive growth. Under the methodology in this rule, that State will qualify for the alternate repayment schedule available upon request, but under the average annual total methodology that State will not qualify. Therefore, for the reasons noted above, we do not believe it will be beneficial to modify our methodology as identified in the proposed rule.

*Comment:* One commenter stated that the use of the Federal Reserve Bank of Philadelphia to identify periods of economic distress in a State could be a good proxy for future State revenues for States that rely heavily on income taxes, but may be limited in its appropriateness for States that depend heavily on sales taxes. The commenter suggested that this indicator does not measure distress that comes from State spending obligations, including natural disasters, retiree pension and health care, State Medicaid program expenditures, and may be limited in its accounting of State spending on unemployment. The commenter recommended that alternative measures be expressly made available in the rule and that Statewide GDP growth should be included as a valid, alternative indicator of Statewide economic distress, as should a State's unemployment rates.

*Response:* We acknowledge that a recession will affect States' revenue differently depending on the various revenue sources States use and how those sources respond to the economic conditions. We disagree that the use of the Federal Reserve Bank of Philadelphia to identify periods of economic distress is limited in its appropriateness for States that depend heavily on sales taxes.

We reviewed this issue by identifying 9 States whose budgets rely heavily on sales taxes and 8 States whose budgets rely heavily on income taxes. We performed an analysis using the Federal Reserve Bank of Philadelphia State coincident index to see if we could determine a difference in States qualifying for an economic distress repayment schedule based on their tax revenue sources. Our analysis did not show a significant difference in qualifying for an alternate repayment schedule between States that rely heavily on general sales tax and those that rely heavily on income taxes.

We also contacted various sources to obtain an understanding of how a State's revenue based on general sales tax will be affected by a recession. Our sources provided a general overview of the effect of State tax revenue during a recession stating that income tax is often more volatile than sales tax. In some States, the sales tax may also be volatile. Most States rely on both a sales and an income tax, which makes up less than one-third of the total taxes. Therefore, there will not necessarily be a significant difference during a recession.

We believe that the use of the Federal Reserve Bank of Philadelphia State coincident index is the best indicator of a State's monthly fiscal health. We note that the trend for each State's index is set to the trend of its GPD and that the data used in determining the index is the best approximation of the type of information used to determine a national recession. We believe that the Federal Reserve Bank of Philadelphia provides for a more equitable treatment of States, is transparent to the public,

robust in its measurement of economic health, based on the most recent data possible, consistent across States, and predictably available on a regular basis in a timely manner.

We also note the commenter's assertion that there are other indicators that may provide a more accurate determination of a State's fiscal health and that these indicators are not measured by the Federal Reserve Bank of Philadelphia. We conducted research and analyzed several potential economic distress measures before making our determination to use the Federal Reserve Bank of Philadelphia. Each measure has some advantages and disadvantages. We found that this is the best option for determining economic distress on a State-by-State basis. It also met the criteria that we believe will best serve States and CMS in making a determination.

*Comment:* One commenter has concerns that this rule will institutionalize a data series produced by a private entity.

*Response:* The Philadelphia Federal Reserve Bank is one of the 12 regional Reserve Banks that, together with the Board of Governors in Washington, DC, make up the Federal Reserve System. It is headquartered in Philadelphia, Pennsylvania and is responsible for the Third Federal Reserve District.

The Federal Reserve Banks have been operating since November 16, 1914. The Federal Reserve Banks' structure consists of both the public or government sector and the private sector. The public sector is represented by a Board of Governors appointed by the President of the United States and confirmed by the U.S. Senate. The private sector is represented by a board of directors. We are confident in relying on data produced by an entity that is part of the Federal Reserve System.

Therefore, we are finalizing without change our proposal to amend § 430.48 to revise the repayment schedule providing more options for States electing a repayment schedule for the payment of Federal funds by installment as stated in the proposed rule.

*D. Refunding of Federal Share of Overpayments to Providers*

We proposed to revise § 433.300 through § 433.322 in accordance with section 6506 of the Affordable Care Act. These provisions amended section 1903(d)(2) of the Act to provide an extension of the period for collection of provider overpayments. Under the new provisions, States have up to 1 year from the date of discovery of an overpayment made to a Medicaid provider to recover or to attempt to recover such an overpayment, unless the overpayment is due to fraud. At the end of the 1-year period, the State is required to return to the Federal government the Federal share of any overpayment not yet returned.

For a detailed description of these provisions, please refer to the proposed rule (76 FR 46691).

The following is a summary of the comments we received regarding refunding of Federal share of overpayments to providers.

*Comment:* One commenter expressed concern regarding the definition of ''final written notice'' in § 433.304. The commenter stated that the proposed changes to sections 433.304 and 433.316 could have the effect of binding the State Medicaid agency to actions taken by other State officials, and suggested some examples of potential problems that could arise, in practice, in situations where the State Medicaid agency does not have legal control over other State officials. The commenter recommended that the proposed regulation be amended to clarify that a State Medicaid agency may not be expected to repay FFP on the basis of allegations made against a provider or filed under authority of another State official. The commenter also recommended that the ''final written notice'' may only come from a State Medicaid agency official.

*Response:* The State Medicaid agency is responsible for returning the Federal share of an overpayment based upon the amount discovered, which, for purposes of § 433.316(d), is the amount identified in the final written notice, as defined in § 433.304. Although we understand the commenter's concern that the State Medicaid agency may not have control over the overpayment determination stated in the final written notice, the only way a State Medicaid agency may treat an overpayment as resulting from fraud under § 433.316(d) is for a law enforcement entity, for example, a Medicaid Fraud Control Unit (MFCU) to accept the case based on a referral from the State Medicaid agency, or for the law enforcement agency to file a civil or criminal case against a provider and notify the State Medicaid agency. There are likely to be instances when other State officials will take action in a State and provide notice to the State Medicaid agency. In those instances, the State Medicaid agency is ultimately responsible for returning the Federal share of the overpayment. Therefore, we decline to take the commenter's recommendations and amend the definition of ''final written notice.''

*Comment:* One commenter stated that the purpose of § 433.316 appears to ensure that the State Medicaid agency makes referrals to the MFCU when there is evidence of fraud. The commenter stated that in general, that expectation is reasonable, but a referral to a MFCU may be redundant in situations where the State Medicaid agency is first made aware of a fraud case because a criminal prosecution has already been initiated by the MFCU, a local prosecuting attorney, or through the U.S. Attorney's office.

*Response:* Although it is true that MFCUs often develop their own cases, we encourage State Medicaid agencies and MFCUs to maintain open communications to keep all parties informed of the cases being worked by each of the offices. Referral of a case developed only by a MFCU back to the MFCU by the State Medicaid agency is not required by § 433.316. However, where the parties independently develop the same case, under § 433.316(d)(3), for the State Medicaid agency to be able to consider the overpayment as resulting from fraud, either (1) the State Medicaid agency must refer the case to the MFCU or other appropriate law enforcement agency and receive a written notification of acceptance of the case from the MFCU or other appropriate law enforcement agency; or (2) the MFCU or other appropriate law enforcement agency must file a civil or criminal case against a provider and notify the State Medicaid agency. In the event the State Medicaid agency identifies allegations of fraud it determines are credible, it is required under § 455.23 to refer the matter to the MFCU and suspend payments, unless good cause exceptions apply, even if the MFCU has developed the case independently.

*Comment:* One commenter noted that a State Medicaid agency may already have commenced or concluded reasonable collection efforts under other procedures, for example, a provider that is associated with a criminal fraud case may also be associated with a bankruptcy case. The commenter recommended that a State be permitted discretion to pursue the most viable collection strategy.

*Response:* Where a State Medicaid agency has commenced or concluded reasonable collection efforts under other procedures, we do not believe that utilizing the fraud exception under § 433.316(d) is necessary. The State Medicaid agency has the discretion to pursue whichever collection strategy it deems most viable; however, the extended period for returning the Federal share under § 433.316 may or may not apply to the extent that the selected collection strategy does not

lead the MFCU or appropriate law enforcement agency to file a civil or criminal action against a provider as referred to in § 433.316(d)(3).

*Comment:* One commenter recommended that CMS clarify that the existence of an element of fraud in a case of an overpayment does not preclude a State from relying on other regulations such as bankruptcy or out of business exceptions to relieve a State of its obligation to repay FFP.

*Response:* Under § 433.318, a State Medicaid agency will not be required to repay the Federal share of a discovered overpayment if a provider is determined to be bankrupt or out of business in accordance with § 433.318. As clarification, whether the provider's overpayment was a result of fraud is not material to the question of whether the State may rely upon § 433.318. The existence of fraud does not extend the time period within which the provider may file its bankruptcy petition or for the State Medicaid agency to determine the provider is out of business.

*Comment:* One commenter requested clarification on the use of bankruptcy terminology in § 433.318(c)(1) and § 433.318(e) of the rule. The commenter noted that there is a distinction between a voluntary bankruptcy petition filed by the debtor and an involuntary bankruptcy petition filed by a creditor. The commenter noted that this rule does not seem to fully describe the bankruptcy process and the variety of possible related outcomes. The commenter suggested that the language in the rule (''if the State recovers an overpayment amount under a court-approved discharge of bankruptcy'') suggests that a State will actually recover an overpayment amount through this process, which is a possible outcome, but unlikely to occur in practice. The commenter also suggests that the phrase ''discharge of bankruptcy'' is unclear and asks if the phrase is intended to convey a discharge of debt, or a discharge of a debtor. The commenter suggests that the phrase ''if a bankruptcy petition is denied, the agency must refund the Federal share of the overpayment in accordance with the procedures * * *'' appears to be problematic noting that it was probably intended to mean that the Medicaid provider, now a debtor, has been denied a discharge of debt. The commenter also suggested that it should be afforded discretion to tailor the collection process and strategy to the facts in the case and that if a State follows reasonable collection procedures; it should not be required to refund the Federal share. The commenter recommends that § 433.318 be modified to reflect the most likely possible outcomes in bankruptcy cases and that a State should not be required to refund the Federal share of an overpayment in cases where a debt is uncollectible. They suggested that the determination should be based on whether a debt is collectible, and not on whether a formal discharge of debt has been granted.

*Response:* We appreciate the comments, but note that the comments are outside the scope of this rule. We revised the overpayment regulations to bring them into compliance with section 6506 of the Affordable Care Act, which amended section 1903(d)(2) of the Act to extend the period from 60 days to 1 year for which a State may collect an overpayment from providers before having to return the Federal funds. This section also provides for additional time beyond the 1 year for States to recover debts due to fraud when a final judgment (including a final determination on an appeal) is pending. Therefore, we decline the commenter's recommendations to make clarifications on the use of bankruptcy terminology. We will consider these comments with respect to possible future rulemaking.

*Comment:* One commenter sought clarification on whether States will be required to submit individualized documentation of reasonable collection efforts to make reclamation and believed that such a requirement will be administratively burdensome, and requested that CMS consider ways to minimize this documentation burden.

*Response:* The submission of documentation for reclaiming of refunds is addressed in regulations. Current regulations at § 433.320(g) state that if the agency reclaims a refund of the Federal share of an overpayment in cases of bankruptcy, the agency must submit to CMS a statement of its efforts to recover the overpayment during the period before the petition for bankruptcy was filed. In cases of out-of-business providers, the agency must submit to CMS a statement of its efforts to locate the provider and its assets and to recover the overpayment during any period before the provider is found to be out-of-business in accordance with § 433.318. This rule did not revise any of the requirements for a State to document that it made reasonable efforts to obtain recovery. Since the overpayment rule was published in 1989, we have not been made aware of any administrative burden that has been imposed on States. We appreciate the comment, but we do not see a need to revise the documentation requirement.

Therefore, we are finalizing without change our proposal to revise § 433.300 through § 433.322 in accordance with section 6506 of the Affordable Care Act as stated in the proposed rule.

*E. Technical Corrections to Medicaid Regulations*

1. Grants Procedures

This rule updates references at § 430.30 by striking ''CMS–25'' and adding ''CMS–37.'' The CMS–25 was renamed to the CMS–37, but the changes were never codified in regulation. We took the opportunity in this final rule to make the correction. States are currently using the CMS–37 form.

2. Deferral of Claims for FFP

This final rule will revise the language in the delegation of authority for deferral determinations under § 430.40 and for disallowance determinations under § 430.42 to reflect the term ''Administrator or current Designee.'' This revision will ensure that future changes in the internal structure of CMS will not affect the authority of the Regional Office to impose deferral and disallowance of claims for FFP.

3. Inpatient Services: Application of Upper Payment Limits (UPLs)

We proposed technical changes that remove UPL transition period language at § 447.272 and § 447.321. The last transition period expired on September 30, 2008.

4. Reporting Requirements for Disproportionate Share Hospital Payments

This final rule corrects a technical error in the regulation text at § 447.299(c)(15). This paragraph provides a narrative description of how ''total uninsured IP/OP uncompensated care costs'' is to be calculated from component data elements. The first sentence unintentionally and incorrectly references costs associated with Medicaid eligible individuals in the description of uninsured uncompensated costs. This reference is incorrect and could not be interpreted reasonably to contribute to an accurate description of ''total uninsured IP/OP uncompensated care costs.'' Additionally, it erroneously contradicts section 1923(g) of the Act, § 447.299, 42 CFR part 455 subpart D, and longstanding CMS policy. The second sentence of § 447.299(c)(15) accurately identifies the component data elements and correctly describes the calculation of ''total uninsured IP/OP uncompensated care costs,'' which does not include Medicaid eligible individuals.

We did not receive any comments pertinent to these provisions. Therefore, we are finalizing without change these provisions as stated in the proposed rule.

*F. Conforming Changes to CHIP Regulations*

The CHIP regulations at § 457.210 through § 457.212 and 457.218 mirror Medicaid regulations at 42 CFR parts 430 and 433 related to deferrals, disallowances, and repayment of Federal funds by installments. We proposed to make conforming changes to both the Medicaid and CHIP programs by striking § 457.210 through § 457.212 and § 457.218 and incorporating the requirements of 42 CFR part 430. We are incorporating these through reference in § 457.628(a).

We are also incorporating the requirements of 42 CFR part 433 with respect to overpayments. Section 2105(c)(6)(B) of the Act incorporates the overpayment requirements of section 1903(d)(2) of the Act into CHIP. Therefore, we are also amending the CHIP regulations to reflect the overpayment requirements as revised by the Affordable Care Act. We are incorporating these through reference in § 457.628(a).

We did not receive any comments pertinent to these provisions. Therefore, we are finalizing without change these provisions as stated in the proposed rule.

*G. General Comments*

*Comment:* One commenter expressed thanks for the codification of the administrative reconsideration process, for increasing the time available to States to notify CMS of their intent, and for lowering the threshold level to qualify for a repayment by installments.

*Response:* We appreciate the support for this rule.

*Comment:* One commenter expressed appreciation for CMS' support of States' program integrity efforts and believes that this rule addresses the need to streamline certain administrative processes related to disallowances, which could lead to administrative cost efficiencies for States and the Federal government. The commenter agreed with the agency that this new administrative reconsideration process could help minimize the administrative burden and allow States to quickly identify and rectify blatant errors in disallowance determinations.

The commenter also agreed that States should retain the authority to seek a formal adjudication by the Health and Human Services' Departmental Appeals Board.

The commenter also stated support for the proposal to determine economic distress on a State-by-State basis rather than relying solely on a national indicator because since the causes and timing of economic distress and recovery vary dramatically by State.

The commenter noted that the proposed change to § 433.320 aligns the Federal regulation with the requirements of the Affordable Care Act and provides State Medicaid agencies with the clarity needed to pursue overpayments to providers due to fraud. The commenter stated that State Medicaid directors are committed to working with Federal policymakers to improve program integrity tools and ensure States are not penalized for their diligent work in pursuing waste, fraud, and abuse.

*Response:* We appreciate the commenter's support for this rule.

*Comment:* One commenter noted inconsistency in the proposed rules regarding the change from ''Regional Administrator'' to ''Consortium Administrator.''

*Response:* We have revised the final rule to remove staff titles from the regulations for deferral determinations under § 430.40 and for disallowance determinations under § 430.42. Specifically, we have revised the language in these sections to reflect the term ''Administrator or current Designee.''

## III. Provisions of the Final Regulations

As a result of our review of the comments we received during the public comment period, as discussed in section II. of this preamble, we are finalizing the proposed revisions as outlined in the proposed rule with the following exception:

We are revising § 430.40(c)(4) to make the language consistent throughout the proposed rule. The regulation has been revised to change the language in the delegation of authority for deferral determinations under § 430.40 and for disallowance determinations under § 430.42 to reflect the term ''Administrator or current Designee.''

## IV. Collection of Information Requirements

Under the Paperwork Reduction Act of 1995 (PRA), we are required to provide 30-day notice in the **Federal Register** and solicit public comment before a collection of information requirement is submitted to the Office of Management and Budget (OMB) for review and approval. To fairly evaluate whether an information collection should be approved by OMB, section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 requires that we solicit comment on the following issues:

- The need for the information collection and its usefulness in carrying out the proper functions of our agency.
- The accuracy of our estimate of the information collection burden.
- The quality, utility, and clarity of the information to be collected.
- Recommendations to minimize the information collection burden on the affected public, including automated collection techniques.

All of the information collection requirements contained in this document are either exempt from the PRA or are currently approved under a valid OMB control number. Therefore, while we are not submitting any information collection requests to OMB for review and approval, we will consider public comments we may receive on these requirements.

*A. ICRs Regarding Disallowance of Claims for FFP (§ 430.42)*

Section 430.42 was revised in accordance with the Medicare Improvement for Patients and Providers Act of 2008 (MIPPA) to set forth new procedures to review administrative determinations to disallow claims for FFP. These new procedures provide for an informal agency reconsideration that must be submitted in writing to the Administrator within 60 day after receipt of a disallowance letter. The reconsideration request must specify the findings or issues with which the State disagrees and the reason for the disagreement. It also may include supporting documentary evidence that the State wishes the Administrator to consider.

The burden associated with this requirement is the time and effort necessary for the State Medicaid agency to draft and submit the reconsideration letter and supporting documentation. Although this requirement is subject to the PRA, we believe that 5 CFR 1320.4(a)(2), exempts the reconsideration letter as a collection of information and the PRA. In this case, the information associated with the reconsideration will be collected subsequent to an administrative action, that is, a determination to disallow.

*B. ICRs Regarding the Maintenance of Records (§ 433.322)*

Section 2105(c)(6)(B) of the Act incorporates the overpayment requirements of section 1903(d)(2) of the Act into CHIP. The overpayment regulations at § 433.322 require that the Medicaid Agency ''maintain a separate record of all overpayment activities for each provider in a manner that satisfies

the retention and access requirements of 45 CFR 92.42.'' We are incorporating these through reference in § 457.628(a). Accordingly, it will require CHIP programs to comply with § 433.322. States are currently required to maintain these records under current regulations for Medicaid (and by implication CHIP).

The recordkeeping requirements set out under 45 CFR 92.42 (and § 433.322) are adopted from OMB Circular A–110.

*C. ICRs Regarding Medicaid Program Budget Report (CMS–37)*

The information collection requirements associated with CMS–37 are approved by OMB and have been assigned OMB control number 0938–0101. This final rule will not impose any new or revised reporting or recordkeeping requirements concerning CMS–37.

*D. ICRs Regarding Quarterly Medicaid Statement of Expenditures for the Medical Assistance Program (CMS–64)*

The information collection requirements associated with CMS–64 are approved by OMB and have been assigned OMB control number 0938–0067. This final rule will not impose any new or revised reporting or recordkeeping requirements concerning CMS–64.

If you comment on the information collection and recordkeeping requirements identified above, please submit your comments to the Office of Information and Regulatory Affairs, Office of Management and Budget,

Attention: CMS Desk Officer, 2292–F,
Fax: (202) 395–6974; or
Email: *OIRA_submission@omb.eop.gov*.

**V. Regulatory Impact Statement**

*A. Statement of Need*

This final rule implements changes to the following:

- Section 1116 of the Act as set forth in section 204 of the Medicare Improvement for Patients and Providers Act of 2008 (Pub. L. 110–275, enacted on July 15, 2008) to provide a new reconsideration process for administrative determinations to disallow claims for FFP under title XIX of the Act (Medicaid).
- Section 1903(d)(2) of the Act as set forth in section 6506 of the Patient Protection and Affordable Care Act (Pub. L. 111–148, enacted on March 23, 2010) (the Affordable Care Act), to lengthen the time States have to credit the Federal government for identified but uncollected Medicaid provider overpayments and provides that interest is due for amounts not timely credited within that time period.
- Section 2107(e)(2)(B) of the Act which makes section 1116 of the Act applicable to CHIP, to the same extent as it is applicable to Medicaid, for administrative review, unless inconsistent with the CHIP statute.
- Enable States to continue to operate their Medicaid programs effectively while repaying the Federal share of unallowable expenditures and to provide more flexibility for States to manage their budgets during periods of economic downturn.
- Clarify that interest charges accrue during the new administrative reconsideration process as set forth in section 204 of the Medicare Improvement for Patients and Providers Act of 2008 (Pub. L. 110–275, enacted on July 15, 2008) if a State chooses to retain the funds during that period.

We conducted a review of existing regulations to correct a technical error in the regulation text at § 447.299(c)(15) which erroneously contradicts section 1923(g) of the Act, § 447.299, 42 CFR part 455 subpart D, and longstanding CMS policy; revise internal delegations of authority to reflect the term ''Administrator or current Designee''; remove obsolete language; and correct other technical errors in accordance with section 6 of Executive Order 13563 of January 18, 2011.

*B. Overall Impact*

We have examined the impact of this rule as required by Executive Order 12866 on Regulatory Planning and Review (September 30, 1993), Executive Order 13563 on Improving Regulation and Regulatory Review (January 18, 2011), the Regulatory Flexibility Act (RFA) (September 19, 1980, Pub. L. 96–354), Executive Order 13563 on Improving Regulation and Regulatory Review (February 2, 2011), section 1102(b) of the Social Security Act, section 202 of the Unfunded Mandates Reform Act of 1995 (March 22, 1995; Pub. L. 104–4), Executive Order 13132 on Federalism (August 4, 1999) and the Congressional Review Act (5 U.S.C. 804(2)).

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects ($100 million or more in any 1 year). This rule does not reach the economic threshold and thus is not considered a major rule.

*C. Anticipated Effects*

The RFA requires agencies to analyze options for regulatory relief of small entities, if a rule has a significant impact on a substantial number of small entities. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and small governmental jurisdictions. Most physician practices, hospitals and other providers are small entities, either by nonprofit status or by qualifying as small businesses under the Small Business Administration's size standards (revenues of less than $7.0 to $34.5 million in any 1 year). States and individuals are not included in the definition of a small entity. For details, see the Small Business Administration's Web site at *http://www.sba.gov/sites/default/files/Size_Standards_Table.pdf*).

The Secretary has also determined that this final rule will not have a significant economic impact on a substantial number of small entities.

In addition, section 1102(b) of the Act requires us to prepare a RIA if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area for Medicare payment regulations and has fewer than 100 beds. We did not prepare an analysis for section 1102(b) of the Act because the Secretary has determined that this final rule will not have a significant impact on the operations of a substantial number of small rural hospitals.

Section 202 of the Unfunded Mandates Reform Act of 1995 also requires that agencies assess anticipated costs and benefits before issuing any rule whose mandates require spending in any 1 year of $100 million in 1995 dollars, updated annually for inflation. In 2012, that threshold is approximately $139 million. This rule will have no consequential effect on State, local, or tribal governments in the aggregate, or on the private sector.

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a proposed rule (and subsequent final rule) that imposes substantial direct requirement costs on State and local governments, preempts State law, or otherwise has Federalism implications. Since this regulation does not impose any costs on State or local governments,

the requirements of Executive Order 13132 are not applicable.

Effects on State Medicaid Programs

The final rule provides States with the option to use certain provisions as well as proposes new requirements or changes to existing interpretations of statutory or regulatory requirements. For a detailed description of the provisions of the proposed rule, please refer to the proposed rule (76 FR 46693).

*D. Alternatives Considered*

This section provides an overview of regulatory alternatives that we considered for the proposed rule. In determining the appropriate guidance to assist States in their efforts to meet Federal requirements, we conducted analysis and research in both the public and private sector. Based, in part, on this analysis and research we arrived at the provisions which were in the proposed rule (76 FR 46694).

1. Administrative Review of Determinations To Disallow Claims for FFP

In the proposed rule (76 FR 46694), we set out procedures for States to request a reconsideration of a disallowance to the CMS Administrator. For a detailed description of the procedures considered, please refer to the proposed rule.

2. Repayment of Federal Funds by Installments

In the proposed rule (76 FR 46694), we proposed three schedules including schedules that recognize the unique fiscal pressures of States that are experiencing economic distress. For a detailed description of the schedules considered, please refer to the proposed rule.

*E. Conclusion*

For the reasons discussed above, we did not prepare analysis for either the RFA or section 1102(b) of the Act because we determined that this regulation will not have a direct significant economic impact on a substantial number of small entities or a direct significant impact on the operations of a substantial number of small rural hospitals.

In accordance with the provisions of Executive Order 12866, this regulation was reviewed by the Office of Management and Budget.

**List of Subjects**

*42 CFR Part 430*

Administrative practice and procedure, Grant programs-health, Medicaid, Reporting and recordkeeping requirements.

*42 CFR Part 433*

Administrative practice and procedure, Child support, Claims, Grant programs-health, Medicaid, Reporting and recordkeeping requirements.

*42 CFR Part 447*

Accounting, Administrative practice and procedure, Drugs, Grant programs-health, Health facilities, Health professions, Medicaid, Reporting and recordkeeping requirements, Rural areas.

*42 CFR Part 457*

Administrative practice and procedure, Grant programs-health, Health insurance, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, the Centers for Medicare & Medicaid Services amends 42 CFR Chapter IV, as set forth below:

## PART 430—GRANTS TO STATES FOR MEDICAL ASSISTANCE PROGRAMS

■ 1. The authority citation for part 430 continues to read as follows:

**Authority:** Sec. 1102 of the Social Security Act (42 U.S.C. 1302).

■ 2. Section 430.30 is amended by revising paragraph (b) to read as follows:

**§ 430.30 Grants procedures.**

* * * * *

(b) *Quarterly estimates.* The Medicaid agency must submit Form CMS–37 (Medicaid Program Budget Report; Quarterly Distribution of Funding Requirements) to the central office (with a copy to the regional office) 45 days before the beginning of each quarter.

* * * * *

■ 3. Section 430.33 is amended by revising paragraph (c)(2) to read as follows:

**§ 430.33 Audits.**

* * * * *

(c) * * *

(2) *Appeal.* Any exceptions that are not disposed of under paragraph (c)(1) of this section are included in a disallowance letter that constitutes the Department's final decision unless the State requests reconsideration by the Administrator or the Departmental Appeals Board. (Specific rules are set forth in § 430.42.)

* * * * *

■ 4. Section 430.40 is amended by revising paragraphs (a)(1), (b)(1) introductory text, (c)(3), (c)(4), (c)(5), (c)(6), and (e)(1) to read as follows:

**§ 430.40 Deferral of claims for FFP.**

(a) * * *

(1) The Administrator or current Designee questions its allowability and needs additional information to resolve the question; and

* * * * *

(b) * * *

(1) Within 15 days of the action described in paragraph (a)(2) of this section, the current Designee sends the State a written notice of deferral that—

* * * * *

(c) * * *

(3) If the current Designee finds that the materials are not in readily reviewable form or that additional information is needed, he or she promptly notifies the State that it has 15 days to submit the readily reviewable or additional materials.

(4) If the State does not provide the necessary materials within 15 days, the current Designee disallows the claim.

(5) The current Designee has 90 days, after all documentation is available in readily reviewable form, to determine the allowability of the claim.

(6) If the current Designee cannot complete review of the material within 90 days, CMS pays the claim, subject to a later determination of allowability.

* * * * *

(e) * * *

(1) The Administrator or current Designee gives the State written notice of his or her decision to pay or disallow a deferred claim.

* * * * *

■ 5. Section 430.42 is amended by—

■ A. Revising paragraphs (a) introductory text and paragraph (a)(9).

■ B. Redesignating paragraphs (b), (c), and (d), as paragraphs (f), (g), and (h) respectively.

■ C. Adding new paragraphs (b), (c), (d), and (e).

■ D. Revising the paragraph heading of newly designated paragraph (f).

■ E. Revising newly designated paragraph (f)(2).

■ F. Adding new paragraph (f)(3).

■ G. Revising newly designated paragraphs (g) and (h).

The revisions and additions read as follows:

**§ 430.42 Disallowance of claims for FFP.**

(a) *Notice of disallowance and of right to reconsideration.* When the Administrator or current Designee determines that a claim or portion of claim is not allowable, he or she promptly sends the State a disallowance letter that includes the following, as appropriate:

* * * * *

(9) A statement indicating that the disallowance letter is the Department's

final decision unless the State requests reconsideration under paragraph (b)(2) or (f)(2) of this section.

(b) *Reconsideration of a disallowance.* (1) The Administrator will reconsider Medicaid disallowance determinations.

(2) To request reconsideration of a disallowance, a State must complete the following:

(i) Submit the following within 60 days after receipt of the disallowance letter:

(A) A written request to the Administrator that includes the following:

(*1*) A copy of the disallowance letter.

(*2*) A statement of the amount in dispute.

(*3*) A brief statement of why the disallowance should be reversed or revised, including any information to support the State's position with respect to each issue.

(*4*) Additional information regarding factual matters or policy considerations.

(B) A copy of the written request to the Regional Office.

(C) Send all requests for reconsideration via registered or certified mail to establish the date the reconsideration was received by CMS.

(ii) In all cases, the State has the burden of documenting the allowability of its claims for FFP.

(iii) Additional information regarding the legal authority for the disallowance will not be reviewed in the reconsideration but may be presented in any appeal to the Departmental Appeals Board under paragraph (f)(2) of this section.

(3) A State may request to retain the FFP during the reconsideration of the disallowance under section 1116(e) of the Act, in accordance with § 433.38 of this subchapter.

(4) The State is not required to request reconsideration before seeking review from the Departmental Appeals Board.

(5) The State may also seek reconsideration, and following the reconsideration decision, request a review from the Board.

(6) If the State elects reconsideration, the reconsideration process must be completed or withdrawn before requesting review by the Board.

(c) *Procedures for reconsideration of a disallowance.* (1) Within 60 days after receipt of the disallowance letter, the State shall, in accordance with (b)(2) of this section, submit in writing to the Administrator any relevant evidence, documentation, or explanation and shall simultaneously submit a copy thereof to the Regional Office.

(2) After consideration of the policies and factual matters pertinent to the issues in question, the Administrator shall, within 60 days from the date of receipt of the request for reconsideration, issue a written decision or a request for additional information as described in paragraph (c)(3) of this section.

(3) At the Administrator's option, CMS may request from the State any additional information or documents necessary to make a decision. The request for additional information must be sent via registered or certified mail to establish the date the request was sent by CMS and received by the State.

(4) Within 30 days after receipt of the request for additional information, the State must submit to the Administrator, with a copy to the Regional Office in readily reviewable form, all requested documents and materials.

(i) If the Administrator finds that the materials are not in readily reviewable form or that additional information is needed, he or she shall notify the State via registered or certified mail that it has 15 business days from the date of receipt of the notice to submit the readily reviewable or additional materials.

(ii) If the State does not provide the necessary materials within 15 business days from the date of receipt of such notice, the Administrator shall affirm the disallowance in a final reconsideration decision issued within 15 days from the due date of additional information from the State.

(5) If additional documentation is provided in readily reviewable form under the paragraph (c)(4) of this section, the Administrator shall issue a written decision, within 60 days from the due date of such information.

(6) The final written decision shall constitute final CMS administrative action on the reconsideration and shall be (within 15 business days of the decision) mailed to the State agency via registered or certified mail to establish the date the reconsideration decision was received by the State.

(7) If the Administrator does not issue a decision within 60 days from the date of receipt of the request for reconsideration or the date of receipt of the requested additional information, the disallowance shall be deemed to be affirmed upon reconsideration.

(8) No section of this regulation shall be interpreted as waiving the Department's right to assert any provision or exemption under the Freedom of Information Act.

(d) *Withdrawal of a request for reconsideration of a disallowance.* (1) A State may withdraw the request for reconsideration at any time before the notice of the reconsideration decision is received by the State without affecting its right to submit a notice of appeal to the Board. The request for withdrawal must be in writing and sent to the Administrator, with a copy to the Regional Office, via registered or certified mail.

(2) Within 60 days after CMS' receipt of a State's withdrawal request, a State may, in accordance with (f)(2) of this section, submit a notice of appeal to the Board.

(e) *Implementation of decisions for reconsideration of a disallowance.* (1) After undertaking a reconsideration, the Administrator may affirm, reverse, or revise the disallowance and shall issue a final written reconsideration decision to the State in accordance with paragraph (c)(4) of this section.

(2) If the reconsideration decision requires an adjustment of FFP, either upward or downward, a subsequent grant award will be issued in the amount of such increase or decrease.

(3) Within 60 days after the receipt of a reconsideration decision from CMS a State may, in accordance with paragraph (f)(2) of this section, submit a notice of appeal to the Board.

(f) *Appeal of Disallowance.* * * *

* * * * *

(2) A State that wishes to appeal a disallowance to the Board must:

(i) Submit a notice of appeal to the Board at the address given on the Departmental Appeals Board's web site within 60 days after receipt of the disallowance letter.

(A) If a reconsideration of a disallowance was requested, within 60 days after receipt of the reconsideration decision; or

(B) If reconsideration of a disallowance was requested and no written decision was issued, within 60 days from the date the decision on reconsideration of the disallowance was due to be issued by CMS.

(ii) Include all of the following:

(A) A copy of the disallowance letter.

(B) A statement of the amount in dispute.

(C) A brief statement of why the disallowance is wrong.

(3) The Board's decision of an appeal under paragraph (f)(2) of this section shall be the final decision of the Secretary and shall be subject to reconsideration by the Board only upon a motion by either party that alleges a clear error of fact or law and is filed during the 60-day period that begins on the date of the Board's decision or to judicial review in accordance with paragraph (f)(2)(i) of this section.

(g) *Appeals procedures.* The appeals procedures are those set forth in 45 CFR part 16 for Medicaid and for many other

programs administered by the Department.

(1) In all cases, the State has the burden of documenting the allowability of its claims for FFP.

(2) The Board shall conduct a thorough review of the issues, taking into account all relevant evidence, including such documentation as the State may submit and the Board may require.

(h) *Implementation of decisions.* (1) The Board may affirm the disallowance, reverse the disallowance, modify the disallowance, or remand the disallowance to CMS for further consideration.

(2) The Board will issue a final written decision to the State consistent with 45 CFR Part 16.

(3) If the appeal decision requires an adjustment of FFP, either upward or downward, a subsequent grant award will be issued in the amount of increase or decrease.

■ 6. Section 430.48 is revised to read as follows:

**§ 430.48 Repayment of Federal funds by installments.**

(a) *Basic conditions.* When Federal payments have been made for claims that are later found to be unallowable, the State may repay the Federal funds by installments if all of the following conditions are met:

(1) The amount to be repaid exceeds 0.25 percent of the estimated or actual annual State share for the Medicaid program.

(2) The State has given the Regional Office written notice, before total repayment was due, of its intent to repay by installments.

(b) *Annual State share determination.* CMS determines whether the amount to be repaid exceeds 0.25 percent of the annual State share as follows:

(1) If the Medicaid program is ongoing, CMS uses the annual estimated State share of Medicaid expenditures for the current year, as shown on the State's latest Medicaid Program Budget Report (CMS–37). The current year is the year in which the State requests the repayment by installments.

(2) If the Medicaid program has been terminated by Federal law or by the State, CMS uses the actual State share that is shown on the State's CMS–64 Quarterly Expense Report for the last four quarters filed.

(c) *Standard Repayment amounts, schedules, and procedures*—(1) *Repayment amount.* The repayment amount may not include any amount previously approved for installment repayment.

(2) *Repayment schedule.* The maximum number of quarters allowed for the standard repayment schedule is 12 quarters (3 years), except as provided in paragraphs (c)(4) and (e) of this section.

(3) *Quarterly repayment amounts.* (i) The quarterly repayment amounts for each of the quarters in the repayment schedule will be the larger of the repayment amount divided by 12 quarters or the minimum repayment amount;

(ii) The minimum quarterly repayment amounts for each of the quarters in the repayment schedule is 0.25 percent of the estimated State share of the current annual expenditures for Medicaid;

(iii) The repayment period may be less than 12 quarters when the minimum repayment amount is required.

(4) *Extended schedule.* (i) The repayment schedule may be extended beyond 12 quarterly installments if the total repayment amount exceeds 100 percent of the estimated State share of the current annual expenditures;

(ii) The quarterly repayment amount will be 8⅓ percent of the estimated State share of the current annual expenditures until fully repaid.

(5) *Repayment process.* (i) Repayment is accomplished through deposits into the State's Payment Management System (PMS) account;

(ii) A State may choose to make payment by Automated Clearing House (ACH) direct deposit, by check, or by Fedwire transfer.

(6) *Reductions.* If the State chooses to repay amounts representing higher percentages during the early quarters, any corresponding reduction in required minimum percentages is applied first to the last scheduled payment, then to the next to the last payment, and so forth as necessary.

(d) *Alternate repayment amounts, schedules, and procedures for States experiencing economic distress immediately prior to the repayment period*—(1) *Repayment amount.* The repayment amount may not include amounts previously approved for installment repayment if a State initially qualifies for the alternate repayment schedule at the onset of an installment repayment period.

(2) *Qualifying period of economic distress.* (i) A State will qualify to avail itself of the alternate repayment schedule if it demonstrates the State is experiencing a period of economic distress;

(ii) A period of economic distress is one in which the State demonstrates distress for at least each of the previous 6 months, ending the month prior to the date of the State's written request for an alternate repayment schedule, as determined by a negative percent change in the monthly Philadelphia Federal Reserve Bank State coincident index.

(3) *Repayment schedule.* The maximum number of quarters allowed for the alternate repayment schedule is 12 quarters (3 years), except as provided in paragraph (d)(5) of this section.

(4) *Quarterly repayment amounts.* (i) The quarterly repayment amounts for each of the first 8 quarters in the repayment schedule will be the smaller of the repayment amount divided by 12 quarters or the maximum quarterly repayment amount;

(ii) The maximum quarterly repayment amounts for each of the first 8 quarters in the repayment schedule is 0.25 percent of the annual State share determination as defined in paragraph (b) of this section;

(iii) For the remaining 4 quarters, the quarterly repayment amount equals the remaining balance of the overpayment amount divided by the remaining 4 quarters.

(5) *Extended schedule.* (i) For a State that initiated its repayment under an alternate payment schedule for economic distress, the repayment schedule may be extended beyond 12 quarterly installments if the total repayment amount exceeds 100 percent of the estimated State share of current annual expenditures;

(A) In these circumstances, paragraph (d)(3) of this section is followed for repayment of the amount equal to 100 percent of the estimated State share of current annual expenditures.

(B) The remaining amount of the repayment is in quarterly amounts equal to 8⅓ percent of the estimated State share of current annual expenditures until fully repaid.

(ii) Upon request by the State, the repayment schedule may be extended beyond 12 quarterly installments if the State has qualifying periods of economic distress in accordance with paragraph (d)(2) of this section during the first 8 quarters of the alternate repayment schedule.

(A) To qualify for additional quarters, the States must demonstrate a period of economic distress in accordance with paragraph (d)(2) of this section for at least 1 month of a quarter during the first 8 quarters of the alternate repayment schedule.

(B) For each quarter (of the first 8 quarters of the alternate payment schedule) identified as qualified period of economic distress, one quarter will be

added to the remaining 4 quarters of the original 12 quarter repayment period.

(C) The total number of quarters in the alternate repayment schedule shall not exceed 20 quarters.

(6) *Repayment process.* (i) Repayment is accomplished through deposits into the State's Payment Management System (PMS) account;

(ii) A State may choose to make payment by Automated Clearing House (ACH) direct deposit, by check, or by Fedwire transfer.

(7) If the State chooses to repay amounts representing higher percentages during the early quarters, any corresponding reduction in required minimum percentages is applied first to the last scheduled payment, then to the next to the last payment, and so forth as necessary.

(e) *Alternate repayment amounts, schedules, and procedures for States entering into distress during a standard repayment schedule*—(1) *Repayment amount.* The repayment amount may include amounts previously approved for installment repayment if a State enters into a qualifying period of economic distress during an installment repayment period.

(2) *Qualifying period of economic distress.* (i) A State will qualify to avail itself of the alternate repayment schedule if it demonstrates the State is experiencing economic distress;

(ii) A period of economic distress is one in which the State demonstrates distress for each of the previous 6 months, that begins on the date of the State's request for an alternate repayment schedule, as determined by a negative percent change in the monthly Philadelphia Federal Reserve Bank State coincident index.

(3) *Repayment schedule.* The maximum number of quarters allowed for the alternate repayment schedule is 12 quarters (3 years), except as provided in paragraph (e)(5) of this section.

(4) *Quarterly repayment amounts.* (i) The quarterly repayment amounts for each of the first 8 quarters in the repayment schedule will be the smaller of the repayment amount divided by 12 quarters or the maximum repayment amount;

(ii) The maximum quarterly repayment amounts for each of the first 8 quarters in the repayment schedule is 0.25 percent of the annual State share determination as defined in paragraph (b) of this section;

(iii) For the remaining 4 quarters, the quarterly repayment amount equals the remaining balance of the overpayment amount divided by the remaining 4 quarters.

(5) *Extended schedule.* (i) For a State that initiated its repayment under the standard payment schedule and later experienced periods of economic distress and elected an alternate repayment schedule, the repayment schedule may be extended beyond 12 quarterly installments if the total repayment amount of the remaining balance of the standard schedule, exceeds 100 percent of the estimated State share of the current annual expenditures;

(ii) In these circumstances, paragraph (d)(3) of this section is followed for repayment of the amount equal to 100 percent of the estimated State share of current annual expenditures;

(iii) The remaining amount of the repayment is in quarterly amounts equal to 8⅓ percent of the estimated State share of the current annual expenditures until fully repaid.

(6) *Repayment process.* (i) Repayment is accomplished through deposits into the State's Payment Management System (PMS) account;

(ii) A State may choose to make payment by Automated Clearing House (ACH) direct deposit, by check, or by Fedwire transfer.

(7) If the State chooses to repay amounts representing higher percentages during the early quarters, any corresponding reduction in required minimum percentages is applied first to the last scheduled payment, then to the next to the last payment, and so forth as necessary.

## PART 433—STATE FISCAL ADMINISTRATION

■ 7. The authority citation for part 433 continues as follows:

**Authority:** Sec. 1102 of the Social Security Act (42 U.S.C. 1302).

■ 8. Section 433.38 is amended by revising paragraphs (a) introductory text, (b)(1), (b)(3), (c), (e)(1)(i),(e)(1)(ii), (e)(1)(iii), (e)(1)(iv), and by adding paragraphs (e)(1)(v), and (e)(1)(vi) to read as follows:

### § 433.38 Interest charge on disallowed claims for FFP.

(a) *Basis and scope.* This section is based on section 1903(d)(5) of the Act, which requires that the Secretary charge a State interest on the Federal share of claims that have been disallowed but have been retained by the State during the administrative appeals process under section 1116(e) of the Act and the Secretary later recovers after the administrative appeals process has been completed. This section does not apply to—

* * * * *

(b) * * *

(1) CMS will charge the State interest on FFP when—

(i) CMS has notified the Medicaid agency under § 430.42 of this subpart that a State's claim for FFP is not allowable;

(ii) The agency has requested a reconsideration of the disallowance to the Administrator under § 430.42 of this chapter and has chosen to retain the FFP during the administrative reconsideration process in accordance with paragraph (c)(2) of this section;

(iii)(A) CMS has made a final determination upholding part or all of the disallowance;

(B) The agency has withdrawn its request for administrative reconsideration on all or part of the disallowance; or

(C) The agency has reversed its decision to retain the funds without withdrawing its request for administrative reconsideration and CMS upholds all or part of the disallowance.

(iv) The agency has appealed the disallowance to the Departmental Appeals Board under 45 CFR Part 16 and has chosen to retain the FFP during the administrative appeals process in accordance with paragraph (c)(2) of this section.

(v)(A)The Board has made a final determination upholding part or all of the disallowance;

(B) The agency has withdrawn its appeal on all or part of the disallowance; or

(C) The agency has reversed its decision to retain the funds without withdrawing its appeal and the Board upholds all or part of the disallowance.

* * * * *

(3) Unless an agency decides to withdraw its request for administrative reconsideration or appeal on part of the disallowance and therefore returns only that part of the funds on which it has withdrawn its request for administrative reconsideration or appeal, any decision to retain or return disallowed funds must apply to the entire amount in dispute.

* * * * *

(c) *State procedures.* (1) If the Medicaid agency has requested administrative reconsideration to CMS or appeal of a disallowance to the Board and wishes to retain the disallowed funds until CMS or the Board issues a final determination, the agency must notify the CMS Regional Office in writing of its decision to do so.

(2) The agency must mail its notice to the CMS Regional Office within 60 days of the date of receipt of the notice of the disallowance, as established by the

certified mail receipt accompanying the notice.

(3) If the agency withdraws its decision to retain the FFP or its request for administrative reconsideration or appeal on all or part of the FFP, the agency must notify CMS in writing.

* * * * *

(e) * * *

(1) * * *

(i) On the date of the final determination by CMS of the administrative reconsideration if the State elects not to appeal to the Board, or final determination by the Board;

(ii) On the date CMS receives written notice from the State that it is withdrawing its request for administrative reconsideration and elects not to appeal to the Board, or withdraws its appeal to the Board on all of the disallowed funds; or

(iii) If the agency withdraws its request for administrative reconsideration on part of the funds on—

(A) The date CMS receives written notice from the agency that it is withdrawing its request for administrative reconsideration on a specified part of the disallowed funds for the part on which the agency withdraws its request for administrative reconsideration; and

(B) The date of the final determination by CMS on the part for which the agency pursues its administrative reconsideration; or

(iv) If the agency withdraws its appeal on part of the funds, on—

(A) The date CMS receives written notice from the agency that it is withdrawing its appeal on a specified part of the disallowed funds for the part on which the agency withdraws its appeal; and

(B) The date of the final determination by the Board on the part for which the agency pursues its appeal; or

(v) If the agency has given CMS written notice of its intent to repay by installment, in the quarter in which the final installment is paid. Interest during the repayment of Federal funds by installments will be at the Current Value of Funds Rate (CVFR); or

(vi) The date CMS receives written notice from the agency that it no longer chooses to retain the funds.

* * * * *

■ 9. Section 433.300 is amended by revising paragraph (b) to read as follows:

**§ 433.300 Basis.**

* * * * *

(b) Section 1903(d)(2)(C) and (D) of the Act, which provides that a State has 1 year from discovery of an overpayment for Medicaid services to recover or attempt to recover the overpayment from the provider before adjustment in the Federal Medicaid payment to the State is made; and that adjustment will be made at the end of the 1-year period, whether or not recovery is made, unless the State is unable to recover from a provider because the overpayment is a debt that has been discharged in bankruptcy or is otherwise uncollectable.

* * * * *

■ 10. Section 433.302 is revised to read as follows:

**§ 433.302 Scope of subpart.**

This subpart sets forth the requirements and procedures under which States have 1 year following discovery of overpayments made to providers for Medicaid services to recover or attempt to recover that amount before the States must refund the Federal share of these overpayments to CMS, with certain exceptions.

■ 11. Section 433.304 is amended by removing the definition of ''Abuse'' and adding the definition of ''Final written notice'' to read as follows:

**§ 433.304 Definitions.**

* * * * *

*Final written notice* means that written communication, immediately preceding the first level of formal administrative or judicial proceedings, from a Medicaid agency official or other State official that notifies the provider of the State's overpayment determination and allows the provider to contest that determination, or that notifies the State Medicaid agency of the filing of a civil or criminal action.

* * * * *

■ 12. Section 433.312 is amended by revising paragraph (a) to read as follows:

**§ 433.312 Basic requirements for refunds.**

(a) *Basic rules.* (1) Except as provided in paragraph (b) of this section, the State Medicaid agency has 1 year from the date of discovery of an overpayment to a provider to recover or seek to recover the overpayment before the Federal share must be refunded to CMS.

(2) The State Medicaid agency must refund the Federal share of overpayments at the end of the 1-year period following discovery in accordance with the requirements of this subpart, whether or not the State has recovered the overpayment from the provider.

* * * * *

■ 13. Section 433.316 is amended by revising paragraphs (a), (c) introductory text, (d), (f), and (g) to read as follows:

**§ 433.316 When discovery of overpayment occurs and its significance.**

(a) *General rule.* The date on which an overpayment is discovered is the beginning date of the 1-year period allowed for a State to recover or seek to recover an overpayment before a refund of the Federal share of an overpayment must be made to CMS.

* * * * *

(c) *Overpayments resulting from situations other than fraud.* An overpayment resulting from a situation other than fraud is discovered on the earliest of—-

* * * * *

(d) *Overpayments resulting from fraud.* (1) An overpayment that results from fraud is discovered on the date of the final written notice (as defined in § 433.304 of this subchapter) of the State's overpayment determination.

(2) When the State is unable to recover a debt which represents an overpayment (or any portion thereof) resulting from fraud within 1 year of discovery because no final determination of the amount of the overpayment has been made under an administrative or judicial process (as applicable), including as a result of a judgment being under appeal, no adjustment shall be made in the Federal payment to such State on account of such overpayment (or any portion thereof) until 30 days after the date on which a final judgment (including, if applicable, a final determination on an appeal) is made.

(3) The Medicaid agency may treat an overpayment made to a Medicaid provider as resulting from fraud under subsection (d) of this section only if it has referred a provider's case to the Medicaid fraud control unit, or appropriate law enforcement agency in States with no certified Medicaid fraud control unit, as required by § 455.15, § 455.21, or § 455.23 of this chapter, and the Medicaid fraud control unit or appropriate law enforcement agency has provided the Medicaid agency with written notification of acceptance of the case; or if the Medicaid fraud control unit or appropriate law enforcement agency has filed a civil or criminal action against a provider and has notified the State Medicaid agency.

* * * * *

(f) *Effect of changes in overpayment amount.* Any adjustment in the amount of an overpayment during the 1-year period following discovery (made in accordance with the approved State plan, Federal law and regulations governing Medicaid, and the appeals resolution process specified in State administrative policies and procedures)

has the following effect on the 1-year recovery period:

(1) A downward adjustment in the amount of an overpayment subject to recovery that occurs after discovery does not change the original 1-year recovery period for the outstanding balance.

(2) An upward adjustment in the amount of an overpayment subject to recovery that occurs during the 1-year period following discovery does not change the 1-year recovery period for the original overpayment amount. A new 1-year period begins for the incremental amount only, beginning with the date of the State's written notification to the provider regarding the upward adjustment.

(g) *Effect of partial collection by State.* A partial collection of an overpayment amount by the State from a provider during the 1-year period following discovery does not change the 1-year recovery period for the balance of the original overpayment amount due to CMS.

* * * * *

■ 14. Section 433.318 is amended by revising paragraphs (a)(2), (b) introductory text, (c) introductory text, (c)(1), (d)(1), and (e), to read as follows:

**§ 433.318 Overpayments involving providers who are bankrupt or out of business.**

(a) * * *

(2) The agency must notify the provider that an overpayment exists in any case involving a bankrupt or out-of-business provider and, if the debt has not been determined uncollectable, take reasonable actions to recover the overpayment during the 1-year recovery period in accordance with policies prescribed by applicable State law and administrative procedures.

(b) *Overpayment debts that the State need not refund.* Overpayments are considered debts that the State is unable to recover within the 1-year period following discovery if the following criteria are met:

* * * * *

(c) *Bankruptcy.* The agency is not required to refund to CMS the Federal share of an overpayment at the end of the 1-year period following discovery, if—

(1) The provider has filed for bankruptcy in Federal court at the time of discovery of the overpayment or the provider files a bankruptcy petition in Federal court before the end of the 1-year period following discovery; and

* * * * *

(d) * * *

(1) The agency is not required to refund to CMS the Federal share of an overpayment at the end of the 1-year period following discovery if the provider is out of business on the date of discovery of the overpayment or if the provider goes out of business before the end of the

1-year period following discovery.

* * * * *

(e) *Circumstances requiring refunds.* If the 1-year recovery period has expired before an overpayment is found to be uncollectable under the provisions of this section, if the State recovers an overpayment amount under a court-approved discharge of bankruptcy, or if a bankruptcy petition is denied, the agency must refund the Federal share of the overpayment in accordance with the procedures specified in § 433.320 of this subpart.

■ 15. Section 433.320 is amended by—

■ A. Revising paragraphs (a)(2), (b)(1), (d), (f)(2), (g)(1), and (h)(1).

■ B. Adding paragraph (a)(4).

The revisions and addition read as follows:

**§ 433.320 Procedures for refunds to CMS.**

(a) * * *

(2) The agency must credit CMS with the Federal share of overpayments subject to recovery on the earlier of—

(i) The Form CMS–64 submission due to CMS for the quarter in which the State recovers the overpayment from the provider; or

(ii) The Form CMS–64 due to CMS for the quarter in which the 1-year period following discovery, established in accordance with § 433.316, ends.

* * * * *

(4) If the State does not refund the Federal share of such overpayment as indicated in paragraph (a)(2) of this section, the State will be liable for interest on the amount equal to the Federal share of the non-recovered, non-refunded overpayment amount. Interest during this period will be at the Current Value of Funds Rate (CVFR), and will accrue beginning on the day after the end of the 1-year period following discovery until the last day of the quarter for which the State submits a CMS–64 report refunding the Federal share of the overpayment.

(b) * * *

(1) The State is not required to refund the Federal share of an overpayment at the end of the 1-year period if the State has already reported a collection or submitted an expenditure claim reduced by a discrete amount to recover the overpayment prior to the end of the 1-year period following discovery.

* * * * *

(d) *Expiration of 1-year recovery period.* If an overpayment has not been determined uncollectable in accordance with the requirements of § 433.318 of this subpart at the end of the 1-year period following discovery of the overpayment, the agency must refund the Federal share of the overpayment to CMS in accordance with the procedures specified in paragraph (a) of this section.

* * * * *

(f) * * *

(2) The Form CMS–64 submission for the quarter in which the 1-year period following discovery of the overpayment ends.

(g) * * *

(1) If a provider is determined bankrupt or out of business under this section after the 1-year period following discovery of the overpayment ends and the State has not been able to make complete recovery, the agency may reclaim the amount of the Federal share of any unrecovered overpayment amount previously refunded to CMS. CMS allows the reclaim of a refund by the agency if the agency submits to CMS documentation that it has made reasonable efforts to obtain recovery.

* * * * *

(h) * * *

(1) Amounts of overpayments not collected during the quarter but refunded because of the expiration of the 1-year period following discovery;

* * * * *

■ 16. Section 433.322 is revised to read as follows:

**§ 433.322 Maintenance of Records.**

The Medicaid agency must maintain a separate record of all overpayment activities for each provider in a manner that satisfies the retention and access requirements of 45 CFR 92.42.

## PART 447—PAYMENTS FOR SERVICES

■ 17. The authority citation for part 447 continues as follows:

**Authority:** Sec. 1102 of the Social Security Act (42 U.S.C. 1302).

**§ 447.272 [Amended]**

■ 18. Section 447.272 is amended by removing paragraphs (e) and (f).

■ 19. Section 447.299 is amended by revising paragraph (c)(15) to read as follows:

**§ 447.299 Reporting requirements.**

* * * * *

(c) * * *

(15) *Total uninsured IP/OP uncompensated care costs.* Total annual amount of uncompensated IP/OP care for furnishing inpatient hospital and

outpatient hospital services to individuals with no source of third party coverage for the hospital services they receive.

(i) The amount should be the result of subtracting paragraphs (c)(12) and (c)(13), from paragraph (c)(14) of this section.

(ii) The uncompensated care costs of providing physician services to the uninsured cannot be included in this amount.

(iii) The uninsured uncompensated amount also cannot include amounts associated with unpaid co-pays or deductibles for individuals with third party coverage for the inpatient and/or outpatient hospital services they receive or any other unreimbursed costs associated with inpatient and/or outpatient hospital services provided to individuals with those services in their third party coverage benefit package.

(iv) The uncompensated care costs do not include bad debt or payer discounts related to services furnished to individuals who have health insurance or other third party payer.

* * * * *

**§ 447.321 [Amended]**

■ 20. Section 447.321 is amended by removing paragraphs (e) and (f).

## PART 457—ALLOTMENTS AND GRANTS TO STATES

■ 21. The authority citation for part 457 continues as follows:

**Authority:** Sec. 1102 of the Social Security Act (42 U.S.C. 1302).

**§ 457.210 [Removed]**

■ 22. Section 457.210 is removed.

**§ 457.212 [Removed]**

■ 23. Section 457.212 is removed.

**§ 457.218 [Removed]**

■ 24. Section 457.218 is removed.

■ 25. Section 457.628 is amended by revising paragraph (a) to read as follows:

**§ 457.628 Other applicable Federal regulations.**

* * * * *

(a) HHS regulations in § 433.312 through § 433.322 of this chapter (related to Overpayments); § 433.38 of this chapter (Interest charge on disallowed claims of FFP); § 430.40 through § 430.42 of this chapter (Deferral of claims for FFP and Disallowance of claims for FFP); § 430.48 of this chapter (Repayment of Federal funds by installments); § 433.50 through § 433.74 of this chapter (sources of non-Federal share and Health Care-Related Taxes and Provider Related Donations); and § 447.207 of this chapter (Retention of Payments) apply to State's CHIP programs in the same manner as they apply to State's Medicaid programs.

* * * * *

(Catalog of Federal Domestic Assistance Program No. 93.778, Medical Assistance Program)

Dated: April 18, 2012.

**Marilyn Tavenner,**

*Acting Administrator, Centers for Medicare & Medicaid Services.*

Approved: May 8, 2012.

**Kathleen Sebelius,**

*Secretary, Department of Health and Human Services.*

[FR Doc. 2012–12637 Filed 5–25–12; 8:45 am]

BILLING CODE 4120–01–P

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### 45 CFR Parts 155, 156, and 157

**[CMS–9989–CN]**

**RIN 0938–AQ67**

## Patient Protection and Affordable Care Act; Establishment of Exchanges and Qualified Health Plans; Exchange Standards for Employers; Correction

**AGENCY:** Department of Health and Human Services.

**ACTION:** Final rule; correction.

**SUMMARY:** This document corrects technical and typographical errors that appeared in the final rule, interim final rule, published in the **Federal Register** on March 27, 2012, entitled ''Patient Protection and Affordable Care Act; Establishment of Exchanges and Qualified Health Plans; Exchange Standards for Employers.''

**DATES:** *Effective Date:* These corrections are effective on May 29, 2012.

**FOR FURTHER INFORMATION CONTACT:** Alissa DeBoy, (301) 492–4428.

**SUPPLEMENTARY INFORMATION:**

### I. Background

In FR Doc. 2012–6125 of March 27, 2012, (77 FR 18310) there were technical and typographical errors that are identified and corrected in the ''Correction of Errors'' section below. The provisions in this correction notice are effective as if they had been included in the document published on March 27, 2012. Accordingly, the corrections are effective on May 29, 2012.

### II. Summary of Errors

On page 18327, in the preamble discussion of standards for consumer assistance tools, there are errors in references to the regulations text. The cross references to § 155.200(a) and § 155.200(b) are incorrect, and are being corrected to read § 155.205(a) and § 155.205(b), respectively, which are the provisions discussing the Exchange call center and Web site.

On page 18331, the preamble explains that Exchanges cannot require Navigators to have agent and broker licenses. However, one sentence implies that any licensure standards for Navigators would cause Navigators to be agents and brokers, which is inaccurate. The sentence also incorrectly implies that establishing any licensure standards would not be allowed, which would conflict with § 155.210(c)(1)(iii). Therefore, we are adding the word ''such'' to the following sentence to refer specifically to agent and broker licensure. We are also adding the word ''in,'' immediately preceding the citation, which was accidentally omitted before. The revised sentence will read as follows: ''Thus, establishing such licensure standards for Navigators would mean that all Navigators would be agents and brokers, and would violate the standard set forth in § 155.210(c)(2) of the final rule that at least two types of entities must serve as Navigators.''

On page 18336, the preamble discusses the potential for future standards related electronic notices and coordination of notices between Medicaid, CHIP, and the Exchanges. We indicate that future rulemaking will be issued for these standards. We are correcting these references to state that future guidance will be released to provide more information on electronic notices and notices coordination.

On page 18341, in preamble discussion of privacy and security standards, we are correcting two errors. First, the definition of personally identifiable information in § 155.260(a) of the proposed rule published on July 15, 2011, was not included in the final rule in order to align the definition with a memorandum released by the Office of Management and Budget. In the preamble, the cross reference to § 155.260(a), which does not exist in the final rule, is replaced with ''as defined in the Office of Management and Budget Memorandum M–07–16.''

Second, on page 18341, the preamble uses the term ''personally identifiable health information.'' The privacy and security section of the final rule applies to ''personally identifiable information.'' Personally identifiable health information is a subset of this term, and is not the focus of the rule, as stated in the preamble. The word ''health'' was

accidentally included, because the privacy and security principles from which the rule derives its language applies specifically to personally identifiable health information. However, the Exchanges final rule applies to the broader set of all personally identifiable information. We are making the correction in the preamble and also in the regulations text.

On page 18344, in the preamble discussion of privacy and security standards, we are correcting two cross references that were not updated from the references in the proposed rule regarding the codification of section 1413(c) of the Affordable Care Act. To align the cross references with the correct final rule provisions, the reference to § 155.260(b)(3) is being changed to § 155.260(a)(6) and the reference to § 155.260(c) is being changed to § 155.260(e). We are also removing the word ''section,'' which was used in addition to the symbol ''§ ,'' thus removing the redundancy.

On page 18396, in the preamble discussion of the Small Business Health Options Program, the text incorrectly states that ''…a SHOP must provide a premium calculator to qualified employers.'' The premium calculator should be made available to the employees; therefore, we are correcting ''qualified employers'' to ''qualified employees.''

On pages 18413 and 18414, in the preamble discussion of decertifying qualified health plans, the text refers twice to the special enrollment period in the case of QHP decertification in § 155.410, but should reference § 155.420, which is the section outlining special enrollment periods.

On page 18429, the preamble discusses the effective date of termination at the end of the 3-month grace period for individuals receiving advance payments of the premium tax credit. The regulations text states that a QHP issuer must terminate the individual's coverage at the end of the first month of the 3-month grace period. However, the preamble is inconsistent in stating that the QHP issuer ''can'' terminate coverage on the first day of the second month of the grace period. The regulations text accurately reflects the policy stating that QHP issuers must terminate on the last day of the first month of the grace period. Therefore, we are correcting the preamble to be consistent with the regulations text by changing the word ''can'' to ''must'' and by aligning the termination date with the regulations text.

On page 18450, we presented regulatory changes to § 155.260(d), which outlines specifics for Exchanges in developing written policies and procedures regarding the collection, use, and disclosure of personally identifiable information. This paragraph was intended to be consistent with paragraph (a) of § 155.260, which also applies to the creation of personally identifiable information. In this notice, we are adding the word ''creation'' to § 155.260(d).

On page 18456, we presented regulatory changes to § 155.315(f)(5)(i). Due to changes during drafting, the reference to paragraph (i) is incorrect, and was intended to refer to paragraph (g) of that section. We are correcting this reference.

On page 18461, we presented regulatory changes to § 155.345(g)(3), which states that an Exchange cannot request ''information of documentation'' that an individual already provided to a different insurance affordability program. This was a typographical error that should read ''information or documentation,'' to be consistent with preamble text and accurately communicate the standard.

On page 18464, we presented our regulatory changes to § 155.430(c)(2), which directs Exchanges to send termination information to the QHP issuer and HHS ''promptly and without undue delay.'' This timeliness standard is consistent with the reporting of enrollment established in § 155.400(b)(1). However, we mistakenly added another qualification in § 155.430(c)(2) that such information be reported ''at such time and in such manner as HHS may specify.'' The latter phrase is not necessary in light of the more specific standard that such information be reported promptly and without undue delay.

On page 18467, we presented our regulatory changes to § 155.1020(a) with respect to rate increase justifications. We inadvertently left out the word ''increase,'' and are adding it to the regulations text to be consistent across provisions and aligned with the preamble, and to more clearly communicate our intent.

On page 18468, in § 155.1080(b), we inadvertently used the word ''meet'' instead of ''meets,'' which results in incorrect subject-verb agreement, and are amending this to be correct.

On page 18469, in § 156.20, in the definition of ''Level of coverage'', we mistakenly defined the term ''level of coverage'' by referring to section 1302(d)(2) of the Affordable Care Act. The bronze, silver, gold, and platinum levels of coverage are defined in section 1302(d)(1) of the Affordable Care Act; therefore, we are correcting this error.

## III. Waiver of Proposed Rulemaking

We ordinarily publish a notice of proposed rulemaking in the **Federal Register** to provide a period for public comment before the provisions of a rule take effect in accordance with section 553(b) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)) and section 553(d) of the APA ordinarily requires a 30-day delay in the effective date of final rules after the date of their publication in the **Federal Register**. These requirements may be waived if an agency finds for good cause that the delay is impracticable, unnecessary, or contrary to the public interest, and the agency incorporates a statement of the findings and its reasons in the rule issued.

This notice merely corrects technical and typographic errors in the Exchanges final rule that was published on March 27, 2012 and becomes effective on May 29, 2012. The changes are not substantive to the Exchanges policy. Therefore, we believe that undertaking further notice and comment procedures to incorporate these corrections and delaying the effective date of these changes is unnecessary. In addition, we believe it is important for the public to have the correct information as soon as possible, and believe it is contrary to the public interest to delay the dissemination of it. For the reasons stated above, we find there is good cause to waive notice and comment procedures and the 30-day delay in the effective date for this correction notice.

## IV. Correction of Errors

In FR Doc. 2012–6125 of March 27, 2012, (77 FR 18310), make the following corrections:

### *A. Correction of Errors in the Preamble*

1. On page 18327, in the third column—

A. In the first full paragraph, in line 6, the cross reference to ''§ 155.200(a)'' is corrected to ''§ 155.205(a)''.

B. In the second full paragraph, in line 2, the cross reference to ''§ 155.200(b)'' is corrected to ''§ 155.205(b)''.

2. On page 18331, in the third column; in the second full paragraph, in line 12, add the word ''such'' before the word ''licensure'' and the word ''in'' before ''§ 155.210(c)(2)''.

3. On page 18336, in the second column; in the last paragraph—

A. In lines 7 and 8, the phrase ''future rulemaking'' is corrected to read ''future guidance.''

B. In line 10, the phrase, ''Future rulemaking'' is corrected to read ''Future guidance''.

4. On page 18341—

A. In the second column; in the third paragraph, in lines 26 and 27, the term ''personally identifiable health information'' is corrected to read ''personally identifiable information.''

B. In the third column; in the first partial paragraph, in line 4, the reference to ''§ 155.260(a)'' is replaced with ''the Office of Management and Budget Memorandum M–07–16.''

5. On page 18344, in the second column; in the third paragraph, in lines 11 and 12, the references to ''§ 155.260(b)(3) and § 155.260(c)'' are corrected to ''§ 155.260(a)(6) and § 155.260(e)''.

6. On page 18396, in the third column; in the second to last paragraph, in lines 9 and 10, the term ''qualified employers'' is corrected to ''qualified employees.''

7. On page 18413, in the third column; in the last paragraph, in the first line, the cross reference to ''§ 155.410'' is corrected to ''§ 155.420''.

8. On page 18414, in the first column; in the first partial paragraph, in the first line, the reference to ''§ 155.410'' is corrected to ''§ 155.420.''

9. On page 18429, in the first column; in the first paragraph, the first sentence is corrected to read, ''We clarify in final § 156.270(g) that if an individual exhausts the grace period without settling all outstanding premium payments, then the QHP issuer must terminate coverage retroactively to the last day of the first month of the grace period.''

*B. Correction of Errors in the Regulations Text*

**§ 155.260 [Corrected]**

■ 1. On page 18450—

■ A. In the first column; in § 155.260, in paragraphs (a)(3)(i), (a)(3)(ii), (a)(3)(iii), (a)(3)(iv), and (a)(3)(v), the term ''personally identifiable health information'' is corrected to read ''personally identifiable information''.

■ B. In the second column; in § 155.260, in paragraph (a)(3)(vi) and (a)(3)(vii), the term ''personally identifiable health information'' is corrected to read ''personally identifiable information''.

■ C. In the third column, in § 155.260 (d) introductory text, in line three, add the word ''creation'' before the word ''collection''.

**§ 155.315 [Corrected]**

■ 2. On page 18456, in the first column; in § 155.315(f)(5)(i), in line 6, the reference to ''paragraph (i)'' is corrected to read ''paragraph (g)''.

**§ 155.345 [Corrected]**

■ 3. On page 18461, in the second column, in § 155.345(g)(3), in line 1, the words, ''Not request information of'' are corrected to read ''Not request information or''.

**§ 155.430 [Corrected]**

■ 4. On page 18464, in the first column; in § 155.430(c)(2), in lines 3 and 4, the words '', at such time and in such manner as HHS may specify,'' are removed.

**§ 155.1020 [Corrected]**

■ 5. On page 18467, in the second column; in § 155.1020(a), in line 10, the word ''increase'' is added before the word ''justifications'' such that the end of that sentence reads: ''* * *for which the U.S. Office of Personnel Management will provide a process for the submission of rate increase justifications.''

**§ 155.1080 [Corrected]**

■ 6. On page 18468, in the second column; in § 155.1080(b), in line 6, the word ''meet'' is corrected to ''meets''.

**§ 156.20 [Corrected]**

■ 7. On page 18469, in the first column; in the definition of Level of coverage, in line 3, the reference to ''section 1302(d)(2) of the Affordable Care Act'' is corrected to read ''section 1302(d)(1) of the Affordable Care Act''.

Dated: May 22, 2012.

**Jennifer Cannistra,**

*Executive Secretary to the Department.*

[FR Doc. 2012–12914 Filed 5–25–12; 8:45 am]

BILLING CODE 4120–01–P

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## DEPARTMENT OF HOMELAND SECURITY

## Coast Guard

## 46 CFR Part 10

**[Docket No. USCG–2004–17455]**

**RIN 1625–AA85**

## Validation of Merchant Mariners' Vital Information and Issuance of Coast Guard Merchant Mariner's Licenses and Certificates of Registry (MMLs)

**AGENCY:** Coast Guard, DHS.

**ACTION:** Final rule.

**SUMMARY:** The Coast Guard is finalizing regulations previously published as an interim rule on January 13, 2006. The interim rule was published to amend the maritime personnel licensing rules to include new security requirements when mariners apply for original, renewal, and raise-of-grade licenses and certificates of registry, but was never published as a final rule. The Coast Guard is finalizing the one remaining section of the interim rule that has remained unfinalized, which is the definition of a dangerous drug.

**DATES:** This final rule is effective June 28, 2012.

**ADDRESSES:** Comments and material received from the public, as well as documents mentioned in this preamble as being available in the docket, are part of docket USCG–2004–17455, and are available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet by going to *http://www.regulations.gov,* inserting USCG–2004–17455 in the ''Enter Keyword or ID'' box, and then clicking ''Search.''

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this rule, call or email Mr. Gerald Miante, Maritime Personnel Qualifications Division, Coast Guard; telephone 202–372–1407, email *Gerald.P.Miante@uscg.mil.* If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

**SUPPLEMENTARY INFORMATION:**

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### I. Abbreviations

§ Section symbol
CFR Code of Federal Regulations
FBI Federal Bureau of Investigation
FR **Federal Register**
MMC Merchant Mariner Credential
MMD Merchant Mariner's Document
NMC National Maritime Center
REC Regional Examination Center

TSA Transportation Security Administration
TWIC Transportation Worker Identification Credential
U.S.C. U.S. Code

## II. Regulatory History

On June 16, 2011, we published a notice of intent with request for comments titled ''Validation of Merchant Mariners' Vital Information and Issuance of Coast Guard Merchant Mariner's Licenses and Certificates of Registry (MMLs)'' in the **Federal Register** (76 FR 35169). We received no comments on the notice. No public meeting was requested and none was held.

## III. Basis and Purpose

On January 13, 2006, the Coast Guard published in the **Federal Register** (71 FR 2154) an interim rule with request for comments. The interim rule amended maritime personnel licensing rules to include new security requirements when mariners apply for original, renewal, and raise-of-grade licenses and certificates of registry. However, subsequent rulemakings have revised or revoked the majority of the interim rule provisions. The Coast Guard is now finalizing the single remaining section that has not been addressed in subsequent rulemakings.

The most recent significant rulemaking documents addressing the interim rule provisions are as follows [1]: (1) Implementation of the 1995 Amendments to the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978, Supplemental Notice of Proposed Rulemaking [Docket No. USCG–2004–17914] (75 FR 13715); (2) Large Passenger Vessel Crew Requirements, Final Rule [USCG–2007–27761] (74 FR 47729); (3) Crewmember Identification Documents, Final Rule [Docket No. USCG–2007–28648] (74 FR 19135); (4) Transportation Worker Identification Credential (TWIC) Implementation in the Maritime Sector; Hazardous Materials Endorsement for a Commercial Driver's License, Final Rule, [Docket Nos. TSA–2006–24191; USCG–2006–24196] (74 FR 13114); (5) Consolidation of Merchant Mariner Qualification Credentials, Final Rule [Docket No. USCG–2006–24371] (74 FR 11196); (6) Maritime Identification Credentials, Notice of acceptable identification credentials; phased cancellation [Docket No. USCG–2006–24189] (74 FR 2865); and (7) Training and Service Requirements for Merchant Marine Officers, Final Rule [Docket No. USCG–2006–26202] (73 FR 52789).

[1] To find all the rulemaking documents associated with the rulemakings listed here, you can view each rulemaking's docket on *www.regulations.gov*.

## IV. Background

The one section of the January 13, 2006, interim rule that has remained unfinalized is the definition of ''dangerous drug'' for subchapter B at 46 CFR 10.107(b). That provision defines ''Dangerous drug'' to mean a narcotic drug, a controlled substance, or a controlled-substance analogue (as defined in section 102 of the Comprehensive Drug Abuse and Control Act of 1970 (21 U.S.C. 802)). This definition was originally published in the January 13, 2006, interim rule as part of 46 CFR 10.103. A subsequent rulemaking, Consolidation of Merchant Mariner Qualification Credentials, redesignated definitions in subchapter B to 46 CFR 10.107(b) (74 FR 11216) and implemented changes to the other definitions listed within the section. The Coast Guard is finalizing this one remaining definition from the interim rule in its current designation, 46 CFR 10.107(b).

## V. Discussion of Comments and Changes

No comments were received. As a result, no changes are being made.

## VI. Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on 14 of these statutes or executive orders.

### *A. Regulatory Planning and Review*

Executive Orders 12866 (''Regulatory Planning and Review'') and 13563 (''Improving Regulation and Regulatory Review'') direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility.

This final 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.

This final rule is intended to finalize the definition of a dangerous drug in § 10.107(b). It does not impose any additional impacts or costs on the marine industry or the public.

### *B. Small Entities*

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule will 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. This rulemaking, which finalizes a lawfully promulgated interim rule, does not require a general notice of proposed rulemaking and, therefore, is exempt from the analysis requirements of the Regulatory Flexibility Act. 5 U.S.C. 604.

### *C. Assistance for Small Entities*

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please consult Gerald P. Miante, Personnel Qualifications Division, Coast Guard, telephone 202–372–1407, email *Gerald.P.Miante@uscg.mil*. 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.

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).

### *D. 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).

*E. Federalism*

A rule has federalism implications under Executive Order 13132, Federalism, if it has 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.

We have evaluated this rule under Executive Order 13132 and have determined that although the rule is preemptive of state law or regulation, it does 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. It is well settled that States may not regulate in categories reserved for regulation by the Coast Guard. It is also well settled that all of the categories covered in 46 U.S.C. 3306, 3703, 7101, and 8101 (design, construction, alteration, repair, maintenance, operation, equipping, personnel qualification, and manning of vessels) are within fields foreclosed from regulation by the States. *See United States* v. *Locke,* 529 U.S. 89, 120 S.Ct. 1135 (2000). Congress granted to the Coast Guard the authority to regulate the issuance of merchant mariners' documents, including the process by which a mariner's qualifications are determined and verified for specific ratings. Because States may not promulgate rules within this category, this rule does not have federalism implications under Executive Order 13132.

*F. 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. This rule will not result in such an expenditure.

*G. Taking of Private Property*

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

*H. 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.

*I. Protection of Children*

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

*J. 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.

*K. 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.

*L. 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.

*M. Environment*

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

**List of Subjects in 46 CFR Part 10**

Penalties, Reporting and recordkeeping requirements, Schools, Seamen.

For the reasons discussed in the preamble, the Coast Guard amends 46 CFR part 10 as follows:

## PART 10—MERCHANT MARINER CREDENTIAL

■ 1. The authority citation for Part 10 continues to read as follows:

**Authority:** 14 U.S.C. 633; 31 U.S.C. 9701; 46 U.S.C. 2101, 2103, 2110; 46 U.S.C. chapter 71; 46 U.S.C. chapter 72; 46 U.S.C. chapter 75; 46 U.S.C. 7701, 8906 and 70105; Executive Order 10173; Department of Homeland Security Delegation No. 0170.1.

■ 2. Amend § 10.107 by revising the definition of ''Dangerous drug'' in paragraph (b) to read as follows:

**§ 10.107 Definitions in subchapter B.**

* * * * *

(b) * * *

*Dangerous drug* means a narcotic drug, a controlled substance, or a controlled-substance analogue (as defined in section 102 of the Comprehensive Drug Abuse and Control Act of 1970 (21 U.S.C. 802)).

* * * * *

Dated: May 11, 2012.

**J.G. Lantz,**

*Director of Commercial Regulations and Standards, U.S. Coast Guard.*

[FR Doc. 2012–12870 Filed 5–25–12; 8:45 am]

BILLING CODE 9110–04–P

**DEPARTMENT OF HOMELAND SECURITY**

**Coast Guard**

**46 CFR Part 12**

**[Docket No. USCG–2003–14500]**

**RIN 1625–AA81**

# Validation of Merchant Mariners' Vital Information and Issuance of Coast Guard Merchant Mariner's Documents (MMDs)

**AGENCY:** Coast Guard, DHS.

**ACTION:** Final rule.

**SUMMARY:** The Coast Guard is finalizing one section of regulations previously published as an interim rule on January 6, 2004. The interim rule was published to enhance the application procedures for the Merchant Mariner Licensing and Documentation program, which were necessary to improve maritime safety and promote the national security interest of the United States, but was never published as a final rule. The Coast Guard is finalizing the one remaining section of the interim rule that has remained unfinalized, which is a statement of the purpose of the rules in this part.

**DATES:** This final rule is effective June 28, 2012.

**ADDRESSES:** Comments and material received from the public, as well as documents mentioned in this preamble as being available in the docket, are part of docket USCG–2003–14500, and are available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet by going to *http://www.regulations.gov*, inserting USCG–2003–14500 in the ''Enter Keyword or ID'' box, and then clicking ''Search.''

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this rule, call or email Mr. Gerald Miante, Maritime Personnel Qualifications Division, Coast Guard; telephone 202–372–1407, email *Gerald.P.Miante@uscg.mil*. If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

**SUPPLEMENTARY INFORMATION:**

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## I. Abbreviations

§ Section symbol
CFR Code of Federal Regulations
FR **Federal Register**
MMD Merchant Mariner's Document
NMC National Maritime Center
REC Regional Examination Center
RFA Regulatory Flexibility Act
TSA Transportation Security Administration
TWIC Transportation Worker Identification Credential
U.S.C. U.S. Code

## II. Regulatory History

On June 16, 2011, we published a notice of intent with request for comments titled ''Validation of Merchant Mariners' Vital Information and Issuance of Coast Guard Merchant Mariner's Documents (MMDs)'' in the **Federal Register** (76 FR 35173). We received no comments on the notice. No public meeting was requested and none was held.

## III. Basis and Purpose

On January 6, 2004, the Coast Guard published in the **Federal Register** (69 FR 526) an interim rule with request for comments. The interim rule described enhancements to the application procedures for the Merchant Mariner Licensing and Documentation program, which were necessary to improve maritime safety and promote the national security interests of the United States. However, subsequent rulemakings have consolidated the majority of the application procedures within Coast Guard regulations and therefore have either revoked or revised the majority of the 2004 interim rule's provisions. As a result, the Coast Guard is finalizing the single remaining section that has not been addressed in subsequent rulemakings.

The most recent significant rulemaking documents addressing the interim rule provisions are as follows [1]: ((1) Implementation of the 1995 Amendments to the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978, Supplemental Notice of Proposed Rulemaking [Docket No. USCG–2004–17914] (75 FR 13715); (2) Large Passenger Vessel Crew Requirements, Final Rule [USCG–2007–27761] (74 FR 47729); (3) Crewmember Identification Documents, Final Rule [Docket No. USCG–2007–28648] (74 FR 19135); (4) Transportation Worker Identification Credential (TWIC) Implementation in the Maritime Sector; Hazardous Materials Endorsement for a Commercial Driver's License, Final Rule, [Docket Nos. TSA–2006–24191; USCG–2006–24196] (74 FR 13114); (5) Consolidation of Merchant Mariner Qualification Credentials, Final Rule [Docket No. USCG–2006–24371] (74 FR 11196); (6) Maritime Identification Credentials, Notice of acceptable identification credentials; phased cancellation [Docket No. USCG–2006–24189] (74 FR 2865); and (7) Training and Service Requirements for Merchant Marine Officers, Final Rule [Docket No. USCG–2006–26202] (73 FR 52789).

## IV. Background

The one section of the January 6, 2004, interim rule that has remained unfinalized is 46 CFR 12.01–1(a)(1): *Purpose of rules in this part.* This paragraph sets forth the purpose of the rules in Part 12 as a means for determining and verifying the identity, citizenship, nationality, and professional qualifications an applicant must possess to be eligible for certification to serve on merchant vessels of the United States. The Coast Guard is finalizing this one remaining section of the interim rule.

## V. Discussion of Comments and Changes

No comments were received. As a result, no changes were made.

## VI. Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on 14 of these statutes or executive orders.

### *A. Regulatory Planning and Review*

Executive Orders 12866 (''Regulatory Planning and Review'') and 13563 (''Improving Regulation and Regulatory Review'') direct agencies to assess the

[1] To find all the rulemaking documents associated with the rulemakings listed here, you can view each rulemaking's docket on *www.regulations.gov*.

costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility.

This final 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.

This final rule is intended to finalize 46 CFR 12.01–1(a)(1), which is the one remaining section of regulations previously published as an interim rule on January 6, 2004, that has not already been finalized. That section is a statement of the purpose of the rules in part 12. Since this final rule does not actually modify the statement of the purpose in the referenced part, there are no costs to the merchant marine industry and in particular the mariners.

*B. Small Entities*

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule will 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. This rulemaking, which finalizes a lawfully promulgated interim rule and changes prefatory text only, does not require a general notice of proposed rulemaking and, therefore, is exempt from the analysis requirements of the Regulatory Flexibility Act. 5 U.S.C. 604.

*C. Assistance for Small Entities*

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please consult Gerald P. Miante, Personnel Qualifications Division, Coast Guard, telephone 202–372–1407, email *Gerald.P.Miante@uscg.mil.* 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.

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).

*D. 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).

*E. Federalism*

A rule has federalism implications under Executive Order 13132, Federalism, if it has 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.

We have evaluated this rule under Executive Order 13132 and have determined that although the rule is preemptive of state law or regulation, it does 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. It is well settled that States may not regulate in categories reserved for regulation by the Coast Guard. It is also well settled that all of the categories covered in 46 U.S.C. 3306, 3703, 7101, and 8101 (design, construction, alteration, repair, maintenance, operation, equipping, personnel qualification, and manning of vessels) are within fields foreclosed from regulation by the States. *See United States* v. *Locke,* 529 U.S. 89, 120 S.Ct. 1135 (2000). Congress granted to the Coast Guard the authority to regulate the issuance of merchant mariners' documents, including the process by which a mariner's qualifications are determined and verified for specific ratings. Because States may not promulgate rules within this category, this rule does not have federalism implications under Executive Order 13132.

*F. 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. This rule will not result in such an expenditure.

*G. Taking of Private Property*

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

*H. 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.

*I. Protection of Children*

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

*J. 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.

*K. 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.

*L. Technical Standards*

The National Technology Transfer and Advancement Act (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.

*M. 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 (42 U.S.C. 4321–4370f), and have concluded that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded under section 2.B.2, figure 2–1, paragraphs (34)(a) and (c) of the Instruction. This final rule involves regulations that are editorial and concern qualification of maritime personnel. An environmental analysis checklist and a categorical exclusion determination are available in the docket where indicated under **ADDRESSES**.

**List of Subjects in 46 CFR Part 12**

Penalties, Reporting and recordkeeping requirements, Seamen.

For the reasons discussed in the preamble, the Coast Guard amends 46 CFR part 12 as follows:

## PART 12—REQUIREMENTS FOR RATING ENDORSEMENTS

■ 1. The authority citation for Part 12 continues to read as follows:

**Authority:** 31 U.S.C. 9701; 46 U.S.C. 2101, 2103, 2110, 7301, 7302, 7503, 7505, 7701, and 70105; Department of Homeland Security Delegation No. 0170.1.

■ 2. Amend § 12.01–1 by revising paragraph (a)(1) to read as follows:

**§ 12.01–1 Purpose of rules in this part.**

(a) * * *

(1) A comprehensive and adequate means of determining and verifying the identity, citizenship, nationality, and professional qualifications an applicant must possess to be eligible for certification to serve on merchant vessels of the United States;

* * * * *

Dated: May 11, 2012.

**J.G. Lantz,**

*Director of Commercial Regulations and Standards, U.S. Coast Guard.*

[FR Doc. 2012–12871 Filed 5–25–12; 8:45 am]

**BILLING CODE 9110–04–P**

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## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR parts 51 and 54

**[WC Docket Nos. 10–90, 07–135, 05–337, 03–109; GN Docket No. 09–51; CC Docket Nos. 01–92, 96–45; WT Docket No. 10–208; FCC 12–47]**

### Connect America Fund; A National Broadband Plan for Our Future; Establishing Just and Reasonable Rates for Local Exchange Carriers; High-Cost Universal Service Support

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** In this document, the Federal Communications Commission reconsiders and modifies certain provisions of its rules that were adopted in the *USF/ICC Transformation Order.* The Commission grants a Petition for Reconsideration and Clarification of the National Exchange Carrier Association, Inc., Organization for the Promotion and Advancement of Small Telecommunications Companies and Western Telecommunications Alliance. The Commission grants in part and denies in part a Petition for Reconsideration filed by the Independent Telephone & Telecommunications Alliance and a Petition for Reconsideration and/or Clarification filed by Frontier Communications Corp. and Windstream Communications, Inc. Finally, the Commission denies a Petition for Reconsideration filed by the United States Telecom Association.

**DATES:** Effective June 28, 2012.

**FOR FURTHER INFORMATION CONTACT:** Amy Bender, Wireline Competition Bureau, (202) 418–1469, Victoria Goldberg, Wireline Competition Bureau, (202) 418–1520.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's in WC Docket Nos. 10–90, 07–135, 05–337, 03–109; GN Docket No. 09–51; CC Docket Nos. 01–92, 96–45; WT Docket No. 10–208; FCC 12–47, released on April 25, 2012. The full text of this document is available for public inspection during regular business hours in the FCC Reference Center, Room CY–A257, 445 12th Street SW., Washington, DC 20554, and at the following Internet address: The complete text may be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc. (BCPI), Portals II, 445 12th Street SW., Room CY–B402, Washington, DC 20554, (202) 488–5300, facsimile (202) 488–5563, or via email at *fcc@bcpiweb.com http://transition.fcc.gov/Daily_Releases/Daily_Business/2012/db0425/FCC-12-47A1.pdf.*

**I. Introduction**

1. In this Order, we address several issues raised in petitions for reconsideration of certain aspects of the *USF/ICC Transformation Order.* The *USF/ICC Transformation Order* represents a careful balancing of policy goals, equities, and budgetary constraints. This balance was required in order to advance the fundamental goals of universal service and intercarrier compensation reform within a defined budget while simultaneously providing sufficient transitions for stakeholders to adapt. While reconsideration of a Commission's decision may be appropriate when a petitioner demonstrates that the original order contains a material error or omission, or raises additional facts that were not known or did not exist until after the petitioner's last opportunity to present such matters, if a petition simply repeats arguments that were previously considered and rejected in the proceeding, due to the balancing involved in this proceeding, we are likely to deny it.

2. With this standard in mind, in this Order we take several limited actions stemming from reconsideration petitions. We grant a request to permit carriers accepting incremental support in Phase I of the Connect America Fund (CAF) to receive credit for deploying broadband to certain unserved locations in partially served census blocks, and deny a number of other requests to modify the rules governing CAF Phase I. In addition, we also grant in part a request by Frontier-Windstream and the Rural Associations to reconsider the VoIP intercarrier compensation rules adopted in the *USF/ICC Transformation Order.* Specifically, we modify our rules to permit LECs, prospectively, to tariff a transitional default rate equal to their intrastate originating access rates when they originate intrastate toll VoIP traffic

until June 30, 2014. This targeted modification is intended to be transitional and temporary and does not alter the overall, uniform, national framework for comprehensive intercarrier compensation reform which was established in the *USF/ICC Transformation Order.*

**II. Connect America Fund Phase I Incremental Support**

3. In the *USF/ICC Transformation Order,* the Commission adopted a framework for the Connect America Fund that would provide support in price cap territories based on a combination of competitive bidding and a forward-looking cost model. But, as the Commission observed, developing and implementing a new cost model could be expected to take some time. So, in order to immediately accelerate broadband deployment in such areas, the Commission established Phase I of the CAF to begin the process of transitioning high-cost support for price cap carriers to the CAF. In Phase I, the Commission froze current high-cost support for price cap carriers, and, in addition, committed up to $300 million in incremental support to promote deployment of broadband to unserved areas within price cap carriers' service territories and their rate of return affiliates' service territories. The $300 million in incremental support will be allocated among price cap carriers by the use of a simplified forward-looking cost estimate based on the prior high cost proxy model.

4. Participation in CAF Phase I is optional: That is, carriers will be able to choose how much of their allocated incremental support to accept based on the broadband obligations that accompany the support. Each carrier will be required to deploy broadband to a number of locations equal to the amount of incremental support it accepts divided by $775. As the Commission explained, that standard was designed to reach as many locations as possible as cost-effectively as possible—to ''spur immediate broadband deployment to as many unserved locations as possible'' with the limited funds available by ''encourag[ing] carriers to use the support in lower-cost areas where there is [nevertheless] no private sector business case for deployment of broadband.'' And, to ensure that these deployments reach those who are otherwise unserved and are unlikely to be served in the near future, the Commission required carriers to certify, among other things, that the locations they would deploy to are shown as unserved by fixed broadband with a minimum speed of 768 kbps downstream and 200 kbps upstream on the National Broadband Map; that, to the best of the carrier's knowledge, the location is not in fact served; and that incremental support would not be used to satisfy merger commitments or similar regulatory obligations.

5. Various parties ask us to reconsider aspects of these rules. Below, we grant in part a request by the Independent Telephone & Telecommunications Alliance (ITTA) that we modify the rules and permit carriers, in certain circumstances, to receive credit in CAF Phase I for deploying to unserved locations based on a certification that they are unserved, even though such locations are identified as served on the National Broadband Map. In addition, we deny requests from Frontier and Windstream, along with the United States Telecom Association (US Telecom), that we reconsider the $775 per-location deployment requirement. We also deny their request that we permit carriers to receive credit in CAF Phase I for improving broadband service to underserved locations—locations where broadband is available, but does not meet the requirements for new CAF Phase I deployments. We also deny Windstream's request, in the alternative, that we permit carriers to use CAF Phase I incremental support to deploy second-mile fiber facilities. Finally, we deny a request by Frontier and Windstream that the $300 million in incremental support be allocated among carriers by calculating distributions ''as if'' the incremental support mechanism were distributing both incremental support and frozen high-cost support, rather than only incremental support.

6. First, ITTA asks us to reconsider the rule that carriers receiving CAF Phase I incremental support must deploy broadband to locations shown on the National Broadband Map as unserved by fixed broadband. ITTA argues that the National Broadband Map in some cases ''overstates fixed broadband coverage'' and that excluding unserved areas from eligibility for CAF Phase I deployment because they appear as served on the Map would mean that consumers in those areas would not benefit from CAF Phase I. ITTA, in an *ex parte* letter joined by several carriers, elaborates on its proposal, asking that we modify the rules to permit carriers to serve additional locations in three different situations.

7. Our analysis of ITTA's petition is informed by a balancing of considerations. On the one hand, CAF Phase I is an interim measure intended to accelerate deployment to those unserved locations that can be reached in the near term. Given our goal of deploying new funding quickly, we believe it is reasonable to focus deployment on areas where it is clear that no broadband exists, rather than to create a potentially burdensome and time-consuming process to identify other areas without service. On the other hand, we do believe that, where adjustments can be made in a way that will not create undue delays, modifying the rules to permit carriers to accept as much incremental support as possible—and thus deploy broadband to more unserved locations—would serve the public interest.

8. ITTA first notes that in some census blocks, the incumbent local exchange provider is the only provider shown by the National Broadband Map as offering fixed broadband services. But, as ITTA explains, the reporting methodology used to create the Map ''indicates that an entire census block is served by the [incumbent] LEC even if only a single location in that census block is able to receive broadband.'' In such situations, ITTA observes, the incumbent LEC knows which locations are actually served and which are actually unserved, and it proposes that the carrier should be able to receive credit in CAF Phase I for deploying broadband to locations that it certifies were not, in fact, already served.

9. We conclude that modifying our rule to provide additional flexibility in this situation will promote the goals of CAF Phase I. Accordingly, we will permit carriers accepting CAF Phase I support to satisfy their deployment requirement by deploying to locations identified on the National Broadband Map as served if the Map reflects that the only provider of fixed broadband to the location is the incumbent carrier itself, the locations are in fact unserved by broadband, and the carrier makes the certifications required by § 54.312(b)(3) of our rules.

10. ITTA also argues that some census blocks are shown in some of the tools available on the National Broadband Map Web site as being served by a carrier other than the incumbent LEC, but that the data underlying the Map ''clearly identifies that the non-ILEC provider serves only a part of the census block.'' This situation can arise in certain situations when, for example, the data underlying the Map show that a cable operator offers broadband to only certain locations within a census block. ITTA proposes that a carrier receiving CAF Phase I support be able to receive credit in CAF Phase I for deploying to locations in such blocks to the extent that the data underlying the

Map confirms that the non-ILEC provider does not serve the location.

11. We conclude that no change to the rules is necessary to address this concern. Section 54.312(b)(3) of our rules requires that a carrier certify that the locations to be served to satisfy its deployment requirement ''are shown as unserved by fixed broadband on the then-current version of the National Broadband Map.'' We take this opportunity to clarify that if the data underlying the Map show that a location is not served by a particular provider, then, for the purposes of this rule, the location is ''shown as unserved'' by that provider.

12. In addition, ITTA claims that there are locations which the National Broadband Map indicates are served by a carrier other than the incumbent LEC, but which the incumbent LEC reasonably believes are not, in fact, served by that other provider. ITTA proposes that carriers receive credit for deploying to such areas, if they provide evidence that there are unserved locations in the area. Specifically, ITTA proposes a CAF Phase I support recipient be permitted to provide a certification that, to the best of the carrier's knowledge, there are unserved locations in a census block notwithstanding that the Map indicates that those locations are served. ITTA proposes that the recipient be permitted to—but not required to—provide ''consumer declarations or other supporting evidence'' supporting its certification. If it does, the certification would not be subject to rebuttal. On the other hand, if the carrier does not provide any declarations or other supporting evidence, other broadband providers in the area would have up to 30 days to respond to the certification. To rebut the CAF Phase I recipient's certification, ITTA proposes that those other providers would be required to certify that they can provide service throughout the relevant area and would be required to provide one or more consumer declarations from customers who either currently or in the past have subscribed to the provider's service within the relevant area. If no provider rebutted the CAF Phase I recipient's certification, the CAF Phase I recipient would be permitted to deploy to unserved locations in the census block at issue.

13. We decline to adopt this aspect of ITTA's proposal. ITTA does not explain how a CAF Phase I recipient would know which locations—other than any locations for which it has obtained a consumer's declaration—in a census block are actually unserved by any other carrier. In addition, we observe that ITTA's proposal would require a provider wishing to challenge the CAF Phase I recipient's certification to provide a declaration within 30 days from a customer or former customer in the census block. That task might be quite time consuming given limited resources. Worse, it might not be possible, because a provider may have no customers in a particular census block, even though it offers service there. Yet ITTA would apparently have us provide CAF Phase I incremental support to incumbents to deploy in such locations. On balance, we cannot conclude on the record before us that adopting ITTA's proposed process, which may not significantly increase the number of locations that are likely to receive new broadband, would serve the public interest.

14. ITTA, joined by several carriers, also asks that we permit carriers receiving CAF Phase I incremental support to deploy broadband to locations that are served by another broadband provider but where the service offered by that other provider does not meet defined service characteristics. They propose that the other provider offer service of at least 768 kbps sustained download speed, with a usage limit no lower than 53 gigabytes per month, all at a price no higher than the month-to-month price of the highest price for a similar product from a wireline provider in the state.

15. We decline to adopt this proposal for several reasons. We acknowledge that some consumers may live in areas ineligible for CAF Phase I support even though the broadband available to them does not currently meet our goals. The Commission chose in CAF Phase I, however, to focus limited resources on deployments to extend broadband to some of the millions of unserved Americans who lack access to broadband entirely, rather than to drive faster speeds to those who already have service. We are not persuaded that the decision about the more pressing need was unreasonable. Moreover, we are not persuaded that permitting CAF Phase I recipients to overbuild other broadband providers represents the most efficient use of limited CAF Phase I support. In addition, we conclude that we do not have an adequate record at this time to make a determination about how high a competitor's price must be—either alone or in combination with usage limits—before we would support overbuilding that competitor, a critical component of petitioners' request.

16. Second, Frontier, Windstream and USTelecom seek reconsideration of the requirement that a carrier accepting incremental support in CAF Phase I deploy broadband to a number of unserved locations equal to the amount each carrier accepts divided by $775. In particular, these parties take issue with the use of $775 as a nationwide estimate for the appropriate amount of per-location support.

17. In adopting the $775 figure, the Commission recognized that, in the absence of a fully developed cost model, the choice of a per-location support amount necessarily involved an exercise of judgment. The Commission weighed a variety of considerations, including the fact that resources for this interim mechanism were limited and the goal to ''spur immediate broadband deployment to as many unserved locations as possible.'' The Commission also considered several sources of data, including deployment projects undertaken by a mid-size price cap carrier under the Rural Utilities Service's Broadband Initiatives Program, data from analysis done as part of the National Broadband Plan, and an analysis performed using the ABC plan cost model, submitted by a group of price cap carriers.

18. Petitioners argue that the comparison with the BIP deployments (which showed an average per-location cost of $557) was faulty, because, ''[a]s the Commission acknowledges in the *Order,* BIP was aimed at improving service to underserved locations as well as deploying to unserved locations'' and only deployments to the unserved count toward satisfaction of the CAF Phase I requirement. But as petitioners concede, the Commission acknowledged this concern in the *Order,* and took it into account. Petitioners also complain that the analysis based on the National Broadband Plan and the ABC plan cost model focuses on deployment costs and fails to account for the cost of maintaining and operating existing networks. That complaint misses the mark, however, because the goal of CAF Phase I is to provide one-time support to spur broadband deployment, not to create a new source of ongoing support. Moreover, as the Commission explained in the *Order,* one part of the analysis Commission staff performed suggested that there were approximately 1.75 million unserved locations served by price cap carriers with costs below $765. Even if all $300 million available in Phase I were accepted, carriers would be required to deploy to only 387,096 locations in total. In other words, the Commission's analysis indicates that, nationwide, there are far more unserved locations with costs below our deployment requirement than will be reached in Phase I. No party disputed the Commission's analysis on this point.

In sum, nothing in the petitions for reconsideration calls the Commission's conclusion into question or suggests that any other nationwide number would be more appropriate.

19. In any event, the heart of Frontier, Windstream and USTelecom's argument is that the Commission should adopt carrier-specific deployment requirements for CAF Phase I rather than use a nationwide figure for the per-location support offered. As Frontier and Windstream explain: ''The fact that some locations within another carrier's territory might be served for $400 or less does nothing for another carrier's consumers when that carrier's least-expensive unserved locations would cost $1,000 or more to serve.'' They assert that they are in the latter situation: because of their history of aggressively deploying broadband, ''there are relatively few, if any, unserved areas left in Petitioners' service areas that can be reached for $775 or less.'' Petitioners propose that we develop a carrier-specific requirement by using the CostQuest Broadband Analysis Tool (CQBAT), a cost model submitted as part of a proposal by several large carriers for reform of the high-cost universal service support mechanism.

20. We decline to adopt the proposed carrier-by-carrier approach. Petitioners may have deployed to many or all of the locations in their territories for which $775 represents an adequate subsidy, but CAF Phase I incremental support, as established in the *USF/ICC Transformation Order,* was designed to reach a significant number of relatively low-cost locations, not to ensure that the entire $300 million offered for Phase I is accepted. Indeed, the Commission recognized that some incremental support would likely be declined, and explained that declined support ''may be used in other ways to advance our broadband objectives pursuant to our statutory authority.'' To the extent carriers have already deployed to the low-cost areas in their territories, then those carriers' remaining unserved areas may be better candidates for CAF Phase II, which will be identified, using an updated model, along with the appropriate ongoing subsidy amounts for areas with costs above a specified benchmark. Further, we note that in the *Order,* the Commission expressly declined to adopt the CQBAT model, explaining that it would be premature to rely on it in light of the limited opportunity the public had then had to review it. Instead, the Commission initiated an open process to develop a robust cost model for the Connect America Fund, a process that is now underway. We are not persuaded that we should, at this early stage in that ongoing process, prejudge the merits of the CQBAT model and adopt it for use in CAF Phase I. Accordingly, we decline to relax the nationwide deployment requirement and decline to establish carrier-specific requirements.

21. Third, several parties ask us to modify the broadband deployment requirement for CAF Phase I to permit carriers to meet their obligations not just by deploying broadband to previously unserved locations, but also by upgrading service to locations that are ''underserved''—locations, for example, that are served by broadband at speeds less than the 4 megabits downstream required for new deployments in CAF Phase I. Frontier and Windstream argue that underserved areas should be eligible for support in CAF Phase I because, in order to deploy broadband to unserved locations, ''facility upgrades in underserved areas may be required,'' and, what is more, those investments may be ''very significant.'' As explained above, however, the Commission's focus in CAF Phase I was to spur broadband deployment to consumers who lack access to broadband, not to improve service for those who already have access to some form of high-speed Internet access. We recognize that as they extend broadband to previously unserved areas, carriers may need to upgrade network facilities shared by both served and unserved locations. However, we believe the $775 per newly served location appropriately takes account of the cost of these upgrades. That is, we conclude it is only appropriate to support such shared investments through CAF Phase I to the extent that they do not drive the required subsidy per unserved location above $775.

22. Fourth, in an *ex parte* letter, Windstream offers a further alternative to the nationwide deployment requirement. Windstream proposes that carriers should be permitted to use CAF Phase I support to deploy second-mile fiber in areas not currently served by fiber. Windstream argues that the existing rules will penalize the customers of those carriers, like Windstream, that have already deployed Digital Subscriber Line Access Multiplexers (DSLAMs) fed by existing copper facilities to provide at least some level of broadband service in some of their most rural areas, even where there is no business case to deploy fiber to the DSLAM. As Windstream observes, residential broadband bandwidth demand has increased substantially in recent years. Providing support for fiber in such areas, Windstream argues, is essential to maintain existing service levels for their consumers; driving fiber deeper into the network would also reduce the cost of connecting rural wireless cell sites to fiber facilities.

23. We decline to adopt Windstream's proposal for second-mile fiber support. While we agree with Windstream that deploying second-mile fiber facilities is a worthwhile endeavor, we reiterate that the focus of CAF Phase I is a relatively narrow one: to spur deployment of broadband to relatively low-cost locations that nevertheless currently have no service at all, while we implement CAF Phase II. It is not intended to be a long-term program or to serve all broadband deployment needs, such as the need to eventually replace existing broadband facilities to meet projected demand. Instead, the need for such investments is more appropriately considered in the broader context of the CAF Phase II mechanism.

24. Finally, Frontier and Windstream request that we clarify or reconsider how the $300 million allocated to CAF Phase I will be distributed among carriers. The *USF/ICC Transformation Order* freezes existing high cost support and uses the CAF Phase I incremental support mechanism to allocate an additional $300 million. Frontier and Windstream assert that there are two different ways that this $300 million could be distributed through the incremental support mechanism. In the first, the incremental support allocation mechanism could be applied only to the $300 million in incremental support. In the second, preferred by petitioners, all high-cost support, both frozen support and the $300 million incremental support, would be distributed ''as if'' it were allocated using the new mechanism, subject to a ''hold harmless'' rule that would ensure no carrier would receive less support than it previously received.

25. According to Frontier and Windstream, the two approaches ''differ markedly in how they allocate the incremental $300 million.'' That is so because the CAF Phase I incremental support allocation mechanism allocates support ''from the top down.'' Specifically, a per-location cost is calculated for each wire center; support is then calculated for the carrier serving that wire center based on the amount by which that per-location cost exceeds a funding threshold, multiplied by the total number of locations in the wire center. The funding threshold is set so that the specified amount of support, either $300 million or $1.3 billion, is allocated. Setting the funding threshold to distribute $1.3 billion would of course result in a lower threshold than

setting it to distribute $300 million, and a lower threshold would mean that more wire centers have per-location costs above the threshold. Petitioners argue that spreading incremental support based on a broader range of high-cost wire centers (those above the threshold set with $1.3 billion) ''would be far more equitable'' than the alternative approach. In addition, they argue, their proposal is more consistent with the support framework that will be in place during CAF Phase II, when the very highest-cost census blocks will likely be served through satellite, fixed wireless, or other technologies rather than wireline broadband provided by incumbent carriers. CenturyLink opposes these petitioners' proposal, arguing that the Commission's ''straightforward calculation'' was ''sensible and justified,'' as compared to the multi-stage, more complex calculation advocated by Frontier and Windstream.

26. We decline to change the CAF Phase I support calculation as advocated by Frontier and Windstream. We remain unconvinced that it would be reasonable to allocate the $300 million in incremental CAF Phase I support ''as-if'' a different amount of support were being allocated. CAF Phase I is an interim support mechanism, designed to be a simple, easily administered tool to provide a boost to broadband deployment in the near term while the Wireline Competition Bureau develops a support model for CAF Phase II. We acknowledge that there were other ways the Commission could have established the amounts of support each carrier would be eligible for in this interim mechanism. But Frontier and Windstream have not shown that their proposed methodology, which would add a degree of complexity for an uncertain benefit, would likely serve the goals of CAF Phase I more effectively than the methodology adopted in the *Order,* and we decline to adopt it.

## III. Intercarrier Compensation for VOIP Traffic

27. *Background.* The *USF/ICC Transformation Order* comprehensively reformed the intercarrier compensation system. Significantly, the Commission launched long-term intercarrier compensation reform by adopting a bill-and-keep methodology as the ultimate uniform, national methodology for all telecommunications traffic exchanged with a local exchange carrier (LEC). The *USF/ICC Transformation Order* began this transition to bill-and-keep with terminating switched access rates. In addition, the Commission addressed specific intercarrier compensation issues involving commercial mobile radio service (CMRS)-LEC compensation and made clear the prospective payment obligations for certain ''VoIP'' traffic, referred to in the *USF/ICC Transformation Order* as ''VoIP–PSTN'' traffic.

28. In light of new evidence in the record, we reconsider an aspect of the transitional intercarrier compensation framework adopted for originating VoIP traffic. For purposes of the *USF/ICC Transformation Order,* VoIP–PSTN traffic ''is 'traffic exchanged over PSTN facilities that originates and/or terminates in IP format.' In this regard, we focus specifically on whether the exchange of traffic between a LEC and another carrier occurs in Time-Division Multiplexing (TDM) format (and not in IP format), without specifying the technology used to perform the functions subject to the associated intercarrier compensation charges.'' As with the *USF/ICC Transformation Order* more broadly, the VoIP intercarrier compensation framework weighed the benefits of ''a more measured transition away from carriers' reliance on intercarrier compensation as a significant revenue source.'' The Commission also found, however, that VoIP traffic had been a particular source of intercarrier compensation disputes and litigation. As a result, ''carriers may receive some intercarrier compensation payments at something less than the full intercarrier compensation rates charged in the case of traditional telephone service'' or, in some cases, no payment at all. Balancing these and additional considerations led the Commission to adopt a middle ground that, prospectively, neither ''subject[ed] VoIP traffic to the pre-existing intercarrier compensation regime that applies in the context of traditional telephone service, including full interstate and intrastate access charges,'' nor ''immediately adopt[ed] a bill-and-keep methodology for VoIP traffic'' or a very low rate. Instead, the Commission's approach permitted LECs, starting December 29, 2011, to tariff default intercarrier compensation for both originating and terminating toll VoIP traffic at rates equal to interstate access rates, with default intercarrier compensation for other VoIP traffic at the otherwise-applicable reciprocal compensation rates. The Commission also adopted measures to ensure that its approach to VoIP intercarrier compensation was symmetrical to minimize marketplace distortions. This symmetrical approach seeks to provide all LECs the opportunity to collect intercarrier compensation under the same VoIP intercarrier compensation framework for the functions they (and/or their retail VoIP provider partner) perform in originating and/or terminating VoIP traffic.

29. Frontier and Windstream and certain rural associations filed petitions, seeking, among other things, clarification that originating intrastate toll VoIP traffic was subject to default rates equal to intrastate originating access under the *USF/ICC Transformation Order.* If the Commission instead concludes that default rates equal to interstate originating access rates applied to all originating toll VoIP traffic under the *USF/ICC Transformation Order,* those petitioners advocate that the Commission reconsider that decision. In light of both Petitions' focus on VoIP traffic that originates in TDM format, some commenters expressed concern that the resulting approach would undermine the symmetry of the VoIP intercarrier compensation framework adopted in the *USF/ICC Transformation Order.* Other commenters opposed the Petitions more broadly, arguing that the *USF/ICC Transformation Order* established default rates equal to interstate originating access for originating intrastate toll VoIP traffic, and that the Commission should not deviate from the policy balance underlying that approach.

30. *Discussion.* As discussed below, we do not adopt the Frontier-Windstream Petition's and Rural Associations Petition's interpretation of the VoIP intercarrier compensation rules adopted in the *USF/ICC Transformation Order.* However, arguments and evidence from those parties and supporting commenters, persuade us to modify the VoIP ICC rules on reconsideration in one respect: we permit LECs to tariff default charges equal to intrastate originating access for originating intrastate toll VoIP traffic (including traffic that originates in IP, terminates in IP, or both) at intrastate rates until June 30, 2014. For all interstate toll VoIP traffic, interstate access rates continue to apply consistent with the default rates adopted in the *USF/ICC Transformation Order.*

31. The record reveals that there has been some uncertainty regarding the default origination charges for intrastate toll VoIP traffic under the framework adopted in the *USF/ICC Transformation Order.* However, we ultimately are unpersuaded by the Frontier-Windstream Petition's and Rural Associations Petition's rationales for interpreting the *USF/ICC Transformation Order* to apply default origination charges equal to intrastate—

rather than interstate—originating access for intrastate toll VoIP traffic. We disagree with claims that statements in other sections of the *USF/ICC Transformation Order* discussing, for example, the Commission's general intent to address reductions to originating access in the FNPRM, imply that the Commission took a particular approach to origination charges for VoIP traffic. The *USF/ICC Transformation Order* adopted a distinct prospective intercarrier compensation framework for VoIP traffic based on its findings specific to that traffic. Contrary to the Petitions' claims, the *USF/ICC Transformation Order*'s treatment or discussion of originating access charges in other contexts do not constrain the interpretation of permissible origination charges for toll VoIP traffic. In addition, although the *USF/ICC Transformation Order* cites illustrative examples of the operation of the VoIP intercarrier compensation framework for termination charges, the text and the implementing rules demonstrate that the intercarrier compensation framework for toll VoIP traffic limits both default origination and termination charges to the level of interstate access rates. Further, although the Commission built upon the ABC Plan in adopting a VoIP intercarrier compensation framework, the Commission did not adopt the ABC Plan, and as a result, individual commenters' interpretations of the ABC Plan do not dictate a different interpretation of the *USF/ICC Transformation Order.*

32. More fundamentally, these arguments reflect a mistaken understanding of key elements of the *USF/ICC Transformation Order.* Arguments that setting default rates equal to intrastate originating access are necessary to avoid ''flash cuts'' or ''reductions'' in intercarrier compensation assume that LECs were receiving intrastate originating access for intrastate toll VoIP traffic under the status quo prior to that *Order.* Although the marketplace evidence in the record on reconsideration demonstrates the accuracy of that position in many cases, that assumption is not reflected in the *USF/ICC Transformation Order* itself. Rather, based on the available record evidence, the Commission found as a practical matter that compensation for VoIP traffic was widely subject to dispute and varied outcomes, and that ''the record is clear that many providers did not pay the same intercarrier compensation rates for VoIP traffic that would have applied to traditional telephone service traffic.'' The Commission did not reach a different conclusion in the case of originating access. Consequently, the *USF/ICC Transformation Order* itself does not provide a basis for interpreting the requirements of that *Order* against a baseline assumption that intrastate originating access historically had been received for intrastate toll VoIP traffic.

33. The record on reconsideration, however, indicates that prior to the *USF/ICC Transformation Order,* here were fewer disputes and instances of non-payment or under-payment of origination charges billed at intrastate originating access rates for intrastate toll VoIP traffic than was the case for terminating charges for such traffic, particularly for calls that originated in TDM format. Consequently, several commenters present evidence that they will experience annual reductions in originating access revenues under the VoIP intercarrier compensation framework adopted in the *USF/ICC Transformation Order.*

34. This new evidence regarding the status quo prior to the *USF/ICC Transformation Order* persuades us to reconsider the balancing of policy interests underlying the *Order*'s approach to VoIP traffic, consistent with Petitioners' request in the alternative to reconsider those rules. In light of this new evidence, we conclude that an appropriate, measured transition for these revenues is somewhat different from the transition that the Commission anticipated based on its findings in the *USF/ICC Transformation Order.* Consequently, on reconsideration we find it appropriate to permit LECs, prospectively, to tariff a rate equal to their intrastate originating access rates when they originate intrastate toll VoIP traffic, albeit for a finite period of time.

35. In particular, consistent with Frontier's proposal, we amend part 51 of our rules to permit LECs to tariff default rates equal to their intrastate originating access rates when they originate intrastate toll VoIP traffic from the effective date of our the revised rules until June 30, 2014—effective July 1, 2014, LECs will be permitted to tariff default rates for such traffic equal to their interstate originating access rates. This is to be considered a transitional rate. We do not find it appropriate to permit default origination charges equal to intrastate access rates indefinitely, consistent with the Commission's recognized need to ''reduce disputes and provide greater certainty to the industry regarding intercarrier compensation revenue streams while also reflecting the Commission's move away from the pre-existing, flawed intercarrier compensation regimes that have applied to traditional telephone service'' under the framework adopted in the *USF/ICC Transformation Order.* We are mindful that some providers were receiving compensation for originating VoIP traffic, however, we consider the transition of origination charges for intrastate toll VoIP traffic in the context of the Commission's overall VoIP intercarrier compensation framework. Under this framework, most providers will receive, either via negotiated agreements or via tariffed charges, additional revenues for previously disputed terminating VoIP calls and will also realize savings associated with reduced litigation and disputes. In light of these benefits, indefinitely permitting origination charges at the level of intrastate access for prospective intrastate toll VoIP traffic is not necessary to ensure a measured transition and is indeed in tension with our overall policy goal of encouraging a migration to all IP networks and moving away from reliance on ICC revenues.

36. Indeed, the *USF/ICC Transformation Order* makes clear the Commission's goal of promoting migration to IP services. As VoIP providers observe, actions that may benefit some providers through a more measured transition away from reliance on intercarrier compensation also burden other providers that are required to bear those costs. Other providers likewise explain that these costs flow through to their services and, in turn, the services their customers provide. In light of these considerations, we believe that a measured transition with a time limit on the use of intrastate access charges as a default for that time period is necessary to ensure that migration to IP services is adequately promoted. The time limit we adopt falls well within our uniform, national framework for comprehensive intercarrier compensation reform which set forth the overall transition for intercarrier compensation rates established in the *USF/ICC Transformation Order.* Within this time period, we predict that carriers will have had the opportunity to make significant progress transitioning their business plans away from extensive reliance on intercarrier compensation.

37. As with the national VoIP intercarrier compensation framework adopted in the *USF/ICC Transformation Order,* the Commission here is specifying rates applicable to LECs' origination of intrastate toll VoIP traffic as an exercise of the same legal authority that enables the Commission to specify transitional rates for comprehensive intercarrier compensation reform under the basic framework of section 251(b)(5). In the

*USF/ICC Transformation Order,* the Commission asserted authority to allow transitional origination charges for toll VoIP traffic, and our action here relies on that authority. In the *USF/ICC Transformation Order* the Commission noted that ''[t]he legal authority that enables us to specify transitional rates for comprehensive intercarrier compensation reform also enables us to adopt our transitional VoIP–PSTN intercarrier compensation framework pending the transition to bill-and-keep.'' The Commission also noted that it ''has authority to adopt * * * [a] transitional framework for toll VoIP–PSTN traffic based on our rulemaking authority to implement section 251(b)(5),'' and that ''interpreting our rulemaking authority in this manner is consistent with court decisions recognizing that 'avoiding market disruptions pending broader reforms is, of course, a standard and accepted justification for a temporary rule.' '' Our actions here likewise do not alter states' roles or preexisting Commission decisions regarding the treatment of VoIP more generally. In particular, nothing in this Order impacts the holding of the *Vonage Order.* Other than specifying a new transitional default rate that LECs are permitted to tariff in the context of originating intrastate toll VoIP traffic, we leave the *USF/ICC Transformation Order*'s transitional national VoIP intercarrier compensation framework completely unaltered.

38. We disagree with commenters who argue that the Commission has not sufficiently justified its legal authority to permit transitional origination charges for toll VoIP traffic consistent with sections 251(b)(5) and 251(g) of the Act. As the Commission explained in the *USF/ICC Transformation Order,* traffic previously was not subject to compensation under section 251(b)(5) if ''such traffic [was] subject to pre-1996 Act obligations regarding 'exchange access,' '' and thus grandfathered under section 251(g). The Commission concluded that ''[r]egardless of whether particular VoIP services are telecommunications services or information services, there [were] pre-1996 Act obligations regarding LECs' compensation for the provision of exchange access to an IXC or an information service provider''—namely, either intercarrier access charges or, if subject to the ESP exemption, special access or subscriber line charges. Contrary to some claims, it was not necessary for the Commission to resolve which of those exchange access charge frameworks applied in particular circumstances previously—so long as they were exchange access regulations involving the exchange of traffic between a LEC and an interexchange carrier or information service provider, they were subject to grandfathering under section 251(g) until superseded by the Commission. Moreover, we agree with parties arguing that ''the grandfathering provision of section 251(g) does not require pre-Act compensation regulations to be frozen in time'' but allows the Commission ''to 'modify LECs' pre-Act 'restrictions' or 'obligations' pending full implementation of relevant sections of the Act.'' Thus, in exercising its authority to adopt a transitional framework for VoIP intercarrier compensation, the Commission was not restricted to adopting precisely the same charges that might have applied previously. As commenters observe, ''[t]o find otherwise would remove any ability of the Commission to adopt a reasonable transition away from pre-Act compensation obligations.'' Thus, regardless of whether the ESP exemption framework historically applied to VoIP traffic, the Commission had authority to eliminate the potential application of that framework to VoIP traffic and adopt transitional intercarrier compensation rules, including origination charges for toll VoIP traffic, that seek to limit marketplace disruptions pending the ultimate transition to bill-and-keep under section 251(b)(5).

39. We also make clear that the new default rate for originating intrastate toll VoIP traffic applies regardless of whether the VoIP traffic originates in TDM or IP format. The VoIP intercarrier compensation rules adopted in the *USF/ICC Transformation Order* included a ''symmetry'' principle that all VoIP traffic will be subject to the same intercarrier compensation requirements, regardless of whether TDM or IP technology was used to originate or terminate the call. The Commission thus ''decline[d] to adopt an asymmetric approach that would apply VoIP-specific rates for only IP-originated or only IP-terminated traffic.'' Rather, the Commission ''adopt[ed] rules making clear that origination and termination charges may be imposed under our transitional [VoIP] intercarrier compensation framework, including when an entity 'uses Internet Protocol facilities to transmit such traffic to [or from] the called party's premises.' ''

40. This ''VoIP symmetry rule'' was incorporated in the codified intercarrier compensation rules for toll VoIP traffic. Section 51.913(a) of the Commission's rules specifies the rate applicable to all ''Access Reciprocal Compensation subject to this subpart exchanged between a local exchange carrier and another telecommunications carrier in Time Division Multiplexing (TDM) format that originates and/or terminates in IP format,'' without distinguishing among classes of VoIP traffic depending upon whether they originate in TDM or IP. In addition, § 51.913(b) of the rules makes clear that a LEC ''shall be entitled to assess and collect the full Access Reciprocal Compensation charges prescribed by this subpart that are set forth in a local exchange carrier's interstate or intrastate tariff for the access services defined in § 51.903'' even if the relevant origination or termination functions are performed by the LEC's retail VoIP provider partner—which, of necessity, would be performing these functions in IP, rather than TDM. Likewise, the rules make clear that ''functions provided by a LEC as part of transmitting telecommunications between designated points using, in whole or in part, technology other than TDM transmission'' count equally as access services for purposes of § 51.903 of the Commission's rules as those performed in TDM.

41. The Petitions focus on the factual scenario of TDM-originated VoIP traffic, and do not request reconsideration of the VoIP symmetry rule nor state that interstate rates should continue to apply to IP-originated VoIP traffic. Precisely because the Petitions did not ask the Commission to reconsider the VoIP symmetry rule, however, they necessarily implicate the rate regulations for all originating intrastate VoIP traffic, because all such traffic would have to be considered for the Petitions to be accommodated within the framework of the VoIP symmetry rule. As commenters observe, the Petitions would be inconsistent with the symmetrical rules adopted in the *USF/ICC Transformation Order* if interpreted as implicating only TDM-originated VoIP traffic. Indeed, Frontier and Windstream subsequently joined with a number of other stakeholders in advocating that the Commission act on their Petition ''by stating that all originating access charges are subject to the same treatment pending further reform.'' Consequently, we interpret the Petitions as implicating the rate regulations for all originating intrastate VoIP traffic, consistent with the rules we adopt on reconsideration.

42. Notably, we would not grant the requests for reconsideration of our VoIP intercarrier compensation rules if the symmetry rule were not applicable here. The Commission adopted the symmetry requirement in the *USF/ICC*

*Transformation Order* to avoid ''marketplace distortions that give one category of providers an artificial regulatory advantage in costs and revenues relative to other market participants.'' As commenters recognized, reconsidering the rules only for intrastate toll VoIP traffic originated in TDM could lead to the outcome the Commission's symmetry rule sought to avoid, for instance by creating artificial incentives for parties to send traffic using TDM technology simply to increase their revenues, which likewise would provide competitive advantages to such providers relative to providers relying on IP networks. The symmetry rule avoids these outcomes, enabling us to grant reconsideration on this issue.

## IV. Procedural Matters

### *A. Paperwork Reduction Act*

43. This Second Order on Reconsideration contains no new information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13, so no review nor approval from the Office of Management and Budget (OMB) is required.

### *B. Final Regulatory Flexibility Act Certification*

44. The Regulatory Flexibility Act (RFA) requires that agencies prepare a regulatory flexibility analysis for notice-and-comment rulemaking proceedings, unless the agency certifies that ''the rule will not have a significant economic impact on a substantial number of small entities.'' The RFA generally defines ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act. A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).

45. This Second Order on Reconsideration adopts revisions to 47 CFR parts 51 and 54. We hereby certify that the revision to part 54 will not have a significant economic impact on a substantial number of small entities. Previously, our rules governing Phase I of the Connect America Fund required, among other things, that carriers accepting incremental support deploy only to locations shown as unserved on the National Broadband Map. In this Order, we revise our rules to expand the areas to which such carriers may deploy, by permitting them to also deploy to unserved locations that are shown as served by the carrier itself, a change we make in recognition of the fact that the Map generally shows wireline coverage on a census-block-by-census-block basis, and thus shows an entire census block as served by the incumbent carrier even when there may be many locations in the block that are, in fact, not served. We conclude that this change to our rules will not have a significant impact on a substantial number of small entities. The Commission will send a copy of this Order, including this certification, to the Chief Counsel for Advocacy of the Small Business Administration. In addition, the Order (or a summary thereof) and certification will be published in the **Federal Register**.

### *C. Congressional Review Act*

46. The Commission will send a copy of this Order to Congress and the Government Accountability Office pursuant to the Congressional Review Act.

### *D. Final Regulatory Flexibility Analysis*

47. As required by the Regulatory Flexibility Act of 1980 (RFA), as amended, Initial Regulatory Flexibility Analyses (IRFAs) were incorporated in the *Notice of Proposed Rule Making and Further Notice of Proposed Rulemaking* (*USF/ICC Transformation NPRM*), in the *Notice of Inquiry and Notice of Proposed Rulemaking* (*USF Reform NOI/NPRM*), and in the *Notice of Proposed Rulemaking* (*Mobility Fund NPRM*) for this proceeding. The Commission sought written public comment on the proposals in the *USF/ICC Transformation NPRM,* including comment on the IRFA. The Commission only received comments on the *USF/ICC Transformation NPRM* IRFA. The comments received were discussed in the *USF/ICC Transformation Order,* and are not discussed further here. This Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.

48. *Need for, and Objectives of the Order.* In the *USF/ICC Transformation Order,* the Commission adopted policies to transition outdated universal service and intercarrier compensation (ICC) systems to the Connect America Fund (CAF). In the present order, in addition to revising some rules related to universal service, which revisions we certify will not have a significant economic impact on a substantial number of small entities, we revise the rules adopted in the *USF/ICC Transformation Order* governing intercarrier compensation for Voice over Internet Protocol (VoIP). In that Order, the Commission permitted LECs, starting December 29, 2011, to tariff default intercarrier compensation rates for both originating and terminating toll VoIP traffic at rates equal to interstate access rates, with default intercarrier compensation for other VoIP traffic at the otherwise-applicable reciprocal compensation rates.

49. In this Second Order on Reconsideration, the Commission reconsidered the transitional intercarrier compensation framework adopted in the *USF/ICC Transformation Order* for originating VoIP traffic. Specifically, the Commission modified the VoIP ICC rules to permit LECs to tariff default charges equal to intrastate originating access for originating intrastate toll VoIP traffic at intrastate rates until June 30, 2014.

50. *Summary of Significant Issues Raised by Public Comments in Response to the IRFA.* No comments relating to any of the IRFAs have been filed since the Commission released the *USF/ICC Transformation Order.* In making the determinations reflected in the *Order,* we have considered the impact of our actions on small entities.

51. *Description and Estimate of the Number of Small Entities to which the Proposed Rules Will Apply.* The RFA directs agencies to provide a description of, and where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted. The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small-business concern'' under the Small Business Act. A ''small-business concern'' is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.

52. *Small Businesses.* Nationwide, there are a total of approximately 27.5 million small businesses, according to the SBA.

53. *Wired Telecommunications Carriers.* The SBA has developed a small business size standard for Wired Telecommunications Carriers, which consists of all such companies having 1,500 or fewer employees. According to Census Bureau data for 2007, there were 3,188 firms in this category, total, that operated for the entire year. Of this total, 3,144 firms had employment of 999 or fewer employees, and 44 firms had employment of 1,000 employees or more. Thus, under this size standard,

the majority of firms can be considered small.

54. *Local Exchange Carriers (LECs).* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to local exchange services. The closest applicable size standard under SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 1,307 carriers reported that they were incumbent local exchange service providers. Of these 1,307 carriers, an estimated 1,006 have 1,500 or fewer employees and 301 have more than 1,500 employees. Consequently, the Commission estimates that most providers of local exchange service are small entities that may be affected by the rules and policies proposed in the Order.

55. *Incumbent Local Exchange Carriers (incumbent LECs).* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to incumbent local exchange services. The closest applicable size standard under SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 1,307 carriers reported that they were incumbent local exchange service providers. Of these 1,307 carriers, an estimated 1,006 have 1,500 or fewer employees and 301 have more than 1,500 employees. Consequently, the Commission estimates that most providers of incumbent local exchange service are small businesses that may be affected by rules adopted pursuant to the Order.

56. We have included small incumbent LECs in this present RFA analysis. As noted above, a ''small business'' under the RFA is one that, *inter alia,* meets the pertinent small business size standard (e.g., a telephone communications business having 1,500 or fewer employees), and ''is not dominant in its field of operation.'' The SBA's Office of Advocacy contends that, for RFA purposes, small incumbent LECs are not dominant in their field of operation because any such dominance is not ''national'' in scope. We have therefore included small incumbent LECs in this RFA analysis, although we emphasize that this RFA action has no effect on Commission analyses and determinations in other, non-RFA contexts.

57. *Competitive Local Exchange Carriers (competitive LECs), Competitive Access Providers (CAPs), Shared-Tenant Service Providers, and Other Local Service Providers.* Neither the Commission nor the SBA has developed a small business size standard specifically for these service providers. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 1,442 carriers reported that they were engaged in the provision of either competitive local exchange services or competitive access provider services. Of these 1,442 carriers, an estimated 1,256 have 1,500 or fewer employees and 186 have more than 1,500 employees. In addition, 17 carriers have reported that they are Shared-Tenant Service Providers, and all 17 are estimated to have 1,500 or fewer employees. In addition, 72 carriers have reported that they are Other Local Service Providers. Of the 72, seventy have 1,500 or fewer employees and two have more than 1,500 employees. Consequently, the Commission estimates that most providers of competitive local exchange service, competitive access providers, Shared-Tenant Service Providers, and Other Local Service Providers are small entities that may be affected by rules adopted pursuant to the Order.

58. *Interexchange Carriers (IXCs).* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to interexchange services. The closest applicable size standard under SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 359 companies reported that their primary telecommunications service activity was the provision of interexchange services. Of these 359 companies, an estimated 317 have 1,500 or fewer employees and 42 have more than 1,500 employees. Consequently, the Commission estimates that the majority of interexchange service providers are small entities that may be affected by rules adopted pursuant to the Order.

59. *Prepaid Calling Card Providers.* Neither the Commission nor the SBA has developed a small business size standard specifically for prepaid calling card providers. The appropriate size standard under SBA rules is for the category Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 193 carriers have reported that they are engaged in the provision of prepaid calling cards. Of these, an estimated all 193 have 1,500 or fewer employees and none have more than 1,500 employees. Consequently, the Commission estimates that the majority of prepaid calling card providers are small entities that may be affected by rules adopted pursuant to the Order.

60. *Local Resellers.* The SBA has developed a small business size standard for the category of Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 213 carriers have reported that they are engaged in the provision of local resale services. Of these, an estimated 211 have 1,500 or fewer employees and two have more than 1,500 employees. Consequently, the Commission estimates that the majority of local resellers are small entities that may be affected by rules adopted pursuant to the Order.

61. *Toll Resellers.* The SBA has developed a small business size standard for the category of Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 881 carriers have reported that they are engaged in the provision of toll resale services. Of these, an estimated 857 have 1,500 or fewer employees and 24 have more than 1,500 employees. Consequently, the Commission estimates that the majority of toll resellers are small entities that may be affected by rules adopted pursuant to the Order.

62. *Other Toll Carriers.* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to Other Toll Carriers. This category includes toll carriers that do not fall within the categories of interexchange carriers, operator service providers, prepaid calling card providers, satellite service carriers, or toll resellers. The closest applicable size standard under SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 284 companies reported that their primary telecommunications service activity was the provision of other toll carriage. Of these, an estimated 279 have 1,500 or fewer employees and five have more than 1,500 employees. Consequently, the Commission estimates that most Other Toll Carriers are small entities that may be affected by the rules and policies adopted pursuant to the Order.

63. *800 and 800-Like Service Subscribers.* Neither the Commission nor the SBA has developed a small

business size standard specifically for 800 and 800-like service (toll free) subscribers. The appropriate size standard under SBA rules is for the category Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees. The most reliable source of information regarding the number of these service subscribers appears to be data the Commission collects on the 800, 888, 877, and 866 numbers in use. According to our data, as of September 2009, the number of 800 numbers assigned was 7,860,000; the number of 888 numbers assigned was 5,588,687; the number of 877 numbers assigned was 4,721,866; and the number of 866 numbers assigned was 7,867,736. We do not have data specifying the number of these subscribers that are not independently owned and operated or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of toll free subscribers that would qualify as small businesses under the SBA size standard. Consequently, we estimate that there are 7,860,000 or fewer small entity 800 subscribers; 5,588,687 or fewer small entity 888 subscribers; 4,721,866 or fewer small entity 877 subscribers; and 7,867,736 or fewer small entity 866 subscribers.

64. *Wireless Telecommunications Carriers (except Satellite).* Since 2007, the SBA has recognized wireless firms within this new, broad, economic census category. Prior to that time, such firms were within the now-superseded categories of Paging and Cellular and Other Wireless Telecommunications. Under the present and prior categories, the SBA has deemed a wireless business to be small if it has 1,500 or fewer employees. For this category, census data for 2007 show that there were 1,383 firms that operated for the entire year. Of this total, 1,368 firms had employment of 999 or fewer employees and 15 had employment of 1000 employees or more. Similarly, according to Commission data, 413 carriers reported that they were engaged in the provision of wireless telephony, including cellular service, Personal Communications Service (PCS), and Specialized Mobile Radio (SMR) Telephony services. Of these, an estimated 261 have 1,500 or fewer employees and 152 have more than 1,500 employees. Consequently, the Commission estimates that approximately half or more of these firms can be considered small. Thus, using available data, we estimate that the majority of wireless firms can be considered small.

65. *Broadband Personal Communications Service.* The broadband personal communications service (PCS) spectrum is divided into six frequency blocks designated A through F, and the Commission has held auctions for each block. The Commission defined ''small entity'' for Blocks C and F as an entity that has average gross revenues of $40 million or less in the three previous calendar years. For Block F, an additional classification for ''very small business'' was added and is defined as an entity that, together with its affiliates, has average gross revenues of not more than $15 million for the preceding three calendar years. These standards defining ''small entity'' in the context of broadband PCS auctions have been approved by the SBA. No small businesses, within the SBA-approved small business size standards bid successfully for licenses in Blocks A and B. There were 90 winning bidders that qualified as small entities in the Block C auctions. A total of 93 small and very small business bidders won approximately 40 percent of the 1,479 licenses for Blocks D, E, and F. In 1999, the Commission re-auctioned 347 C, E, and F Block licenses. There were 48 small business winning bidders. In 2001, the Commission completed the auction of 422 C and F Broadband PCS licenses in Auction 35. Of the 35 winning bidders in this auction, 29 qualified as ''small'' or ''very small'' businesses. Subsequent events, concerning Auction 35, including judicial and agency determinations, resulted in a total of 163 C and F Block licenses being available for grant. In 2005, the Commission completed an auction of 188 C block licenses and 21 F block licenses in Auction 58. There were 24 winning bidders for 217 licenses. Of the 24 winning bidders, 16 claimed small business status and won 156 licenses. In 2007, the Commission completed an auction of 33 licenses in the A, C, and F Blocks in Auction 71. Of the 14 winning bidders, six were designated entities. In 2008, the Commission completed an auction of 20 Broadband PCS licenses in the C, D, E and F block licenses in Auction 78.

66. *Advanced Wireless Services.* In 2008, the Commission conducted the auction of Advanced Wireless Services (''AWS'') licenses. This auction, which as designated as Auction 78, offered 35 licenses in the AWS 1710–1755 MHz and 2110–2155 MHz bands (''AWS–1''). The AWS–1 licenses were licenses for which there were no winning bids in Auction 66. That same year, the Commission completed Auction 78. A bidder with attributed average annual gross revenues that exceeded $15 million and did not exceed $40 million for the preceding three years (''small business'') received a 15 percent discount on its winning bid. A bidder with attributed average annual gross revenues that did not exceed $15 million for the preceding three years (''very small business'') received a 25 percent discount on its winning bid. A bidder that had combined total assets of less than $500 million and combined gross revenues of less than $125 million in each of the last two years qualified for entrepreneur status. Four winning bidders that identified themselves as very small businesses won 17 licenses. Three of the winning bidders that identified themselves as a small business won five licenses. Additionally, one other winning bidder that qualified for entrepreneur status won 2 licenses.

67. *Narrowband Personal Communications Services.* In 1994, the Commission conducted an auction for Narrowband PCS licenses. A second auction was also conducted later in 1994. For purposes of the first two Narrowband PCS auctions, ''small businesses'' were entities with average gross revenues for the prior three calendar years of $40 million or less. Through these auctions, the Commission awarded a total of 41 licenses, 11 of which were obtained by four small businesses. To ensure meaningful participation by small business entities in future auctions, the Commission adopted a two-tiered small business size standard in the Narrowband PCS Second Report and Order. A ''small business'' is an entity that, together with affiliates and controlling interests, has average gross revenues for the three preceding years of not more than $40 million. A ''very small business'' is an entity that, together with affiliates and controlling interests, has average gross revenues for the three preceding years of not more than $15 million. The SBA has approved these small business size standards. A third auction was conducted in 2001. Here, five bidders won 317 (Metropolitan Trading Areas and nationwide) licenses. Three of these claimed status as a small or very small entity and won 311 licenses.

68. *Paging (Private and Common Carrier).* In the *Paging Third Report and Order,* we developed a small business size standard for ''small businesses'' and ''very small businesses'' for purposes of determining their eligibility for special provisions such as bidding credits and installment payments. A ''small business'' is an entity that, together with

its affiliates and controlling principals, has average gross revenues not exceeding $15 million for the preceding three years. Additionally, a ''very small business'' is an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than $3 million for the preceding three years. The SBA has approved these small business size standards. According to Commission data, 291 carriers have reported that they are engaged in Paging or Messaging Service. Of these, an estimated 289 have 1,500 or fewer employees, and two have more than 1,500 employees. Consequently, the Commission estimates that the majority of paging providers are small entities that may be affected by our action. An auction of Metropolitan Economic Area licenses commenced on February 24, 2000, and closed on March 2, 2000. Of the 2,499 licenses auctioned, 985 were sold. Fifty-seven companies claiming small business status won 440 licenses. A subsequent auction of MEA and Economic Area (''EA'') licenses was held in the year 2001. Of the 15,514 licenses auctioned, 5,323 were sold. One hundred thirty-two companies claiming small business status purchased 3,724 licenses. A third auction, consisting of 8,874 licenses in each of 175 EAs and 1,328 licenses in all but three of the 51 MEAs, was held in 2003. Seventy-seven bidders claiming small or very small business status won 2,093 licenses. A fourth auction, consisting of 9,603 lower and upper paging band licenses was held in the year 2010. Twenty-nine bidders claiming small or very small business status won 3,016 licenses..

69. *220 MHz Radio Service—Phase I Licensees.* The 220 MHz service has both Phase I and Phase II licenses. Phase I licensing was conducted by lotteries in 1992 and 1993. There are approximately 1,515 such non-nationwide licensees and four nationwide licensees currently authorized to operate in the 220 MHz band. The Commission has not developed a small business size standard for small entities specifically applicable to such incumbent 220 MHz Phase I licensees. To estimate the number of such licensees that are small businesses, we apply the small business size standard under the SBA rules applicable to Wireless Telecommunications Carriers (except Satellite). Under this category, the SBA deems a wireless business to be small if it has 1,500 or fewer employees. The Commission estimates that nearly all such licensees are small businesses under the SBA's small business size standard that may be affected by rules adopted pursuant to the Order.

70. *220 MHz Radio Service—Phase II Licensees.* The 220 MHz service has both Phase I and Phase II licenses. The Phase II 220 MHz service is subject to spectrum auctions. In the *220 MHz Third Report and Order,* we adopted a small business size standard for ''small'' and ''very small'' businesses for purposes of determining their eligibility for special provisions such as bidding credits and installment payments. This small business size standard indicates that a ''small business'' is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $15 million for the preceding three years. A ''very small business'' is an entity that, together with its affiliates and controlling principals, has average gross revenues that do not exceed $3 million for the preceding three years. The SBA has approved these small business size standards. Auctions of Phase II licenses commenced on September 15, 1998, and closed on October 22, 1998. In the first auction, 908 licenses were auctioned in three different-sized geographic areas: three nationwide licenses, 30 Regional Economic Area Group (EAG) Licenses, and 875 Economic Area (EA) Licenses. Of the 908 licenses auctioned, 693 were sold. Thirty-nine small businesses won licenses in the first 220 MHz auction. The second auction included 225 licenses: 216 EA licenses and 9 EAG licenses. Fourteen companies claiming small business status won 158 licenses.

71. *Specialized Mobile Radio.* The Commission awards small business bidding credits in auctions for Specialized Mobile Radio (''SMR'') geographic area licenses in the 800 MHz and 900 MHz bands to entities that had revenues of no more than $15 million in each of the three previous calendar years. The Commission awards very small business bidding credits to entities that had revenues of no more than $3 million in each of the three previous calendar years. The SBA has approved these small business size standards for the 800 MHz and 900 MHz SMR Services. The Commission has held auctions for geographic area licenses in the 800 MHz and 900 MHz bands. The 900 MHz SMR auction was completed in 1996. Sixty bidders claiming that they qualified as small businesses under the $15 million size standard won 263 geographic area licenses in the 900 MHz SMR band. The 800 MHz SMR auction for the upper 200 channels was conducted in 1997. Ten bidders claiming that they qualified as small businesses under the $15 million size standard won 38 geographic area licenses for the upper 200 channels in the 800 MHz SMR band. A second auction for the 800 MHz band was conducted in 2002 and included 23 BEA licenses. One bidder claiming small business status won five licenses.

72. The auction of the 1,053 800 MHz SMR geographic area licenses for the General Category channels was conducted in 2000. Eleven bidders won 108 geographic area licenses for the General Category channels in the 800 MHz SMR band qualified as small businesses under the $15 million size standard. In an auction completed in 2000, a total of 2,800 Economic Area licenses in the lower 80 channels of the 800 MHz SMR service were awarded. Of the 22 winning bidders, 19 claimed small business status and won 129 licenses. Thus, combining all three auctions, 40 winning bidders for geographic licenses in the 800 MHz SMR band claimed status as small business.

73. In addition, there are numerous incumbent site-by-site SMR licensees and licensees with extended implementation authorizations in the 800 and 900 MHz bands. We do not know how many firms provide 800 MHz or 900 MHz geographic area SMR pursuant to extended implementation authorizations, nor how many of these providers have annual revenues of no more than $15 million. One firm has over $15 million in revenues. In addition, we do not know how many of these firms have 1,500 or fewer employees. We assume, for purposes of this analysis, that all of the remaining existing extended implementation authorizations are held by small entities, as that small business size standard is approved by the SBA.

74. *Broadband Radio Service and Educational Broadband Service.* Broadband Radio Service systems, previously referred to as Multipoint Distribution Service (''MDS'') and Multichannel Multipoint Distribution Service (''MMDS'') systems, and ''wireless cable,'' transmit video programming to subscribers and provide two-way high speed data operations using the microwave frequencies of the Broadband Radio Service (''BRS'') and Educational Broadband Service (''EBS'') (previously referred to as the Instructional Television Fixed Service (''ITFS'')). In connection with the 1996 BRS auction, the Commission established a small business size standard as an entity that had annual average gross revenues of no more than $40 million in the previous three calendar years. The BRS auctions resulted in 67 successful bidders obtaining licensing opportunities for

493 Basic Trading Areas (''BTAs''). Of the 67 auction winners, 61 met the definition of a small business. BRS also includes licensees of stations authorized prior to the auction. At this time, we estimate that of the 61 small business BRS auction winners, 48 remain small business licensees. In addition to the 48 small businesses that hold BTA authorizations, there are approximately 392 incumbent BRS licensees that are considered small entities. After adding the number of small business auction licensees to the number of incumbent licensees not already counted, we find that there are currently approximately 440 BRS licensees that are defined as small businesses under either the SBA or the Commission's rules. The Commission has adopted three levels of bidding credits for BRS: (i) A bidder with attributed average annual gross revenues that exceed $15 million and do not exceed $40 million for the preceding three years (small business) is eligible to receive a 15 percent discount on its winning bid; (ii) a bidder with attributed average annual gross revenues that exceed $3 million and do not exceed $15 million for the preceding three years (very small business) is eligible to receive a 25 percent discount on its winning bid; and (iii) a bidder with attributed average annual gross revenues that do not exceed $3 million for the preceding three years (entrepreneur) is eligible to receive a 35 percent discount on its winning bid. In 2009, the Commission conducted Auction 86, which offered 78 BRS licenses. Auction 86 concluded with ten bidders winning 61 licenses. Of the ten, two bidders claimed small business status and won 4 licenses; one bidder claimed very small business status and won three licenses; and two bidders claimed entrepreneur status and won six licenses.

75. In addition, the SBA's Cable Television Distribution Services small business size standard is applicable to EBS. There are presently 2,032 EBS licensees. All but 100 of these licenses are held by educational institutions. Educational institutions are included in this analysis as small entities. Thus, we estimate that at least 1,932 licensees are small businesses. Since 2007, Cable Television Distribution Services have been defined within the broad economic census category of Wired Telecommunications Carriers; that category is defined as follows: ''This industry comprises establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks. Transmission facilities may be based on a single technology or a combination of technologies.'' The SBA defines a small business size standard for this category as any such firms having 1,500 or fewer employees. The SBA has developed a small business size standard for this category, which is: all such firms having 1,500 or fewer employees. According to Census Bureau data for 2007, there were a total of 955 firms in this previous category that operated for the entire year. Of this total, 939 firms had employment of 999 or fewer employees, and 16 firms had employment of 1000 employees or more. Thus, under this size standard, the majority of firms can be considered small and may be affected by rules adopted pursuant to the Order.

76. *Lower 700 MHz Band Licenses.* The Commission previously adopted criteria for defining three groups of small businesses for purposes of determining their eligibility for special provisions such as bidding credits. The Commission defined a ''small business'' as an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $40 million for the preceding three years. A ''very small business'' is defined as an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than $15 million for the preceding three years. Additionally, the Lower 700 MHz Band had a third category of small business status for Metropolitan/Rural Service Area (''MSA/RSA'') licenses, identified as ''entrepreneur'' and defined as an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than $3 million for the preceding three years. The SBA approved these small size standards. The Commission conducted an auction in 2002 of 740 Lower 700 MHz Band licenses (one license in each of the 734 MSAs/RSAs and one license in each of the six Economic Area Groupings (EAGs)). Of the 740 licenses available for auction, 484 licenses were sold to 102 winning bidders. Seventy-two of the winning bidders claimed small business, very small business or entrepreneur status and won a total of 329 licenses. The Commission conducted a second Lower 700 MHz Band auction in 2003 that included 256 licenses: 5 EAG licenses and 476 Cellular Market Area licenses. Seventeen winning bidders claimed small or very small business status and won 60 licenses, and nine winning bidders claimed entrepreneur status and won 154 licenses. In 2005, the Commission completed an auction of 5 licenses in the Lower 700 MHz Band, designated Auction 60. There were three winning bidders for five licenses. All three winning bidders claimed small business status.

77. In 2007, the Commission reexamined its rules governing the 700 MHz band in the *700 MHz Second Report and Order.* The *700 MHz Second Report and Order* revised the band plan for the commercial (including Guard Band) and public safety spectrum, adopted services rules, including stringent build-out requirements, an open platform requirement on the C Block, and a requirement on the D Block licensee to construct and operate a nationwide, interoperable wireless broadband network for public safety users. An auction of A, B and E block licenses in the Lower 700 MHz band was held in 2008. Twenty winning bidders claimed small business status (those with attributable average annual gross revenues that exceed $15 million and do not exceed $40 million for the preceding three years). Thirty three winning bidders claimed very small business status (those with attributable average annual gross revenues that do not exceed $15 million for the preceding three years). In 2011, the Commission conducted Auction 92, which offered 16 Lower 700 MHz band licenses that had been made available in Auction 73 but either remained unsold or were licenses on which a winning bidder defaulted. Two of the seven winning bidders in Auction 92 claimed very small business status, winning a total of four licenses.

78. *Upper 700 MHz Band Licenses.* In the *700 MHz Second Report and Order,* the Commission revised its rules regarding Upper 700 MHz band licenses. In 2008, the Commission conducted Auction 73 in which C and D block licenses in the Upper 700 MHz band were available. Three winning bidders claimed very small business status (those with attributable average annual gross revenues that do not exceed $15 million for the preceding three years).

79. *700 MHz Guard Band Licensees.* In the *700 MHz Guard Band Order,* we adopted a small business size standard for ''small businesses'' and ''very small businesses'' for purposes of determining their eligibility for special provisions such as bidding credits and installment payments. A ''small business'' is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $40 million for the preceding three years. Additionally, a ''very small business'' is an entity that, together with its affiliates and controlling principals, has average

gross revenues that are not more than $15 million for the preceding three years. An auction of 52 Major Economic Area (MEA) licenses commenced on September 6, 2000, and closed on September 21, 2000. Of the 104 licenses auctioned, 96 licenses were sold to nine bidders. Five of these bidders were small businesses that won a total of 26 licenses. A second auction of 700 MHz Guard Band licenses commenced on February 13, 2001 and closed on February 21, 2001. All eight of the licenses auctioned were sold to three bidders. One of these bidders was a small business that won a total of two licenses.

80. *Cellular Radiotelephone Service.* Auction 77 was held to resolve one group of mutually exclusive applications for Cellular Radiotelephone Service licenses for unserved areas in New Mexico. Bidding credits for designated entities were not available in Auction 77. In 2008, the Commission completed the closed auction of one unserved service area in the Cellular Radiotelephone Service, designated as Auction 77. Auction 77 concluded with one provisionally winning bid for the unserved area totaling $25,002.

81. *Private Land Mobile Radio (''PLMR'').* PLMR systems serve an essential role in a range of industrial, business, land transportation, and public safety activities. These radios are used by companies of all sizes operating in all U.S. business categories, and are often used in support of the licensee's primary (non-telecommunications) business operations. For the purpose of determining whether a licensee of a PLMR system is a small business as defined by the SBA, we use the broad census category, Wireless Telecommunications Carriers (except Satellite). This definition provides that a small entity is any such entity employing no more than 1,500 persons. The Commission does not require PLMR licensees to disclose information about number of employees, so the Commission does not have information that could be used to determine how many PLMR licensees constitute small entities under this definition. We note that PLMR licensees generally use the licensed facilities in support of other business activities, and therefore, it would also be helpful to assess PLMR licensees under the standards applied to the particular industry subsector to which the licensee belongs.

82. As of March 2010, there were 424,162 PLMR licensees operating 921,909 transmitters in the PLMR bands below 512 MHz. We note that any entity engaged in a commercial activity is eligible to hold a PLMR license, and that any revised rules in this context could therefore potentially impact small entities covering a great variety of industries.

83. *Rural Radiotelephone Service.* The Commission has not adopted a size standard for small businesses specific to the Rural Radiotelephone Service. A significant subset of the Rural Radiotelephone Service is the Basic Exchange Telephone Radio System (''BETRS''). In the present context, we will use the SBA's small business size standard applicable to Wireless Telecommunications Carriers (except Satellite), *i.e.,* an entity employing no more than 1,500 persons. There are approximately 1,000 licensees in the Rural Radiotelephone Service, and the Commission estimates that there are 1,000 or fewer small entity licensees in the Rural Radiotelephone Service that may be affected by the rules and policies proposed herein.

84. *Air-Ground Radiotelephone Service.* The Commission has not adopted a small business size standard specific to the Air-Ground Radiotelephone Service. We will use SBA's small business size standard applicable to Wireless Telecommunications Carriers (except Satellite), *i.e.,* an entity employing no more than 1,500 persons. There are approximately 100 licensees in the Air-Ground Radiotelephone Service, and we estimate that almost all of them qualify as small under the SBA small business size standard and may be affected by rules adopted pursuant to the Order.

85. *Aviation and Marine Radio Services.* Small businesses in the aviation and marine radio services use a very high frequency (VHF) marine or aircraft radio and, as appropriate, an emergency position-indicating radio beacon (and/or radar) or an emergency locator transmitter. The Commission has not developed a small business size standard specifically applicable to these small businesses. For purposes of this analysis, the Commission uses the SBA small business size standard for the category Wireless Telecommunications Carriers (except Satellite), which is 1,500 or fewer employees. Census data for 2007, which supersede data contained in the 2002 Census, show that there were 1,383 firms that operated that year. Of those 1,383, 1,368 had fewer than 100 employees, and 15 firms had more than 100 employees. Most applicants for recreational licenses are individuals. Approximately 581,000 ship station licensees and 131,000 aircraft station licensees operate domestically and are not subject to the radio carriage requirements of any statute or treaty. For purposes of our evaluations in this analysis, we estimate that there are up to approximately 712,000 licensees that are small businesses (or individuals) under the SBA standard. In addition, between December 3, 1998 and December 14, 1998, the Commission held an auction of 42 VHF Public Coast licenses in the 157.1875–157.4500 MHz (ship transmit) and 161.775–162.0125 MHz (coast transmit) bands. For purposes of the auction, the Commission defined a ''small'' business as an entity that, together with controlling interests and affiliates, has average gross revenues for the preceding three years not to exceed $15 million dollars. In addition, a ''very small'' business is one that, together with controlling interests and affiliates, has average gross revenues for the preceding three years not to exceed $3 million dollars. There are approximately 10,672 licensees in the Marine Coast Service, and the Commission estimates that almost all of them qualify as ''small'' businesses under the above special small business size standards and may be affected by rules adopted pursuant to the Order.

86. *Fixed Microwave Services.* Fixed microwave services include common carrier, private operational-fixed, and broadcast auxiliary radio services. At present, there are approximately 22,015 common carrier fixed licensees and 61,670 private operational-fixed licensees and broadcast auxiliary radio licensees in the microwave services. The Commission has not created a size standard for a small business specifically with respect to fixed microwave services. For purposes of this analysis, the Commission uses the SBA small business size standard for Wireless Telecommunications Carriers (except Satellite), which is 1,500 or fewer employees. The Commission does not have data specifying the number of these licensees that have more than 1,500 employees, and thus is unable at this time to estimate with greater precision the number of fixed microwave service licensees that would qualify as small business concerns under the SBA's small business size standard. Consequently, the Commission estimates that there are up to 22,015 common carrier fixed licensees and up to 61,670 private operational-fixed licensees and broadcast auxiliary radio licensees in the microwave services that may be small and may be affected by the rules and policies adopted herein. We note, however, that the common carrier microwave fixed licensee category includes some large entities.

87. *Offshore Radiotelephone Service.* This service operates on several UHF

television broadcast channels that are not used for television broadcasting in the coastal areas of states bordering the Gulf of Mexico. There are presently approximately 55 licensees in this service. The Commission is unable to estimate at this time the number of licensees that would qualify as small under the SBA's small business size standard for the category of Wireless Telecommunications Carriers (except Satellite). Under that SBA small business size standard, a business is small if it has 1,500 or fewer employees. Census data for 2007, which supersede data contained in the 2002 Census, show that there were 1,383 firms that operated that year. Of those 1,383, 1,368 had fewer than 100 employees, and 15 firms had more than 100 employees. Thus, under this category and the associated small business size standard, the majority of firms can be considered small.

88. *39 GHz Service.* The Commission created a special small business size standard for 39 GHz licenses—an entity that has average gross revenues of $40 million or less in the three previous calendar years. An additional size standard for ''very small business'' is: an entity that, together with affiliates, has average gross revenues of not more than $15 million for the preceding three calendar years. The SBA has approved these small business size standards. The auction of the 2,173 39 GHz licenses began on April 12, 2000 and closed on May 8, 2000. The 18 bidders who claimed small business status won 849 licenses. Consequently, the Commission estimates that 18 or fewer 39 GHz licensees are small entities that may be affected by rules adopted pursuant to the Order.

89. *Local Multipoint Distribution Service.* Local Multipoint Distribution Service (''LMDS'') is a fixed broadband point-to-multipoint microwave service that provides for two-way video telecommunications. The auction of the 986 LMDS licenses began and closed in 1998. The Commission established a small business size standard for LMDS licenses as an entity that has average gross revenues of less than $40 million in the three previous calendar years. An additional small business size standard for ''very small business'' was added as an entity that, together with its affiliates, has average gross revenues of not more than $15 million for the preceding three calendar years. The SBA has approved these small business size standards in the context of LMDS auctions. There were 93 winning bidders that qualified as small entities in the LMDS auctions. A total of 93 small and very small business bidders won approximately 277 A Block licenses and 387 B Block licenses. In 1999, the Commission re-auctioned 161 licenses; there were 32 small and very small businesses winning that won 119 licenses.

90. *218–219 MHz Service.* The first auction of 218–219 MHz spectrum resulted in 170 entities winning licenses for 594 Metropolitan Statistical Area (MSA) licenses. Of the 594 licenses, 557 were won by entities qualifying as a small business. For that auction, the small business size standard was an entity that, together with its affiliates, has no more than a $6 million net worth and, after federal income taxes (excluding any carry over losses), has no more than $2 million in annual profits each year for the previous two years. In the *218–219 MHz Report and Order and Memorandum Opinion and Order,* we established a small business size standard for a ''small business'' as an entity that, together with its affiliates and persons or entities that hold interests in such an entity and their affiliates, has average annual gross revenues not to exceed $15 million for the preceding three years. A ''very small business'' is defined as an entity that, together with its affiliates and persons or entities that hold interests in such an entity and its affiliates, has average annual gross revenues not to exceed $3 million for the preceding three years. These size standards will be used in future auctions of 218–219 MHz spectrum.

91. *2.3 GHz Wireless Communications Services.* This service can be used for fixed, mobile, radiolocation, and digital audio broadcasting satellite uses. The Commission defined ''small business'' for the wireless communications services (''WCS'') auction as an entity with average gross revenues of $40 million for each of the three preceding years, and a ''very small business'' as an entity with average gross revenues of $15 million for each of the three preceding years. The SBA has approved these definitions. The Commission auctioned geographic area licenses in the WCS service. In the auction, which was conducted in 1997, there were seven bidders that won 31 licenses that qualified as very small business entities, and one bidder that won one license that qualified as a small business entity.

92. *1670–1675 MHz Band.* An auction for one license in the 1670–1675 MHz band was conducted in 2003. The Commission defined a ''small business'' as an entity with attributable average annual gross revenues of not more than $40 million for the preceding three years and thus would be eligible for a 15 percent discount on its winning bid for the 1670–1675 MHz band license. Further, the Commission defined a ''very small business'' as an entity with attributable average annual gross revenues of not more than $15 million for the preceding three years and thus would be eligible to receive a 25 percent discount on its winning bid for the 1670–1675 MHz band license. One license was awarded. The winning bidder was not a small entity.

93. *3650–3700 MHz band.* In March 2005, the Commission released a *Report and Order and Memorandum Opinion and Order* that provides for nationwide, non-exclusive licensing of terrestrial operations, utilizing contention-based technologies, in the 3650 MHz band (*i.e.,* 3650–3700 MHz). As of April 2010, more than 1270 licenses have been granted and more than 7433 sites have been registered. The Commission has not developed a definition of small entities applicable to 3650–3700 MHz band nationwide, non-exclusive licensees. However, we estimate that the majority of these licensees are Internet Access Service Providers (ISPs) and that most of those licensees are small businesses.

94. *24 GHz—Incumbent Licensees.* This analysis may affect incumbent licensees who were relocated to the 24 GHz band from the 18 GHz band, and applicants who wish to provide services in the 24 GHz band. For this service, the Commission uses the SBA small business size standard for the category ''Wireless Telecommunications Carriers (except satellite),'' which is 1,500 or fewer employees. To gauge small business prevalence for these cable services we must, however, use the most current census data. Census data for 2007, which supersede data contained in the 2002 Census, show that there were 1,383 firms that operated that year. Of those 1,383, 1,368 had fewer than 100 employees, and 15 firms had more than 100 employees. Thus under this category and the associated small business size standard, the majority of firms can be considered small. The Commission notes that the Census' use of the classifications ''firms'' does not track the number of ''licenses''. The Commission believes that there are only two licensees in the 24 GHz band that were relocated from the 18 GHz band, Teligent and TRW, Inc. It is our understanding that Teligent and its related companies have less than 1,500 employees, though this may change in the future. TRW is not a small entity. Thus, only one incumbent licensee in the 24 GHz band is a small business entity.

95. *24 GHz—Future Licensees.* With respect to new applicants in the 24 GHz band, the size standard for ''small

business'' is an entity that, together with controlling interests and affiliates, has average annual gross revenues for the three preceding years not in excess of $15 million. ''Very small business'' in the 24 GHz band is an entity that, together with controlling interests and affiliates, has average gross revenues not exceeding $3 million for the preceding three years. The SBA has approved these small business size standards. These size standards will apply to a future 24 GHz license auction, if held.

96. *Satellite Telecommunications.* Since 2007, the SBA has recognized satellite firms within this revised category, with a small business size standard of $15 million. The most current Census Bureau data are from the economic census of 2007, and we will use those figures to gauge the prevalence of small businesses in this category. Those size standards are for the two census categories of ''Satellite Telecommunications'' and ''Other Telecommunications.'' Under the ''Satellite Telecommunications'' category, a business is considered small if it had $15 million or less in average annual receipts. Under the ''Other Telecommunications'' category, a business is considered small if it had $25 million or less in average annual receipts.

97. The first category of Satellite Telecommunications ''comprises establishments primarily engaged in providing point-to-point telecommunications services to other establishments in the telecommunications and broadcasting industries by forwarding and receiving communications signals via a system of satellites or reselling satellite telecommunications.'' For this category, Census Bureau data for 2007 show that there were a total of 512 firms that operated for the entire year. Of this total, 464 firms had annual receipts of under $10 million, and 18 firms had receipts of $10 million to $24,999,999. Consequently, we estimate that the majority of Satellite Telecommunications firms are small entities that might be affected by rules adopted pursuant to the Order.

98. The second category of Other Telecommunications ''primarily engaged in providing specialized telecommunications services, such as satellite tracking, communications telemetry, and radar station operation. This industry also includes establishments primarily engaged in providing satellite terminal stations and associated facilities connected with one or more terrestrial systems and capable of transmitting telecommunications to, and receiving telecommunications from, satellite systems. Establishments providing Internet services or voice over Internet protocol (VoIP) services via client-supplied telecommunications connections are also included in this industry.'' For this category, Census Bureau data for 2007 show that there were a total of 2,383 firms that operated for the entire year. Of this total, 2,346 firms had annual receipts of under $25 million. Consequently, we estimate that the majority of Other Telecommunications firms are small entities that might be affected by our action.

99. *Cable and Other Program Distribution.* Since 2007, these services have been defined within the broad economic census category of Wired Telecommunications Carriers; that category is defined as follows: ''This industry comprises establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks. Transmission facilities may be based on a single technology or a combination of technologies.'' The SBA has developed a small business size standard for this category, which is: all such firms having 1,500 or fewer employees. According to Census Bureau data for 2007, there were a total of 955 firms in this previous category that operated for the entire year. Of this total, 939 firms had employment of 999 or fewer employees, and 16 firms had employment of 1000 employees or more. Thus, under this size standard, the majority of firms can be considered small and may be affected by rules adopted pursuant to the Order.

100. *Cable Companies and Systems.* The Commission has developed its own small business size standards, for the purpose of cable rate regulation. Under the Commission's rules, a ''small cable company'' is one serving 400,000 or fewer subscribers, nationwide. Industry data indicate that, of 1,076 cable operators nationwide, all but eleven are small under this size standard. In addition, under the Commission's rules, a ''small system'' is a cable system serving 15,000 or fewer subscribers. Industry data indicate that, of 7,208 systems nationwide, 6,139 systems have under 10,000 subscribers, and an additional 379 systems have 10,000–19,999 subscribers. Thus, under this second size standard, most cable systems are small and may be affected by rules adopted pursuant to the Order.

101. *Cable System Operators.* The Act also contains a size standard for small cable system operators, which is ''a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1 percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed $250,000,000.'' The Commission has determined that an operator serving fewer than 677,000 subscribers shall be deemed a small operator, if its annual revenues, when combined with the total annual revenues of all its affiliates, do not exceed $250 million in the aggregate. Industry data indicate that, of 1,076 cable operators nationwide, all but ten are small under this size standard. We note that the Commission neither requests nor collects information on whether cable system operators are affiliated with entities whose gross annual revenues exceed $250 million, and therefore we are unable to estimate more accurately the number of cable system operators that would qualify as small under this size standard.

102. *Open Video Services.* The open video system (''OVS'') framework was established in 1996, and is one of four statutorily recognized options for the provision of video programming services by local exchange carriers. The OVS framework provides opportunities for the distribution of video programming other than through cable systems. Because OVS operators provide subscription services, OVS falls within the SBA small business size standard covering cable services, which is ''Wired Telecommunications Carriers.'' The SBA has developed a small business size standard for this category, which is: all such firms having 1,500 or fewer employees. According to Census Bureau data for 2007, there were a total of 955 firms in this previous category that operated for the entire year. Of this total, 939 firms had employment of 999 or fewer employees, and 16 firms had employment of 1000 employees or more. Thus, under this second size standard, most cable systems are small and may be affected by rules adopted pursuant to the Order. In addition, we note that the Commission has certified some OVS operators, with some now providing service. Broadband service providers (''BSPs'') are currently the only significant holders of OVS certifications or local OVS franchises. The Commission does not have financial or employment information regarding the entities authorized to provide OVS, some of which may not yet be operational. Thus, again, at least some of the OVS operators may qualify as small entities.

103. *Internet Service Providers.* Since 2007, these services have been defined within the broad economic census category of Wired Telecommunications

Carriers; that category is defined as follows: ''This industry comprises establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks. Transmission facilities may be based on a single technology or a combination of technologies.'' The SBA has developed a small business size standard for this category, which is: All such firms having 1,500 or fewer employees. According to Census Bureau data for 2007, there were 3,188 firms in this category, total, that operated for the entire year. Of this total, 3144 firms had employment of 999 or fewer employees, and 44 firms had employment of 1000 employees or more. Thus, under this size standard, the majority of firms can be considered small. In addition, according to Census Bureau data for 2007, there were a total of 396 firms in the category Internet Service Providers (broadband) that operated for the entire year. Of this total, 394 firms had employment of 999 or fewer employees, and two firms had employment of 1000 employees or more. Consequently, we estimate that the majority of these firms are small entities that may be affected by rules adopted pursuant to the Order.

104. *Internet Publishing and Broadcasting and Web Search Portals.* Our action may pertain to interconnected VoIP services, which could be provided by entities that provide other services such as email, online gaming, web browsing, video conferencing, instant messaging, and other, similar IP-enabled services. The Commission has not adopted a size standard for entities that create or provide these types of services or applications. However, the Census Bureau has identified firms that ''primarily engaged in (1) publishing and/or broadcasting content on the Internet exclusively or (2) operating Web sites that use a search engine to generate and maintain extensive databases of Internet addresses and content in an easily searchable format (and known as Web search portals).'' The SBA has developed a small business size standard for this category, which is: All such firms having 500 or fewer employees. According to Census Bureau data for 2007, there were 2,705 firms in this category that operated for the entire year. Of this total, 2,682 firms had employment of 499 or fewer employees, and 23 firms had employment of 500 employees or more. Consequently, we estimate that the majority of these firms are small entities that may be affected by rules adopted pursuant to the Order.

105. *Data Processing, Hosting, and Related Services.* Entities in this category ''primarily * * * provid[e] infrastructure for hosting or data processing services.'' The SBA has developed a small business size standard for this category; that size standard is $25 million or less in average annual receipts. According to Census Bureau data for 2007, there were 8,060 firms in this category that operated for the entire year. Of these, 7,744 had annual receipts of under $24,999,999. Consequently, we estimate that the majority of these firms are small entities that may be affected by rules adopted pursuant to the Order.

106. *All Other Information Services.* The Census Bureau defines this industry as including ''establishments primarily engaged in providing other information services (except news syndicates, libraries, archives, Internet publishing and broadcasting, and Web search portals).'' Our action pertains to interconnected VoIP services, which could be provided by entities that provide other services such as email, online gaming, web browsing, video conferencing, instant messaging, and other, similar IP-enabled services. The SBA has developed a small business size standard for this category; that size standard is $7.0 million or less in average annual receipts. According to Census Bureau data for 2007, there were 367 firms in this category that operated for the entire year. Of these, 334 had annual receipts of under $5.0 million, and an additional 11 firms had receipts of between $5 million and $9,999,999. Consequently, we estimate that the majority of these firms are small entities that may be affected by our action.

107. *Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements.* Under the revised VoIP pricing rules we adopt, carriers may tariff default intercarrier compensation charges for intrastate originating toll VoIP-PSTN traffic in the absence of an agreement for different intercarrier compensation. Service providers may need to revise their interstate and intrastate tariffs to account for these changes.

108. *Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered.* The RFA requires an agency to describe any significant alternatives that it has considered in reaching its approach, which may include the following four alternatives, among others: (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.

109. We did not identify any feasible alternatives that would have lessened the economic impact on small entities. In the absence of an agreement, there is no other way than through a tariff filing to effectuate the new default rates where increased rates may be allowed.

110. *Report to Congress.* The Commission will send a copy of the Order, including this FRFA, in a report to be sent to Congress and the Government Accountability Office pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996. In addition, the Commission will send a copy of the Order, including the FRFA, to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the Order and FRFA (or summaries thereof) will also be published in the **Federal Register**.

## V. Ordering Clauses

111. Accordingly, *it is ordered,* pursuant to the authority contained in sections 1, 2, 4(i), 201–206, 214, 218–220, 251, 252, 254, 256, 303(r), 332, 403 of the Communications Act of 1934, as amended, and section 706 of the Telecommunications Act of 1996, 47 U.S.C. 151, 152, 154(i), 201–206, 214, 218–220, 251, 252, 254, 256, 303(r), 332, 403, 1302, and §§ 1.1 and 1.429 of the Commission's rules, 47 CFR 1.1 and 1.429, that this Second Order on Reconsideration *is adopted.*

112. *It is further ordered* that the Petition for Reconsideration of the United States Telecom Association is *denied* to the extent provided herein.

113. *It is further ordered* that the Petition for Reconsideration and/or Clarification of Frontier Communications Corp. and Windstream Communications, Inc., is *granted* to the extent provided herein and *denied* to the extent provided herein.

114. *It is further ordered* that the Petition for Reconsideration and Clarification of the National Exchange Carrier Association, Inc., Organization for the Promotion and Advancement of Small Telecommunications Companies and Western Telecommunications Alliance, is granted to the extent provided herein.

115. *It is further ordered* that the Petition for Reconsideration of the

Independent Telephone & Telecommunications Alliance is *granted* to the extent provided herein and *denied* to the extent provided herein.

116. *It is further ordered* that part 51 of the Commission's rules, 47 CFR part 51, is *amended,* and such rule amendments shall be effective 45 days after the date of publication of the rule amendments in the **Federal Register**.

117. *It is further ordered* that Part 54 of the Commission's rules, 47 CFR part 54, is *amended,* and such rule amendments shall be effective 30 days after the date of publication of the rule amendments in the **Federal Register**.

**List of Subjects in 47 CFR Parts 51 and 54**

Communications common carriers, Reporting and recordkeeping requirements, Telecommunications, Telephone.

Federal Communications Commission.

**Marlene H. Dortch,**

*Secretary.*

**Final Rule**

For the reasons discussed in the Second Order on Reconsideration, the Federal Communications Commission amends 47 CFR parts 51 and 54 as follows:

## PART 51—INTERCONNECTION

■ 1. The authority citation for part 51 continues to read as follows:

**Authority:** Sections 1–5, 7, 201–05, 207–09, 218, 220, 225–27, 251–54, 256, 271, 303(r), 332, 706 of the Telecommunication Act of 1996, 48 Stat. 1070, as amended, 1077; 47 U.S.C. 151–55, 157, 201–05, 207–09, 218, 220, 225–27, 251–54, 256, 271, 303(r), 332, 1302, 47 U.S.C. 157 *note,* unless otherwise noted.

■ 2. Revise § 51.913(a) to read as follows:

**§ 51.93 Transition for VoIP-PSTN traffic.**

(a)(1) Terminating Access Reciprocal Compensation subject to this subpart exchanged between a local exchange carrier and another telecommunications carrier in Time Division Multiplexing (TDM) format that originates and/or terminates in IP format shall be subject to a rate equal to the relevant interstate terminating access charges specified by this subpart. Interstate originating Access Reciprocal Compensation subject to this subpart exchanged between a local exchange carrier and another telecommunications carrier in Time Division Multiplexing (TDM) format that originates and/or terminates in IP format shall be subject to a rate equal to the relevant interstate originating access charges specified by this subpart.

(2) Until June 30, 2014, intrastate originating Access Reciprocal Compensation subject to this subpart exchanged between a local exchange carrier and another telecommunications carrier in Time Division Multiplexing (TDM) format that originates and/or terminates in IP format shall be subject to a rate equal to the relevant intrastate originating access charges specified by this subpart. Effective July 1, 2014, originating Access Reciprocal Compensation subject to this subpart exchanged between a local exchange carrier and another telecommunications carrier in Time Division Multiplexing (TDM) format that originates and/or terminates in IP format shall be subject to a rate equal to the relevant interstate originating access charges specified by this subpart.

(3) Telecommunications traffic originates and/or terminates in IP format if it originates from and/or terminates to an end-user customer of a service that requires Internet protocol-compatible customer premises equipment.

* * * * *

## PART 54—UNIVERSAL SERVICE

■ 3. The authority citation for part 54 continues to read as follows:

**Authority:** 47 U.S.C. 151, 154(i), 201, 205, 214, 219, 220, 254, 303(r), 403, and 1302 unless otherwise noted.

■ 4. Section 54.312(b)(3) is revised to read as follows:

**§ 54.312 Connect America Fund for Price Cap Territories—Phase I.**

* * * * *

(b) * * *

(3) A carrier may elect to accept or decline incremental support. A holding company may do so on a holding-company basis on behalf of its operating companies that are eligible telecommunications carriers, whose eligibility for incremental support, for these purposes, shall be considered on an aggregated basis. A carrier must provide notice to the Commission, relevant state commissions, and any affected Tribal government, stating the amount of incremental support it wishes to accept and identifying the areas by wire center and census block in which the designated eligible telecommunications carrier will deploy broadband to meet its deployment obligation, or stating that it declines incremental support. Such notification must be made within 90 days of being notified of any incremental support for which it would be eligible. Along with its notification, a carrier accepting incremental support must also submit a certification that the locations to be served to satisfy the deployment obligation are not shown as served by fixed broadband provided by any entity other than the certifying entity or its affiliate on the then-current version of the National Broadband Map; that, to the best of the carrier's knowledge, the locations are, in fact, unserved by fixed broadband; that the carrier's current capital improvement plan did not already include plans to complete broadband deployment within the next three years to the locations to be counted to satisfy the deployment obligation; and that incremental support will not be used to satisfy any merger commitment or similar regulatory obligation.

* * * * *

[FR Doc. 2012–12950 Filed 5–25–12; 8:45 am]

BILLING CODE 6712–01–P

## DEPARTMENT OF DEFENSE

### Defense Acquisition Regulations System

### 48 CFR Part 252

### Defense Federal Acquisition Regulation Supplement; Technical Amendments

**AGENCY:** Defense Acquisition Regulations System, Department of Defense (DoD).

**ACTION:** Final rule.

**SUMMARY:** DoD is making amendments to the Defense Federal Acquisition Regulation Supplement (DFARS) in order to make editorial changes.

**DATES:** *Effective Date:* May 29, 2012.

**FOR FURTHER INFORMATION CONTACT:** Ms. Ynette Shelkin, Defense Acquisition Regulations System, OUSD(AT&L)DPAP(DARS), Room 3B855, 3060 Defense Pentagon, Washington, DC 20301–3060; telephone 571–372–6089.

**SUPPLEMENTARY INFORMATION:** DFARS Case 2012–D032 was published in the **Federal Register** as an interim rule on May 22, 2012 (77 FR 30359), requesting public comments be submitted on or before July 23, 2012. The interim rule amends DFARS part 252 to implement the United States-Colombia Trade Promotion Agreement Implementation Act (Pub. L. 112–42) (19 U.S.C. 3805 note) by adding Colombia to the definition of ''Free Trade Agreement country'' in multiple locations in the DFARS. This document makes editorial

changes to the interim rule. The date for receipt of comments in response to the interim rule is unchanged by this amendment.

**List of Subjects in 48 CFR Part 252**

Government procurement.

**Ynette R. Shelkin,**

*Editor, Defense Acquisition Regulations System.*

Therefore, 48 CFR part 252 is amended as follows:

## PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 1. The authority citation for 48 CFR part 252 continues to read as follows:

**Authority:** 41 U.S.C. 1303 and 48 CFR chapter 1.

**252.225–7017 [Amended]**

■ 2. Section 252.225–7017 is amended—

■ a. In paragraph (a), in the definition of ''Designated country,'' paragraph (ii), by removing ''Australia, Bahrain, Canada, Chile, Columbia, Costa Rica, Dominican Republic, El Salvador, Guatemala, Honduras, Korea (Republic of), Mexico, Morocco, Nicaragua, Peru, or Singapore'' and adding ''Australia, Bahrain, Canada, Chile, Colombia, Costa Rica, Dominican Republic, El Salvador, Guatemala, Honduras, Korea (Republic of), Mexico, Morocco, Nicaragua, Peru, or Singapore'' in its place; and

■ b. In paragraph (a) in the definition of ''Free Trade Agreement country'' by removing ''Australia, Bahrain, Canada, Chile, Columbia, Costa Rica, Dominican Republic, El Salvador, Guatemala, Honduras, Korea (Republic of), Mexico, Morocco, Nicaragua, Peru, or Singapore'' and adding ''Australia, Bahrain, Canada, Chile, Colombia, Costa Rica, Dominican Republic, El Salvador, Guatemala, Honduras, Korea (Republic of), Mexico, Morocco, Nicaragua, Peru, or Singapore'' in its place.

**252.225–7021 [Amended]**

■ 3. Section 252.225–7021 is amended in paragraph (a), in the definition of ''Designated country,'' paragraph (ii), by removing ''Australia, Bahrain, Canada, Chile, Columbia, Costa Rica, Dominican Republic, El Salvador, Guatemala, Honduras, Korea (Republic of), Mexico, Morocco, Nicaragua, Peru, or Singapore'' and adding ''Australia, Bahrain, Canada, Chile, Colombia, Costa Rica, Dominican Republic, El Salvador, Guatemala, Honduras, Korea (Republic of), Mexico, Morocco, Nicaragua, Peru, or Singapore'' in its place.

**252.225–7036 [Amended]**

■ 4. Section 252.225–7036 is amended in paragraph (a), in the definition of ''Free Trade Agreement country'' by removing ''Australia, Bahrain, Canada, Chile, Costa Rica, Dominican Republic, El Salvador, Guatemala, Honduras, Korea (Republic of), Mexico, Morocco, Nicaragua, Peru, or Singapore'' and adding ''Australia, Bahrain, Canada, Chile, Colombia, Costa Rica, Dominican Republic, El Salvador, Guatemala, Honduras, Korea (Republic of), Mexico, Morocco, Nicaragua, Peru, or Singapore'' in its place.

**252.225–7045 [Amended]**

■ 5. Section 252.225–7045 is amended in paragraph (a), in the definition of ''Designated country,'' paragraph (2), by removing ''Australia, Bahrain, Canada, Chile, Columbia, Costa Rica, Dominican Republic, El Salvador, Guatemala, Honduras, Korea (Republic of), Mexico, Morocco, Nicaragua, Peru, or Singapore'' and adding ''Australia, Bahrain, Canada, Chile, Colombia, Costa Rica, Dominican Republic, El Salvador, Guatemala, Honduras, Korea (Republic of), Mexico, Morocco, Nicaragua, Peru, or Singapore'' in its place.

[FR Doc. 2012–12934 Filed 5–25–12; 8:45 am]

BILLING CODE 5001–06–P

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### 50 CFR Part 217

**[Docket No. 120307157–2434–02]**

**RIN 0648–BB74**

## Taking and Importing Marine Mammals; Taking Marine Mammals Incidental to Coastal Commercial Fireworks Displays at Monterey Bay National Marine Sanctuary, CA

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

**ACTION:** Final rule.

**SUMMARY:** NMFS, upon request of the Monterey Bay National Marine Sanctuary (MBNMS), hereby issues regulations pursuant to the Marine Mammal Protection Act (MMPA) to govern the unintentional taking of marine mammals, by harassment, incidental to authorizing professional fireworks displays within the MBNMS in California waters, for the period of July 4, 2012, through July 3, 2017. These regulations, which allow for the issuance of Letters of Authorization for the incidental take of marine mammals during the described activities and specified timeframes, prescribe the permissible methods of taking and other means of effecting the least practicable adverse impact on marine mammal species or stocks and their habitat, as well as requirements pertaining to the monitoring and reporting of such taking.

**DATES:** Effective from June 28, 2012, through June 28, 2017.

**ADDRESSES:** A copy of MBNMS's application may be obtained by writing to Tammy C. Adams, Acting Chief, Permits and Conservation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910, or visiting the internet at: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm.* Documents cited in this final rule may also be viewed, by appointment, during regular business hours at the above address.

**FOR FURTHER INFORMATION CONTACT:** Ben Laws, Office of Protected Resources, NMFS, (301) 427–8401.

**SUPPLEMENTARY INFORMATION:**

### Background

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

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

Except with respect to certain activities not pertinent here, the MMPA defines 'harassment' as: ''any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the

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

**Summary of Request**

On April 28, 2011, NMFS received a complete application from MBNMS requesting authorization for take of two species of marine mammals incidental to coastal fireworks displays conducted at MBNMS under authorizations issued by MBNMS. NMFS first issued an incidental harassment authorization (IHA) under section 101(a)(5)(D) of the MMPA to MBNMS on July 4, 2005 (70 FR 39235; July 7, 2005), and subsequently issued 5-year regulations governing the annual issuance of Letters of Authorization (LOAs) under section 101(a)(5)(A) of the MMPA (71 FR 40928; July 19, 2006). Upon expiration of those regulations, NMFS issued MBNMS an IHA (76 FR 29196; May 20, 2011), which expires on July 3, 2012. During the effective period of this final rule (July 4, 2012 until July 3, 2017), MBNMS may authorize as many as 20 fireworks displays in designated areas per year and, as a result, marine mammals will be exposed to elevated levels of sound as well as increased human activity associated with those displays. Because the specified activities have the potential to take marine mammals present within the action area, MBNMS may be authorized to take, by Level B harassment only, California sea lions (*Zalophus californianus*) and harbor seals (*Phoca vitulina*).

**Background**

The MBNMS adjoins 276 mi (444 km), or approximately 25 percent, of the central California coastline, and encompasses ocean waters from mean high tide to an average of 25 mi (40 km) offshore between Rocky Point in Marin County and Cambria in San Luis Obispo County. Fireworks displays have been conducted over current MBNMS waters for many years as part of national and community celebrations (e.g., Independence Day, municipal anniversaries), and to foster public use and enjoyment of the marine environment. In central California, marine venues are the preferred setting for fireworks in order to optimize public access and avoid the fire hazard associated with terrestrial display sites. Many fireworks displays occur at the height of the dry season in central California, when area vegetation is particularly prone to ignition from sparks or embers.

In 1992, the MBNMS was the first national marine sanctuary (NMS) to be designated along urban shorelines and therefore has addressed many regulatory issues previously not encountered by the NMS program. Authorization of professional fireworks displays has required a steady refinement of policies and procedures related to this activity. Fireworks displays, and the attendant increase in human activity, are known to result in the behavioral disturbance of pinnipeds, typically in the form of temporary abandonment of haul-outs. As a result, pinnipeds hauled out in the vicinity of authorized fireworks displays may exhibit behavioral responses that indicate incidental take by Level B harassment under the MMPA. Numbers of California sea lions and harbor seals, the species that may be subject to harassment, have been recorded extensively at four regions where fireworks displays are authorized in MBNMS. Based on these data and MBNMS's estimated maximum number of fireworks displays, MBNMS may be authorized to incidentally harass up to 4,219 California sea lions and 230 harbor seals annually over the 5-year time span of this final rule, from July 4, 2012, to July 3, 2017.

**Description of the Specified Activity**

Since 1993, the MBNMS, a component of NOAA's Office of National Marine Sanctuaries, has processed requests for the professional display of fireworks that affect MBNMS. The MBNMS has determined that debris fallout (i.e., spent pyrotechnic materials) from fireworks events may constitute a discharge into the sanctuary and thus violate sanctuary regulations, unless an authorization is issued by the superintendent. Therefore, sponsors of fireworks displays conducted in the MBNMS are required to obtain sanctuary authorization prior to conducting such displays (see 15 CFR 922.132).

Professional pyrotechnic devices used in fireworks displays can be grouped into three general categories: Aerial shells (paper and cardboard spheres or cylinders ranging from 2–12 in (5–30 cm) diameter and filled with incendiary materials), low-level comet and multi-shot devices similar to over-the-counter fireworks (e.g., roman candles), and ground-mounted set piece displays that are mostly static in nature. Fireworks displays were described in detail in the **Federal Register** notice announcing the proposed rule (77 FR 19976; April 3, 2012); please see that document for more information.

The MBNMS issued 91 authorizations for professional fireworks displays from 1993–2011. However, the MBNMS staff projects that as many as twenty coastal displays per year may be conducted in, or adjacent to, MBNMS boundaries in the future. Thus, the number of displays will be limited to not more than twenty events per year in four specific areas along 276 mi (444 km) of coastline. Fireworks displays will not exceed 30 minutes (with the exception of up to two displays per year, each not to exceed 1 hour) in duration and will occur with an average frequency of less than or equal to once every 2 months within each of the four prescribed display areas. NMFS believes—and extensive monitoring data indicates—that incidental take resulting from fireworks displays will be, at most, the short-term flushing and evacuation of non-breeding haul-out sites by California sea lions and harbor seals.

A more detailed description of the fireworks displays authorized by MBNMS may be found in MBNMS' application, in MBNMS' Assessment of Pyrotechnic Displays and Impacts within the MBNMS 1993–2001 (2001), or in the report of Marine Mammal Acoustic and Behavioral Monitoring for the MBNMS Fireworks Display, 4 July 2007 (2007), which are available at: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm.*

**Description of Fireworks Display Areas**

The Monterey Bay area is located in the Oregonian province subdivision of the Eastern Pacific Boreal Region. The six types of habitats found in the bay area are: (1) Submarine canyon habitat, (2) nearshore sublittoral habitat, (3) rocky intertidal habitat, (4) sandy beach intertidal habitat, (5) kelp forest habitat, and (6) estuarine/slough habitat. Monterey Bay supports a wide array of temperate cold-water species with occasional influxes of warm-water species, and this species diversity is directly related to the diversity of habitats.

Pyrotechnic displays within the sanctuary are conducted from a variety of coastal launch sites (e.g., beaches, bluff tops, piers, offshore barges, golf courses). Authorized fireworks displays will be confined to only four general prescribed areas (with seven total sub-sites) within the sanctuary, while displays along the remaining 95 percent of sanctuary coastal waters will be prohibited. These sites were approved for fireworks events based on their proximity to urban areas and pre-existing high human use patterns, seasonal considerations such as the abundance and distribution of marine

wildlife, and the acclimation of wildlife to human activities and elevated ambient noise levels in the area.

The four conditional display areas are located, from north to south, at Half Moon Bay, the Santa Cruz/Soquel area, the northeastern Monterey Peninsula, and Cambria (Santa Rosa Creek) (see Maps A–J in MBNMS' application). The number of displays will be limited to not more than 20 total events per year within these four specific areas combined, along the whole 276 mi (444 km) of coastline. The display areas were described in detail in the **Federal Register** document announcing the proposed rule (77 FR 19976; April 3, 2012); please see that document for more information.

**Comments and Responses**

NMFS published the proposed rule in the **Federal Register** on April 3, 2012 (77 FR 19976). During the 30-day comment period, NMFS received a letter from the Marine Mammal Commission (MMC). The MMC recommended that NMFS issue the final rule but condition it to require the MBNMS to conduct monitoring for at least 30 minutes on the evening of each fireworks display and the morning after each display. The MMC believes that monitoring (1) is essential to estimating the number of actual takes and to document any injuries or deaths and (2) should occur as close to the fireworks detonation time as possible. The proposed rule did not specify a minimum time for pre- or post-event monitoring. NMFS concurs with the recommendation and will stipulate that pre-event monitoring shall take place on the day prior to the scheduled display for as long as is required (but for no less than 30 minutes) to record the presence of marine mammals in the vicinity of the display, and that post-event monitoring for dead or injured marine mammals shall occur the morning following the display for as long as is required (but for no less than 30 minutes) to investigate the vicinity of the display. No other public comments were received. All measures proposed in the initial **Federal Register** document are included within the authorization and NMFS has determined that they will effect the least practicable impact on the species or stocks and their habitats.

**Description of Marine Mammals in the Area of the Specified Activity**

There are 26 known species of marine mammals within the Monterey Bay area. However, only six of these species are likely to be present in the acute impact area (the area where sound, light, and debris effects may have direct impacts on marine organisms and habitats) during a fireworks display. These species include the California sea lion, harbor seal, southern sea otter (*Enhydra lutris*), bottlenose dolphin (*Tursiops truncatus*), harbor porpoise (*Phocoena phocoena*), and gray whale. The northern elephant seal is rarely seen in the area.

Though the three aforementioned cetaceans are known to frequent nearshore areas within the sanctuary, they have never been reported in the vicinity of a fireworks display, nor have there been any reports to the MBNMS of stranding events or of injured/dead animals discovered after any display. Because sound attenuates rapidly across the air-water interface, these animals would likely not encounter the effects of fireworks except when surfacing for air. NMFS does not anticipate any take of cetaceans and they are not addressed further in this document.

Past sanctuary observations have not detected any disturbance to sea otters as a result of the fireworks displays; however, past observations have not included specific surveys for this species. Sea otters do frequent all general display areas. Sea otters and other species may temporarily depart the area prior to the beginning of the fireworks display due to increased human activities. Some sea otters in Monterey harbor have become well-acclimated to very intense human activity, often continuing to feed undisturbed as boats pass simultaneously on either side and within 20 ft (6 m) of the otters. It is therefore possible that select individual otters may have a higher tolerance level than others to fireworks displays. Otters in residence within the Monterey harbor display a greater tolerance for intensive human activity than their counterparts in more remote locations. However, otters are not under NMFS' jurisdiction. The MBNMS consulted with the U.S. Fish and Wildlife Service (USFWS) pursuant to section 7 of the Endangered Species Act (ESA) regarding effects on southern sea otters. The USFWS issued a biological opinion on June 22, 2005, which concluded that the authorization of fireworks displays is not likely to jeopardize the continued existence of endangered and threatened species within the sanctuary or to destroy or adversely modify any listed critical habitat. The USFWS further found that MBNMS would be unlikely to take any southern sea otters, and therefore issued neither an incidental take statement under the ESA nor an IHA.

The northern elephant seal is seen so infrequently in the areas with fireworks displays that they are not likely to be impacted by fireworks displays. Therefore, the only species likely to be harassed by the fireworks displays are the California sea lion and the harbor seal. Detailed species accounts of the California sea lion and harbor seal were provided in the **Federal Register** notice announcing the proposed rule (77 FR 19976; April 3, 2012); please see that document for more information.

**Potential Effects of the Specified Activity on Marine Mammals**

The potential effects of the specified activity, including physiological effects, behavioral disturbance, the effects of sound and light, and increased boat traffic, were described in detail in the **Federal Register** notice announcing the proposed rule (77 FR 19976; April 3, 2012); please see that document for more information.

**Anticipated Effects on Habitat**

The anticipated effects of the specified activity on marine mammal habitat, including those from fireworks debris and chemical residue, were described in detail in the **Federal Register** document announcing the proposed rule (77 FR 19976; April 3, 2012); please see that document for more information.

**Summary of Previous Monitoring**

The MBNMS has monitored commercial fireworks displays for potential impacts to marine life and habitats since 1993. In July 1993, the MBNMS performed its initial field observations of professional fireworks at the annual Independence Day fireworks display conducted by the City of Monterey. Subsequent documented field observations were conducted in Monterey by the MBNMS staff on seven occasions between 1994 and 2002. Documented field observations were also made at Aptos each October from 2000 to 2005, and have been made for all authorized fireworks under NMFS-issued MMPA authorizations, beginning in 2005. Though monitoring techniques and intensity have varied over the years and visual monitoring of wildlife abundance and behavioral responses to nighttime displays is challenging, observed impacts have been consistent. Wildlife activity nearest to disturbance areas returns to normal (pre-display species distribution, abundance, and activity patterns) within 12–15 hours, and no signs of wildlife injury or mortality have ever been discovered as a result of managed fireworks displays.

Sea lions are generally more tolerant of noise and visual disturbances than harbor seals. In addition, pups and juveniles of either species are more

likely to be harassed when exposed to disturbance than are older animals. Adult sea lions have likely habituated to many sources of disturbance and are therefore much more tolerant of human activities nearby. Of all the display sites in the sanctuary, California sea lions are only present in significant concentrations at Monterey. Nearly two decades of observing sea lions at the City of Monterey's Fourth of July celebration provides the following general observations: Sea lions (1) begin leaving the breakwater as soon as the fireworks begin; (2) clear completely off after an aerial salute or quick succession of loud effects; (3) usually begin returning within a few hours of the end of the display; and (4) are present on the breakwater at pre-firework numbers by the following morning.

The same surveys have noted that the small numbers of harbor seals that are typically present usually do not haul out after the initial fireworks detonation, but remain in the water around the haul-out. The observed behavior of the seals after the initial disturbance and during the fireworks display is similar to responses observed during rocket launches at Vandenberg Air Force Base (VAFB), where harbor seals loitered in the water adjacent to their haul-out site during the launch and returned to shore within 2 to 22 minutes after the launch disturbance.

A private environmental consultant monitored the Aptos fireworks display each October from 2001 through 2005 (per California Coastal Commission permit conditions) and concluded that harbor seal activity returned to normal at the site by the day following the display. Surveys have detected no evidence of injury or mortality in harbor seals as a result of the annual 30-minute fireworks display at the site.

Since harbor seals are smaller than sea lions and are less vocal, their movements and behavior are often more difficult to observe at night. In general, harbor seals are more timid and easily disturbed than California sea lions. Thus, based on past observations of sea lion disturbance thresholds and behavior, it is very likely that harbor seals evacuate exposed haul-outs in the acute impact area during fireworks displays, though they may loiter in adjacent surface waters until the fireworks have concluded. In conclusion, fireworks displays likely result in temporary displacement from haul-outs, constituting a short-term disruption in behavior, and pinnipeds are likely to resume normal behavior and full utilization of haul-outs within approximately 12 hours.

In 2007, MBNMS conducted acoustic monitoring in conjunction with in-depth behavioral monitoring for the City of Monterey Independence Day fireworks display. MBNMS was required to: (1) Conduct counts of marine mammals present within the fireworks impact area immediately before and one day after the event; (2) conduct behavioral observations of marine mammals present during the display; and (3) conduct NMFS-approved acoustic monitoring of sound levels for the duration of the event. The full report (Marine Mammal Acoustic and Behavioral Monitoring for the Monterey Bay National Marine Sanctuary Fireworks Display 4 July 2007) is available at *http://www.nmfs.noaa.gov/pr/permits/incidental.htm.*

Acoustic monitoring began approximately 3 hours prior to the beginning of the fireworks display. During those 3 hours, the average 1-hour sound level ($L_{eq}$ 1 hour) was approximately 59 dB, and included sea lion vocalizations, private fireworks in the local area, and recreational boat traffic. The fireworks display began with two sets of fireworks detonations and ended with a grand finale of multiple explosions after 20 minutes. The average sound level measured during the hour containing the fireworks display was 72.9 dB, approximately 14 dB greater than ambient levels recorded before the display. The loudest sound recorded during the event was associated with the detonation of a 10-in shell, and was measured at 133.9 dB re: 20 μPa (peak). The second loudest sound recorded was associated with detonation of an 8-in shell, measured at 127 dB re: 20 μPa (peak). Overall, sound generated during the display was low- to mid-frequency and ranged from 97 to 107 dB re: 20 μPa, while the majority of the fireworks detonations ranged from 112 to 124 dB re: 20 μPa.

From 2006–2011, under the regulations in effect from July 4, 2006, through July 3, 2011 (71 FR 40928; July 19, 2006), and a subsequent 1-year IHA, 24 fireworks events were authorized in the MBNMS. For each display, observers conducted a pre-event census to document abundance of marine mammals and post-event surveys to record any injured or dead wildlife species. Pre-event censuses were assumed to be a reasonable proxy for the number of incidental takes, as all animals present within the vicinity of the display area would be expected to temporarily abandon haul-outs prior to or during fireworks displays. Table 1 summarizes these monitoring efforts. In all cases, no pinnipeds other than those authorized for taking were observed, and post-event monitoring revealed no injured or dead marine mammals.

TABLE 1—INCIDENTAL TAKE OF MARINE MAMMALS DURING MBNMS-AUTHORIZED FIREWORKS DISPLAYS, 2006–2011

| Event | Location | Date | California sea lions | Harbor seals |
|---|---|---|---|---|
| Independence Day | Cambria | 7/4/2006 | 0 | 0 |
| Independence Day | Monterey | 7/4/2006 | 61 | 9 |
| Feast of Lanterns | Pacific Grove | 7/30/2006 | 0 | 0 |
| Monte Foundation | Aptos | 10/14/2006 | 0 | 4 |
| Independence Day | Cambria | 7/4/2007 | 0 | 0 |
| Independence Day | Monterey | 7/4/2007 | 258 | 8 |
| Independence Day | Half Moon Bay | 7/4/2007 | 0 | 1 |
| Feast of Lanterns | Pacific Grove | 7/28/2007 | 0 | 8 |
| Monte Foundation | Aptos | 10/13/2007 | 0 | 4 |
| Independence Day | Cambria | 7/4/2008 | 0 | 0 |
| Independence Day | Monterey | 7/4/2008 | 394 | 10 |
| Independence Day | Half Moon Bay | 7/4/2008 | 0 | 2 |
| Feast of Lanterns | Pacific Grove | 7/26/2008 | 0 | 0 |
| Monte Foundation | Aptos | 10/11/2008 | 24 | 2 |
| Independence Day | Cambria | 7/4/2009 | 0 | 0 |
| Independence Day | Half Moon Bay | 7/4/2009 | 45 | 5 |
| Feast of Lanterns | Pacific Grove | 7/25/2009 | 4 | 7 |
| Monte Foundation | Aptos | 10/3/2009 | 35 | 11 |

TABLE 1—INCIDENTAL TAKE OF MARINE MAMMALS DURING MBNMS-AUTHORIZED FIREWORKS DISPLAYS, 2006–2011—Continued

| Event | Location | Date | California sea lions | Harbor seals |
|---|---|---|---|---|
| Independence Day | Cambria | 7/4/2010 | 0 | 0 |
| Monte Foundation | Aptos | 10/8/2010 | 0 | 18 |
| Independence Day | Cambria | 7/4/2011 | 0 | 0 |
| Independence Day | Half Moon Bay | 7/4/2011 | 0 | 0 |
| Feast of Lanterns | Pacific Grove | 7/30/2011 | 0 | 2 |
| Monte Foundation | Aptos | 10/7/2011 | 0 | 0 |
| Total | | | 821 | 91 |

**Mitigation**

In order to issue an incidental take authorization under section 101(a)(5)(A) of the MMPA, NMFS must set forth the permissible methods of taking pursuant to the specified activity, and other means of effecting the least practicable impact on each species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of each species or stock for taking for certain subsistence uses (where relevant). The MBNMS and NMFS worked to craft a set of mitigation measures designed to minimize fireworks impacts on the marine environment, as well as to outline the locations, frequency, and conditions under which the MBNMS will authorize marine fireworks displays. These mitigation measures, which were successfully implemented under NMFS-issued ITAs from 2005–2011, include four broad approaches for managing fireworks displays:

• Establish a sanctuary-wide seasonal prohibition to safeguard pinniped reproductive periods. Fireworks events will not be authorized between March 1 and June 30 of any year, i.e., the primary reproductive season for pinnipeds.

• Establish four conditional display areas and prohibit displays along the remaining 95 percent of sanctuary coastal areas. Traditional display areas are located adjacent to urban centers where wildlife has often become habituated to frequent human disturbances. Remote areas and areas where professional fireworks have not traditionally been conducted will not be considered for fireworks approval. The conditional display areas (described previously in this document) are located at Half Moon Bay, the Santa Cruz/Soquel area, the northeastern Monterey Peninsula, and Cambria (Santa Rosa Creek).

• Create a per-annum limit on the number of displays allowed in each display area. If properly managed, a limited number of fireworks displays conducted in areas already heavily impacted by human activity can occur with sufficient safeguards to prevent any long-term or chronic impacts upon local natural resources. There is a per-annum limit of 20 displays along the entire sanctuary coastline in order to prevent cumulative negative environmental effects from fireworks proliferation. Additionally, displays will be authorized at a frequency equal to or less than one every 2 months in each area.

• Retain authorization requirements and general and special restrictions for each event. Fireworks displays will not exceed 30 minutes with the exception of two longer displays per year that will not exceed 1 hour. Standard requirements include the use of a ramp-up period, wherein salutes are not allowed in the first 5 minutes of the display; the removal of plastic and aluminum labels and wrappings; and post-show reporting and cleanup. The sanctuary will continue to assess displays and restrict the number of aerial salute effects on a case-by-case basis, and will implement general and special restrictions unique to each fireworks event as necessary.

These measures are designed to prevent an incremental proliferation of fireworks displays and disturbance throughout the sanctuary and minimize area of impact by confining displays to primary traditional use areas. They also effectively remove fireworks impacts from 95 percent of the sanctuary's coastal areas, place an annual quota and multiple conditions on the displays authorized within the remaining 5 percent of the coast, and impose a sanctuary-wide seasonal prohibition on all fireworks displays. These measures were developed in order to assure that protected species and habitats are not jeopardized by fireworks activities. They have been well received by local fireworks sponsors who have pledged their cooperation in protecting sanctuary resources.

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

Based on our evaluation of the applicant's measures and their efficacy over the past 6 years of authorizing fireworks, NMFS has determined that these mitigation measures provide the means of effecting the least practicable impact on marine mammal species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance.

**Monitoring and Reporting**

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

In order to increase the long-term understanding of the effects of fireworks displays on pinnipeds, described previously in Summary of Previous Monitoring, as well as to estimate levels

of incidental take and ensure compliance with MMPA authorizations, MBNMS will require its applicants to conduct a pre-event census of local marine mammal populations within the acute fireworks impact area. Each applicant will also be required to conduct post-event monitoring in the acute fireworks impact area to record injured or dead marine mammals. The pre-event census shall occur no earlier than the day prior to the fireworks display, and observations will be conducted for no less than 30 minutes. The post-event monitoring shall take place no later than the morning following the display, and will be conducted for no less than 30 minutes.

MBNMS must submit a draft annual monitoring report to NMFS within 60 days after the conclusion of the calendar year. MBNMS must submit a final annual monitoring report to the NMFS within 30 days after receiving comments from NMFS on the draft report. If no comments are received from NMFS, the draft report will be considered to be the final report. In addition, the MBNMS will continue to make its information available to other marine mammal researchers upon request.

**Adaptive Management**

This final rule governing the take of marine mammals incidental to the specified activities at MBNMS contains an adaptive management component. In accordance with 50 CFR 216.105(c), these regulations are based on the best available information. As new information is developed, through monitoring, reporting, or research, the regulations may be modified, in whole or in part, after notice and opportunity for public review. The use of adaptive management will allow NMFS to consider new information from different sources to determine if mitigation or monitoring measures should be modified (including additions or deletions) if new data suggest that such modifications are appropriate.

The following are some of the possible sources of applicable data:

- Results from MBNMS's monitoring from the previous year;
- Results from general marine mammal research; or
- Any information which reveals that marine mammals may have been taken in a manner, extent or number not authorized by these regulations or subsequent LOAs.

If, during the effective dates of the regulations, new information is presented from monitoring, reporting, or research, these regulations may be modified, in whole or in part, after notice and opportunity of public review, as allowed for in 50 CFR 216.105(c). In addition, LOAs will be withdrawn or suspended if, after notice and opportunity for public comment, the Assistant Administrator finds, among other things, that the regulations are not being substantially complied with or that the taking allowed is having more than a negligible impact on the species or stock, as allowed for in 50 CFR 216.106(e). That is, should substantial changes in marine mammal populations in the project area occur or monitoring and reporting show that MBNMS actions are having more than a negligible impact on marine mammals, then NMFS reserves the right to modify the regulations and/or withdraw or suspend the LOA after public review.

**Estimated Take by Incidental Harassment**

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

All anticipated takes would be by Level B harassment, involving temporary changes in behavior. The mitigation and monitoring measures are expected to minimize the possibility of injurious or lethal takes such that take by Level A harassment, serious injury or mortality, is considered remote. However, there is no specific information demonstrating that injurious or lethal takes would occur even in the absence of the planned mitigation and monitoring measures.

The two marine mammal species likely to be taken by Level B harassment incidental to fireworks displays authorized within the sanctuary are the California sea lion and the harbor seal, due to the temporary evacuation of usual and accustomed haul-out sites. Both of these species are protected under the MMPA, while neither is listed under the ESA. Numbers of animals that may be taken by Level B harassment are expected to vary due to factors such as tidal state, seasonality, shifting prey stocks, climatic phenomenon (such as El Niño events), and the number, timing, and location of future displays. The estimated take of sea lions and harbor seals was determined using the monitoring data from 2006–2011, presented earlier in this document, except as described in the footnotes to Table 2. Numbers of animals that are likely to be present were analyzed for the four prescribed areas described previously in this document: Half Moon Bay (HMB), Santa Cruz/Soquel (SC; including Capitola and Aptos), Monterey Bay (MB; including Pacific Grove), and Cambria (C). Please see Table 2 for more information. Table 2 of NMFS' proposed rule (77 FR 19976; April 3, 2012) contained several errors; those errors are corrected here.

TABLE 2—ESTIMATED POTENTIAL INCIDENTAL TAKE PER YEAR BY DISPLAY AREA

| Display location | Time of year | Estimated maximum number of events per year | Estimated maximum number of animals present per event (total) | |
|---|---|---|---|---|
| | | | California sea lions | Harbor seals |
| HMB | July | 4 | 45 (180) | 5 (20) |
| SC | October | 5 | 35 (175) | 18 (90) |
| MB | July | 6 | 394 (2,364) | 10 (60) |
| MB [1] | January | 1 | 1,500 | 60 |
| Cambria [2] | July | 4 | 0 | 0 |

TABLE 2—ESTIMATED POTENTIAL INCIDENTAL TAKE PER YEAR BY DISPLAY AREA—Continued

| Display location | Time of year | Estimated maximum number of events per year | Estimated maximum number of animals present per event (total) | |
|---|---|---|---|---|
| | | | California sea lions | Harbor seals |
| Total | | 20 | 4,219 | 230 |

[1] From 2006–11, no authorized fireworks events occurred at MB during January. However, authorized events have occurred at MB in January and could occur again during the life of this rule. Given the lack of monitoring data available, potential take is conservatively estimated for such an event on the basis of unpublished data gathered by MBNMS biologists at the specific display site, unpublished aerial survey data gathered by NMFS from Point Piedras Blancas to Bodega Rock, results of independent surveys conducted in the MBNMS and personal communication with those researchers, and population estimates from surveys covering larger geographic areas.

[2] From 2006–11, no pinnipeds have been observed during monitoring associated with authorized fireworks displays at Cambria.

At all four designated display sites combined, twenty fireworks events per year could likely disturb an estimated maximum total of 4,219 California sea lions out of a total estimated population of 238,000. This number is small relative to the population size (1.8 percent). For harbor seals, an estimated maximum of 230 animals out of a total estimated population of 34,233 could be disturbed within the sanctuary as a result of twenty fireworks events per year at all four designated display sites combined. These numbers are small relative to the population size (0.7 percent).

With the incorporation of mitigation measures described previously in this document, only Level B incidental harassment associated with authorized coastal fireworks displays is likely to occur, and these events are unlikely to result in any detectable impact on marine mammal species or stocks or their habitats.

**Negligible Impact and Small Numbers Analysis and Determination**

NMFS has defined 'negligible impact' in 50 CFR 216.103 as ''* * *an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.'' In making a negligible impact determination, NMFS considers a variety of factors, including but not limited to: (1) The number of anticipated mortalities; (2) the number and nature of anticipated injuries; (3) the number, nature, intensity, and duration of Level B harassment; and (4) the context in which the take occurs.

Past monitoring by the MBNMS has identified only a short-term behavioral disturbance of animals by fireworks displays, with the primary causes of disturbance being sound effects and light flashes from exploding fireworks. Additionally, a VAFB study of the effects of rocket-launch noise, which is more intense than fireworks noise, on California sea lions and harbor seals indicated only short-term behavioral impacts. With the mitigation measures described herein, any takes would be limited to the temporary incidental harassment of California sea lions and harbor seals due to evacuation of usual and accustomed haul-out sites for as little as 15 minutes and as much as 15 hours following any fireworks event. Most animals depart affected haul-out areas at the beginning of the display and return to previous levels of abundance within 4 to 15 hours following the event. This information is based on observations made by sanctuary staff over an 8-year period (1993–2001), in-depth surveys conducted in 2001 and 2007, and pre- and post-event monitoring conducted under MMPA authorizations from 2005–2011. Empirical observations have focused on impacts to water quality and selected marine mammals in the vicinity of the displays.

NMFS has determined that the fireworks displays will result in no more than Level B harassment of small numbers of California sea lions and harbor seals. The effects of coastal fireworks displays are typically limited to short term and localized changes in behavior, including temporary departures from haul-outs to avoid the sight and sound of commercial fireworks. Fireworks displays are limited in duration by MBNMS authorization requirements and will not occur on consecutive days at any fireworks site in the sanctuary. MBNMS' mitigation measures—implemented as a component of NMFS' incidental take authorizations since 2005—will further reduce potential impacts. As described previously, these measures ensure that authorized fireworks displays avoid times of importance for breeding, as well as limiting displays to the 5 percent of sanctuary coastline that is already heavily used by humans, and generally limiting the overall amount and intensity of activity. No take by injury, serious injury, or mortality is anticipated, and takes by Level B harassment will be at the lowest level practicable due to incorporation of the mitigation measures described previously in this document.

Based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the mitigation and monitoring measures, NMFS finds that MBNMS' authorization of coastal fireworks displays will result in the incidental take of small numbers of marine mammals, by Level B harassment only, and that the total taking from coastal fireworks displays will have a negligible impact on the affected species or stocks.

**Impact on Availability of Affected Species or Stock for Taking for Subsistence Uses**

There are no relevant subsistence uses of marine mammals implicated by this action. Endangered Species Act (ESA)

As mentioned earlier, the Steller sea lion and several species of ESA-listed cetaceans may be present at MBNMS at different times of the year and could potentially swim through the fireworks impact area during a display. In a 2001 consultation with MBNMS, NMFS concluded that this action is not likely to adversely affect ESA-listed species under NMFS' jurisdiction. There is no designated critical habitat in the area. This action will not have effects beyond those analyzed in that consultation.

The USFWS is responsible for regulating incidental take of the southern sea otter. The MBNMS consulted with the USFWS pursuant to section 7 of the ESA regarding impacts to that species. The USFWS issued a biological opinion on June 22, 2005, which concluded that the authorization of fireworks displays is not likely to jeopardize the continued existence of endangered and threatened species within the sanctuary or to destroy or adversely modify any listed critical habitat. The USFWS further found that

MBNMS would be unlikely to take any southern sea otters, and therefore issued neither an incidental take statement under the ESA nor an IHA.

**National Environmental Policy Act**

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), as implemented by the regulations published by the Council on Environmental Quality (40 CFR parts 1500–1508), and NOAA Administrative Order 216–6, NMFS and MBNMS prepared an Environmental Assessment (EA) on the Issuance of Regulations Authorizing Incidental Take of Marine Mammals and Issuance of National Marine Sanctuary Authorizations for Coastal Commercial Fireworks Displays within the Monterey Bay National Marine Sanctuary, to consider the direct, indirect and cumulative effects to the human environment resulting from issuance of sanctuary authorizations for fireworks displays and issuance of an IHA to MBNMS. NMFS signed a Finding of No Significant Impact (FONSI) on June 21, 2006. NMFS has reviewed MBNMS's application and determined that there are no substantial changes to the action, no significant new information, and that there are no new direct, indirect, or cumulative effects to the human environment resulting from issuance of an IHA to MBNMS. Therefore, NMFS has determined that a new or supplemental EA or Environmental Impact Statement is unnecessary, and reaffirms the existing FONSI for this action. The existing EA and FONSI for this action are available for review at *http://www.nmfs.noaa.gov/pr/permits/incidental.htm.*

**Classification**

The Office of Management and Budget (OMB) has determined that this rule is not significant for purposes of Executive Order 12866.

At the proposed rule stage, the Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this rule, if adopted, would not have a significant economic impact on a substantial number of small entities. MBNMS is a component of the Office of National Marine Sanctuaries within NOAA, which is a federal agency. Because this rule impacts only the activities of MBNMS, which is not considered to be a small entity within SBA's definition, the Chief Counsel for Regulation certified that this rule will not have a significant economic impact on a substantial number of small entities. No comments were received on this certification. As a result, a regulatory flexibility analysis is not required and none has been prepared.

Notwithstanding any other provision of law, no person is required to respond to nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act (PRA) unless that collection of information displays a currently valid OMB control number. This rule contains collection-of-information requirements subject to the provisions of the PRA. These requirements have been approved by OMB under control number 0648–0151 and include applications for regulations, subsequent LOAs, and reports. Send comments regarding any aspect of this data collection, including suggestions for reducing the burden, to NMFS and the OMB Desk Officer (see **ADDRESSES**).

**List of Subjects in 50 CFR part 217**

Exports, Fish, Imports, Indians, Labeling, Marine mammals, Penalties, Reporting and recordkeeping requirements, Seafood, Transportation.

Dated: May 16, 2012.

**Alan D. Risenhoover,**

*Acting Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.*

For reasons set forth in the preamble, 50 CFR part 217 is amended as follows:

## PART 217—REGULATIONS GOVERNING THE TAKE OF MARINE MAMMALS INCIDENTAL TO SPECIFIED ACTIVITIES

■ 1. The authority citation for part 217 continues to read as follows:

**Authority:** 16 U.S.C. 1361 *et seq.*

■ 2. Subpart B is added to part 217 to read as follows:

### Subpart B—Taking of Marine Mammals Incidental to Coastal Commercial Fireworks Displays at Monterey Bay National Marine Sanctuary, CA

Sec.

217.11 Specified activity and specified geographical region.
217.12 Effective dates.
217.13 Permissible methods of taking.
217.14 Prohibitions.
217.15 Mitigation.
217.16 Requirements for monitoring and reporting.
217.17 Letters of Authorization.
217.18 Renewals and Modifications of Letters of Authorization.

### Subpart B—Taking of Marine Mammals Incidental to Coastal Commercial Fireworks Displays at Monterey Bay National Marine Sanctuary, CA

#### § 217.11 Specified activity and specified geographical region.

(a) Regulations in this subpart apply only to the Monterey Bay National Marine Sanctuary (MBNMS) and those persons it authorizes to display fireworks within the MBNMS for the taking of marine mammals that occurs in the area described in paragraph (b) of this section and that occurs incidental to authorization of commercial fireworks displays.

(b) The taking of marine mammals by MBNMS may be authorized in a Letter of Authorization (LOA) only if it occurs in waters of the MBNMS.

#### § 217.12 Effective dates.

Regulations in this subpart are effective from June 28, 2012, through June 28, 2017.

#### § 217.13 Permissible methods of taking.

(a) Under LOAs issued pursuant to §§ 216.106 and 217.17 of this chapter, the Holder of the LOA (hereinafter ''MBNMS'') may incidentally, but not intentionally, take marine mammals within the area described in § 217.11(b) of this chapter, provided the activity is in compliance with all terms, conditions, and requirements of the regulations in this subpart and the appropriate LOA.

(b) The incidental take of marine mammals under the activities identified in § 217.11(a) of this chapter is limited to the following species and is limited to Level B Harassment:

(1) Harbor seal (*Phoca vitulina*)—1,150 (an average of 230 annually)

(2) California sea lion (*Zalophus californianus*)—21,095 (an average of 4,219 annually)

#### § 217.14 Prohibitions.

Notwithstanding takings contemplated in § 217.11 of this chapter and authorized by a LOA issued under §§ 216.106 and 217.17 of this chapter, no person in connection with the activities described in § 217.11 of this chapter may:

(a) Take any marine mammal not specified in § 217.13(b) of this chapter;

(b) Take any marine mammal specified in § 217.13(b) of this chapter other than by incidental, unintentional Level B harassment;

(c) Take a marine mammal specified in § 217.13(b) of this chapter if such taking results in more than a negligible impact on the species or stocks of such marine mammal; or

(d) Violate, or fail to comply with, the terms, conditions, and requirements of this subpart or a LOA issued under §§ 216.106 and 217.17 of this chapter.

**§ 217.15 Mitigation.**

(a) The activity identified in § 217.11(a) of this chapter must be conducted in a manner that minimizes, to the greatest extent practicable, adverse impacts on marine mammals and their habitats. When conducting the activities identified in § 217.11(a) of this chapter, the mitigation measures contained in the LOA issued under §§ 216.106 and 217.17 of this chapter must be implemented. These mitigation measures include but are not limited to:

(1) Limiting the location of the authorized fireworks displays to the four specifically designated areas at Half Moon Bay, the Santa Cruz/Soquel area, the northeastern Monterey Breakwater, and Cambria (Santa Rosa Creek);

(2) Limiting the frequency of authorized fireworks displays to no more than twenty total displays per year and no more than one fireworks display every 2 months in each of the four prescribed areas;

(3) Limiting the duration of authorized individual fireworks displays to no longer than 30 minutes each, with the exception of two longer shows not to exceed 1 hour;

(4) Prohibiting fireworks displays at MBNMS between March 1 and June 30 of any year; and

(5) Continuing to implement authorization requirements and general and special restrictions for each event, as determined by MBNMS. Standard requirements include, but are not limited to, the use of a ramp-up period, wherein salutes are not allowed in the first 5 minutes of the display; the removal of plastic and aluminum labels and wrappings; and post-show reporting and cleanup. MBNMS shall continue to assess displays and restrict the number of aerial salute effects on a case-by-case basis, and shall implement general and special restrictions unique to each fireworks event as necessary.

(b) The mitigation measures that the individuals conducting the fireworks are responsible for will be included as a requirement in fireworks display authorizations issued by MBNMS to the individual entities.

**§ 217.16 Requirements for monitoring and reporting.**

(a) MBNMS is responsible for ensuring that all monitoring required under a LOA is conducted appropriately, including, but not limited to:

(1) A census of all pinnipeds in the impact area on the day prior to all displays, with observations to occur for no less than 30 minutes, and

(2) Reporting to NMFS of all marine mammal injury, serious injury, or mortality observed in the vicinity of the display area. Monitoring for injury, serious injury, or mortality shall occur no later than the morning after each fireworks display, and shall occur for no less than 30 minutes.

(b) Unless specified otherwise in the LOA, MBNMS must submit a draft annual monitoring report to the Director, Office of Protected Resources, NMFS, no later than 60 days after the conclusion of each calendar year. This report must contain:

(1) An estimate of the number of marine mammals disturbed by the authorized activities,

(2) Results of the monitoring required in § 217.16(a) of this chapter, and any additional information required by the LOA. A final annual monitoring report must be submitted to NMFS within 30 days after receiving comments from NMFS on the draft report. If no comments are received from NMFS, the draft report will be considered to be the final annual monitoring report.

(c) A draft comprehensive monitoring report on all marine mammal monitoring conducted during the period of these regulations must be submitted to the Director, Office of Protected Resources, NMFS at least 120 days prior to expiration of these regulations. A final comprehensive monitoring report must be submitted to the NMFS within 30 days after receiving comments from NMFS on the draft report. If no comments are received from NMFS, the draft report will be considered to be the final comprehensive monitoring report.

**§ 217.17 Letters of Authorization.**

(a) To incidentally take marine mammals pursuant to these regulations, MBNMS must apply for and obtain a LOA.

(b) A LOA, unless suspended or revoked, may be effective for a period of time not to exceed the expiration date of these regulations.

(c) If an LOA expires prior to the expiration date of these regulations, MBNMS must apply for and obtain a renewal of the LOA.

(d) In the event of projected changes to the activity or to mitigation and monitoring measures required by an LOA, MBNMS must apply for and obtain a modification of the LOA as described in § 217.18 of this chapter.

(e) The LOA shall set forth:

(1) Permissible methods of incidental taking;

(2) Means of effecting the least practicable adverse impact (i.e., mitigation) on the species, its habitat, and on the availability of the species for subsistence uses; and

(3) Requirements for monitoring and reporting.

(f) Issuance of the LOA shall be based on a determination that the level of taking will be consistent with the findings made for the total taking allowable under these regulations.

(g) Notice of issuance or denial of a LOA shall be published in the **Federal Register** within 30 days of a determination.

**§ 217.18 Renewals and modifications of Letters of Authorization.**

(a) A LOA issued under §§ 216.106 and 217.17 of this chapter for the activity identified in § 217.11(a) of this chapter shall be renewed or modified upon request by the applicant, provided that:

(1) The proposed specified activity and mitigation, monitoring, and reporting measures, as well as the anticipated impacts, are the same as those described and analyzed for these regulations (excluding changes made pursuant to the adaptive management provision in § 217.18(c)(1) of this chapter), and

(2) NMFS determines that the mitigation, monitoring, and reporting measures required by the previous LOA under these regulations were implemented.

(b) For LOA modification or renewal requests by the applicant that include changes to the activity or the mitigation, monitoring, or reporting (excluding changes made pursuant to the adaptive management provision in § 217.18(c)(1) of this chapter) that do not change the findings made for the regulations or result in no more than a minor change in the total estimated number of takes (or distribution by species or years), NMFS may publish a notice of proposed LOA in the **Federal Register**, including the associated analysis illustrating the change, and solicit public comment before issuing the LOA .

(c) A LOA issued under §§ 217.106 and 217.17 of this chapter for the activity identified in § 217.11(a) of this chapter may be modified by NMFS under the following circumstances:

(1) Adaptive Management—NMFS may modify (including augment) the existing mitigation, monitoring, or reporting measures (after consulting with MBNMS regarding the practicability of the modifications) if doing so creates a reasonable likelihood of more effectively accomplishing the goals of the mitigation and monitoring set forth in the preamble for these regulations.

(i) Possible sources of data that could contribute to the decision to modify the mitigation, monitoring, or reporting measures in an LOA:

(A) Results from MBNMS's monitoring from the previous year(s).

(B) Results from other marine mammal and/or sound research or studies.

(C) Any information that reveals marine mammals may have been taken in a manner, extent or number not authorized by these regulations or subsequent LOAs.

(ii) If, through adaptive management, the modifications to the mitigation, monitoring, or reporting measures are substantial, NMFS will publish a notice of proposed LOA in the **Federal Register** and solicit public comment.

(2) Emergencies—If NMFS determines that an emergency exists that poses a significant risk to the well-being of the species or stocks of marine mammals specified in § 217.13(b) of this chapter, an LOA may be modified without prior notice or opportunity for public comment. Notification would be published in the **Federal Register** within 30 days of the action.

[FR Doc. 2012–12964 Filed 5–25–12; 8:45 am]

**BILLING CODE 3510–22–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### 50 CFR Part 635

**[Docket No. 110210132–1275–02]**

**RIN 0648–XC035**

## Atlantic Highly Migratory Species; Atlantic Bluefin Tuna Fisheries

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

**ACTION:** Temporary rule; closure of incidental Longline category southern area fishery.

**SUMMARY:** NMFS closes the incidental Longline category southern area fishery for large medium and giant Atlantic bluefin tuna (BFT) for the remainder of 2012. Fishing for, retaining, possessing, or landing BFT in the Longline category southern area is prohibited for the remainder of 2012. This action is being taken to prevent any further overharvest of the Longline category southern area BFT subquota.

**DATES:** Effective 11:30 p.m., local time, May 29, 2012, through December 31, 2012.

**FOR FURTHER INFORMATION CONTACT:** Sarah McLaughlin or Brad McHale, 978–281–9260.

**SUPPLEMENTARY INFORMATION:** Regulations implemented under the authority of the Atlantic Tunas Convention Act (16 U.S.C. 971 *et seq.*) and the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act; 16 U.S.C. 1801 *et seq.*) governing the harvest of BFT by persons and vessels subject to U.S. jurisdiction are found at 50 CFR part 635. Section 635.27(a) subdivides the U.S. BFT quota recommended by the International Commission for the Conservation of Atlantic Tunas (ICCAT) among the various domestic fishing categories, consistent with the allocations established in the 2006 Consolidated Atlantic Highly Migratory Species Fishery Management Plan (Consolidated HMS FMP) (71 FR 58058, October 2, 2006) and subsequent rulemaking.

Under § 635.27(a)(3), the total amount of large medium and giant BFT (measuring 73 inches (185 cm) curved fork length (CFL) or greater) that may be caught incidentally and retained, possessed, or landed by vessels that possess Longline category Atlantic Tunas permits is 8.1 percent of the baseline annual U.S. BFT quota. No more than 60 percent of the Longline category incidental BFT quota may be allocated for landing in the area south of 31°00' N. lat. (i.e., the ''southern area''). The current Longline category baseline BFT quota is 74.8 mt, with 44.9 mt allocated to the southern area.

NMFS is required, under § 635.28(a)(1), to file a closure notice with the Office of the Federal Register for publication when a BFT quota is reached or is projected to be reached. On and after the effective date and time of such notification, for the remainder of the fishing year, or for a specified period as indicated in the notification, fishing for, retaining, possessing, or landing BFT under that quota category is prohibited until the opening of the subsequent quota period or until such date as specified in the notice.

Based on the best available BFT landings information for the incidental Longline category southern area BFT fishery (i.e., 46.9 mt of the available 44.9 mt landed as of May 16, 2012), NMFS has determined that the Longline category southern area BFT subquota has been reached. Therefore, through December 31, 2012, landing large medium or giant BFT south of 31°00′ N. lat. by vessels permitted in the Atlantic tunas Longline category must cease at 11:30 p.m. local time on May 29, 2012. This action is taken consistent with the regulations at §§ 635.27(a)(3) and 635.28(a)(1). The intent of this closure is to prevent any further overharvest of the Longline category southern area BFT subquota.

NMFS will continue to monitor incidental Longline category BFT landings north of 31°00' N. lat. against the available Longline category northern area BFT subquota for the 2012 fishing year and may take further action, if necessary. Any subsequent adjustments to the Longline category fishery for 2012 would be published in the **Federal Register**. In addition, fishermen may call (978) 281–9260, or access *www.hmspermits.gov,* for fishery updates.

### Classification

The Assistant Administrator for NMFS (AA) finds that it is impracticable and contrary to the public interest to provide prior notice of, and an opportunity for public comment on, this action for the following reasons:

The closure of the Longline category southern area BFT fishery, i.e., prohibiting further BFT landings against the Longline category southern area is necessary to prevent any further overharvest of the 2012 Longline southern area BFT subquota. NMFS provides notification of closures by publishing the notice in the **Federal Register**, emailing individuals who have subscribed to the Atlantic HMS News electronic newsletter, and updating the information posted on the Atlantic Tunas Information Line and on *www.hmspermits.gov*.

These fisheries are currently underway, and delaying this action would be contrary to the public interest as it could result in excessive BFT landings, which could have adverse effects on the stock and/or may result in future potential quota reductions for the Longline category. NMFS must close the Longline category southern area fishery to landings before large medium and giant BFT further exceed the available subquota for that area. Therefore, the AA finds good cause under 5 U.S.C. 553(b)(B) to waive prior notice and the opportunity for public comment. For all of the above reasons, there is good cause under 5 U.S.C. 553(d) to waive the 30-day delay in effectiveness.

This action is being taken under §§ 635.27(a)(3) and 635.28(a)(1), and is exempt from review under Executive Order 12866.

**Authority:** 16 U.S.C. 971 *et seq.* and 1801 *et seq.*

Dated: May 23, 2012.

**Carrie Selberg,**

*Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

[FR Doc. 2012–12929 Filed 5–23–12; 4:15 pm]

BILLING CODE 3510–22–P

# Proposed Rules

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

## DEPARTMENT OF ENERGY

### 5 CFR Chapter XXII

### 10 CFR Chapters II, III, X

### Reducing Regulatory Burden

**AGENCY:** Office of the General Counsel, Department of Energy.

**ACTION:** Notice of extension of public comment period.

**SUMMARY:** This notice announces that the period for submitting comments on the Department of Energy's (DOE) request for information (RFI) issued as part of its implementation of Executive Order 13563, ''Improving Regulation and Regulatory Review,'' is extended to June 19, 2012.

**DATES:** DOE will accept comments, data, and information regarding the RFI received no later than June 19, 2012.

**ADDRESSES:** Interested persons are encouraged to submit comments, identified by ''Regulatory Burden RFI,'' by any of the following methods:

*Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

*Email: Regulatory.Review@hq.doe.gov.* Include ''Regulatory Burden RFI'' in the subject line of the message.

*Mail:* U.S. Department of Energy, Office of the General Counsel, 1000 Independence Avenue SW., Room 6A245, Washington, DC 20585.

*Docket:* For access to the docket to read background documents or comments received, go to the Federal eRulemaking Portal at *http://www.regulations.gov.*

**FOR FURTHER INFORMATION CONTACT:** Daniel Cohen, Assistant General Counsel for Legislation, Regulation, and Energy Efficiency, U.S. Department of Energy, Office of the General Counsel, 1000 Independence Avenue SW., Washington, DC 20585. Email: *Regulatory.Review@hq.doe.gov.*

**SUPPLEMENTARY INFORMATION:** On January 18, 2011, the President issued Executive Order 13563, ''Improving Regulation and Regulatory Review,'' to ensure that Federal regulations seek more affordable, less intrusive means to achieve policy goals, and that agencies give careful consideration to the benefits and costs of those regulations. Additionally, the Executive Order directs agencies to consider how best to promote retrospective analyses of existing rules. To implement the Executive Order, DOE published a plan to periodically review existing regulations to determine which should be maintained, modified, strengthened, or repealed to increase the effectiveness and decrease the burdens of DOE's regulatory program. DOE's plan is available at *http://www.whitehouse.gov/21stcenturygov/actions/21st-century-regulatory-system.*

Pursuant to its plan to implement the Executive Order, DOE published an RFI on May 15, 2012 seeking additional public comment on how best to review its existing regulations and to identify whether any of its existing regulations should be modified, streamlined, expanded, or repealed. (77 FR 28518) DOE sought comment on the RFI until May 29, 2012. DOE received a request from a member of the public to extend the comment period given the importance of many of the questions and issues raised in the RFI to the commenter. As a result, in this notice, DOE extends the reply comment period until June 19, 2012. DOE will consider any comments received by June 19, 2012.

Issued in Washington, DC, on May 23, 2012.

**Gregory H. Woods,**

*General Counsel.*

[FR Doc. 2012–13054 Filed 5–25–12; 8:45 am]

**BILLING CODE 6450–01–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 71

### Docket No. FAA–2011–1429; Airspace Docket No. 11–AAL–22

### Proposed Establishment of Class E Airspace; Chenega Bay, AK

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This action proposes to establish Class E airspace at Chenega Bay Airport, Chenega Bay, AK, to accommodate aircraft using new Area Navigation (RNAV) Global Positioning System (GPS) standard instrument approach procedures at Chenega Bay Airport, Chenega Bay, AK. The FAA is proposing this action to enhance the safety and management of aircraft operations at the airport.

**DATES:** Comments must be received on or before July 13, 2012.

**ADDRESSES:** Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590; telephone (202) 366–9826. You must identify FAA Docket No. FAA–2011–1429; Airspace Docket No. 11–AAL–22, at the beginning of your comments. You may also submit comments through the Internet at *http://www.regulations.gov.*

**FOR FURTHER INFORMATION CONTACT:** Richard Roberts, Federal Aviation Administration, Operations Support Group, Western Service Center, 1601 Lind Avenue SW., Renton, WA 98057; telephone (425) 203–4517.

**SUPPLEMENTARY INFORMATION:**

#### Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify both docket numbers (FAA Docket No. FAA 2011–1429 and Airspace Docket No. 11–AAL–22) and be submitted in triplicate to the Docket Management System (see **ADDRESSES** section for address and phone number). You may also submit comments through the Internet at *http://www.regulations.gov.*

Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those

comments a self-addressed stamped postcard on which the following statement is made: ''Comments to FAA Docket No. FAA–2011–1429 and Airspace Docket No. 11–AAL–22''. The postcard will be date/time stamped and returned to the commenter.

All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this action may be changed in light of comments received. All comments submitted will be available for examination in the public docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

**Availability of NPRMs**

An electronic copy of this document may be downloaded through the Internet at *http://www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's web page at *http://www.faa.gov/airports_airtraffic/air_traffic/publications/airspace_amendments/.*

You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office (see the **ADDRESSES** section for the address and phone number) between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the Northwest Mountain Regional Office of the Federal Aviation Administration, Air Traffic Organization, Western Service Center, Operations Support Group, 1601 Lind Avenue SW., Renton, WA 98057.

Persons interested in being placed on a mailing list for future NPRM's should contact the FAA's Office of Rulemaking, (202) 267–9677, for a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

**The Proposal**

The FAA is proposing an amendment to Title 14 Code of Federal Regulations (14 CFR) part 71 by establishing Class E airspace at Chenega Bay Airport, Chenega Bay, AK. Controlled airspace is necessary to accommodate aircraft using the new RNAV (GPS) standard instrument approach procedures at Chenega Bay Airport, Chenega Bay, AK. This action would enhance the safety and management of aircraft operations at the airport.

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 71.1. The Class E airspace designation listed in this document will be published subsequently in this Order.

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

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the U.S. Code. Subtitle 1, section 106, describes the authority for the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in subtitle VII, part A, subpart I, section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would establish controlled airspace at Chenega Bay Airport, Chenega Bay, AK.

This proposal will be subject to an environmental analysis in accordance with FAA Order 1050.1E, ''Environmental Impacts: Policies and Procedures'' prior to any FAA final regulatory action.

**List of Subjects in 14 CFR Part 71**

Airspace, Incorporation by reference, Navigation (air).

**The Proposed Amendment**

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR Part 71 as follows:

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

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

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

**§ 71.1 [Amended]**

2. The incorporation by reference in 14 CFR Part 71.1 of the Federal Aviation Administration Order 7400.9V, Airspace Designations and Reporting Points, dated August 9, 2011, and 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.*

* * * * *

**AAL AK E5 Chenega Bay, AK [New]**

Chenega Bay Airport, AK
(Lat. 60°04′43″ N., long. 147°59′41″ W.)

That airspace extending upward from 700 feet above the surface within a 2-mile radius of the Chenega Bay Airport, and that airspace beginning at the intersection of the 2-mile radius of the airport and 170° bearing of Chenega Bay Airport to lat. 60°02′17″ N., long. 147°39′07″ W.; to lat. 60°05′06″ N., long. 147°28′33″ W.; to lat. 60°11′41″ N., long. 147°37′16″ W.; thence to the intersection of the 2-mile radius of Chenega Bay Airport and 353° bearing of the airport.

Issued in Seattle, Washington, on May 17, 2012.

**Robert Henry,**

*Acting Manager, Operations Support Group, Western Service Center.*

[FR Doc. 2012–12943 Filed 5–25–12; 8:45 am]

BILLING CODE 4910–13–P

## DEPARTMENT OF LABOR

## Wage and Hour Division

## 29 CFR Parts 570 and 579

**RIN 1235–AA06**

## Child Labor Regulations, Orders and Statements of Interpretation; Child Labor Violations—Civil Money Penalties

**AGENCY:** Wage and Hour Division, Labor.

**ACTION:** Withdrawal of proposed rule.

**SUMMARY:** The Department of Labor (Department or DOL) is withdrawing its proposed rule published on September 2, 2011, 76 FR 54836, which provided the public with notice of and the opportunity to submit written comments on its proposal to amend its

child labor regulations which protect children from employment in particularly hazardous occupations.

**DATES:** The proposed rule published on September 2, 2011 (76 FR 54836) is withdrawn as of May 29, 2012.

**FOR FURTHER INFORMATION CONTACT:** Mary Ziegler, Director, Division of Regulations, Legislation and Interpretation, Wage and Hour Division, U.S. Department of Labor, Room S–3502, 200 Constitution Avenue NW., Washington, DC 20210; telephone: (202) 693–0406 (this is not a toll free number). Copies of this notice may be obtained in alternative formats (Large Print, Braille, Audio Tape, or Disc), upon request, by calling (202) 693–0023. TTY/TDD callers may dial toll-free (877) 889–5627 to obtain information or request materials in alternative formats.

**SUPPLEMENTARY INFORMATION:**

## A. Rulemaking Background

On September 2, 2011, WHD published a Notice of Proposed Rulemaking (NPRM), 76 FR 54836, that proposed amendments to child labor regulations issued pursuant to the child labor provisions of the Fair Labor Standards Act (FLSA), 29 U.S.C. 203(l), 212, 213, primarily to address the employment of children under 16 years of age in particularly hazardous agricultural occupations. The FLSA's child labor provisions do not apply to the employment of children working in agricultural industries once they reach the age of 16. The proposed amendments would have, among other things, amended existing hazardous occupation orders related to the agricultural employment of children under the age of 16 to address specific recommendations made by the National Institute for Occupational Safety and Health; created new agricultural hazardous occupation orders; and revised the agricultural student learner exemptions that permit the employment of 14- and 15-year-olds to perform certain hazardous agricultural work that they would otherwise be prohibited from performing because they are under the age of 16.

The FLSA exempts from the agricultural hazardous occupation orders and minimum age requirements children who are employed by their parent or person standing in the place of their parent on a farm owned or operated by the parent or such person. *See* 29 U.S.C. 213(c)(1)(A), (c)(2). As a result of this statutory parental exemption, the agricultural hazardous occupation orders apply only to children who are hired farm workers employed on farms not owned or operated by their parent or person standing in the place of their parent. The rule as proposed would have amended the Department's regulations to include the Wage Hour Division's interpretations of the statutory parental exemption as it applies to the agricultural employment of children under the age of 16.

The Department received over 10,000 written comments on the proposed rule and held a public hearing on the rule on October 14, 2011, in Tampa, Florida. To ensure that all who wished to comment on the rule had the opportunity to do so the Department extended the initial 60-day comment period for an additional 30 days, through December 1, 2011. As a result of the comments it received, on February 1, 2012, the Department announced that it would re-propose the parts of the child labor NPRM related to its interpretation of the agricultural parental exemption. On April 26, 2012, the Department announced its intent to withdraw the entire rulemaking, including the proposed regulations related to the parental exemption.

## B. Reason for the Decision To Withdraw the Proposed Rule

### *1. The Secretary's Discretion To Establish Hazardous Occupations Orders*

To protect the safety, health and welfare of children, the FLSA, 29 U.S.C. 213(c)(2), gives the Secretary discretion to ''find and declare[]'' certain occupations to be ''particularly hazardous,'' for children under the age of 16. The FLSA's child labor provisions do not apply to children employed in agriculture who are 16 years of age and older. The Secretary has the same discretion to establish hazardous occupation orders in nonagricultural employment, but those orders apply to children who are 17 years of age and younger. 29 U.S.C. 203(l). The Secretary has used this discretionary authority to establish 17 hazardous occupation orders applicable to nonagricultural employment, and 11 hazardous orders applicable to agricultural employment. *See* 29 CFR 570.51–.68 & 570.71.

### *2. Use of a Non-Regulatory Approach*

The Department received over 10,000 comments on the proposed rule. Many of the comments were from parents who own or operate farms who believed that the Department's proposal would limit their ability to employ their own children on their farm and to provide their children with hands-on experiences in agricultural occupations. Further, many of the commenters maintained that the Department's proposed amendments interpreting the statutory parental exemption failed to recognize that many farms are no longer wholly owned by a parent or parents of the children employed on the farm and the proposed rule should allow for corporate and other types of ownership of farms by multiple members of an employed child's family. Other commenters, including 153 Members of the House of Representatives, 42 United States Senators, and a number of agricultural education instructors, emphasized the importance of preparing the next generation of farmers and ranchers. These individuals also stated that the Department's proposal to increase the rigor of the current student learner exemptions that allow 14- and 15-year-olds to be employed in certain occupations that the Secretary has declared are particularly hazardous for children under the age of 16, would unduly limit the work young children could be employed to perform on a farm and thereby limit their opportunity to learn about farming through hands-on experience and discourage them from entering the field of farming. The Department also received comments from members of Congress and the public that supported the Department's proposed amendment, citing to data demonstrating that the hazards on farms are significant.

On April 26, 2012, the Department issued a statement announcing that it would withdraw the proposed child labor rule. Acknowledging the thousands of comments the Department received that expressed concerns about the effect the commenters stated the rule would have on small family-owned farms and farming traditions, the Department stated that ''[t]he Obama administration is firmly committed to promoting family farmers and respecting the rural way of life, especially the role that parents and other family members play in passing those traditions down through the generations.'' The Department stated that its decision to withdraw, rather than re-propose or finalize the rule, was based on its ''deep[] commit[ment] to listening and responding to what Americans across the country have to say about proposed rules and regulations.'' The Department explained that rather than re-proposing the regulation, it intended to work to promote safer and healthier working practices and conditions for children employed as farm workers by collaborating with farming organizations such as the American Farm Bureau and Future Farmers of America to develop educational programs that address

hazardous agricultural work practices and conditions.

*C. Conclusion*

In summary, the FLSA grants the Secretary of Labor exclusive authority to determine that a proposed rule should be withdrawn provided she publishes reasons for her decision not to promulgate the rule. This Notice explains the Secretary's reasons for pursuing a non-regulatory approach to addressing the safety and health of children employed in agriculture rather than amending the existing child labor rules. The FLSA affords the Secretary broad authority to set and order her rulemaking priorities. The Secretary properly exercised her discretion by determining not to proceed with the child labor rulemaking, particularly in light of the many comments informing the Secretary about the effect of the rule.

For the reasons stated herein, the proposed rule is withdrawn.

**Nancy J. Leppink,**

*Deputy Administrator, Wage and Hour Division.*

[FR Doc. 2012–12954 Filed 5–25–12; 8:45 am]

**BILLING CODE P**

## DEPARTMENT OF TRANSPORTATION

### Pipeline and Hazardous Materials Safety Administration

### 49 CFR Parts 171, 172, 173, 178, and 180

**[Docket No. PHMSA–2011–0140 (HM–234)]**

**RIN 2137–AE80**

### Hazardous Materials; Miscellaneous Amendments Pertaining to DOT Specification Cylinders (RRR)

**AGENCY:** Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

**ACTION:** Advance notice of proposed rulemaking (ANPRM).

**SUMMARY:** The Pipeline and Hazardous Materials Safety Administration (PHMSA) is considering amendments to the Hazardous Materials Regulations (HMR) to revise certain requirements applicable to the manufacture, use, and requalification of DOT specification cylinders. PHMSA is taking this action in response to petitions for rulemaking submitted by the regulated community and a review of the regulations applicable to compressed gas cylinders. PHMSA is not proposing specific amendments to the HMR; rather, we are seeking comment on the issues discussed in the ANPRM. While this ANPRM focuses on specific petitions for rulemaking and special permits, we will accept comments on the HMR applicable to compressed gas cylinders. These comments will be combined with a retrospective review of existing requirements aimed to modify, streamline, expand, or repeal existing rules that are outmoded, ineffective, insufficient, or excessively burdensome.

**DATES:** Comments must be received by August 27, 2012.

**ADDRESSES:** You may submit comments identified by the docket number PHMSA–2011–0140 (HM–234) by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* 1–202–493–2251.
- *Mail:* Docket Management System; US Department of Transportation, West Building, Ground Floor, Room W12–140, Routing Symbol M–30, 1200 New Jersey Avenue SE., Washington, DC 20590.
- *Hand Delivery:* To the Docket Management System; 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.

*Instructions:* All submissions must include the agency name and docket number for this ANPRM at the beginning of the comment. To avoid duplication, please use only one of these four methods. All comments received will be posted without change to the Federal Docket Management System (FDMS), including any personal information.

*Docket:* For access to the dockets to read background documents or comments received, go to *http://www.regulations.gov* or DOT's Docket Operations Office (see **ADDRESSES**).

*Privacy Act:* Anyone is able to search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the document (or signing the document, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477) or you may visit *http://www.regulations.gov.*

**FOR FURTHER INFORMATION CONTACT:** Kevin Leary or Robert Benedict, Standards and Rulemaking Division, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, 1200 New Jersey Avenue SE., Washington, DC 20590, at (202) 366–8553.

**SUPPLEMENTARY INFORMATION:**

I. Executive Summary
II. Background
III. Summary Review of Amendments Considered
IV. Regulatory Review and Notices
A. Statutory/Legal Authority for This ANPRM
B. Executive Order 12866, Executive Order 13563 and DOT Regulatory Policies and Procedures
C. Executive Order 13132
D. Executive Order 13175
E. Regulatory Flexibility Act and Executive Order 13272
F. Paperwork Reduction Act
G. Regulation Identifier Number (RIN)
H. Unfunded Mandates Reform Act of 1995
I. Environmental Assessment
J. Privacy Act
K. International Trade Analysis

## I. Executive Summary

PHMSA is considering amendments that would revise and clarify the HMR (49 CFR parts 171–180) applicable to cylinder manufacture, maintenance, and use. This action responds to ten petitions for rulemaking submitted by the regulated community and seeks comment on incorporating the provisions of three special permits. These amendments would update and expand the use of currently authorized industry consensus standards, revise the construction, marking and testing requirements of DOT–4 series cylinders, clarify the filling requirements for cylinders, discuss the handling of cylinders used in fire suppression systems, and revise the requalification and condemnation requirements for cylinders. PHMSA will review comments on the amendments described in this ANPRM for their potential economic and safety implications and will use these comments to craft more specific proposals in any potential future rulemaking. PHMSA requests that commenters note the applicable petition when submitting comments.

## II. Background

PHMSA requests public comment on various petitions for rulemaking submitted in accordance with § 106.95 and DOT special permits PHMSA has issued applicable to the manufacture, use, and requalification of cylinders. PHMSA is publishing this ANPRM to obtain the views of those who are likely to be affected by the changes discussed, including those who are likely to benefit from and those who are potentially subject to additional regulation if PHMSA were to adopt the petitions. This ANPRM is intended to provide the

greatest opportunity for public participation in the development of regulatory amendments, and promote greater exchange of information and perspectives among the various stakeholders. This additional step will lead to more focused and well-developed proposals that reflect the views of all regulated entities.

Access to Compressed Gas Association publications discussed in this ANPRM are available for public review at: *www.cganet.com.* Access to the petitions and background documents referenced in this ANPRM can be found at *http://www.regulations.gov* under Docket No. PHMSA–2011–0140 (HM–234) or at DOT's Docket Operations Office (see **ADDRESSES**).

## III. Summary Review of Amendments Considered

### *A. Petitions for Rulemaking*

Federal hazardous material transportation law (Federal hazmat law), 49 U.S.C. 5101–5127, authorizes the Secretary of Transportation to regulate the manufacture and continuing qualification of packagings used to transport hazardous materials in commerce, or packagings certified under Federal hazmat law for the transportation of hazardous materials in commerce. The HMR contain requirements for the manufacture, use, and requalification of cylinders subject to Federal hazmat law, including defining materials and methods of construction, the frequency and manner of inspection and testing, standards for cylinder rejection and condemnation, cylinder marking and recordkeeping, authorizations for packaging hazardous materials in cylinders, filling, loading, unloading, and carriage in transportation.

In accordance with 49 CFR 106.95, a person may petition PHMSA to add, amend or delete a regulation by filing a petition for rulemaking with all the information required in § 106.100. In this ANPRM, PHMSA seeks comment on ten petitions for rulemaking submitted by the compressed gas industry, including cylinder manufacturers, cylinder requalifiers, hazardous materials trainers, shippers, and carriers of compressed gases. These petitions are included in the docket for this proceeding. The following table provides a brief summary of the petitions addressed in this ANPRM and affected sections:

| Petition | Party submitting petition | Summary |
|---|---|---|
| P–1499 ... | The Compressed Gas Association (CGA) ..... | Requests PHMSA incorporate by reference CGA *C–6 Standards for Visual Inspection of Steel Compressed Gas Cylinders* 2007, 10th edition, in place of the 7th edition (§§ 173.3, 173.198, 180.205, 180.209, 180.211, 180.411, and 180.519). |
| P–1501 ... | The Compressed Gas Association ..... | Requests modifications to the manufacturing and testing specifications for series 4 cylinders in §§ 178.50, 178.51, 178.61, and 178.68. |
| P–1515 ... | Certified Training Co. (CTC) ..... | Proposes numerous revisions to the requirements for the requalification of DOT specification cylinders in §§ 180.203–180.215. |
| P–1521 ... | The Compressed Gas Association ..... | Proposes to revise § 172.400a to allow the use of the labels described in CGA C–7–2004 Appendix A on cylinders that are overpacked. |
| P–1540 ... | The Compressed Gas Association ..... | Proposes to require manufacturers to mark newly-constructed DOT 4B, DOT 4BA, DOT 4BW and DOT 4E specification cylinders with the mass weight (MW) or tare weight (TW), and water capacity (WC) (§ 178.35). |
| P–1546 ... | GSI Training Services, Inc ..... | Requests a revision to the HMR to allow cylinders used in fixed fire suppression systems to utilize the exceptions in § 173.309(a) for fire extinguishers. |
| P–1560 ... | Air Products and Chemicals, Inc ..... | Requests increased maximum permitted filling densities for specification cylinders containing carbon dioxide and nitrous oxide (§ 173.304a). |
| P–1563 ... | 3M Inc ..... | Proposes to allow materials packaged in accordance with § 173.301(a)(9) to be marked with the OVERPACK marking. |
| P–1572 ... | Barlen and Associates, Inc ..... | Requests clarification of the requirements for the filling density[a] for liquefied compressed gases contained in multiple element gas containers (MEGCs) and manifolded cylinders (§§ 173.301(g) and 173.312). |
| P–1580 ... | HMT Associates Inc ..... | Proposes to resolve a discrepancy between the HMR and CGA S–1.1 regarding the pressure relief device tolerances for DOT 39 cylinders transported by aircraft (§§ 173.301(f)(2) and 173.304(f)(2)). |

P–1499

The National Technology Transfer and Advancement Act of 1995 directs agencies to use voluntary consensus standards in lieu of government-unique standards except where inconsistent with law or otherwise impractical. Public Law 104–113, 110 Stat. 775 (codified in 15 U.S.C.); 15 U.S.C. 272. The HMR incorporate a variety of standards by reference in § 171.7, including numerous standards relevant to cylinder construction, maintenance, and use. With regard to the visual inspection of steel cylinders, PHMSA incorporates by reference the 7th edition of the Compressed Gas Association's (CGA) publication *C–6 Standards for Visual Inspection of Steel Compressed Gas Cylinders 1993.* This CGA publication serves as a guide to cylinder requalifiers and users for establishing cylinder inspection procedures and standards. Inspection procedures include preparation of cylinders for inspection, exterior inspection, interior inspection if required, nature and extent of damage to be looked for, and tests that indicate the conditions of the cylinder. The 7th edition of this standard is currently referenced in §§ 173.3, 173.198, 180.205, 180.209, 180.211, 180.411, and 180.519.

The CGA represents all facets of the compressed gas industry, including manufacturers, distributors, suppliers, and transporters of gases, cryogenic liquids, and related products. The CGA submitted petition P–1499 requesting that PHMSA replace the currently-incorporated 7th edition of publication *C–6 Standards for Visual Inspection of Steel Compressed Gas Cylinders* with the revised 10th edition and update the appropriate references throughout the HMR. The 10th edition provides enhanced guidance for cylinder requalifiers including guidance on the inspection of multiple-element gas

[a] Filling density means ''the percent ratio of the weight of gas in a packaging to the weight of water that the container will hold at 16 °C (60 °F). (1 lb of water = 27.737 in$^3$ at 60 °F.).'' 49 CFR 173.304a, Note 1.

containers (MEGCs), requirements for thread inspection for cylinders used in corrosive gas service and clarifies maximum allowable depths and measuring techniques for various types of corrosion. PHMSA identified approximately 5,000 companies that would be subject to this standard. The majority of these companies are classified as small businesses using SBA size standards (<500 employees). This revision would impose a one-time cost of between $78 and $142 per document depending on the document format (electronic or hard copy) and if the purchaser is a member of the CGA.

This publication is available to view on the CGA Web site at: *www.cganet.com*. PHMSA requests comments from affected entities, particularly small entities, on the impacts, both positive and negative, that would result from incorporation of this revised standard. PHMSA is interested in technical differences between the 7th and 10th editions of CGA publication *C–6 Standards for Visual Inspection of Steel Compressed Gas Cylinders* including, but not limited to, the specific revisions that increase safety and cost implications associated with the adoption of the new standard.

P–1501

The authorized materials, manufacturing methods and testing requirements for DOT 4B, 4BA, 4BW, and 4E cylinders (DOT–4 series cylinders) are specified in §§ 178.50, 178.51, 178.61, and 178.68. Specifically, these sections describe material types permitted to be used in construction, size specifications, cylinder wall thickness and required tests.

The CGA submitted petition P–1501 requesting that PHMSA revise the manufacturing requirements for DOT 4B, 4BA, 4BW, and 4E cylinders. According to the petition, the current DOT–4 series welded cylinder manufacturing requirements are unclear in some respects and result in interpretation by the manufacturers and enforcement personnel. A summary of the changes proposed by P–1501 are outlined below:

- Revise §§ 178.50(b), 178.51(b), 178.61(b), and 178.68(b) to ensure material compositions and the heat treatment are within the specified tolerances and of uniform quality as follows:
  - Require a record of intentionally-added alloying elements, and
  - Require materials manufactured outside of the United States to have a ladle analysis confirmed by a check analysis.
- Revise the pressure tests in §§ 178.50(i), 178.51(i), 178.61(i), and 178.68(h) to permit use of the volumetric expansion test, a hydrostatic proof pressure test or a pneumatic proof pressure test.
- Revise the physical and flattening tests [b] and retest criteria in §§ 178.50, 178.51, 178.61, and 178.68 for consistency. These revisions would clarify the location on the cylinder from which the test specimens are removed.
- Revise §§ 178.50(n), 178.51(n), and 178.61(o) to permit marking on the footring for cylinders with water capacities up to thirty pounds, rather than twenty-five pounds.
- Add requirements for the location of markings on DOT 4E cylinders in § 178.68.

The CGA states in its petition that the proposed changes do not present a significant economic impact to any single manufacturer or user, but will also enhance regulatory clarity, promote consistent manufacturing practices, and create greater uniformity between the specifications for DOT–4 series cylinders and the requirements for welded cylinders found in International Organization for Standardization (ISO) standard 4706–1, *Gas cylinders-Refillable welded steel cylinders—Part 1: Test pressure 60 bar and below* that are referenced in the United Nations Model Regulations.

PHMSA identified six U.S. based manufacturers of these cylinders. PHMSA requests comments on the economic and safety implications of all the proposed changes in P–1501. PHMSA seeks comment on the potential burden (time and/or cost) for compliance with the information collection activities associated with the requirement to keep a record of intentionally-added alloying elements and to perform a ladle analysis confirmed by a check analysis for materials manufactured outside of the United States. In addition to the cost of keeping the records, PHMSA seeks comment on the cost to implement and conduct the ladle and check analyses, pressure test, and physical/flattening test.

PHMSA seeks comment on CGA's proposed changes to pressure tests in §§ 178.50(i), 178.51(i), 178.61(i), and 178.68(h). Specifically, we seek comment on safety precautions that should be taken to protect personnel when a pneumatic pressure test is authorized [c] and any additional considerations associated with revised testing requirements. PHMSA seeks information on whether the expansion of foot ring marking permissions will tangibly reduce costs.

P–1515

The requirements for the requalification of DOT specification cylinders found in Part 180 Subpart C outline the specific procedures for the requalification and maintenance of cylinders. These requirements include definitions for terms used in the subpart, references to CGA publications for the visual inspection of cylinders, specific requirements for hydrostatically testing cylinders including methods to ensure the accuracy of test equipment.

PHMSA received petition P–1515 from Certified Training Company (CTC) proposing numerous revisions to the requirements for the requalification of DOT specification cylinders found in Part 180 Subpart C. The petitioner states that the requalification requirements in the HMR create confusion for requalifiers and enforcement officials. PHMSA requests comments on the need to revise these requirements and two possible methods of resolving the confusion with regard to the requalification requirements for specification cylinders. The first, as suggested by CTC in P–1515, would modify the specific HMR provisions in § 180.203 through § 180.215 for requalification of cylinders. The second would incorporate by reference CGA *C–1 Methods for Pressure Testing Compressed Gas Cylinders,* 10th edition (2009) into § 180.205. CGA *C–1 Methods for Pressure Testing Compressed Gas Cylinders,* 10th edition (2009) contains most of the provisions and additions specified in P–1515 including revisions to definitions in § 180.203, appropriate procedures for conducting the hydraulic pressure tests, and marking and record keeping requirements.

CTC, in P–1515, requests that PHMSA revise the HMR as follows:

- Add the following terms and definitions to § 180.203:
  - ''Accuracy'' means the conformance of a particular reading to a known standard. Accuracy is expressed as the percentage of error of a reading from a true value.
  - ''Accuracy grade'' means the inherent quality of the device. It expresses the maximum error allowed

[b] The physical and flattening tests are destructive tests conducted on samples of welded cylinders. The samples are subjected to loading until they fail. The failed pieces are then compared to known certain pass/fail criteria to determine the quality of the weld or tube.

[c] Pneumatic pressure tests present a greater hazard than hydraulic pressure tests. In the event of test failure, a container filled with a gas will release a greater amount of stored energy. Additional precautions must be taken to ensure the safety of the test operator.

for the device at any reading. Accuracy grade is expressed as a percentage of the full scale of the device.

○ ''Actual test pressure'' means the pressure applied to a cylinder during requalification.

○ ''Calibrated cylinder'' means a cylinder that has certified calibration points of pressure with corresponding expansion values. It is a secondary, derived standard used for the verification and demonstration of test system accuracy and integrity.

○ ''Master gauge'' means a pressure indicating device that is used as a calibration standard, and has an inherent accuracy grade equal to or better than the requirement for the pressure indicating device in the test apparatus.

○ ''Over-pressurized'' means a condition in which the internal pressure applied to a cylinder has reached or exceeded the yield point of the cylinder.

○ ''Percent permanent expansion'' means the ratio of permanent expansion to total expansion, expressed as a percentage. The calculation for percent permanent expansion is permanent expansion divided by total expansion times 100.

○ ''Reference gauge'' means the pressure indicating device that is used in the daily verification of a proof test system, and has an inherent accuracy equal to or better than the requirement for the device to be checked.

○ ''Service pressure'' means the rated service pressure marked on the cylinder. The petitioner added this definition to differentiate the marked service pressure from the actual full pressure.

• Modify the definitions for the following terms used in § 180.203:

○ ''Commercially free of corroding components'' to also specify a moisture content less than 55 ppm.

○ ''Defect'' to mean an imperfection requiring a cylinder to be rejected.

○ ''Test pressure'' to state the minimum prescribed test pressure. This revision was suggested to differentiate test pressure from actual test pressure.

• Modify the requirements in § 180.205(f) (visual inspection) to permit the shot blasting [d] of cylinders to remove surface corrosion, but prohibit grinding, sanding or any other method that may reduce cylinder wall thickness unless conducted by an authorized facility in accordance with § 180.212.

• Modify the requirements in § 180.205(g) (pressure test) to:

○ Clarify the pressure test procedure by:

▪ Adding a requirement to isolate the cylinder undergoing the hydrostatic test from other sources of pressure that may influence the test results.

▪ Separate requirements in § 180.205(g)(2) for pressure indicating devices (i.e. gauges) from expansion indicating devices (i.e. burettes, digital systems) and require periodic verification of these devices to confirm their accuracy.

○ Require a calibrated cylinder's markings to be checked and confirmed every five years.

○ Permit up to three repeat tests in the event of equipment malfunction and add a requirement to perform a system check at 90% of test pressure before repeating the pressure test.

○ Add a provision that would permit a cylinder that was over-pressurized (filled to a pressure greater than 10% of the test pressure) to continue in compressed gas service provided the cylinder's permanent expansion does not exceed ½ of the normally-allowed limit.

○ Permit cylinders that fail requalification to undergo repair and then attempt requalification a second time.

• Combine the condemnation requirements for DOT (found in § 180.205(i)) and UN cylinders (found in the applicable ISO Standard) under one uniform standard.

• Modify the requirements in § 180.209(b) (DOT 3A or 3AA cylinders) to revise the eligibility criteria for the use of the five-pointed star under § 180.209(b), which permits DOT 3A and DOT 3AA cylinders to be requalified every ten years instead of every five years. The current eligibility criteria for the use of the five-pointed star include that, (1) The cylinder was manufactured after December 31, 1945; (2) The cylinder is used exclusively for air; argon; cyclopropane; ethylene; helium; hydrogen; krypton; neon; nitrogen; nitrous oxide; oxygen; sulfur hexafluoride; xenon; chlorinated hydrocarbons, fluorinated hydrocarbons, liquefied hydrocarbons, and mixtures thereof that are commercially free from corroding components; permitted mixtures of these gases; and permitted mixtures of these gases with up to 30 percent by volume of carbon dioxide, provided the gas has a dew point at or below minus (52 °F) at 1 atmosphere; (3) Before each refill, the cylinder is removed from any cluster, bank, group, rack or vehicle and passes the hammer test specified in CGA Publication C–6; (4) The cylinder is dried immediately after hydrostatic testing to remove all traces of water; and (5) Each cylinder is stamped with a five-pointed star at least one-fourth of an inch high immediately following the test date. The petitioner's revisions to the eligibility criteria for the use of the five-pointed star include:

○ Remove the restriction that cylinders must be made after December 31, 1945 in order to be requalified every ten years;

○ Remove the hammer test, as some question the utility of such a test;

○ Add a requirement that the cylinder must have not more than 5% permanent expansion;

○ Add a requirement that cylinders must not exceed the elastic expansion rejection limit (REE); and

○ Add self-contained breathing apparatus to the list of prohibited uses, as underwater breathing is already prohibited.

• Require requalification markings to begin immediately to the right of the manufacturer's markings and subsequent markings to proceed in columns downward to the bottom of the shoulder area. Additional markings would proceed in a similar column format.

• Allow domestic requalifiers to stamp cylinders that do not conform to a DOT specification, special permit or authorized UN standard (i.e. foreign cylinders) with a requalifier identification number (RIN).

• Specify in § 180.209(e) [e] that cylinders used to transport reclaimed refrigerant gases must be requalified every five years using the volumetric expansion method.

• Modify § 180.212 to permit grinding of DOT 3-series cylinders, provided the remaining wall thickness is measured by ultrasonic examination.

PHMSA is also considering incorporating into the HMR by reference, CGA *C–1 Methods for Pressure Testing Compressed Gas Cylinders,* 10th edition (2009), and referring to this standard in the cylinder requalification requirements specified in § 180.209. This publication provides extensive detail and instruction necessary to properly conduct the hydrostatic tests required by the HMR.[f]

[d] Shot blasting aluminum cylinders may result in adverse effect on the cylinder's sidewall properties (e.g. aging and heat treatment).

[e] This paragraph permits an increase in the interval between retest for cylinders used exclusively for certain non-corrosive gases and gas mixtures that are commercially free from corroding components. Many of these are refrigerant gases. Refrigerant gases recovered from machines and processes may contain water or other contaminants that could corrode the cylinder and compromise its integrity.

[f] On April 12, 2007 PHMSA published a NPRM under docket number PHMSA–2006–25910 (HM–218E; 72 FR 18446) entitled ''Cargo Tank Motor Vehicle and Cylinder Issues; Petitions for Rulemakings.'' As part of this rulemaking PHMSA proposed the incorporation of the 2004 edition of

PHMSA requests comment from the regulated community whether the requirements for the requalification of DOT specification cylinders found in Part 180 Subpart C need revision and if so, what specific provisions need further clarity.

PHMSA identified 980 entities that conduct hydrostatic retesting. Incorporation of CGA C–1 would impose a one-time cost of between $102 and $186 per document depending on the document format (electronic or hard copy) and if the purchaser is a member of the CGA. PHMSA requests data on the impact of incorporating CGA *C–1 Methods for Pressure Testing Compressed Gas Cylinders,* 10th edition (2009), the various changes proposed by CTC, and the relative benefits and drawbacks of the two options as a means of clarifying and enhancing the current requirements for requalification of DOT specification cylinders. With regard to CTC's petition, PHMSA requests information about the safety implications, benefits, and costs of each bulleted item listed. We are particularly interested in comments regarding the safety implications of the various practices to remove surface corrosion from cylinders and whether PHMSA should regulate such practices. PHMSA is also interested in comments regarding the safety implications of requiring DOT cylinders used to transport reclaimed refrigerant gases to be requalified every five years and modifying the conditions for use of the five-pointed star. Beyond the purchase costs of CGA *C–1 Methods for Pressure Testing Compressed Gas Cylinders,* 10th edition (2009), PHMSA is interested in data on the impacts that would be encountered with incorporating CGA C–1 by reference. This publication is available to view on the CGA Web site at: *www.cganet.com.*

PHMSA requests comments on how these changes would potentially impact small entities. Finally, PHMSA seeks information on potential benefits of certain aspects of P–1515 including what benefits, if any, would be realized from permitting second requalification after failure, changing the five-year and ten-year requalification requirements, permitting the continued use of over-pressurized cylinders and allowing foreign cylinders to be stamped with a RIN.

P–1521

For many years the HMR have permitted the use of a neckring marking, under certain conditions, in accordance with the CGA publication *C–7, Guide to Preparation of Precautionary Labeling and Marking of Compressed Gas Containers, Appendix A,* 8th Edition (2004) under § 172.400a. This neckring marking identifies the contents of a cylinder by displaying the proper shipping name, the UN identification number and the hazard class/division diamond within a single marking. Section 172.400a permits the use of this marking in lieu of the 100 mm x 100 mm square-on-point labels on a Dewar flask meeting the requirements in § 173.320 and cylinders containing Division 2.1, 2.2, and 2.3 materials that are not overpacked. This requirement is intended to provide flexibility in hazard communication for cylinders, especially small cylinders.

The CGA petitioned PHMSA (P–1521) to modify the provision in § 172.400a(a)(1)(i) to remove the limitation that would only allow the use of the neckring markings if the cylinders are not overpacked. The petition would still require the overpack to display the 100 mm x 100 mm square-on-point labels in accordance with 49 CFR Part 172, Subpart E.

The marking prescribed in Appendix A to CGA publication C–7, *Guide to Preparation of Precautionary Labeling and Marking of Compressed Gas Containers, Appendix A,* 8th Edition (2004) provides useful information in a clear and consistent manner and its widespread use on cylinders for many years has enhanced its recognition. CGA's proposed change would provide greater flexibility for shipments of overpacked cylinders while ensuring adequate hazard communication. If cylinders are contained in an overpack, the overpack must display the appropriate markings and labels.

According to figures obtained from the U.S. Census Bureau, approximately 86 entities are engaged in Industrial Gas Manufacturing of which 74 are classed as small entities (<500 employees). Other potentially impacted entities include medical equipment wholesalers, service establishment equipment and supplies merchant wholesalers and other miscellaneous durable goods merchant wholesalers. While firms in these industries total over 20,000, PHMSA expects that only a tiny fraction of these firms would be affected by CGA's proposed change. PHMSA seeks comment on the potential implications of this change. Specifically, PHMSA seeks comment as to whether this change is necessary and what, if any, safety and economic impacts would result. PHMSA seeks data concerning how many shipments the proposal would impact. Finally, PHMSA seeks information on how the increased flexibility of marking would economically affect shippers.

P–1540

As specified in § 178.35(f), the HMR require DOT specification cylinders to be permanently marked with specific information including the DOT specification, the service pressure, a serial number, an inspector's mark, and the date manufacturing tests were completed. These marks provide vital information to fillers and uniquely identify the cylinder.

Liquefied gases are normally filled by weight. The tare weight and water capacity must be known by the filler to properly fill a cylinder by weight. However, the HMR do not require tare weight, mass weight, or water capacity markings on DOT specification cylinders. This information is essential for cylinders filled by weight, as cylinders overfilled with a liquefied gas can become liquid full as the ambient temperature increases. If temperatures continue to rise, pressure in the overfilled cylinder will rise disproportionately, potentially leading to leakage or a violent rupture of the cylinder after only a small rise in temperature.

To address this, the CGA submitted a petition (P–1540) requesting that PHMSA require tare weight or mass weight, and water capacity to be marked on newly constructed DOT 4B, 4BA, 4BW, and 4E specification cylinders. The petition also requests that PHMSA provide guidance on the accuracy of these markings and define the party responsible for applying the markings. In its petition, CGA notes that PHMSA incorporates by reference, the National Fire Protection Association's *58-Liquefied Petroleum Gas Code* (NFPA–58), which requires cylinders used for liquefied petroleum gases to be marked with the tare weight and water capacity. However, as stated in the petition, NFPA–58 gives no guidance as to the accuracy of these markings or who is required to provide the marking. The petitioner states that this lack of guidance can lead to overfilling cylinders that can potentially create unsafe conditions.

The CGA petition states that accurate marking of cylinder tare weight, mass

CGA publication *C–1 Methods for Hydrostatic Testing of Compressed Gas Cylinders,* 8th edition (2004) in response to a petition from CGA (P–1485). In HM–218E, the 2004 edition of CGA C–1 was not adopted based partially on comments raised by CTC that cited concerns about the accuracy of certain provisions in the 8th edition of CGA C–1, including test equipment accuracy, calibrated cylinder design requirements, and certain omissions. On July 17, 2009, CGA published the revised CGA Pamphlet *C–1, Methods for Pressure Testing Compressed Gas Cylinders,* 10th edition. The 10th edition of CGA C–1 addresses the issues raised by CTC in the HM–218E NPRM.

weight, and water capacity at the time of manufacture is necessary for safe filling and transportation of these cylinders. While DOT 4B, 4BA, 4BW, and 4E cylinders are often used to transport liquefied compressed gas, we note that these are not the only cylinder types used to transport compressed gas.

In response to the petition, PHMSA is considering modifying § 178.35 to require all DOT specification cylinders suitable for the transport of liquefied gases, to be marked with the cylinder's tare weight and water capacity. This proposal would further align the marking requirements for DOT specification cylinders with the marking requirements for UN ISO Cylinders in § 178.71. However, we stress that while cylinder markings are important to ensure the safe filling of liquefied compressed gas they do not take the place of adequate personnel training, procedures to ensure proper filling, and continued requalification and maintenance of cylinders in preventing incidents.

PHMSA understands that many in the compressed gas industry, especially the liquefied petroleum gas industry, already request manufacturers mark cylinders with this additional information as an added safety measure. Based on this assumption, PHMSA estimates the impact on the compressed gas industry will be minimal as many in the industry are already voluntarily applying these markings. We request comment on this assertion.

PHMSA identified six U.S. based manufacturers of the cylinders identified in the petition. Five of these companies are classed as small businesses (<500 employees). PHMSA requests comments and supporting data regarding the increased safety benefits and the economic impact of this proposal. With regard to the cost associated with this modification, PHMSA has the following specific questions:

- What is the average total cost per cylinder to complete these markings (i.e. is an estimated cost of $0.10 per character for new markings accurate)?
- What is the estimated quantity of newly manufactured 4B, 4BA, 4BW and 4E cylinders each year? Furthermore, how many of these cylinders already display mass weight, tare weight and water capacity markings in compliance with the Liquefied Petroleum Gas Code or other codes?
- How many manufacturers of the above-mentioned cylinders are considered small businesses by the Small Business Administration (SBA)?

PHMSA seeks to identify how often the mass weight, tare weight and water capacity markings are already permissively applied to cylinders and the costs associated with applying these marks. Finally, PHMSA is interested in identifying any relevant data about increased safety benefits associated with the additional markings and alternate methods/safeguards against overfilling of cylinders currently being implemented.

P–1546

The Hazardous Materials Table in § 172.101 provides a shipping description for cylinders used as fire extinguishers (UN1044, fire extinguishers, 2.2) and references § 173.309 for exceptions and non-bulk packaging requirements. Fire extinguishers charged with a limited quantity of compressed gas are excepted from labeling and the specification packaging requirements if the cylinder is packaged and offered for transportation in accordance with § 173.309(a)(1) through § 173.309(a)(3). Additionally, fire extinguishers filled in accordance with the requirements of § 173.309 may use non-specification cylinders (i.e. cylinders not manufactured to specifications in Part 178). Part 180 also provides special requirements for cylinders used as fire extinguishers. Specifically, § 180.209(j) includes different requalification intervals for DOT specification cylinders used as fire extinguishers.

PHMSA has written several letters of clarification regarding the applicability of § 173.309 to fire extinguishers. Notably on March 9, 2005, PHMSA wrote a letter to Safecraft Safety Equipment, Ref. No. 04–0202, regarding non-specification stainless steel cylinders used as a component in a fire suppression system for installation in vehicles. In that letter, PHMSA stated that the cylinders used in the fire suppression system appeared to meet the requirements of § 173.309(a). PHMSA issued another letter on May 30, 2008 to Buckeye Fire Equipment, Ref. No. 06–0101 stating that the company could not use the shipping name ''Fire extinguishers'' for their cylinders that served as a component of a kitchen fire suppression system and must use the proper shipping name that best describes the material contained in the cylinder since these cylinders were not equipped to function as fire extinguishers. This latter clarification effectively required cylinders that are part of a fixed fire suppression system to meet an appropriate DOT specification.

In response to this letter, GSI Training Services submitted a petition for rulemaking (P–1546) requesting PHMSA allow cylinders that form a component of fire suppression systems to use the proper shipping name ''Fire extinguishers'' when offered for transportation. This petitioner states that at least one company manufactured over 39,000 non-specification cylinders for use in fire suppression systems based on the information provided in the March 9, 2005 letter and that the May 30, 2008 clarification effectively placed this company out of compliance. The petitioner further suggests that cylinders comprising a component of a fixed fire suppression system will provide an equal or greater level of safety than portable fire extinguishers since cylinders in fire suppression systems are typically installed in buildings where they are protected from damage and not handled on a regular basis.

In response to P–1546, PHMSA is considering modifying § 173.309 to state that the requirements applicable to fire extinguishers also apply to cylinders used as part of a fire suppression system. The controls outlined in § 173.309(a), including limits on the internal volume, the cylinder contents, the initial testing and subsequent retesting requirements, may provide an acceptable level of safety regardless of whether the cylinder is equipped for use as a fire extinguisher or is a component of a fixed fire suppression system.

According to figures obtained from the U.S. Census Bureau, approximately 568 companies are engaged in heavy tank manufacturing that would include pressure vessels for fire suppression systems. Additionally, equipment wholesalers and retailers may benefit from this proposal. PHMSA is concerned with the specific safety impacts associated with providing an exception for the transport of compressed gases in non-DOT specification cylinders. In other words, are the requirements in § 173.309 appropriate for cylinders used in a fixed extinguishing system? PHMSA is interested in whether allowing non-specification cylinders to utilize the fire extinguisher exception would result in a cost saving and if so how much? Finally, PHMSA is interested in other safety standards that apply to fire suppression systems and how those standards would influence transport safety.

P–1560

Additional requirements for shipments of liquefied compressed gases in DOT specification cylinders are specified in § 173.304a. In § 173.304a(a)(2), a table provides the maximum filling densities and

permissible cylinder types for certain named gases. Currently, § 173.304a(a)(2) permits a maximum filling density of 68% for carbon dioxide and nitrous oxide in DOT 3, DOT 3HT2000 and DOT 39 cylinders as well as DOT 3A, 3AX, 3AA, 3AAX, 3E, 3T, and 3AL cylinders with a marked service pressure of 1800 psi.

Air Products and Chemicals Inc. (Air Products) submitted a petition for rulemaking (P–1560) requesting PHMSA revise § 173.304a(a)(2) to modify the maximum permitted filling densities for carbon dioxide and nitrous oxide to include 70.3%, 73.2%, and 74.5% in DOT 3A, 3AA, 3AX, 3AAX, and 3T cylinders with marked service pressures of 2000, 2265, and 2400 psi respectively. Air Products stated in its petition that the proposed increase in the maximum permitted filling densities would yield various benefits including increased harmonization of compressed gas filling requirements with the UN Model Regulations, benefits to the carbonated beverage industry, decreased fuel costs associated with the transportation and delivery of carbon dioxide and nitrous oxide and reduced administrative costs through the elimination of DOT SP–13599.

PHMSA has a high degree of confidence that the increased filling densities for these gases will not adversely impact safety and this action supports several PHMSA initiatives, including incorporating special permits into the HMR. Therefore, we are considering modifying the entries currently in the table in § 173.304a(a)(2) for carbon dioxide and nitrous oxide to include the maximum filling densities listed in P–1560 and DOT SP–13599.

We note that the current HMR prescribe only one filling density for carbon dioxide and nitrous oxide (68%), while the UN Model Regulations prescribe two filling densities (68% and 76%) and incorporating the provisions of P–1560 would expand the list of allowable filling densities and permissible cylinder types beyond what is currently permitted in the UN Model Regulations. PHMSA requests comments on the safety and economic implications of permitting expanded maximum filling densities for carbon dioxide and nitrous oxide gases. PHMSA seeks estimates on the number of carbon dioxide and nitrous oxide cylinders currently in use that would be affected by this authorization. PHMSA also requests feedback on how these proposed changes would positively and negatively affect both holders of this special permit and non-holders. Specifically, PHMSA seeks data on the costs associated with the process of applying for and maintaining DOT SP–13599 that would be obviated by incorporating this special permit into the regulations.

P–1563

In accordance with § 173.301(a)(9), specification 2P, 2Q, 3E, 3HT, spherical 4BA, 4D, 4DA, 4DS, and 39 cylinders must be packed in strong non-bulk outer packagings. This configuration meets the definition of a combination package as it is defined in § 171.8 of the HMR. The HMR require the outside of the combination packaging to be marked with an indication that the inner packagings conform to the prescribed specifications; however, the inner packagings do not have to be marked. Since these are combination packages and not overpacks, the HMR do not permit the use of the ''OVERPACK'' marking to comply with this requirement. In contrast to a combination package, each package in an overpack must bear the appropriate markings and labels. The overpack must also display these markings and labels unless they are visible through the overpack (§ 173.25(a)(2), (a)(4)). The absence of the ''OVERPACK'' marking on outside packages required by § 173.301(a)(9) removes the implication that each inner packaging (cylinders in this case) must meet the applicable marking and labeling requirements of Part 172.

PHMSA received a petition for rulemaking (P–1563) from the 3M Corporation addressing the regulatory confusion between marking requirements for overpacks in § 173.25 and outside packages for certain thin-walled cylinders specified in § 173.301(a)(9). The petitioner notes that the differing marking requirements in §§ 173.25 and 173.301(a)(9) create confusion and make training difficult. This petition requests PHMSA modify the HMR to permit materials packaged in accordance with § 173.301(a)(9), except aerosols ''2P'' and ''2Q,'' to display the OVERPACK marking described in § 173.25, in lieu of the current requirement for ''an indication that the inner packaging conforms to prescribed specifications.''

The marking ''Inner packages comply with prescribed specifications'' for overpacks in § 173.25 was changed in 2004 to ''OVERPACK'' in an effort to better align with global overpack requirements. The petitioner states that prior to 2004 both the overpack requirements in § 173.25 and the requirement in § 173.301(a)(9) used very similar language intended to inform package handlers that although not visible, the inner packages contained specification packagings and these packagings conform to appropriate DOT or UN standards.

PHMSA recognizes that different marking requirements in § 173.301(a)(9) and § 173.25 may have caused confusion without enhancing safety. PHMSA is considering modifying § 173.301(a)(9) to specifically require the use of the ''OVERPACK'' marking for the specified cylinders. However, this change would mean that both the inner packaging (cylinder) and the overpack would have to display hazardous materials markings and labels in accordance with § 173.25, thereby creating an additional burden. To avoid this consequence, PHMSA is considering revising the exceptions for labeling in § 172.400a, to specify that labels are not required on cylinders packed in accordance with § 173.301(a)(9) provided the outer packaging is labeled as required by the subchapter. This modification would eliminate the confusion cited by the petitioner while excepting the inner packages from the marking and labeling requirements.

PHMSA requests comments on the potential consequences of these changes. Specifically, PHMSA seeks comment on whether others have experienced difficulty with the requirements of § 173.301(a)(9) and thus see the necessity for such a change. PHMSA also seeks information on the safety and economic impacts of this proposed modification, including the quantity of shipments per year this modification would impact.

P–1572

Requirements for shipping MEGCs are specified in § 173.312. Specifically, § 173.312(b) details the filling requirements for MEGCs and states that a ''MEGC may not be filled to a pressure greater than the lowest marked working pressure of any pressure receptacle [and a] MEGC may not be filled above its marked maximum permissible gross mass.'' This requirement that each pressure receptacle contained in the MEGC may not be filled above the working pressure of the lowest marked working pressure of any pressure receptacle is clear for permanent (non-liquefied compressed) gases which are generally filled by pressure. However, § 173.312(b) does not contain a corresponding requirement addressing pressure receptacles containing a liquefied compressed gas which are most often filled by weight. This lack of specificity for MEGCs containing liquefied compressed gas has led to some confusion on the proper filling methods for such MEGCs.

Barlen and Associates, Inc. filed a petition for rulemaking (P–1572) requesting PHMSA explicitly state in § 173.312 that for liquefied compressed gases in MEGCs, the filling ratio of each pressure receptacle must not exceed the values contained in Packing Instruction P200 of the United Nations *Recommendations on the Transport of Dangerous Goods—Model Regulations* (17th ed. 2011), as specified in § 173.304b, and liquefied compressed gases in manifolded DOT cylinders cannot exceed the filling densities specified in § 173.304a(a)(2).

PHMSA does not anticipate this provision will impose any new burden, as this proposal would only restate an important safety requirement already stated in § 173.304a for DOT cylinders and § 173.304b for UN pressure receptacles. However, PHMSA welcomes comments from affected entities on the safety and economic impacts of this proposal. PHMSA also seeks comment on whether others find the requirements of § 173.312(b) confusing and thus, see a need for more specific requirements as proposed in P–1572.

P–1580

As provided by § 173.301(f), a cylinder filled with a compressed gas and offered for transportation ''must be equipped with one or more [pressure relief devices (PRDs)] sized and selected as to type, location and quantity and tested in accordance with CGA [publication] S–1.1 [*Pressure Relief Device Standards-Part 1—Cylinders for Compressed Gases,* 12th edition (2005)] and CGA [publication] S–7 [*Method for Selecting Pressure Relief Devices for Compressed Gas Mixtures in Cylinders* (2005)].'' As specified in §§ 172.302(f)(2) and 172.304(f)(2), the rated burst pressure of a rupture disc for DOT 3A, 3AA, 3AL, 3E, and 39 cylinders, and UN pressure receptacles ISO 9809–1, ISO 9809–2, ISO 9809–3, and ISO 7866 cylinders containing oxygen, compressed; compressed gas, oxidizing, n.o.s.; or nitrogen trifluoride must be 100% of the cylinder minimum test pressure with a tolerance of plus zero to minus 10%.

In response to PHMSA's NPRM entitled ''Hazardous Materials; Miscellaneous Amendments'' published in the **Federal Register** on September 29, 2010 [75 FR 60017] under Docket No. PHMSA–2009–0151 (HM–218F), HMT Associates, Inc. submitted a late-filed comment that identified a potential discrepancy between the HMR and CGA publication S–1.1 *Pressure Relief Device Standards—Part 1—Cylinders for Compressed Gases,* 12th edition (2005). Specifically, this commenter stated the HMR have different PRD settings than CGA S–1.1 for DOT 39 cylinders that make it virtually impossible to comply with both the HMR and CGA S–1.1. Sections 173.302(f)(2) and 173.304(f)(2) require the rated burst pressure of a rupture disc for DOT 3A, 3AA, 3AL, 3E, and 39 cylinders to be 100% of the cylinder minimum test pressure with a tolerance of plus zero to minus 10%, whereas 4.2.2 of CGA S–1.1 requires the rated burst pressure of the rupture disc on DOT 39 cylinders to be not less than 105% of the cylinder test pressure.

In P–1580, the petitioner proposes revising §§ 173.302(f)(2) and 173.304(f)(2) to require that the burst pressure of a rupture disc coincide with CGA S–1.1 for DOT 39 cylinders offered for transportation after October 1, 2008, other DOT specification cylinders with the first requalification due after October 1, 2008, and UN pressure receptacles prior to initial use. Specifically, as prescribed in 4.2.2 of CGA S–1.1, the required burst pressure of the rupture disc ''shall not exceed 80% of the minimum cylinder burst pressure and shall not be less than 105% of the cylinder test pressure.''

PHMSA notes that the HMR do not specify that the rated burst pressure on a rupture disc must be in accordance with CGA S–1.1, thus we do not see the need for the changes proposed in P–1580. However, PHMSA requests comments from the compressed gas industry regarding the potential discrepancy. We ask if others see this as a contradiction in the regulations in need of modification. Furthermore, if a change is deemed necessary, PHMSA requests comment concerning the safety and economic implications of such a revision.

*B. Special Permits*

The HMR includes many performance-oriented regulations, which provide the regulated community with flexibility in meeting safety requirements. Even so, not every transportation situation can be anticipated and built into the regulations. Special permits enable the hazardous materials industry to quickly, effectively and safely integrate new products and technologies into the production and transportation stream. Federal hazmat law authorizes the Secretary to issue variances—termed special permits—from the HMR only if a special permit provides for a safety level ''at least equal to the safety level required under [Federal hazmat law/regulations] * * * or consistent with the public interest and [Federal hazmat law], if a required safety level does not exist.'' 49 U.S.C. 5117(a)(1). Thus, special permits provide a mechanism for testing new technologies, promoting increased transportation efficiency and productivity, and ensuring global competitiveness. Within the DOT, PHMSA is primarily responsible for implementing the Federal hazmat law and issuing special permits.

PHMSA periodically conducts reviews of active special permits to identify variances that should be adopted into regulations for broader applicability. Converting these special permits into regulations reduces paperwork burdens and facilitates commerce while maintaining an acceptable level of safety. Additionally, adopting special permits as rules of general applicability provides wider access to the benefits and regulatory flexibility of the provisions granted in the special permits. Factors that influence whether a specific special permit is a candidate for regulatory action include: the safety record for transporting hazardous materials; transportation operations conducted under a special permit; the potential for broad application of a special permit; suitability of provisions in the special permit for incorporation into the HMR; rulemaking activity in related areas; and agency priorities.

In this ANPRM, PHMSA is considering incorporating three special permits relating to the transportation of compressed gases into the HMR. These special permits have a strong record of safety and incorporating them into the HMR will provide wider access to the benefits of their provisions, therefore fostering greater regulatory flexibility without compromising transportation safety.

Pressure Relief Devices (PRD)

Section 173.301(f)(2) of the HMR states that ''a pressure relief device, when installed, must be in communication with the vapor space of a cylinder containing a Division 2.1 (flammable gas material).'' Special Permit 13318 (SP–13318) authorizes the transportation in commerce of DOT specification 39 cylinders of 75 cubic inches or less volume, without the PRD in direct communication with the vapor space. A copy of this special permit can be viewed in the docket for this ANPRM. PHMSA is considering amending paragraph (f)(2) to state that this provision does not apply to cylinders of 75 cubic inches or less in volume filled with a liquefied petroleum gas or to cylinders installed with PRDs at both ends. This special permit was originally issued in 2003 subsequent to the publication of HM–

220D (67 FR 51625; August 8, 2002) and continues to allow a shipping practice that previously had been successfully used for over 40 years with an acceptable safety record. This amendment would eliminate the need for this special permit.

PHMSA is considering whether incorporating this special permit into the regulations is appropriate and seeks comment on the potential impacts of such incorporation.

Filling Limits for Carbon Dioxide and Nitrous Oxide

Section 173.304a(a)(2) provides the maximum permitted filling densities for various gases for shipment of liquefied compressed gases, including carbon dioxide and nitrous oxide, in specification cylinders. Special permit (SP–13599) authorizes a higher permitted filling density for carbon dioxide and nitrous oxide. The specifics of this issue, including the expected costs and benefits of this revision, are discussed above in Section III. A. entitled Petitions for Rulemaking, under the heading P–1560.

Pressure Relief Device Requirement for Export Cylinders

As currently stated in § 171.23(a)(4), a cylinder not manufactured, inspected and tested in accordance with Part 178 that is filled for export must be equipped with a pressure relief device. PHMSA issued SP–12929 to authorize the transportation of non-DOT and non-UN specification (i.e. foreign manufactured cylinders) to be filled in the United States and transported for export, without the PRD, provided specific conditions are met. These conditions include requiring: (1) The cylinder to meet the maximum filling density and service pressure requirements prescribed in the HMR, (2) the shipping paper include the notation ''DOT–SP 12929'' and a certification that the cylinder was retested and refilled in accordance with the requirements for export in the HMR and (3) the emergency response information indicate that the cylinders are not fitted with PRDs. A copy of this special permit can be viewed in the docket for this ANPRM.

In this ANPRM, we are considering incorporating the provisions of SP–12929 into the HMR. We solicit comments on the impacts, if any that adopting these provisions would have on import and export shipments of cylinders.

## IV. Regulatory Review and Analysis

### *A. Statutory/Legal Authority for This ANPRM*

This ANPRM is published under the authority of 49 U.S.C. 5103(b), which authorizes the Secretary to ''prescribe regulations for the safe transportation, including security, of hazardous material in intrastate, interstate, and foreign commerce.'' Section 5117(a) authorizes the Secretary of Transportation to issue a special permit exempting compliance with a regulation prescribed in §§ 5103(b), 5104, 5110, or 5112 ''to a person transporting, or causing to be transported, hazardous material in a way that achieves a safety level at least equal to the safety level required under [the Federal hazmat law], or consistent with the public interest * * * if a required safety level does not exist.'' The issues described in this ANPRM respond to ten outstanding petitions for rulemaking and would incorporate into the HMR three special permits with an established history of safety.

### *B. Executive Order 12866, Executive Order 13563 and DOT Regulatory Policies and Procedures*

This ANPRM is not considered a significant regulatory action under section 3(f) and was not reviewed by the Office of Management and Budget (OMB). The ANPRM is not considered a significant rule under the Regulatory Policies and Procedures order issued by the Department of Transportation [44 FR 11034].

Executive Order 13563 is ''supplemental to and reaffirms the principles, structures, and definitions governing regulatory review that were established in Executive Order 12866 of September 30, 1993.'' In addition, Executive Order 13563 specifically requires agencies to: (1) Involve the public in the regulatory process; (2) promote simplification and harmonization through interagency coordination; (3) ''identify and consider regulatory approaches that reduce burdens and maintain flexibility;'' (4) ensure the objectivity of any scientific or technological information used to support regulatory action; and (5) consider how to best promote retrospective analysis to modify, streamline, expand, or repeal existing rules that are outmoded, ineffective, insufficient, or excessively burdensome.

PHMSA has involved the public in the regulatory process in a variety of ways. First, in this ANPRM, PHMSA is addressing issues identified for possible future rulemaking in letters of interpretation and other correspondence submitted to PHMSA by the regulated community and other stakeholders. Overall, the issues discussed in this ANPRM promote the continued safe transportation of hazardous materials while producing a net benefit. PHMSA is responding to ten petitions for rulemaking submitted by the compressed gas industry in accordance with 49 CFR 106.95 and is considering incorporating the provisions of three special permits.

These petitions clarify the existing regulatory text in the HMR, incorporate widely-used industry publications and address specific safety concerns, thus enhancing the safe transportation of compressed gases while limiting the impact on the regulated community. Incorporating the provisions of special permits into regulations with general applicability will provide shippers and carriers with additional flexibility to comply with established safety requirements, thereby reducing burdens and costs and increasing productivity.

PHMSA requests public comments and feedback on these issues to help inform its determination in how to address the issues presented in this ANPRM.

### *C. Executive Order 13132*

E.O. 13132 requires agencies to assure meaningful and timely input by state and local officials in the development of regulatory policies that may 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. We invite state and local governments with an interest in the issues presented in this ANPRM to comment on the effect that adoption of specific proposals may have on state or local governments.

### *D. Executive Order 13175*

This ANPRM was analyzed in accordance with the principles and criteria contained in Executive Order 13175 entitled ''Consultation and Coordination with Indian Tribal Governments''. Because this ANPRM does not have tribal implications and does not impose substantial direct compliance costs on Indian tribal governments, the funding and consultation requirements of Executive Order 13175 do not apply, and a tribal summary impact statement is not required. We invite Indian tribal governments to provide comments on the effect that adoption of specific proposals may have on Indian communities.

*E. Regulatory Flexibility Act, Executive Order 13272, and DOT Procedures and Policies*

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires an agency to review regulations to assess their impact on small entities. An agency must conduct a regulatory flexibility analysis unless it determines and certifies that a rule is not expected to have a significant impact on a substantial number of small entities. The term ''small entities'' comprises small businesses and 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. 5 U.S.C. 601. Accordingly, DOT policy requires an analysis of the impact of all regulations on small entities, and mandates that agencies strive to lessen any adverse effects on these businesses. Section 603(b) of the Regulatory Flexibility Act requires an analysis of the possible impact of the proposed rule on small entities, including reasons for the proposed action, the objectives of the proposed rule, an estimate of the number of small entities affected and alternative proposals considered. Such analysis for this ANPRM is as follows:

*Need for the ANPRM.* Current requirements for the manufacture, use, and requalification of cylinders can be traced to standards first applied in the early 1900s. Over the years, the regulations have been revised to reflect advancements in transportation efficiency and changes in the national and international economic environment. This ANPRM is part of a retrospective analysis to modify and streamline existing requirements that are outmoded, ineffective, insufficient, or excessively burdensome.

*Description of action.* This ANPRM considers incorporating the provisions of three special permits, responds to ten petitions for rulemaking, considers clarifying other requirements in the HMR, and addresses areas of concern that are currently not addressed in the HMR. The amendments discussed in this ANPRM are designed to facilitate international transportation, increase flexibility for the regulated community and promote technological advancement while maintaining a comparable level of safety.

*Identification of potentially affected small entities.* The amendments considered here are likely to affect cylinder manufacturers (NAICS code 332420; approximately 568 companies), cylinder requalifiers, independent inspection agencies, and commercial establishments that own and use DOT specification cylinders and UN pressure receptacles, as well as individuals who export non-UN/ISO compressed gas cylinders (NAICS codes 32512, 336992, 423450, 423850, 423990, 454312, 541380). Nearly all of these companies, particularly cylinder requalification facilities (approximately 5000 companies), are small entities based on the criteria developed by the Small Business Administration.

*Reporting and recordkeeping requirements.* This ANPRM does not include any new reporting or recordkeeping requirements.

*Related Federal rules and regulations.* The Occupational Safety and Health Administration (OSHA) prescribes requirements for the use, maintenance, and testing of portable fire extinguishers in 29 CFR 1910.157 and requirements for fixed fire suppression systems in 29 CFR 1910.160. The issues discussed in this ANPRM pertaining to the transportation of fire extinguishers and compressed gas cylinders that are a component of a fixed fire suppression system do not conflict with the requirements in 29 CFR. With respect to the transportation of compressed gases in cylinders, there are no related rules or regulations issued by other departments or agencies of the Federal government.

*Alternate proposals for small business.* Certain regulatory actions may affect the competitive situation of an individual company or group of companies by imposing relatively greater burdens on small, rather than large, enterprises. PHMSA requests comments from small entities on the impacts of these additional requirements.

*Conclusion.* This ANPRM requests information on a series of questions which will be used to develop a proposal to amend provisions of the HMR addressing the manufacture, maintenance and use of cylinders. PHMSA anticipates that this ANPRM will generally reduce burdens for most persons and any costs resulting from adoption of new requirements will be offset by the benefits derived from elimination of the need to apply for special permits, increased regulatory flexibility, and the improved safety derived from enhanced compliance with the clarified portions of the HMR. Since there are no specific proposals in this ANPRM, there are no costs to be evaluated. If your business or organization is a small entity and if adoption of proposals contained in this ANPRM could have a significant economic impact on your operations, please submit a comment to explain how and to what extent your business or organization could be affected.

*F. Paperwork Reduction Act*

This ANPRM does not impose new information collection requirements. Depending on the results of our request for comments to this ANPRM, a decrease may result in the annual burden and costs under OMB proposed changes to incorporate provisions contained in certain widely used or longstanding special permits that have an established safety record.

PHMSA specifically requests comments on the information collection and recordkeeping burdens associated with developing, implementing, and maintaining these requirements for approval under this ANPRM.

Address written comments to the Dockets Unit as identified in the **ADDRESSES** section of this ANPRM. We must receive comments regarding information collection burdens prior to the close of the comment period identified in the **DATES** section of this ANPRM.

*G. Regulation Identifier Number (RIN)*

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

*H. Unfunded Mandates Reform Act of 1995*

This ANPRM does not impose unfunded mandates under the Unfunded Mandates Reform Act of 1995. It does not result in costs of $141.3 million or more to either state, local or tribal governments, in the aggregate, or to the private sector, and is the least burdensome alternative that achieves the objective of the rule. Further, in compliance with the Unfunded Mandates Reform Act of 1995, PHMSA will evaluate any regulatory action that might be proposed in subsequent stages of the proceeding to assess the effects on State, local, and tribal governments and the private sector.

*I. Environmental Assessment*

The National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321–4347), requires Federal agencies to consider the consequences of major Federal actions and prepare a detailed statement on actions that significantly affect the quality of the

human environment. The Council on Environmental Quality (CEQ) regulations require federal agencies to conduct an environmental review considering: (1) The need for the proposed action; (2) alternatives to the proposed action; (3) probable environmental impacts of the proposed action and alternatives; and (4) the agencies and persons consulted during the consideration process.

Description of Action

This ANPRM responds to ten petitions for rulemaking submitted by the regulated community and seeks comment on incorporating the provisions of three special permits. These issues discussed in this ANPRM would, if eventually adopted, update and expand the use of currently authorized industry consensus standards, revise the construction, marking and testing requirements of DOT–4 series cylinders, clarify the filling requirements for cylinders, discuss the handling of cylinders used in fire suppression systems, and revise the requalification and condemnation requirements for cylinders.

Amendments to the HMR discussed in this ANPRM:

- Replace the currently incorporated 7th edition of the Compressed Gas Association's (CGA) publication *C–6 Standards for Visual Inspection of Steel Compressed Gas Cylinders* with the revised 10th edition and update the appropriate references throughout the HMR.
- Revise the manufacturing requirements for certain DOT–4 series cylinders.
- Revise the requirements for the requalification of DOT specification cylinders by the volumetric expansion method found in Part 180 Subpart C.
- Allow the use of the labels described in the 8th edition of CGA's publication C–7 *Guide to the Preparation of Precautionary Labeling and Marking of Compressed Gas Containers* (currently incorporated by reference in the HMR) Appendix A on cylinders contained in overpacks.
- Require manufacturers to mark newly-manufactured cylinders suitable for the transport of liquefied compressed gas to be marked with the mass weight, tare weight and water capacity.
- Allow non-specification cylinders used in a fixed fire suppression system to be transported under the same exceptions as those provided for fire extinguishers.
- Increase maximum allowable filling density for carbon dioxide and nitrous oxide consistent with the UN Model Regulations.
- Permit use of the OVERPACK marking for cylinders packed in accordance with § 173.301(a)(9).
- Clarify filling limits for a liquefied compressed gas in a manifold or a multiple element gas container (MEGC).
- Harmonize the pressure relief device tolerances for DOT 39 cylinders transporting oxidizing gases by aircraft with the 12th edition of CGA's publication *S–1.1 Pressure Relief Device Standards—Part 1—Cylinders for Compressed Gases.*
- Incorporate into the HMR the requirements of DOT Special Permit (SP) 13318 that authorizes DOT specification 39 cylinders of 75 cubic inches or less volume to be transported without the pressure relief device being in direct communication with the vapor space of the cylinders.
- Clarify the requirements for filling non-specification cylinders for export or for use on board a vessel.

Alternatives Considered

Alternative (1): Do nothing

Our goal is to update, clarify and provide relief from certain existing regulatory requirements to promote safer transportation practices, eliminate unnecessary regulatory requirements, and facilitate international commerce. We rejected the do-nothing alternative.

Alternative (2): Publish an ANPRM seeking public comment on the issues raised in 10 petitions for rulemaking and the incorporation of 3 special permits. Subsequently, review the comments received on the amendments described in this ANPRM and their potential economic and safety implications. If deemed necessary, PHMSA will use these comments to craft more specific proposals which will be published in a notice of proposed rulemaking. This is the selected alternative.

Environmental Consequences

Hazardous materials are substances that may pose a threat to public safety or the environment during transportation because of their physical, chemical, or nuclear properties. The hazardous materials regulatory system is a risk management system that is prevention oriented and focused on identifying a safety hazard and reducing the probability and quantity of a hazardous material release. Hazardous materials are categorized by hazard analysis and experience into hazard classes and packing groups. The regulations require each shipper to classify a material in accordance with these hazard classes and packing groups. The process of classifying a hazardous material is itself a form of hazard analysis. Further, the regulations require the shipper to communicate a material's hazards through use of the hazard class, packing group, and proper shipping name on the shipping paper and the use of labels on packages and placards on transport vehicles. Thus, the shipping paper, labels, and placards communicate the most significant findings of the shipper's hazard analysis. A hazardous material is assigned to one of three packing groups based upon its degree of hazard, from a high hazard, Packing Group I to a low hazard, Packing Group III material. The quality, damage resistance, and performance standards of the packaging in each packing group are appropriate for the hazards of the material transported.

Under the HMR, hazardous materials are transported by aircraft, vessel, rail, and highway. The potential for environmental damage or contamination exists when packages of hazardous materials are involved in accidents or en route incidents resulting from cargo shifts, valve failures, package failures, loading, unloading, collisions, handling problems, or deliberate sabotage. The release of hazardous materials can cause the loss of ecological resources (e.g. wildlife habitats) and the contamination of air, aquatic environments, and soil. Contamination of soil can lead to the contamination of ground water. Compliance with the HMR substantially reduces the possibility of accidental release of hazardous materials. It is anticipated that the petitions and special permits discussed in this ANPRM, if adopted in a future rulemaking, would have minimal, if any, environmental consequences. PHMSA will more thoroughly examine the extent of the environmental impacts of the petitions and special permits discussed in this ANPRM should these issues be proposed in a future rulemaking.

Agencies Consulted

Occupational Safety and Health Administration;

National Institute of Standards and Technology;

U.S. Environmental Protection Agency.

Conclusion

PHMSA has conducted a technical review of the amendments discussed in this ANPRM and determined that the amendments considered would provide protection against overfilling and where a proposal would remove restrictions these revisions are based on sound

scientific methods and would not result in unusual stresses on the cylinder or adversely impact human health or the environment. PHMSA welcomes any data or information related to environmental impacts, both positive and negative, that may result from a future rulemaking addressing the issues discussed in this ANPRM.

*J. Privacy Act*

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78), or at *http://www.regulations.gov*.

*K. International Trade Analysis*

The Trade Agreements Act of 1979 (Pub. L. 96–39), as amended by the Uruguay Round Agreements Act (Pub. L. 103–465), prohibits Federal agencies from establishing any standards or engaging in related activities that create unnecessary obstacles to the foreign commerce of the United States. Pursuant to these Acts, the establishment of standards is not considered an unnecessary obstacle to the foreign commerce of the United States, so long as the standards have a legitimate domestic objective, such as the protection of safety, and do not operate in a manner that excludes imports that meet this objective. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards. PHMSA notes the purpose is to ensure the safety of the American public, and has assessed the effects of this ANPRM to ensure that it does not exclude imports that meet this objective. As a result, this ANPRM is not considered as creating an unnecessary obstacle to foreign commerce.

Issued in Washington, DC, under authority delegated in 49 CFR part 1.

**Magdy El-Sibaie,**

*Associate Administrator for Hazardous Materials Safety, Pipeline and Hazardous Materials Safety Administration.*

[FR Doc. 2012–12832 Filed 5–25–12; 8:45 am]

**BILLING CODE 4910–60–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### 50 CFR Part 635

**RIN 0648–BB29**

## Atlantic Highly Migratory Species; Atlantic Shark Management Measures

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

**ACTION:** Notice of intent to prepare an environmental impact statement; request for comments.

**SUMMARY:** The National Marine Fisheries Service is considering the inclusion of Gulf of Mexico blacktip sharks in an amendment to the 2006 Consolidated Highly Migratory Species Fishery Management Plan that is currently under development. This amendment process began in October 2011 to address the results of recent stock assessments for scalloped hammerhead, dusky, sandbar, and blacknose sharks. A new stock assessment is ongoing for Gulf of Mexico blacktip sharks, and is expected to be complete and available before the amendment process is completed. Therefore, we are considering including Gulf of Mexico blacktip sharks in the amendment to ensure any changes in the shark fisheries as a result of recent stock assessments are considered at the same time for public clarity and for administrative efficiency.

**DATES:** Comments must be received no later than 5 p.m., local time, on June 21, 2012.

**ADDRESSES:** You may submit comments on this document, identified by NOAA–NMFS–2011–0229, by any of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal eRulemaking Portal *www.regulations.gov.* To submit comments via the eRulemaking Portal, first click the ''submit a comment'' icon, then enter NOAA–NMFS–2011–0229 in the keyword search. Locate the document you wish to comment on from the resulting list and click on the ''Submit a Comment'' icon on the right of that line.
- *Mail:* Submit written comments to Peter Cooper, 1315 East-West Highway, Silver Spring, MD 20910. Please mark the outside of the envelope ''Comments on including Gulf of Mexico blacktip sharks in Amendment 5 to the Consolidated HMS FMP.''
- *Fax:* (301) 713–1917. Attn: Peter Cooper.

Comments must be submitted by one of the above methods to ensure that the comments are received, documented, and considered by the National Marine Fisheries Service. Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered. All comments received are a part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (*e.g.,* name, address, etc.) submitted voluntarily by the sender will be publicly accessible. Do not submit confidential business information, or otherwise sensitive or protected information. We will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word or Excel, WordPerfect, or Adobe PDF file formats only.

**FOR FURTHER INFORMATION CONTACT:** Karyl Brewster-Geisz or Peter Cooper at (301) 427–8503, or online at *http://www.nmfs.noaa.gov/sfa/hms/* or *http://www.sefsc.noaa.gov/sedar/Index.jsp.*

**SUPPLEMENTARY INFORMATION:** The Atlantic shark fisheries are managed under the authority of the Magnuson-Stevens Fishery Conservation and Management Act. The 2006 Consolidated Highly Migratory Species Fishery Management Plan is implemented by regulations at 50 CFR part 635.

The National Marine Fisheries Service published a notice of intent to prepare an Environmental Impact Statement as required by the National Environmental Policy Act to amend the fishery management plan on October 7, 2011(76 FR 62331). This amendment is designed to rebuild and/or end overfishing on several shark stocks that were determined to be overfished and/or have overfishing occurring. We anticipate completing this amendment and any related documents in April 2013.

In December 2011, the Southeast Data, Assessment and Review 29 stock assessment process for Gulf of Mexico blacktip sharks began. This process has included, among other things, a data and assessment workshop along with two assessment webinars that have been open to the public to attend. A third assessment webinar is expected in late May. According to the schedule of events for the assessment, the assessment should be completed in August 2012.

Therefore, we are expecting the final assessment results in early Fall 2012. Because final results of the assessment would be available in the Fall before the amendment is finalized in April 2013, we are considering adding Gulf of Mexico blacktip sharks to the amendment. We believe that this addition would facilitate administrative efficiency by optimizing our resources, and would allow us to address new scientific information in the most timely manner. This addition would also provide better clarity to and understanding by the public regarding any possible impacts of the rulemaking on shark fisheries by combining potential management measures resulting from recent shark stock assessments into one rulemaking.

Gulf of Mexico blacktip sharks are currently managed within the non-sandbar large coastal shark (LCS) complex and are caught in recreational and commercial fisheries targeting sharks. Commercial regulations for blacktip sharks include, but are not limited to, a trip limit of 33 non-sandbar LCS for directed shark permit holders and a trip limit of 3 non-sandbar LCS for incidental shark permit holders. Gulf of Mexico blacktip sharks are part of the non-sandbar LCS annual Gulf of Mexico quota of 390.5 mt dw, which is adjusted each year for any overharvest from past fishing years. Recreational regulations for blacktip sharks include, but are not limited to, retention limit of 1 shark per vessel per trip with a 4.5-ft (54-in) fork length minimum size.

We may consider adjusting or implementing management measures for Gulf of Mexico blacktip sharks in this amendment based on the results of the current stock assessment. These measures for Gulf of Mexico blacktip sharks could include, but are not limited to, implementing a specific commercial quota outside of the non-sandbar LCS quota, modifying commercial trip limits, and adjusting recreational retention limits.

We request comments regarding the addition of Gulf of Mexico blacktip sharks to the amendment. These comments will help determine if we should move forward with adding Gulf of Mexico blacktip sharks to the amendment.

**Authority:** 16 U.S.C. 1801 *et seq.*

Dated: May 22, 2012.

**Carrie Selberg,**

*Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

[FR Doc. 2012–12976 Filed 5–25–12; 8:45 am]

BILLING CODE 3510–22–P

# Notices

Federal Register
Vol. 77, No. 103
Tuesday, May 29, 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

May 23, 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.

**Farm Service Agency**

*Title:* Debt Settlement Policies and Procedures

*OMB Control Number:* 0560–0146

*Summary of Collection:* Debt Collection Improvement Act (DCIA) of 1996 and 4 CFR 102, Federal Claim Collection standard and other applicable regulation require each Federal agency to collect debts owed it, and to employ a cost effective and efficient procedures and methods to identify, report and collect debts. Provisions under the Federal Claims Collection Standards and the DCIA allow the debtor upon receiving a notification letter and unable to pay debt owed to the Federal Government in one lump sum, to forward a written request and financial statement to Farm Service Administration (FSA) and Commodity Credit Corporation (CCC) for establishing an agreed repayment plan in the promissory note using form CCC–279, *Promissory Note.*

*Need and Use of the Information:* FSA will collect information on the debtor's assets, liabilities, income and expenses when a debtor requests to enter into an installment agreement to settle their debt. Based on that information a determination can be made on whether the debtor can pay the debt in one lump sum or an installment is necessary. Without this financial information FSA/CCC would have no method of allowing debtor's to pay their debts in installments while still ensuring that the government's financial interests are protected.

*Description of Respondents:* Individuals or households.

*Number of Respondents:* 100.

*Frequency of Responses:* Reporting: On occasion.

*Total Burden Hours:* 200.

**Farm Service Agency**

*Title:* Assignments of Payments and Joint Payment Authorizations

*OMB Control Number:* 0560–0183.

*Summary of Collection:* The Soil Conservation and Domestic Allotment Act (16 U.S.C. 590h(g)) authorizes producers to assign, in writing, Farm Service Agency (FSA) conservation program payments. The statute requires that any such assignment be signed and witnessed. The Agricultural Act of 1949, as amended, extends that authority to Commodity Credit Corporation (CCC) programs, including rice, feed grains, cotton, and wheat. When the recipient of a FSA or CCC payment chooses to assign a payment to another party or have the payment made jointly with another party, the other party must be identified. FSA will collect information using forms CCC–36, CCC 37, CCC–251, CCC–252.

*Need and Use of the Information:* The information collected on the forms will be used by FSA employee in order to record the payment or contract being assigned, the amount of the assignment, the date, and the name and address of the assignee and the assignor. This is to enable FSA employee to pay the proper party when payments become due. FSA will also use the information to terminate joint payments at the request of both the producer and joint payee.

*Description of Respondent:* Individuals or households.

*Number of Respondents:* 211,826.

*Frequency of Responses:* Reporting; On occasion.

*Total Burden Hours:* 35,266.

**Ruth Brown,**

*Departmental Information Collection Clearance Officer.*

[FR Doc. 2012–12984 Filed 5–25–12; 8:45 am]

BILLING CODE 3410–05–P

## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

**[Docket No. APHIS–2012–0040]**

### Notice of Availability of a Treatment Evaluation Document; Methyl Bromide Fumigation of Cottonseed

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Notice.

**SUMMARY:** We are advising the public that we have determined that it is necessary to immediately add to the Plant Protection and Quarantine Treatment Manual a treatment schedule for methyl bromide fumigation of cottonseed for the fungal plant pathogen *Fusarium oxysporum* f. sp. *vasinfectum* (FOV). We have prepared a treatment evaluation document that describes the new treatment schedule and explains why we have determined that it is

effective at neutralizing FOV, certain strains of which are quarantine pests. We are making the treatment evaluation document available to the public for review and comment.

**DATES:** We will consider all comments that we receive on or before July 30, 2012.

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

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov/#!documentDetail;D=APHIS-2012-0040-0001.*
- *Postal Mail/Commercial Delivery:* Send your comment to Docket No. APHIS–2012–0040, 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-2012-0040* 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:** Mr. Marc Phillips, Import Specialist, Regulatory Coordination and Compliance, PPQ, APHIS, 4700 River Road Unit 156, Riverdale, MD 20737; (301) 851–2114.

**SUPPLEMENTARY INFORMATION:**

## Background

The regulations in 7 CFR chapter III are intended, among other things, to prevent the introduction or dissemination of plant pests and noxious weeds into or within the United States. Under the regulations, certain plants, fruits, vegetables, and other articles must be treated before they may be moved into the United States or interstate. The phytosanitary treatments regulations contained in part 305 of 7 CFR chapter III (referred to below as the regulations) set out standards for treatments required in parts 301, 318, and 319 of 7 CFR chapter III for fruits, vegetables, and other articles.

In § 305.2, paragraph (b) states that approved treatment schedules are set out in the Plant Protection and Quarantine (PPQ) Treatment Manual.[1] Section 305.3 sets out a process for adding, revising, or removing treatment schedules in the PPQ Treatment Manual. In that section, paragraph (b) sets out the process for adding, revising, or removing treatment schedules when there is an immediate need to make a change. The circumstances in which an immediate need exists are described in § 305.3(b)(1). They are:

- PPQ has determined that an approved treatment schedule is ineffective at neutralizing the targeted plant pest(s).
- PPQ has determined that, in order to neutralize the targeted plant pest(s), the treatment schedule must be administered using a different process than was previously used.
- PPQ has determined that a new treatment schedule is effective, based on efficacy data, and that ongoing trade in a commodity or commodities may be adversely impacted unless the new treatment schedule is approved for use.
- The use of a treatment schedule is no longer authorized by EPA or by any other Federal entity.

We have determined a new methyl bromide fumigation treatment schedule to neutralize the fungal pathogen *Fusarium oxysporum* f. sp. *vasinfectum* (FOV) on cottonseed (*Gossypium* spp.) is effective, and we have determined that ongoing trade in cottonseed will be adversely impacted unless the new treatment schedule is approved for use.

Certain strains of FOV are present in Australia and not in the United States—specifically FOV vegetative compatibility groups (VCG) 01111 and 01112. These strains are quarantine pests and could have significant impacts on U.S. cotton production. They are currently found only in Australia. Fumigation with methyl bromide was the only approved treatment for FOV VCG 01111 and 01112, so when the Environmental Protection Agency (EPA) canceled the tolerance for methyl bromide on cottonseed, trade ceased.

However, in a proposed rule published in the **Federal Register** on April 6, 2012 (77 FR 20752–20756), EPA proposed to reinstate the tolerance of methyl bromide on cottonseed, which would allow trade with Australia to resume if an effective treatment schedule is added to the PPQ Treatment Manual. It is important to resume trade in cottonseed with Australia as soon as possible because fumigated cottonseed can be used as animal feed, and the supply of domestic animal feed has been hurt by recent droughts in cotton-growing regions of the United States. In addition, while FOV VCG 01111 and 01112 are currently found only in Australia, this treatment will also be available should those VCG be found in other countries that wish to export cottonseed to the United States.

Therefore, in accordance with paragraph (b)(2) of § 305.3, we are adding the new methyl bromide fumigation treatment for cottonseed to the PPQ Treatment Manual as T301–e. This treatment schedule will be listed in a separate section of the PPQ Treatment Manual, which will indicate that T301–e was added through the immediate process described in paragraph (b) of § 305.3 and that it is subject to change or removal based on public comment. Although we expect that EPA will finalize the proposed rule to reinstate the tolerance soon, the tolerance is not currently established, meaning that this treatment schedule will not be authorized for use until the EPA proposal is finalized.

Our determination that the new treatment schedule T301–e is effective is presented in a treatment evaluation document we have prepared to support this action. The treatment evaluation document 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 paper copies of the treatment evaluation document by calling or writing to the person listed under **FOR FURTHER INFORMATION CONTACT**. Please refer to the subject of the treatment evaluation document when requesting copies.

After reviewing the comments we receive, we will announce our decision regarding the new treatment schedule that is described in the treatment evaluation document in a subsequent notice, in accordance with paragraph (b)(3) of § 305.3. If we do not receive any comments, or the comments we receive do not change our determination that the treatment is effective, we will affirm the treatment schedule's addition to the PPQ Treatment Manual and make available a new version of the PPQ Treatment Manual in which T301–e is listed in the main body of the PPQ Treatment Manual. If we receive comments that cause us to determine that T301–e needs to be changed or removed, we will make available a new version of the PPQ Treatment Manual that reflects changes to or the removal of T301–e.

**Authority:** 7 U.S.C. 7701–7772 and 7781–7786; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.3.

[1] The Treatment Manual is available on the Internet at *http://www.aphis.usda.gov/import_export/plants/manuals/index.shtml* or by contacting the Animal and Plant Health Inspection Service, Plant Protection and Quarantine, Manuals Unit, 92 Thomas Johnson Drive, Suite 200, Frederick, MD 21702.

Done in Washington, DC, this 23rd day of May 2012.

**Kevin Shea,**

*Acting Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. 2012–13016 Filed 5–25–12; 8:45 am]

**BILLING CODE 3410–34–P**

## DEPARTMENT OF AGRICULTURE

### Forest Service

### Notice of Meeting; Federal Lands Recreation Enhancement Act

**AGENCY:** Rocky Mountain Region, Forest Service, USDA.

**ACTION:** Notice of Meeting.

**SUMMARY:** The Colorado Recreation Resource Advisory Committee will tentatively meet in Colorado Springs, CO. The purpose of the meeting is to continue to provide new members with the information they need to be effective committee members; to elect a Chair and Vice-Chair; and to review proposals for fee changes and new fee projects. These fee proposals will tentatively include two new cabin rentals, a new fee at the Buckeye Group Site, fee changes to Green Mountain Reservoir and the elimination of fees at Cataract Lake. There will also be an update of changes at the Mt. Evans fee site. Proposals can be found at *http://www.fs.usda.gov/goto/r2/rac-colorado.*

**DATES:** The meeting will be held June 12, 2012 from 9 a.m.–5 p.m. and June 13 from 8 a.m.–1:00 p.m. or when adjourned. This meeting will only be held if a quorum is present.

**ADDRESSES:** The meeting will be at the Clarion Hotel and Conference Center, 314 West Bijou Street, Colorado Springs, CO in the Bordeaux Room. Send written comments to Rick Cooksey, Designated Federal Officer, 2468 Jackson Street, Laramie, WY 82070 or *rcooksey@fs.fed.us.*

**FOR FURTHER INFORMATION CONTACT:** Jane Leche, Colorado Recreation Resource Advisory Committee Coordinator, at 303–275–5349 or *jleche@fs.fed.us.*

**SUPPLEMENTARY INFORMATION:** The meeting is open to the public. Committee discussion is limited to Forest Service staff and Committee members. However, persons who wish to bring recreation fee matters to the attention of the Committee may file written statements with the Committee staff before or after the meeting. A public input session will be provided and individuals who made written requests by May 29, 2012 will have the opportunity to address the Committee at the meeting.

Meeting agenda and status can be found at: *http://www.fs.usda.gov/goto/r2/rac-colorado.*

The Recreation RAC is authorized by the Federal Land Recreation Enhancement Act, which was signed into law by President Bush in December 2004.

Dated: May 18, 2012.

**Maribeth Gustafson,**

*Deputy Regional Forester, Operations, Rocky Mountain Region.*

[FR Doc. 2012–12731 Filed 5–25–12; 8:45 am]

**BILLING CODE 3410–11–M**

## DEPARTMENT OF COMMERCE

### U.S. Census Bureau

### Proposed Information Collection; Comment Request; 2012 Survey of Business Owners and Self-Employed Persons (SBO)

**AGENCY:** U.S. Census Bureau, Commerce.

**ACTION:** Notice.

**SUMMARY:** The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

**DATES:** To ensure consideration, written comments must be submitted on or before July 30, 2012.

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

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Katherine Russell, U.S. Census Bureau, CSD, 6K280A, Washington, DC 20233–6400, (301) 763–7094, *katherine.russell@census.gov.*

**SUPPLEMENTARY INFORMATION:**

#### I. Abstract

The Census Bureau plans to conduct the 2012 Survey of Business Owners and Self-Employed Persons (SBO). In the SBO, businesses are asked several questions about their business as well as several questions about the gender, ethnicity, race, and veteran status of the principal owner(s). This survey provides the only comprehensive, regularly collected source of information on the characteristics of U.S. businesses by ownership category, i.e., by gender, ethnicity, race, and veteran status. The survey is conducted as part of the economic census program. The economic census is required by law to be taken every 5 years under Title 13 of the United States Code, Sections 131, 193, and 224.

Businesses which reported any business activity on any one of the following Internal Revenue Service tax forms will be eligible for selection: 1040 (Schedule C), ''Profit or Loss from Business (Sole Proprietorship); 1065, U.S. Return of Partnership Income; 941, ''Employer's Quarterly Federal Tax Return''; 944, ''Employer's Annual Federal Tax Return''; or any one of the 1120 corporate tax forms.

The Survey of Business Owners was last conducted in 2007 as part of the 2007 Economic Census. The following changes have been made to the 2012 SBO:

- To reduce the SBO sample size, mailing and processing costs, and respondent burden, the Census Bureau is expanding its use of direct data substitution from existing data sources.
- Select businesses will be mailed the new 2012 SBO–2 short form with 39 fewer questions to answer than the 2012 SBO–1 long form.
- Spanish versions of the SBO–1 and the SBO–2 forms will be available upon request.
- The first eight questions from the 2007 SBO–1 form have been reorganized into three questions on the 2012 SBO–1 and SBO–2 forms to improve navigation through the form.
- The veteran question has been revised and expanded to collect information on whether the veteran was service-disabled, served on active duty or as a reservist during the survey year, served on active duty at any time, and served on active duty after September 11, 2001. The revised and expanded wording for the veteran categories and the collection of the additional service characteristics reflects input received during consultations with many leaders in the veteran community. Input was received from, among others, the Department of Defense, the Veterans Administration, the Bureau of Labor Statistics, the U.S. House of Representatives Committee on Veterans' Affairs, the Senate Committee on Veterans' Affairs, the Small Business Administration, the American Legion, VET-Force, and AMVETS.
- Interest from researchers on the possible correlation between intellectual

property rights and business success led to the addition of a question on whether the business owned a copyright, trademark, granted patent, or pending patent.

We received separate clearance from the Office of Management and Budget (OMB) to test our proposed 2012 SBO questionnaire. We intend to conduct interviews with 83 businesses in three rounds. Cognitive interviews began in November 2011 and will continue through June 2012. Upon completion of each round of interviews, the interview team meets and decides on the recommended changes to the form. The form is revised after each round and the interview protocol is updated to reflect the new version of the form. The third round of testing is continuing as we submit this presubmission notice.

**II. Method of Collection**

The Census Bureau will primarily use a mailout/mailback survey form to collect the data. Electronic reporting will be available for the return of both the SBO–1 and SBO–2 forms. The Spanish versions of these forms will only be available in paper format upon request. The questionnaires will be mailed from our National Processing Center in Jeffersonville, Indiana. Two mail follow-ups to nonrespondents will be conducted at approximately one-month intervals.

**III. Data**

*OMB Control Number:* 0607–0943.

*Form Number:* SBO–1, 2012 Survey of Business Owners and Self-Employed Persons; SBO–2, 2012 Survey of Business Owners and Self-Employed Persons (short version); SBO–1S, 2012 Survey of Business Owners and Self-Employed Persons (Spanish version of the long form); SBO–2S, 2012 Survey of Business Owners and Self-Employed Persons (Spanish version of the short form).

*Type of Review:* Regular submission.

*Affected Public:* Large and small businesses.

*Estimated Number of Respondents:* 1.75 million—half will receive the long form and half will receive the short form.

*Estimated Time per Response:* 12 minutes for the SBO–1 and 8 minutes for the SBO–2.

*Estimated Total Annual Burden Hours:* 291,667.

*Estimated Total Annual Cost:* $8,814,177.

*Respondent's Obligation:* Mandatory.

*Legal Authority:* Title 13, United States Code, Sections 131, 193, and 224.

**IV. Request for Comments**

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

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

Dated: May 23, 2012.

**Glenna Mickelson,**

*Management Analyst, Office of the Chief Information Officer.*

[FR Doc. 2012–12909 Filed 5–25–12; 8:45 am]

BILLING CODE 3510–07–P

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## DEPARTMENT OF COMMERCE

### Economic Development Administration

### The National Advisory Council on Innovation and Entrepreneurship; Meeting of the National Advisory Council on Innovation and Entrepreneurship

**AGENCY:** U.S. Department of Commerce.

**ACTION:** Notice of an open meeting.

**SUMMARY:** The National Advisory Council on Innovation and Entrepreneurship will hold a meeting on Tuesday, June 12, 2012. The open meeting will be held from 10:00 a.m.–2:00 p.m. and will be open to the public via conference call. The meeting will take place at the U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230. The Council was chartered on November 10, 2009 to advise the Secretary of Commerce on matter related to innovation and entrepreneurship in the United States.

**DATES:** June 12, 2012.

*Time:* 10:00 a.m.–2:00 p.m. (EST).

**ADDRESSES:** U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230. Please specify if any specific requests for participation five business days in advance. Last minute requests will be accepted, but may be impossible to complete.

**SUPPLEMENTARY INFORMATION:** The purpose of the meeting is to discuss the latest initiatives by the Administration and the Secretary of Commerce on the issues of innovation, entrepreneurship and commercialization. The meeting will also discuss efforts by the U.S. Department of Commerce around manufacturing, exports and investment. Specific topics for discussion include manufacturing, investment, exports, innovation commercialization, entrepreneurship, federal programs for commercialization and technology transfer. The final agenda will be posted on the U.S. Department of Commerce Web site at *www.commerce.gov.* Any member of the public may submit pertinent questions and comments concerning the Council's affairs at any time before or after the meeting. Comments may be submitted to the Office of Innovation and Entrepreneurship at the contact information below. Copies of the meeting minutes will be available within 90 days.

**FOR FURTHER INFORMATION CONTACT:** Nish Acharya, Office of Innovation and Entrepreneurship, Room 7019, 1401 Constitution Avenue, Washington, DC 20230; telephone: 202–482–4068; fax: 202–273–4781. Please reference ''NACIE June 12, 2012'' in the subject line of your fax.

Dated: May 23, 2012.

**Nish Acharya,**

*Director, Office of Innovation & Entrepreneurship, U.S. Department of Commerce.*

[FR Doc. 2012–12983 Filed 5–25–12; 8:45 am]

BILLING CODE 3510–03–P

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## DEPARTMENT OF COMMERCE

### Bureau of Industry and Security

### Regulations and Procedures Technical Advisory Committee; Notice of Partially Closed Meeting

The Regulations and Procedures Technical Advisory Committee (RPTAC) will meet June 12, 2012, 9:00 a.m., Room 3884, in the Herbert C. Hoover Building, 14th Street between Constitution and Pennsylvania Avenues NW., Washington, DC. The Committee advises the Office of the Assistant Secretary for Export Administration on implementation of the Export Administration Regulations (EAR) and provides for continuing review to update the EAR as needed.

**Agenda**

*Public Session*

1. Opening remarks by the Chairman.

2. Opening remarks by Bureau of Industry and Security.

3. Export Enforcement update.

4. Regulations update.

5. Working group reports.

6. Automated Export System (AES) update.

7. Presentation of papers or comments by the Public.

*Closed Session*

8. Discussion of matters determined to be exempt from the provisions relating to public meetings found in 5 U.S.C. app. 2 10(a)(1) and 10(a)(3).

The open session will be accessible via teleconference to 25 participants on a first come, first serve basis. To join the conference, submit inquiries to Ms. Yvette Springer at *Yvette.Springer@bis.doc.gov* no later than June 5, 2012.

A limited number of seats will be available for the public session. Reservations are not accepted. To the extent that time permits, members of the public may present oral statements to the Committee. The public may submit written statements at any time before or after the meeting. However, to facilitate the distribution of public presentation materials to the Committee members, the Committee suggests that presenters forward the public presentation materials prior to the meeting to Ms. Springer via email.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on January 11, 2012, pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. app. 2 § (10)(d)), that the portion of the meeting dealing with pre-decisional changes to the Commerce Control List and U.S. export control policies shall be exempt from the provisions relating to public meetings found in 5 U.S.C. app. 2 10(a)(1) and 10(a)(3). The remaining portions of the meeting will be open to the public.

For more information, call Yvette Springer at (202) 482–2813.

Dated: May 23, 2012.

**Yvette Springer,**

*Committee Liaison Officer.*

[FR Doc. 2012–12936 Filed 5–25–12; 8:45 am]

**BILLING CODE 3510–JT–P**

## DEPARTMENT OF COMMERCE

### International Trade Administration

### Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**SUMMARY:** The Department of Commerce (''the Department'') has received requests to conduct administrative reviews of various antidumping and countervailing duty orders and findings with April anniversary dates. In accordance with the Department's regulations, we are initiating those administrative reviews. The Department also received requests to revoke two antidumping duty orders in part.

**DATES:** *Effective Date:* May 29, 2012.

**FOR FURTHER INFORMATION CONTACT:** Brenda E. Waters, Office of AD/CVD Operations, Customs Unit, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230, telephone: (202) 482–4735.

**SUPPLEMENTARY INFORMATION:**

**Background**

The Department has received timely requests, in accordance with 19 CFR 351.213(b), for administrative reviews of various antidumping and countervailing duty orders and findings with April anniversary dates. The Department also received a timely request to revoke in part the antidumping duty orders on 1-hydroxyethylidene-1, 1-diphosphonic acid (''HEDP'') from India for one exporter, and on certain steel threaded rod from the People's Republic of China with respect to one exporter.

All deadlines for the submission of various types of information, certifications, or comments or actions by the Department discussed below refer to the number of calendar days from the applicable starting time.

**Notice of No Sales**

If a producer or exporter named in this notice of initiation had no exports, sales, or entries during the period of review (''POR''), it must notify the Department within 60 days of publication of this notice in the **Federal Register**. All submissions must be filed electronically at *http://iaaccess.trade.gov* in accordance with 19 CFR 351.303. *See Antidumping and Countervailing Duty Proceedings: Electronic Filing Procedures; Administrative Protective Order Procedures,* 76 FR 39263 (July 6, 2011). Such submissions are subject to verification in accordance with section 782(i) of the Tariff Act of 1930, as amended (''Act''). Further, in accordance with 19 CFR 351.303(f)(3)(ii), a copy of each request must be served on the petitioner and each exporter or producer specified in the request.

**Respondent Selection**

In the event the Department limits the number of respondents for individual examination for administrative reviews, the Department intends to select respondents based on U.S. Customs and Border Protection (''CBP'') data for U.S. imports during the POR. We intend to release the CBP data under Administrative Protective Order (''APO'') to all parties having an APO within seven days of publication of this initiation notice and to make our decision regarding respondent selection within 21 days of publication of this **Federal Register** notice. The Department invites comments regarding the CBP data and respondent selection within five days of placement of the CBP data on the record of the applicable review.

In the event the Department decides it is necessary to limit individual examination of respondents and conduct respondent selection under section 777A(c)(2) of the Act:

In general, the Department has found that determinations concerning whether particular companies should be ''collapsed'' (*i.e.,* treated as a single entity for purposes of calculating antidumping duty rates) require a substantial amount of detailed information and analysis, which often require follow-up questions and analysis. Accordingly, the Department will not conduct collapsing analyses at the respondent selection phase of this review and will not collapse companies at the respondent selection phase unless there has been a determination to collapse certain companies in a previous segment of this antidumping proceeding (*i.e.,* investigation, administrative review, new shipper review or changed circumstances review). For any company subject to this review, if the Department determined, or continued to treat, that company as collapsed with others, the Department will assume that such companies continue to operate in the same manner and will collapse them for respondent selection purposes. Otherwise, the Department will not collapse companies for purposes of respondent selection. Parties are requested to (a) identify which companies subject to review

previously were collapsed, and (b) provide a citation to the proceeding in which they were collapsed. Further, if companies are requested to complete the Quantity and Value Questionnaire for purposes of respondent selection, in general each company must report volume and value data separately for itself. Parties should not include data for any other party, even if they believe they should be treated as a single entity with that other party. If a company was collapsed with another company or companies in the most recently completed segment of this proceeding where the Department considered collapsing that entity, complete quantity and value data for that collapsed entity must be submitted.

**Deadline for Withdrawal of Request for Administrative Review**

Pursuant to 19 CFR 351.213(d)(1), a party that has requested a review may withdraw that request within 90 days of the date of publication of the notice of initiation of the requested review. The regulation provides that the Department may extend this time if it is reasonable to do so. In order to provide parties additional certainty with respect to when the Department will exercise its discretion to extend this 90-day deadline, interested parties are advised that, with regard to reviews requested on the basis of anniversary months on or after August 2011, the Department does not intend to extend the 90-day deadline unless the requestor demonstrates that an extraordinary circumstance has prevented it from submitting a timely withdrawal request. Determinations by the Department to extend the 90-day deadline will be made on a case-by-case basis.

**Separate Rates**

In proceedings involving non-market economy (''NME'') countries, the Department begins with a rebuttable presumption that all companies within the country are subject to government control and, thus, should be assigned a single antidumping duty deposit rate. It is the Department's policy to assign all exporters of merchandise subject to an administrative review in an NME country this single rate unless an exporter can demonstrate that it is sufficiently independent so as to be entitled to a separate rate.

To establish whether a firm is sufficiently independent from government control of its export activities to be entitled to a separate rate, the Department analyzes each entity exporting the subject merchandise under a test arising from the *Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China,* 56 FR 20588 (May 6, 1991), as amplified by *Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China,* 59 FR 22585 (May 2, 1994). In accordance with the separate rates criteria, the Department assigns separate rates to companies in NME cases only if respondents can demonstrate the absence of both *de jure* and *de facto* government control over export activities.

All firms listed below that wish to qualify for separate rate status in the administrative reviews involving NME countries must complete, as appropriate, either a separate rate application or certification, as described below. For these administrative reviews, in order to demonstrate separate rate eligibility, the Department requires entities for whom a review was requested, that were assigned a separate rate in the most recent segment of this proceeding in which they participated, to certify that they continue to meet the criteria for obtaining a separate rate. The Separate Rate Certification form will be available on the Department's Web site at *http://www.trade.gov/ia* on the date of publication of this **Federal Register** notice. In responding to the certification, please follow the ''Instructions for Filing the Certification'' in the Separate Rate Certification. Separate Rate Certifications are due to the Department no later than 60 calendar days after publication of this **Federal Register** notice. The deadline and requirement for submitting a Certification applies equally to NME-owned firms, wholly foreign-owned firms, and foreign sellers who purchase and export subject merchandise to the United States.

Entities that currently do not have a separate rate from a completed segment of the proceeding [1] should timely file a Separate Rate Application to demonstrate eligibility for a separate rate in this proceeding. In addition, companies that received a separate rate in a completed segment of the proceeding that have subsequently made changes, including, but not limited to, changes to corporate structure, acquisitions of new companies or facilities, or changes to their official company name,[2] should timely file a Separate Rate Application to demonstrate eligibility for a separate rate in this proceeding. The Separate Rate Status Application will be available on the Department's Web site at *http://www.trade.gov/ia* on the date of publication of this **Federal Register** notice. In responding to the Separate Rate Status Application, refer to the instructions contained in the application. Separate Rate Status Applications are due to the Department no later than 60 calendar days of publication of this **Federal Register** notice. The deadline and requirement for submitting a Separate Rate Status Application applies equally to NME-owned firms, wholly foreign-owned firms, and foreign sellers that purchase and export subject merchandise to the United States.

For exporters and producers who submit a separate-rate status application or certification and subsequently are selected as mandatory respondents, these exporters and producers will no longer be eligible for separate rate status unless they respond to all parts of the questionnaire as mandatory respondents.

**Initiation of Reviews**

In accordance with 19 CFR 351.221(c)(1)(i), we are initiating administrative reviews of the following antidumping and countervailing duty orders and findings. We intend to issue the final results of these reviews not later than April 30, 2013.

| Antidumping duty proceedings | Period to be reviewed |
|---|---|
| INDIA: 1-Hydroxyethylidene-1, 1-Diphosphonic Acid (HEDP) A–533–847 | 4/1/11–3/31/12 |
| Aquapharm Chemicals Pvt., Ltd. | |
| RUSSIA: Ammonium Nitrate A–821–811 | 5/2/11–3/31/12 |

[1] Such entities include entities that have not participated in the proceeding, entities that were preliminarily granted a separate rate in any currently incomplete segment of the proceeding (*e.g.,* an ongoing administrative review, new shipper review, *etc.*) and entities that lost their separate rate in the most recently complete segment of the proceeding in which they participated.

[2] Only changes to the official company name, rather than trade names, need to be addressed via a Separate Rate Application. Information regarding new trade names may be submitted via a Separate Rate Certification.

| Antidumping duty proceedings | Period to be reviewed |
|---|---|
| JSC Acron. | |
| MCC EuroChem. | |
| TAIWAN: Polyvinyl Alcohol [3] A–583–841 | 9/13/10–2/29/12 |
| THE PEOPLE'S REPUBLIC OF CHINA: Certain Activated Carbon [4] A–570–904 | 4/1/11–3/31/12 |
| AmeriAsia Advanced Activated Carbon Products Co., Ltd. | |
| Anhui Handfull International Trading (Group) Co., Ltd. | |
| Anhui Hengyuan Trade Co. Ltd. | |
| Anyang Sino-Shon International Trading Co., Ltd. | |
| Baoding Activated Carbon Factory. | |
| Beijing Broad Activated Carbon Co., Ltd. | |
| Beijing Haijian Jiechang Environmental Protection Chemicals. | |
| Beijing Hibridge Trading Co., Ltd. | |
| Beijing Pacific Activated Carbon Products Co., Ltd. | |
| Bengbu Jiutong Trade Co. Ltd. | |
| Calgon Carbon (Tianjin) Co., Ltd. | |
| Changji Hongke Activated Carbon Co., Ltd. | |
| Chengde Jiayu Activated Carbon Factory. | |
| Cherishmet Incorporated. | |
| China National Building Materials and Equipment Import and Export Corp.. | |
| China National Nuclear General Company Ningxia Activated Carbon Factory. | |
| China Nuclear Ningxia Activated Carbon Plant. | |
| Da Neng Zheng Da Activated Carbon Co., Ltd. | |
| Datong Carbon Corporation. | |
| Datong Changtai Activated Carbon Co., Ltd. | |
| Datong City Zuoyun County Activated Carbon Co., Ltd. | |
| Datong Fenghua Activated Carbon. | |
| Datong Forward Activated Carbon Co., Ltd. | |
| Datong Fuping Activated Carbon Co. Ltd. | |
| Datong Guanghua Activated Co., Ltd. | |
| Datong Hongtai Activated Carbon Co., Ltd. | |
| Datong Huanqing Activated Carbon Co., Ltd. | |
| Datong Huaxin Activated Carbon. | |
| Datong Huibao Active Carbon Co., Ltd. | |
| Datong Huibao Activated Carbon Co., Ltd. | |
| Datong Huiyuan Cooperative Activated Carbon Plant. | |
| Datong Juqiang Activated Carbon Co., Ltd. | |
| Datong Kaneng Carbon Co. Ltd. | |
| Datong Locomotive Coal & Chemicals Co., Ltd. | |
| Datong Municipal Yunguang Activated Carbon Co., Ltd. | |
| Datong Tianzhao Activated Carbon Co., Ltd. | |
| DaTong Tri-Star & Power Carbon Plant. | |
| Datong Weidu Activated Carbon Co., Ltd. | |
| Datong Xuanyang Activated Carbon Co., Ltd. | |
| Datong Zuoyun Biyun Activated Carbon Co., Ltd. | |
| Datong Zuoyun Fu Ping Activated Carbon Co., Ltd. | |
| Dezhou Jiayu Activated Carbon Factory. | |
| Dongguan Baofu Activated Carbon. | |
| Dongguan SYS Hitek Co., Ltd. | |
| Dushanzi Chemical Factory. | |
| Fu Yuan Activated Carbon Co., Ltd. | |
| Fujian Jianyang Carbon Plant. | |
| Fujian Nanping Yuanli Activated Carbon Co., Ltd. | |
| Fujian Yuanli Active Carbon Co., Ltd. | |
| Fuzhou Taking Chemical. | |
| Fuzhou Yihuan Carbon. | |
| Great Bright Industrial. | |
| Hangzhou Hengxing Activated Carbon. | |
| Hangzhou Hengxing Activated Carbon Co., Ltd. | |
| Hangzhou Linan Tianbo Material (HSLATB). | |
| Hangzhou Nature Technology. | |
| Hebei Foreign Trade and Advertising Corporation. | |
| Hebei Shenglun Import & Export Group Company. | |
| Hegongye Ninxia Activated Carbon Factory. | |
| Heilongjiang Provincial Hechang Import & Export Co., Ltd. | |
| Hongke Activated Carbon Co., Ltd. | |
| Huaibei Environment Protection Material Plant. | |
| Huairen Huanyu Purification Material Co., Ltd. | |
| Huairen Jinbei Chemical Co., Ltd. | |
| Huaiyushan Activated Carbon Group. | |
| Huatai Activated Carbon. | |
| Huzhou Zhonglin Activated Carbon. | |
| Inner Mongolia Taixi Coal Chemical Industry Limited Company. | |
| Itigi Corp. Ltd. | |

| Antidumping duty proceedings | Period to be reviewed |
|---|---|
| J&D Activated Carbon Filter Co. Ltd. | |
| Jacobi Carbons AB. | |
| Jacobi Carbons, Inc.. | |
| Jacobi Carbons Industry (Tianjin). | |
| Jiangle County Xinhua Activated Carbon Co., Ltd. | |
| Jiangsu Taixing Yixin Activated Carbon Technology Co., Ltd. | |
| Jiangxi Hanson Import Export Co.. | |
| Jiangxi Huaiyushan Activated Carbon. | |
| Jiangxi Huaiyushan Activated Carbon Group Co.. | |
| Jiangxi Huaiyushan Suntar Active Carbon Co., Ltd. | |
| Jiangxi Jinma Carbon. | |
| Jianou Zhixing Activated Carbon. | |
| Jiaocheng Xinxin Purification Material Co., Ltd. | |
| Jilin Bright Future Chemical Company, Ltd. | |
| Jilin Province Bright Future Industry and Commerce Co., Ltd. | |
| Jing Mao (Dongguan) Activated Carbon Co., Ltd. | |
| Kaihua Xingda Chemical Co., Ltd. | |
| Kemflo (Nanjing) Environmental Tech. | |
| Keyun Shipping (Tianjin) Agency Co., Ltd. | |
| Kunshan Actview Carbon Technology Co., Ltd. | |
| Langfang Winfield Filtration Co.. | |
| Link Shipping Limited. | |
| Longyan Wanan Activated Carbon. | |
| Mindong Lianyi Group. | |
| Nanjing Mulinsen Charcoal. | |
| Nantong Ameriasia Advanced Activated Carbon Product Co., Ltd. | |
| Ningxia Baota Activated Carbon Co., Ltd. | |
| Ningxia Baota Active Carbon Plant. | |
| Ningxia Guanghua A/C Co., Ltd. | |
| Ningxia Blue-White-Black Activated Carbon (BWB). | |
| Ningxia Fengyuan Activated Carbon Co., Ltd. | |
| Ningxia Guanghua Activated Carbon Co., Ltd. | |
| Ningxia Guanghua Chemical Activated Carbon Co., Ltd. | |
| Ningxia Guanghua Cherishmet Activated Carbon Co., Ltd. | |
| Ningxia Haoqing Activated Carbon Co., Ltd. | |
| Ningxia Henghui Activated Carbon. | |
| Ningxia Honghua Carbon Industrial Corporation. | |
| Ningxia Huahui Activated Carbon Co., Ltd. | |
| Ningxia Huinong Xingsheng Activated Carbon Co., Ltd. | |
| Ningxia Jirui Activated Carbon. | |
| Ningxia Lingzhou Foreign Trade Co., Ltd. | |
| Ningxia Luyuangheng Activated Carbon Co., Ltd. | |
| Ningxia Mineral & Chemical Limited. | |
| Ningxia Pingluo County Yaofu Activated Carbon Plant. | |
| Ningxia Pingluo Xuanzhong Activated Carbon Co., Ltd. | |
| Ningxia Pingluo Yaofu Activated Carbon Factory. | |
| Ningxia Taixi Activated Carbon. | |
| Ningxia Tianfu Activated Carbon Co., Ltd. | |
| Ninxia Tongfu Coking Co., Ltd. | |
| Ningxia Weining Active Carbon Co., Ltd. | |
| Ningxia Xingsheng Coal and Active Carbon Co., Ltd. | |
| Ningxia Xingsheng Coke & Activated Carbon Co., Ltd. | |
| Ningxia Yinchuan Lanqiya Activated Carbon Co., Ltd. | |
| Ningxia Yirong Alloy Iron Co., Ltd. | |
| Ningxia Zhengyuan Activated. | |
| Nuclear Ningxia Activated Carbon Co., Ltd. | |
| OEC Logistic Qingdao Co., Ltd. | |
| Panshan Import and Export Corporation. | |
| Pingluo Xuanzhong Activated Carbon Co., Ltd. | |
| Pingluo Yu Yang Activated Carbon Co., Ltd. | |
| Shanghai Activated Carbon Co., Ltd. | |
| Shanghai Coking and Chemical Corporation. | |
| Shanghai Goldenbridge International. | |
| Shanghai Jiayu International Trading (Dezhou Jiayu and Chengde Jiayu). | |
| Shanghai Jinhu Activated Carbon (Xingan Shenxin and Jiangle Xinhua). | |
| Shanghai Light Industry and Textile Import & Export Co., Ltd. | |
| Shanghai Mebao Activated Carbon. | |
| Shanghai Xingchang Activated Carbon. | |
| Shanxi Blue Sky Purification Material Co., Ltd. | |
| Shanxi Carbon Industry Co., Ltd. | |
| Shanxi Dapu International Trade Co., Ltd. | |
| Shanxi DMD Corporation. | |
| Shanxi Industry Technology Trading Co., Ltd. | |

| Antidumping duty proceedings | Period to be reviewed |
|---|---|
| Shanxi Newtime Co., Ltd. | |
| Shanxi Qixian Foreign Trade Corporation. | |
| Shanxi Qixian Hongkai Active Carbon Goods. | |
| Shanxi Sincere Industrial Co., Ltd. | |
| Shanxi Supply and Marketing Cooperative. | |
| Shanxi Tianli Ruihai Enterprise Co.. | |
| Shanxi Xiaoyi Huanyu Chemicals Co., Ltd. | |
| Shanxi Xinhua Activated Carbon Co., Ltd. | |
| Shanxi Xinhua Chemical Co., Ltd. (formerly Shanxi Xinhua Chemical Factory). | |
| Shanxi Xinhua Protective Equipment. | |
| Shanxi Xinshidai Import Export Co., Ltd. | |
| Shanxi Xuanzhong Chemical Industry Co., Ltd. | |
| Shanxi Zuoyun Yunpeng Coal Chemistry. | |
| Shenzhen Sihaiweilong Technology Co.. | |
| Sincere Carbon Industrial Co. Ltd. | |
| Sinoacarbon International Trading Co, Ltd. | |
| Taining Jinhu Carbon. | |
| Tangshan Solid Carbon Co., Ltd. | |
| Tianchang (Tianjin) Activated Carbon. | |
| Tianjin Century Promote International Trade Co., Ltd. | |
| Tianjin Jacobi International Trading Co. Ltd. | |
| Tianjin Maijin Industries Co., Ltd. | |
| Taiyuan Hengxinda Trade Co., Ltd. | |
| Tonghua Bright Future Activated Carbon Plant. | |
| Tonghua Xinpeng Activated Carbon Factory. | |
| Triple Eagle Container Line. | |
| Uniclear New-Material Co., Ltd. | |
| United Manufacturing International (Beijing) Ltd. | |
| Valqua Seal Products (Shanghai) Co.. | |
| VitaPac (HK) Industrial Ltd. | |
| Wellink Chemical Industry. | |
| Xi Li Activated Carbon Co., Ltd. | |
| Xi'an Shuntong International Trade & Industrials Co., Ltd. | |
| Xiamen All Carbon Corporation. | |
| Xingan County Shenxin Activated Carbon Factory. | |
| Xinhua Chemical Company Ltd. | |
| Xuanzhong Chemical Industry. | |
| Yangyuan Hengchang Active Carbon. | |
| Yicheng Logistics. | |
| Yinchuan Lanqiya Activated Carbon Co., Ltd. | |
| Zhejiang Quizhou Zhongsen Carbon. | |
| Zhejiang Xingda Activated Carbon Co., Ltd. | |
| Zhejiang Yun He Tang Co., Ltd. | |
| Zhuxi Activated Carbon. | |
| Zuoyun Bright Future Activated Carbon Plant. | |
| THE PEOPLE'S REPUBLIC OF CHINA: Certain Steel Threaded Rod[5] A–570–932 | 4/1/11–3/31/12 |
| Autocraft Industry Ltd. | |
| Autocraft Industry (Shanghai) Ltd. | |
| Billion Land Ltd. | |
| Certified Products International Inc.. | |
| China Brother Holding Group Co. Ltd. | |
| China Jiangsu International Economic Technical Cooperation Corporation. | |
| Dongxiang Accuracy Hardware Co., Ltd. | |
| EC International (Nantong) Co. Ltd. | |
| Fastwell Industry Co. Ltd. | |
| Fuda Xiongzhen Machinery Co., Ltd. | |
| Fuller Shanghai Co. Ltd. | |
| Gem-Year Industrial Co. Ltd. | |
| Haiyan Dayu Fasteners Co., Ltd. | |
| Haiyan Hurras Import & Export Co. Ltd. | |
| Haiyan Hurras Import Export Co. Ltd. | |
| Haiyan Jianhe Hardware Co. Ltd. | |
| Haiyan Julong Standard Part Co. Ltd. | |
| Hangzhou Grand Imp. & Exp. Co., Ltd. | |
| Jiangsu Dainan Zhenya Import & Export Co. Ltd. | |
| Jiangsu Zhenya Special Screw Co., Ltd. | |
| Jiashan Zhongsheng Metal Products Co., Ltd. | |
| Jiaxing Brother Fastener Co., Ltd., IFI & Morgan Ltd. and RMB Fasteners Ltd.. | |
| Jiaxing Brother Standard Part. | |
| Jiaxing Brother Standard Part Co., Ltd and affiliates RMB Fasteners Ltd. and IFI &. | |
| Morgan Ltd. (collectively "Brother"). | |
| Jiaxing China Industrial Imp & Exp Co. a/k/a Jiaxing Cnindustrial Imp. & Exp. Co., Ltd.. | |
| Jiaxing SINI Fastener Co., Ltd. | |

| Antidumping duty proceedings | Period to be reviewed |
|---|---|
| Jiaxing Wonper Imp. & Exp. Co. Ltd. | |
| Jiaxing Xinyue Standard Part Co. Ltd. | |
| Nanjing Prosper Import & Export Corporation Ltd. | |
| Ningbiao Bolts & Nuts Manufacturing Co.. | |
| Ningbo Baoli Machinery Manufacture Co., Ltd. | |
| Ningbo Beilun Milfast Metalworks Co. Ltd. | |
| Ningbo Dexin Fastener Co. Ltd. | |
| Ningbo Dongxin High-Strength Nut Co., Ltd. | |
| Ningbo Fastener Factory. | |
| Ningbo Grand Asia Import & Export Co., Ltd. | |
| Ningbo Healthy East Import & Export. | |
| Ningbo Jinding Fastening Piece Co., Ltd. | |
| Ningbo Pal International Trading Co.. | |
| Ningbo Qunli Fastener Manufacture Co., Ltd. | |
| Ningbo Shuanglin Auto Parts Co., Ltd. | |
| Ningbo Shuanglin Industry Manufacturing Ltd. | |
| Ningbo Xiangxiang Large Fasteners. | |
| Ningbo XinXing Fasteners Manufacture Co., Ltd. | |
| Ningbo Yinzhou Foreign Trade Co., Ltd. | |
| Ningbo Yinzhou JH Machinery Co.. | |
| Ningbo Zhenghai Youngding Fastener Co., Ltd. | |
| Ningbo Zhongjiang Petroleum Pipes & Machinery Co., Ltd. | |
| Panther T&H Industry Co. Ltd. | |
| PSGT Trading Jingjiang Ltd. | |
| Qingdao Free Trade Zone Health Intl.. | |
| Shanghai East Best Foreign Trade Co.. | |
| Shanghai East Best International Business Development Co., Ltd. | |
| Shanghai Fortune International Co. Ltd. | |
| Shanghai Furen International Trading. | |
| Shanghai Nanshi Foreign Economic Co.. | |
| Shanghai Overseas International Trading Co. Ltd. | |
| Shanghai P&J International Trading Co., Ltd. | |
| Shanghai Prime Machinery Co. Ltd. | |
| Shanghai Printing & Dyeing and Knitting Mill. | |
| Shanghai Printing & Packaging Machinery Corp.. | |
| Shanghai Recky International Trading Co., Ltd. | |
| Suntec Industries Co., Ltd. | |
| T and C Fastener Co. Ltd. | |
| Tandem Industrial Co., Ltd. | |
| Tong Ming Enterprise. | |
| Wisechain Trading Ltd. | |
| Xingtai City Xinxing Fasteners Co.. | |
| Zhejiang Artex Arts and Crafts. | |
| Zhejiang Guangtai Industry and Trade. | |
| Zhejiang Heiter Industries Co., Ltd. | |
| Zhejiang Heiter MFG & Trade Co. Ltd. | |
| Zhejiang Morgan Brother Technology Co. Ltd. | |
| Zhejiang New Oriental Fastener Co., Ltd. | |
| THE PEOPLE'S REPUBLIC OF CHINA: Frontseating Service Valves [6] A–570–933 | 4/1/11–3/31/12 |
| Zhejiang DunAn Hetian Metal Co., Ltd. | |
| Zhejiang Sanhua Co., Ltd. | |
| THE PEOPLE'S REPUBLIC OF CHINA: Magnesium Metal [7] A–570–896 | 4/1/11–3/31/12 |
| Tianjin Magnesium International Co., Ltd. | |

**Countervailing Duty Proceedings**

None.

**Suspension Agreements**

None.

During any administrative review covering all or part of a period falling between the first and second or third and fourth anniversary of the publication of an antidumping duty order under 19 CFR 351.211 or a determination under 19 CFR 351.218(f)(4) to continue an order or suspended investigation (after sunset review), the Secretary, if requested by a domestic interested party within 30 days of the date of publication of the notice of initiation of the review, will determine, consistent with *FAG Italia* v. *United States,* 291 F.3d 806 (Fed. Cir. 2002), as appropriate, whether antidumping duties have been absorbed by an exporter or producer subject to the review if the subject merchandise is sold in the United States through an importer that is affiliated with such exporter or producer. The request must include the name(s) of the exporter or producer for which the inquiry is requested.

For the first administrative review of any order, there will be no assessment of antidumping or countervailing duties on entries of subject merchandise entered, or withdrawn from warehouse, for consumption during the relevant provisional-measures ''gap'' period, of the order, if such a gap period is applicable to the period of review.

Interested parties must submit applications for disclosure under administrative protective orders in accordance with 19 CFR 351.305. On January 22, 2008, the Department published *Antidumping and Countervailing Duty Proceedings: Documents Submission Procedures; APO Procedures,* 73 FR 3634 (January 22, 2008). Those procedures apply to administrative reviews included in this notice of initiation. Parties wishing to participate in any of these administrative reviews should ensure that they meet the requirements of these procedures (*e.g.,* the filing of separate letters of appearance as discussed at 19 CFR 351.103(d)).

Any party submitting factual information in an antidumping duty or countervailing duty proceeding must certify to the accuracy and completeness of that information. *See* section 782(b) of the Act. Parties are hereby reminded that revised certification requirements are in effect for company/government officials as well as their representatives in all segments of any antidumping duty or countervailing duty proceedings initiated on or after March 14, 2011. *See Certification of Factual Information to Import Administration During Antidumping and Countervailing Duty Proceedings: Interim Final Rule,* 76 FR 7491 (February 10, 2011) (''*Interim Final Rule*''), amending 19 CFR 351.303(g)(1) and (2). The formats for the revised certifications are provided at the end of the *Interim Final Rule.* The Department intends to reject factual submissions in any proceeding segments initiated on or after March 14, 2011 if the submitting party does not comply with the revised certification requirements.

These initiations and this notice are in accordance with section 751(a) of the Act (19 U.S.C. 1675(a)) and 19 CFR 351.221(c)(1)(i).

Dated: May 22, 2012.

**Christian Marsh,**

*Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.*

[FR Doc. 2012–12981 Filed 5–25–12; 8:45 am]

**BILLING CODE 3510–DS–P**

[3] In the initiation notice that published on April 30, 2012 (77 FR 25401) the POR for the above referenced case was incorrect. The period listed above is the correct POR for this case.

[4] If one of the above-named companies does not qualify for a separate rate, all other exporters of Certain Activated Carbon from the PRC who have not qualified for a separate rate are deemed to be covered by this review as part of the single PRC entity of which the named exporters are a part.

[5] If one of the above-named companies does not qualify for a separate rate, all other exporters of Certain Steel Threaded Rods from the PRC who have not qualified for a separate rate are deemed to be covered by this review as part of the single PRC entity of which the named exporters are a part.

[6] If the above-named company does not qualify for a separate rate, all other exporters of Frontseating Service Valves from the PRC who have not qualified for a separate rate are deemed to be covered by this review as part of the single PRC entity of which the named exporters are a part.

[7] If the above-named company does not qualify for a separate rate, all other exporters of Magnesium Metal from the PRC who have not qualified for a separate rate are deemed to be covered by this review as part of the single PRC entity of which the named exporters are a part.

## DEPARTMENT OF COMMERCE

### International Trade Administration

### Executive-Led Trade Mission to South Africa and Zambia

**AGENCY:** International Trade Administration, Department of Commerce.

**ACTION:** Notice.

**Mission Description**

The United States Department of Commerce, International Trade Administration, U.S. Commercial Service is organizing a Trade Mission to South Africa and Zambia November 26—November 30, 2012, to help U.S. firms find business partners and sell equipment and services in Johannesburg and Cape Town, South Africa, and Lusaka, Zambia.

Targeted sectors are:

- *Electric Power and Energy Efficiency Technologies, Equipment and Services*
  - Electrical generating equipment
  - Renewable energy technologies
  - Clean coal technology
  - Transmission and distribution equipment and services
  - Energy efficiency building technologies and services
- *Productivity Enhancing Agricultural Technologies and Equipment*
  - Crop production equipment and machinery
  - Irrigation equipment and technology
  - Crop storage and handling
  - Precision farming technologies
- *Transportation Equipment and Infrastructure*
  - New and refurbished locomotives
  - New bulk car and other dedicated rolling fleets
  - Smart Signaling and operations' automation
  - Business model analysis
  - Strategic route design and network planning
  - Port Infrastructure
- *Mining Equipment and Technology*
  - Software
  - Process automation
  - Mining beneficiation
  - Geo-information technologies
  - Bulk materials handling technology

Although focused on the sectors above, the mission also will consider participation from companies in other appropriate sectors as space permits.

This mission will be led by a senior Department of Commerce official and will include business-to-business matchmaking with local companies, market briefings, and meetings with key government officials.

**Commercial Setting**

South Africa is a country of 50 million people that is rich in diverse cultures, people and natural heritage. Enjoying remarkable macroeconomic stability and a largely pro-business environment, South Africa is a logical and attractive choice for U.S. companies to enter Sub-Sahara Africa.

South Africa is the most advanced, broad-based industry and productive economy in Africa and in 2011 had a gross domestic product (GDP) of $42 billion, growing by 3.1 percent. In 2010 South Africa accounted for 31 percent of Sub-Saharan Africa's GDP.

South Africa is April 2011 joined Brazil, Russia, India and China as the only African country in the leading emerging market group, BRICS. This step was seen as significant endorsement by its peers of the country's macro-economic development since the establishment of democracy in 1994.

Zambia is a politically stable, multi-party democracy, rich in natural resources. Zambia has a population of approximately 13 million with a growing middle class, particularly in urban areas. Its relatively open economy has averaged more than six percent real GDP growth over the past eight years and was ranked one of the fastest growing economies in the world in a recent report by The Economist magazine.

In 2011, total U.S.-Zambia trade was $177 million, an 83 percent increase over 2010 levels and a more than 200 percent increase over 2009 levels. While relatively small in total, U.S.-Zambia trade has tremendous growth potential, and the Zambian government and private sector are keen to strengthen the commercial relationship between the United States and Zambia. Leading U.S. exports include machinery, transportation equipment, chemicals, and computers and electronic products.

**Best Prospects in Mission Targeted Sectors**

*Energy*

South Africa

Electricity supply constraints are expected to remain a feature of South Africa's social and economic landscape for several years to come, and the introduction of additional capacity will be required for at least the next 20 years.

Energy Efficiency Building Technologies and Products

South Africa presents potentially lucrative opportunities for U.S. firms involved in Green Building Technologies (GBT). By developed-economy standards, South Africa continues to lag far behind in its adoption of green building practices. However, the notion of green building is gathering momentum in South Africa with an array of projects currently in the pipeline.

Although no formal statistics are currently recorded for green building products in South Africa, the current building and construction materials market is estimated at about $11.88 billion per annum, with 60 percent sold direct to end-users and 40 percent via the distribution/merchant network. Of this total of $11.88 billion, $2.12 billion (18 percent) of materials would be used in the additions, alterations and home improvement market (including unrecorded home improvement).

South Africa's State-owned Industrial Development Corporation (IDC) plans to inject $1.68 billion into 'green' industries over the next five years as part of a larger $14 billion disbursement plan between 2010 and 2015. The IDC indicated that the ''green economy'' has emerged as a primary focus for the development finance institution (DFI), owing to its potential to create jobs and lower the carbon intensity of the South African economy.

Zambia

More than 45 percent of Sub-Saharan Africa's water resources pass through Zambia, creating significant untapped hydropower potential to meet domestic demand and for export to Eastern and Southern African countries. Zambia is connected to the Southern African Power Pool and has plans to connect to the East African Power Pool. Domestic demand often exceeds domestic production due to maintenance and upgrades at major hydropower facilities and brown outs are relatively common. In the past two years, ZESCO has raised electricity rates substantially to meet long-term cost recovery, although a planned further 20 percent increase in rates in early 2012 was shelved due to public opposition.

Specific opportunities for mission members include hydro generation, other renewable technologies, construction and engineering services in generation and transmission, and smart grid technologies. There is also a market for small-scale power generating equipment, such as micro-hydro power systems, mobile generation units, solar panels and diesel-powered generators for household or commercial use.

*Agricultural Equipment*

South Africa has by far the most modern, productive and diverse agricultural economy in sub-Saharan Africa. It is a net exporter of agricultural and food products and is self sufficient in food products. South Africa offers U.S. exporters of agricultural equipment and technology a wide range of opportunities. The country's annual agricultural equipment market is estimated at approximately $919 million. Five percent of all new agriculture equipment is being produced locally, ninety five percent of all agriculture equipment and parts are being sourced from international markets, and at least twenty percent of new equipment and technologies are currently being sourced from the United States.

Zambia has favorable climatic conditions, vast irrigation potential, good prospects for livestock production, and has one of the highest percentages of uncultivated arable land in Africa. Zambia exported approximately $500 million in agricultural products in 2010, and agriculture accounts for more than 20 percent of Zambia's GDP. The sector provides employment for about 60 percent of the population, the majority being small-scale or subsistence farmers, with about 750 large scale commercial farms and more than 1,000 emergent farms (up to 150 acres).

*Transportation Equipment and Infrastructure*

South Africa's government has announced and allocated initial funding for significant transportation infrastructure capital investments:

The Passenger Rail Agency of South Africa (Prasa) of the South African Department of Transport (SADOT) has announced a large rail improvement program. The 20-year procurement process will be split into two, with the first ten-year contract running from 2015 and the second from 2025. The formal tender process started in March 2012 and financial closure with the successful bidder is expected in June 2013. The first train is to be delivered in 2015.

The South African Government will spend R21.3bn on infrastructure in the port of Durban over seven years, but this excludes more than R100bn that could be required to dig out the old Durban International Airport site and expand the harbor further. The sum of R21.3bn—a figure that may change as projects are reviewed or added over the next seven years—is part of the R300bn of transport and logistics projects that South African President Jacob Zuma mentioned in his state of the nation address in February 2012.

Zambia is landlocked and sparsely populated. As such, transportation is a substantial cost to doing business in the country. Goods move primarily by road and rail. Most copper, Zambia's primary export, is moved by truck. The Government has budgeted a record $890 million to road development and maintenance in 2012.

The government has at various times signaled its intention to expand Zambia's main international airports, and the United States Trade and Development Agency (USTDA) funded an airports master plan that was completed in 2011 for international airports in Lusaka, Livingstone, Ndola, and Mfuwe.

*Mining Equipment and Technology*

South Africa—2,200 miles of railway line, three new ports and a large amount of bulk handling infrastructure at other ports are high on the agenda for both the South African Government and mining consortia.

Zambia is the largest copper producer in Africa and the eighth largest producer in the world. Zambia has more than 6 percent of known copper reserves, with about 42 percent of the country still unexplored for minerals. The sector has seen more than $5 billion in investment in the sector since the mines were privatized starting in 1998 and annual copper production is expected to top 1 million tons by 2015. The mining sector accounts for 6 percent of Zambia's GDP, and copper exports generate about 75 percent of export earnings. The sector continues to be the second largest formal employer, after government.

All mining companies are required by law to upgrade their mining equipment, particularly smelters, to conform Zambia's mining sector to international regulations and United Kingdom and U.S. environmental standards by 2015.

Zambia also has cobalt, gold, uranium, nickel, manganese, coal, and gemstones, and produces 20 percent of the world's emeralds.

**Mission Goals**

The goal of the South Africa-Zambia Trade Mission is to provide U.S. participants with first-hand market information, and one-on-one meetings with business contacts, including potential agents, distributors and partners so they can position themselves to enter or expand their presence in the South African and Zambian markets.

**Mission Scenario**

The South Africa-Zambia Mission will visit Johannesburg, Cape Town and Lusaka, with an optional visit to Ndola in Zambia's Copper Belt, allowing participants to access the largest markets and business centers in the two countries. In each city, participants will meet with potential business contacts.

PROPOSED MISSION TIMETABLE

| Day of week | Date | Activity |
|---|---|---|
| Sunday | Nov 25 | Arrive in Lusaka. |
| Monday | Nov. 26 Lusaka | Mission Meetings Officially Start.<br>Breakfast briefing with U.S. Embassy Staff.<br>One-on-one business appointments.<br>Evening business reception. |
| Tuesday | Nov 27 Lusaka Optional flight to Ndola; (Copper Belt); Travel to Johannesburg. | In Lusaka one-on-one business appointments continue and for those companies with mining, transport and other meetings in the northern Copper Belt, morning flight to Ndola for meetings. Evening flights (Lusaka and Ndola) to Johannesburg. |
| Wednesday | Nov. 28 Johannesburg | Briefing by U.S. Embassy Staff.<br>One-on-one business meetings.<br>Evening business reception. |
| Thursday | Nov. 29 Johannesburg and Travel to Cape Town. | One-on-one meetings continue in Johannesburg.<br>Briefing by Cape Town Consulate Staff.<br>Networking reception in Cape Town. |
| Friday | Nov 30 Cape Town | One-on-one business appointments continue.<br>Mission ends. |

* **Note:** The final schedule and potential site visits will depend on the availability of local government and business officials, specific goals of mission participants, and air travel schedules.

**Participation Requirements**

All applicants will be evaluated on their ability to meet certain conditions and best satisfy the selection criteria as outlined below. The mission is designed for a minimum of 15 and a maximum of 20 to participate in the mission from the applicant pool. U.S. companies already doing business in the target markets as well as U.S. companies seeking to enter these markets for the first time are encouraged to apply.

*Fees and Expenses*

After a company has been selected to participate on the mission, a participation fee to the U.S. Department of Commerce is required. The participation fee for one representative is $4350 for a small or medium-sized enterprise (SME) [1] and $4900 for large firms. The fee for each additional firm representative (SME or large) is $450. Expenses for travel, lodging, some meals, and incidentals will be the responsibility of each mission participant.

*Conditions for Participation*

- An applicant must submit a completed and signed mission application and supplemental application materials, including adequate information on the company's products and/or services, primary market objectives, and goals for participation. If the U.S. Department of Commerce receives an incomplete application, the Department may reject the application, request additional information, or take the lack of information into account when evaluating the applications.
- Each applicant must also certify that the products and services it seeks to export through the mission are either produced in the United States, or, if not, marketed under the name of a U.S. firm and have at least 51 percent U.S. content of the value of the finished product or service.

*Selection Criteria for Participation*

- Suitability of the company's products or services to the mission goals.
- Applicant's potential for business in South Africa and Zambia, including likelihood of exports resulting from the mission.
- Consistency of the applicant's goals and objectives with the stated scope of the mission.

[1] An SME is defined as a firm with 500 or fewer employees or that otherwise qualifies as a small business under SBA regulations. *See http://www.sba.gov/contractingopportunities/owners/basics/whatismallbusiness/index.html.* Parent companies, affiliates, and subsidiaries will be considered when determining business size. The dual pricing reflects the Commercial Service's user fee schedule that became effective May 1, 2008. *See http://www.export.gov/newsletter/march2008/initiatives.html.*

Diversity of company size, sector or subsector, and location may also be considered during the review process.

Referrals from political organizations and any documents containing references to partisan political activities (including political contributions) will be removed from an applicant's submission and not considered during the selection process.

**Timeframe for Recruitment and Applications**

Mission recruitment will be conducted in an open and public manner, including publication in the **Federal Register**, posting on the Commerce Department trade mission calendar—*www.ita.doc.gov/doctm/tmcal.html*—and other Internet web sites, press releases to general and trade media, direct mail, broadcast fax, notices by industry trade associations and other multiplier groups, and publicity at industry meetings, symposia, conferences, and trade shows.

Recruitment for the mission will begin immediately, and conclude October 5, 2012. The U.S. Department of Commerce will review applications and make selection decisions on a rolling basis beginning August 6, 2012, until the maximum of 20 participants is selected. Applications received after October 5, 2012, will be considered only if space and scheduling constraints permit.

*Contacts:*

Frank Spector, U.S. Commercial Service, U.S. Department of Commerce, Washington, DC 20230, Tel: 202–482–2054, Fax: 202–482–9000, *Frank.Spector@trade.gov.*

Larry Farris, Senior Commercial Officer, U.S. Consulate, Johannesburg, South Africa, Tel: +55–11 290–3316, Fax: +55–11 884–0538, Email: *larry.farris@trade.gov.*

**Frank Spector,**

*Senior International Trade Specialist, Global Trade Programs.*

[FR Doc. 2012–12974 Filed 5–25–12; 8:45 am]

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## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–570–875]**

### Non-Malleable Cast Iron Pipe Fittings From the People's Republic of China: Final Results of Antidumping Duty Changed Circumstances Review, and Revocation of Order, in Part

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**DATES:** *Effective Date:* April 1, 2011.

**SUMMARY:** On April 16, 2012, the Department of Commerce (the ''Department'') published in the **Federal Register** a notice of initiation and preliminary results of the antidumping duty (''AD'') changed circumstances review with intent to revoke, in part, the AD order on non-malleable cast iron pipe fittings from the People's Republic of China (''PRC'').[1] Given that Anvil International and Ward Manufacturing (''Petitioners'')[2] are no longer interested in seeking antidumping relief from imports of a particular brake fluid tube connector (''connector''), we are revoking this AD order, in part, with regard to this particular connector.

**FOR FURTHER INFORMATION CONTACT:** Zev Primor or Robert Bolling, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone (202) 482–4114 and (202) 482–3434, respectively.

**Background**

On April 7, 2003, the Department published an AD order on non-malleable cast iron pipe fittings from the PRC.[3] On March 6, 2012, Ford Motor Company (''Ford'') requested revocation in part of the AD order pursuant to sections 751(b)(1) and 782(h) of the Tariff Act of 1930, as amended (the ''Act''), with respect to Ford's connector. The domestic industry has affirmatively expressed a lack of interest in the continuation of the AD order with respect to this product. On April 16, 2012, the Department published the *Initiation and Preliminary Results,* excluding the connector from the scope of the AD order on non-malleable cast iron pipe fittings from the PRC.

**New Scope Language**

The following connector is excluded: A ''joint block'' for brake fluid tubes and is made of non-malleable cast iron to Society of Automotive Engineers (SAE) automotive standard J431. The tubes have an inside diameter of 3.44 millimeters (0.1355 inches) and the inside diameters of the fluid flow channels of the connector are 3.2 millimeters (0.1260 inches) and 3.8 millimeters (0.1496 inches). The end of the tube is forced by pressure over the end of a flared opening in the connector also known as ''flared joint.'' The flared joint, once made fast, permits brake fluid to flow through channels that never exceed 3.8 millimeters (0.1496 inches) in diameter.

**Scope of the Amended Order**

The products covered by the order are finished and unfinished non-malleable cast iron pipe fittings with an inside diameter ranging from ¼ inch to 6 inches, whether threaded or unthreaded, regardless of industry or proprietary specifications. The subject fittings include elbows, ells, tees, crosses, and reducers as well as flanged fittings. These pipe fittings are also known as ''cast iron pipe fittings'' or ''gray iron pipe fittings.'' These cast iron pipe fittings are normally produced to ASTM A–126 and ASME B.16.4 specifications and are threaded to ASME B1.20.1 specifications. Most building codes require that these products are Underwriters Laboratories (UL) certified. The scope does not include cast iron soil pipe fittings or grooved fittings or grooved couplings.

Fittings that are made out of ductile iron that have the same physical characteristics as the gray or cast iron fittings subject to the scope above or which have the same physical characteristics and are produced to ASME B.16.3, ASME B.16.4, or ASTM A–395 specifications, threaded to ASME B1.20.1 specifications and UL certified, regardless of metallurgical differences between gray and ductile iron, are also included in the scope of the order. These ductile fittings do not include grooved fittings or grooved couplings. Ductile cast iron fittings with mechanical joint ends (MJ), or push on ends (PO), or flanged ends and produced to the American Water Works Association (AWWA) specifications AWWA C110 or AWWA C153 are not included. Additionally, certain brake fluid tube connectors are excluded from the scope of this order.[4]

Imports of subject merchandise are currently classifiable in the Harmonized

[1] *See Non-Malleable Cast Iron Pipe Fittings From the People's Republic of China: Initiation and Preliminary Results of Changed Circumstances Review, and Intent to Revoke Order in Part,* 77 FR 22562 (April 16, 2012) (''*Initiation and Preliminary Results*'').

[2] Petitioners account for approximately 95 percent of the domestic production of the like product.

[3] *See Notice of Antidumping Duty Order: Non-Malleable Cast Iron Pipe Fittings From the People's Republic of China,* 68 FR 16765 (April 7, 2003).

[4] To be excluded, the connector must meet the following description: The connector is a ''joint block'' for brake fluid tubes and is made of non-malleable cast iron to Society of Automotive Engineers (SAE) automotive standard J431. The tubes have an inside diameter of 3.44 millimeters (0.1355 inches) and the inside diameters of the fluid flow channels of the connector are 3.2 millimeters (0.1260 inches) and 3.8 millimeters (0.1496 inches). The end of the tube is forced by pressure over the end of a flared opening in the connector also known as ''flared joint.'' The flared joint, once made fast, permits brake fluid to flow through channels that never exceed 3.8 millimeters (0.1496 inches) in diameter.

Tariff Schedule of the United States (HTSUS) under item numbers 7307.11.00.30, 7307.11.00.60, 7307.19.30.60, 7307.19.30.85. HTSUS subheadings are provided for convenience and customs purposes. The written description of the scope of the order is dispositive.[5]

**Final Results of Review: Partial Revocation of Antidumping Duty Order**

The affirmative statement of no interest by Petitioners concerning certain brake fluid connectors, as described herein, constitutes changed circumstances sufficient to warrant revocation of this order in part. No party commented on the *Initiation and Preliminary Results.* Additionally, no party contests that Petitioners' statement of no interest represents the views of domestic producers accounting for substantially all of the production of the particular domestic like product (*i.e.,* connector). Therefore, the Department is partially revoking the order on non-malleable cast iron pipe fittings from the PRC with regard to a product which meets the specifications detailed above, in accordance with sections 751(b), (d) and 782(h) of the Act and 19 CFR 351.216(d) and 351.222(g).

In this changed circumstances review, we have determined to revoke the order in part, retroactive to April 1, 2011, (the date following the last day of the most recently completed administrative review) for unliquidated entries in light of: (1) The submission by Petitioners; (2) the fact that entries after this date are not subject to a final determination by the Department; and (3) we have received no comments following our preliminary results of April 16, 2012, where we indicated that this changed circumstances review will apply retroactively. We hereby notify the public of our revocation in part with respect to a connector in the antidumping duty order on non-malleable cast iron pipe fittings from the PRC retroactive to April 1, 2011.

We will instruct U.S. Customs and Border Protection to liquidate without regard to antidumping duties, as applicable, and to refund any estimated antidumping duties collected for all unliquidated entries of a certain connector, made on or after April 1, 2011, meeting the specifications indicated above, in accordance with 19 CFR 351.222.

This notice serves as a reminder to parties subject to administrative protective orders (''APOs'') of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.306. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a sanctionable violation.

This changed circumstances administrative review, partial revocation of the antidumping duty order and notice are in accordance with sections 751(b), (d) and 782(h) of the Act and 19 CFR 351.216(e) and 351.222(g).

Dated: May 21, 2012.

**Paul Piquado,**

*Assistant Secretary for Import Administration.*

[FR Doc. 2012–12979 Filed 5–25–12; 8:45 am]

**BILLING CODE 3510–DS–P**

[5] On April 21, 2009, in consultation with the U.S. Customs and Border Protection (CBP), the Department added the following HTSUS classification to the AD/CVD module for pipe fittings: 7326.90.8588. *See* Memorandum from Abdelali Elouaradia, Office Director, Import Administration, Office 4 to Stephen Claeys, Deputy Assistant Secretary, Import Administration regarding the Final Scope Ruling on Black Cast Iron Cast, Green Ductile Flange and Twin Tee, antidumping duty order on non-malleable iron cast pipe fittings from the PRC, dated September 19, 2008. *See also* Memorandum to the file from Karine Gziryan, Financial Analyst, Office 4, regarding Module Update adding HTSUS number for twin tin fitting included in the scope of antidumping order on non-malleable iron cast pipe fittings from the PRC, dated April 22, 2009.

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–588–833]**

### Stainless Steel Bar From Japan: Initiation and Preliminary Results of Antidumping Duty Changed-Circumstances Review, and Intent To Revoke Order in Part

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**SUMMARY:** On February 14, 2012, in accordance with section 751(b) of the Tariff Act of 1930, as amended (the Act), and section 351.216(b) of the Department of Commerce's (the Department) regulations, Suruga USA Corp. (Suruga), a U.S. importer of subject merchandise, filed a request for a changed-circumstances review of four types of stainless steel bar (SSBar)[1] that are subject to the antidumping duty order on SSBar from Japan (the Order).

On May 7, 2012, Suruga submitted revised product descriptions of SSBar that it seeks to exclude from the Order. The revised submission covers three products—one under Grade 304 and two under Grade 440C.[2] On May 11, 2012, we received a submission from the petitioners[3] expressing a lack of interest in the products identified in Suruga's May 7, 2012 request and certifications that they account for virtually all of the domestic production of the particular SSBar.[4]

Therefore, in response to Suruga's request and based on the record evidence, we are notifying the public of our preliminary intent to revoke, in part, the antidumping duty order on SSBar from Japan with respect to the products described below and are inviting interested parties to comment on these preliminary results.

**DATES:** *Effective Date:* May 29, 2012.

**FOR FURTHER INFORMATION CONTACT:** Jerrold Freeman or Minoo Hatten, AD/CVD Operations, Office 1, Import Administration, International Trade Administration, Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–0180 or (202) 482–1690, respectively.

**SUPPLEMENTARY INFORMATION:**

**Background**

The Department published the antidumping duty order on SSBar on February 21, 1995.[5] On February 14, 2012, Suruga requested that the Department conduct a changed-circumstances review of the Order and exclude four particular types of stainless SSBar from the scope of the Order.[6] Because of certain concerns, the Department asked Suruga to submit revised product descriptions.

On May 7, 2012, Suruga submitted revised product descriptions which included one product under Grade 304 and two products under Grade 440C.[7] Suruga stated that, although the form of the descriptions was revised for ease of

[1] SSFJ & SSFJ–DKC, PSSFJ, PSSFG, U–SSFJ.

[2] *See* Suruga's Letter to the Department, dated May 7, 2012 at Attachment A.

[3] The petitioners are Carpenter Technology Corporation, Crucible Industries LLC, Electralloy, a G.O. Carlson Inc. Co., North American Stainless, Outokumpu Stainless Bar, Inc., Universal Stainless & Alloy Products, Inc., and Valbruna Slater Stainless, Inc.

[4] Petitioner's Letter to the Department, dated May 11, 2012, at 1. The petitioners used the term ''virtually all'' in their May 11, 2012, letter. For this initiation and preliminary results of review, we are interpreting the phrase, ''virtually all,'' as fulfilling the ''substantially all'' threshold provided under section 351.222(g)(1)(i) of our regulations.

[5] *See Notices of Antidumping Duty Orders: Stainless Steel Bar from Brazil, India, and Japan,* 60 FR 9661 (Feb. 21, 1995).

[6] *See generally* Suruga's Letter to the Department, dated February 14, 2012.

[7] *See* Suruga's Letter to the Department, dated May 7, 2012 at Attachment A.

understanding, the products described in its May 7, 2012 submission are identical to those in its February 14, 2012 submission.[8] Suruga requests that the Department exclude imports meeting the following descriptions from the Order:[9]

(1) The Grade 304 product has the following characteristics: round cross-section, cold finished, chrome plated (plating thickness 10 microns or greater), hardness of plating a minimum 750 HV on the Vickers Scale, maximum roundness deviation of 0.020 mm (based on circularity tolerance described in JIS B 0021 (1984)), in actual (measured) lengths from 2000 mm to 3005 mm, in nominal outside diameters ranging from 6 mm to 30 mm (diameter tolerance for any size from minus 0.010 mm to minus 0.053 mm). Tolerance can be defined as the specified permissible deviation from a specified nominal dimension; for example if the nominal outside diameter of the product entering is 6 mm, then the actual measured sizes should fall within 5.947 mm to 5.990 mm;

(2) The first Grade 440C product has the following characteristics: round cross-section, cold finished, heat treated through induction hardening, minimum Rockwell hardness of 56 Hardness of 56 HRC, maximum roundness deviation of 0.007 mm (based on circularity tolerance described in JIS B 0021 (1984)), in actual (measured) lengths from 500 mm to 3005 mm, in nominal outside diameters ranging from 3 mm to 38.10 mm (diameter tolerance for any size from 0.00 mm to minus 0.150 mm). Tolerance can be defined as the specified permissible deviation from a specified nominal dimension; for example if the nominal outside diameter of the product entering is 3 mm, then the actual measured sizes should fall within 2.850 mm to 3.000 mm;

(3) The second Grade 440C product has the following characteristics: round cross-section, cold finished, chrome plated (plating thickness 5 microns or greater), heat treated through induction hardening, minimum Rockwell Hardness of 56 HRC, maximum roundness deviation of 0.007 mm (based on circularity tolerance described in JIS B 0021 (1984)), in actual (measured) lengths from 2000 mm to 3005 mm, in nominal outside diameters ranging from 6 mm to 30 mm (diameter tolerance for any size from minus 0.004 mm to minus 0.020 mm). Tolerance can be defined as the specified permissible deviation from a specified nominal dimension; for example if the nominal outside diameter of the product entering is 6 mm, then the actual measured sizes should fall within 5.980 mm to 5.996 mm.

Suruga stated that parties comprising the majority of the U.S. industry have agreed to the exclusion of the aforementioned products based on changed circumstances.[10] Suruga also requested that the Department revoke the Order in part retroactively to February 1, 2010, the beginning of the 2010/2011 period of review for which we had deferred the initiation of a review based on a timely request by Suruga.[11] On March 30, 2012, in accordance with section 751(a) of the Act and section 351.213(c)(3) of the Department's regulations, the Department initiated the previously-deferred 2010/2011 administrative review of the Order. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part, and Deferral of Administrative Review,* 77 FR 19179 (March 30, 2012).

On February 14, 2012, the petitioners submitted a letter attesting to their lack of interest in having the merchandise, as described above, continue to be subject to the Order.[12] On March 7, 2012, the petitioners submitted an amended letter affirming their support for the exclusion of the four types of SSBar from Japan, which included a signed certification from each company and a statement indicating that collectively the petitioners account for virtually all of the domestic production of SSBar.[13] On May 11, 2012, the petitioners provided certified statements in support of the exclusion of the three above-referenced products from the scope of the Order, again stating that they account for virtually all of the domestic production of the particular SSBar that Suruga seeks to exclude from the Order.[14]

## Scope of the Order

The scope of the order covers SSBar. The term SSBar with respect to the order means articles of stainless steel in straight lengths that have been either hot-rolled, forged, turned, cold-drawn, cold-rolled or otherwise cold-finished, or ground, having a uniform solid cross section along their whole length in the shape of circles, segments of circles, ovals, rectangles (including squares), triangles, hexagons, octagons or other convex polygons. SSBar includes cold-finished SSBars that are turned or ground in straight lengths, whether produced from hot-rolled bar or from straightened and cut rod or wire, and reinforcing bars that have indentations, ribs, grooves, or other deformations produced during the rolling process.

Except as specified above, the term does not include stainless steel semi-finished products, cut-length flat-rolled products (*i.e.,* cut-length rolled products which if less than 4.75 mm in thickness have a width measuring at least 10 times the thickness, or if 4.75 mm or more in thickness having a width which exceeds 150 mm and measures at least twice the thickness), wire (*i.e.,* cold-formed products in coils, of any uniform solid cross section along their whole length, which do not conform to the definition of flat-rolled products), and angles, shapes and sections.

In addition, the term does not include certain valve/stem stainless steel round bar of 21–2N modified grade, having a diameter of 5.7 millimeters (with a tolerance of 0.025 millimeters), in length no greater than 15 meters, having a chemical composition consisting of a minimum of 0.50 percent and a maximum of 0.60 percent of carbon, a minimum of 7.50 percent and a maximum of 9.50 percent of manganese, a maximum of 0.25 percent of silicon, a maximum of 0.04 percent of phosphorus, a maximum of 0.03 percent of sulfur, a minimum of 20.0 percent and a maximum of 22.00 percent of chromium, a minimum of 2.00 percent and a maximum of 3.00 percent of nickel, a minimum of 0.20 percent and a maximum of 0.40 percent of nitrogen, a minimum of 0.85 percent of the combined content of carbon and nitrogen, and a balance minimum of iron, having a maximum core hardness of 385 HB and a maximum surface hardness of 425 HB, with a minimum hardness of 270 HB for annealed material.[15]

The SSBar subject to the order is currently classifiable under subheadings 7222.11.00, 7222.19.00, 7222.20.00, and 7222.30.00 of the Harmonized Tariff Schedule of the United States

[8] *See id.* at 1 and Attachment A.

[9] *See id.* at Attachment A.

[10] *See id.* at 1.

[11] *See* Suruga's Letter to the Department, dated February 14, 2012, at 2. Suruga filed a timely request for the administrative review of the Order covering the period February 1, 2010 through January 31, 2011. *See* Suruga's letter to the Secretary of Commerce, dated February 28, 2011. We granted Suruga's request in *Initiation of Antidumping Duty Administrative Reviews, Requests for Revocation In Part, and Deferral of Administrative Review,* 76 FR 17825, 17826 (March 31, 2011).

[12] *See generally* Petitioner's Letter to the Department, dated February 14, 2012.

[13] *See generally* Petitioner's Letter to the Department, dated March 7, 2012.

[14] *See* Petitioner's Letter to the Department, dated May 11, 2012, at 1–2.

[15] *See Final Results of Antidumping Duty Changed-Circumstances Review and Revocation of Order in Part: Stainless Steel Bar from Japan,* 71 FR 70959, 70960 (December 7, 2006).

(HTSUS).[16] Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of the order is dispositive.

**Initiation and Preliminary Results of Antidumping Duty Changed-Circumstances Review, and Intent To Revoke the Order in Part**

Pursuant to section 751(b)(1) of the Act, the Department will conduct a changed-circumstances review upon receipt of information concerning, or a request from an interested party for a review of, an antidumping duty order which shows changed circumstances sufficient to warrant a review of the order. Section 782(h)(2) of the Act and section 351.222(g) of the Department's regulations provide that the Department may revoke an order (in whole or in part) if it determines that producers accounting for substantially all of the production of the domestic like product (*i.e.,* at least 85 percent) [17] have expressed no further interest in the relief of subject merchandise provided by the order or if other changed circumstances sufficient to warrant revocation exist. In addition, section 351.221(c)(3)(ii) of the Department's regulations permits the Department to combine the notices of initiation and preliminarily results if it concludes that expedited action is warranted.

In accordance with section 751(b) of the Act, section 351.216(b), and section 351.222(g) of the Department's regulations, the Department is initiating this changed-circumstances review and has determined that, pursuant to section 351.221(c)(3)(ii) of the Department's regulations, expedited action is warranted. We find that the petitioners' affirmative statement of no interest, and their certified statement that they produced virtually all the domestic like product, provide a reasonable basis for the Department's determination to conduct an expedited review. Based on the petitioners' expression of no interest and claims of accounting for virtually all of the domestic production of the domestic like product, and absent any evidence to the contrary, we also preliminarily determine that substantially all of the domestic producers of the domestic like product have no interest in the continued application of the Order as to the types of SSBar in question. Therefore, we are notifying the public of our intent to revoke the Order in part. If we make a final determination to revoke the Order in part, this determination will apply to all unliquidated entries of the above-specified types of SSBar from Japan covered by the Order which are entered, or withdrawn from warehouse, for consumption on or after the date determined by the Department.[18] Suspension of liquidation is considered removed upon publication of the final results in the **Federal Register** and the Department will instruct U.S. Customs and Border Protection (CBP) to liquidate without regard to antidumping duties and to refund with interest any estimated antidumping duties collected.[19] The current requirement for a cash deposit of estimated antidumping duties on entries of the three types of SSBar described above and covered by the Order will continue unless, and until, we publish a final determination to revoke the Order in part.

Suruga requested that the Department revoke the Order in part retroactively to February 1, 2010, the beginning of the 2010 anniversary month of the Order. In the instant case, we have not completed an administrative review on the Order for the period February 1, 2010 through January 31, 2011. It is the Department's practice to revoke an order (in whole or in part) so that the effective date of revocation covers entries that have not been subject to a completed administrative review.[20] Therefore, in accordance with the Department's practice, we preliminarily determine to instruct CBP to liquidate, without regard to antidumping duties, shipments of these three types of SSBar from Japan described above, entered, or withdrawn from warehouse, for consumption on or after February 1, 2010.

*Public Comment*

Pursuant to 19 CFR 351.221(b)(4)(ii), interested parties may comment on these preliminary results by submitting case briefs to the Department no later than 15 days after the publication of this notice in the **Federal Register**. Parties will have seven days subsequent to this due date to submit rebuttal comments, limited to the issues raised in the case briefs. Parties who submit case briefs or rebuttal comments in this proceeding are requested to submit with each argument (1) a statement of the issue and (2) a brief summary of the argument (no longer than five pages, including footnotes). Any interested party may request a hearing within 10 days of the date of publication of this notice. Further, any hearing, if requested, will be held no later than 25 days after the date of publication of this notice, or the first business day thereafter. All written comments and/or requests must be filed electronically using Import Administration's Antidumping and Countervailing Duty Centralized Electronic Service System (IA ACCESS). An electronically filed document must be received successfully in its entirety by the Department's electronic records system, IA ACCESS, by 5 p.m. Eastern Time of the deadlines set forth in this notice.

We will issue our final results in this changed-circumstances review as soon as practicable following the above comment period but not later than 270 days after the date on which we initiated the changed-circumstances review, in accordance with 19 CFR 351.216(e), and we will publish the results in the **Federal Register**.

This notice is published in accordance with sections 751(b)(1) and 777(i)(1) of the Act and sections 351.216, 351.221(b)(1), and 351.222 of the Department's regulations.

Dated: May 18, 2012.

**Paul Piquado,**

*Assistant Secretary for Import Administration.*

[FR Doc. 2012–12980 Filed 5–25–12; 8:45 am]

**BILLING CODE 3510–DS–P**

[16] The Department previously listed 7222.10.0005, 7222.10.0050, 7222.20.0005, 7222.20.0045, 7222.20.0075, and 7222.30.0000 in the scope of the Order. *See id.* at 7059. On February 14, 2010, the above-referenced numbers were replaced with 7222.10.10, 7222.11.00, 7222.19.00, 7222.20.00, and 7222.30.00. As a result of recent changes to the HTSUS, effective February 3, 2012, the subject merchandise is no longer classifiable under HTSUS 7222.10.00. *See* Harmonized Tariff Schedule of the United States, available at *http://www.usitc.gov/tata/hts/bychapter/_1200.htm.*

[17] The Department has defined ''substantially all'' to mean accounting for over 85% of the total production of the domestic like product. *See Certain Orange Juice from Brazil: Preliminary Results of Antidumping Duty Changed Circumstances Review and Intent Not to Revoke, In Part,* 73 FR 60241, 60242 (Oct. 10, 2008); unchanged in *Certain Orange Juice from Brazil: Final Results of Antidumping Duty Changed Circumstances Review,* 74 FR 4733 (Jan. 27, 2009).

[18] *See* section 751(d)(3) of the Act.

[19] *See* section 778 of the Act; section 351.222(g)(4) of the Department's regulations.

[20] *See Notice of the Final Results of Changed Circumstances Review and Revocation of the Antidumping Order: Coumarin from the People's Republic of China,* 69 FR 24122 (May 3, 2004) and the accompanying Issues and Decision Memorandum at 3; *see also Large Newspaper Printing Presses and Components Thereof, Whether Assembled or Unassembled, from Germany: Notice of Final Results of Changed Circumstances Review, Revocation of the Antidumping Duty Order, and Rescission of Administrative Reviews,* 67 FR 19551, 19552 (April 22, 2002).

## DEPARTMENT OF COMMERCE

### International Trade Administration

### U.S. Architecture Services Trade Mission to India; Chennai, Kolkata and Bangalore, India; October 15–19, 2012

**AGENCY:** International Trade Administration, Department of Commerce.

**ACTION:** Notice.

### Mission Description

The United States Department of Commerce, International Trade Administration (ITA), U.S. and Foreign Commercial Service (CS), with support from the American Institute of Architects (*http://www.aia.org/*), is organizing an Architecture Services Trade Mission to India from October 15 to 19, 2012. The purpose of the mission is to introduce U.S. firms to India's rapidly expanding market for architectural and design services, including project management services, and to assist U.S. companies to pursue export opportunities in this sector. The mission to India is designed for U.S. architectural, project management, and design services companies, particularly small- and medium-sized enterprises (SMEs), that provide state-of-the-art and world class designs. Target sectors holding high potential for U.S exporters include: master planning (regional design—city planning or regional planning, neighborhood design, port re-development—design of the walkways, buildings, etc. along the port); hospitals and health care architecture; airports/other transportation infrastructure facility architecture; mixed-use projects architectural services; and educational (k–12, university and beyond).

The mission will include stops in Chennai, Kolkata, and Bangalore, where participants will receive market briefings and participate in customized meetings with key officials and prospective partners. Trade mission participants will also have the option to have additional stops at Mumbai, Ahmedabad and New Delhi, where CS offices also can arrange meetings with both private sector developers and state and local government officials.

The mission supports President Obama's National Export Initiative (NEI) and his goal of doubling U.S. exports by 2015 to strengthen the U.S. economy and U.S. competitiveness through meaningful job creation. The mission will help U.S. companies already doing business in India to increase their footprint and deepen their business interests.

The mission will help participating firms gain market insights, make industry contacts, solidify business strategies, and advance specific projects, with the goal of increasing U.S. exports of services to India. The mission will include one-on-one business appointments with pre-screened potential buyers, agents, distributors and joint venture partners; meetings with state and local government officials and industry leaders; and networking events. Participating in an official U.S. industry delegation, rather than traveling to India on their own, will enhance the companies' ability to secure meetings in India.

### Commercial Setting

India, one of the world's fastest growing economies, presents lucrative opportunities for U.S. companies that offer products and services that help to meet the nation's rapidly expanding infrastructure and housing needs. India is seeking to invest $1 trillion in its infrastructure during the 12th Five-Year Plan (2012–2017) and is seeking private sector participation to fund half of this massive expansion through the Public-Private Partnership (PPP) model. The rapid growth of the Indian economy (averaging 8 percent over the past 10 years) has created a pressing need for infrastructure development and the country requires significant outside expertise to meet its ambitious targets. U.S. industry is well qualified to supply the kinds of architectural services and project management skills needed to successfully tackle major initiatives, including such groundbreaking projects as the Delhi-Mumbai Industrial Corridor (DMIC) and the proposed 250-km Bangalore-Chennai expressway, to be built at a cumulative cost of $1 billion. U.S. technologies are also well positioned to contribute to energy production and greater efficiency in new industrial zones as they are built in India, which faces chronic energy challenges.

Major upcoming opportunities for U.S. firms include the seven technology townships associated with the development of the Delhi Mumbai Industrial Corridor (DMIC), the billion dollar Chennai-Bangalore expressway, municipal construction in several large cities, large educational and hospitality projects launched by the private sector as well as multi-use township and residential projects.

The Indian architecture/construction industry is an integral part of the economy and a conduit for a substantial part of its development investment. The profession and practice of architecture, design and project management in India has undergone a complete transformation in recent years. The booming economy and growing middle class has prompted developers to bring in foreign architects to design many projects, including airports, residential and commercial buildings, and resorts. Foreign architects have a proven track record and have helped bring about a transformation in the way projects are designed and built in India. Many foreign architecture firms have paired up with Indian firms who have the expertise on the ground to execute projects.

To explore these opportunities the trade mission will visit three cities as described below:

*Chennai, Tamil Nadu*

Chennai (also known as Madras) is the capital city of the Indian state of Tamil Nadu. Located on the Coromandel Coast off the Bay of Bengal, it is a major commercial, cultural, and educational center in south India and the port of Chennai is the second largest port in India. As of the 2011 census, the city had 4.68 million residents making it the sixth most populous city in India; the urban agglomeration, which comprises the city and its suburbs, was home to approximately 8.9 million people, making it the fourth most populous metropolitan area in the country. According to Forbes magazine, Chennai is one of the fastest growing cities in the world. It has a diversified economic base anchored by the automobile, software services, hardware manufacturing, and health care and financial services industries. According to the Confederation of Indian Industry (CII), Chennai is estimated to grow to a $100–billion economy, 2.5 times its present size, by the year 2025.

Chennai firms are looking to American architects to learn the processes for executing world-class contemporary buildings. Chennai is experiencing a broad need for all building types, but corporate campuses, education, housing, infrastructure, and master-planning efforts are the most active development sectors. The Chennai realty market has been growing at over 8 percent a year and there are at least 675 real estate projects pending for approval with the local government and 43.5 million square feet area is awaiting development in Chennai. The residential real estate market in is expected to register strong growth in 2012, primarily on account of improvement in the information technology (IT) sector, and continued economic growth in the region. CS Chennai has supported the CII initiated Green building movement, with the U.S.

Agency for International Development (USAID) supported Green Building council, established in Hyderabad in cooperation with U.S. Green building council.

*Kolkata, West Bengal*

Kolkata (also known as Calcutta) is the capital of the Indian state of West Bengal and has a rich history spanning more than 300 years. Located on the east bank of the Hooghly River, it is the principal commercial, cultural, and educational centre of East India, while the Port of Kolkata is India's oldest port and the country's sole major river port.

The Kolkata metropolitan area (which is 1,480 sq. km, including its suburbs), is home to approximately 14.1 million people within three municipal corporations and 39 local municipalities, making it the third most populous metropolitan area of the country. As of 2008, Kolkata's economic output, as measured by gross domestic product, ranked third behind Mumbai and New Delhi. Kolkata underwent years of urban decay from the 1970s until the late 1990s. Since then, interest in the city picked up and a construction boom is now underway. High rise apartment buildings, resorts and commercial complexes are being developed all over the city. As a growing metropolitan city in a developing country, Kolkata faces urban challenges such as extremely high population density, high traffic density in low road space, several thousand heritage buildings in dire need of restoration, shortage of funds, socio-economic dislocations, and unregulated expansion of the city to accommodate growing population and pollution.

Opportunities have been created by the growing demand for high end residential and commercial buildings, new satellite townships, the growing economic power of the middle class population, exposure to modern city concepts from a globalized urban youth population and a vibrant real estate developer community. One of the largest projects is the construction of Rajarhat/New Town, an area that will ultimately cover as much as 50 sq km. In recent years, bids have generated participation by large Indian real estate firms such as Unitech and DLF, and by an international leader, EMAAR. Local architects and developers are seeking to attract foreign architects to get involved in high profile projects.

*Bangalore, Karnataka*

Bangalore (also known as Bengaluru), is the capital of the state of Karnataka. Located on the Deccan Plateau in the south-eastern part of Karnataka, and with an estimated population of 8.5 million in 2011, Bangalore is the third most populous city in India and the 28th largest in the world. Bangalore, most famously known as ''India's Silicon Valley'' is the hub for India's information technology sector. With the advent and growth of the ITES industry, as well as numerous industries in other sectors, and the onset of economic liberalization since the early 1990s, Bangalore has taken the lead in service-based industries, fuelling substantial growth of the city both economically and spatially.

Bangalore has become a cosmopolitan city attracting people and business alike, within and across nations. A large number of companies, domestic as well as multinationals, have opened their offices in the Silicon Valley of India. While the Bangalore Development Authority (BDA) governs the growth process of the city, a majority of commercial developments in the city have been carried out by the private sector. The city is becoming a hub of people with high salaries leading to high disposable incomes, which has created a boom in real estate prices; prices grew 25 percent in the period 2011–12. The past year also saw a large number of residential project launches. There are many factors which are boosting demand. Realty experts are of the opinion that the large metro rail project now under construction will transform the real estate scenario in this city in next three years, similar to what happened in the national capital Delhi. Demand for back-offices and contact centers has resulted in continued strong growth in suburban real estate development, with leading IT companies continuing to set up new facilities in Bangalore.

**Mission Goals**

The goals of the Architecture Services Trade Mission to India are to provide U.S. participants with first-hand market information, and one-on-one meetings with business contacts, including potential end users and partners, so that they can position themselves to enter or expand their presence in the Indian market. As such, the mission will focus on helping U.S. companies obtain market information, establish business and government contacts, solidify business strategies, and/or advance specific projects.

The mission will also facilitate first-hand market exposure and access to government decision makers and key private-sector industry contacts, including potential partners. It will provide opportunities for participants to have policy and regulatory framework discussions with Indian government officials and private sector representatives, in order to advance U.S. architectural interests in India.

**Mission Scenario**

The mission will start in Chennai with a welcome dinner on Sunday, October 14. The next day the participants will attend a round table industry seminar, industry briefing, site visits, lunch meeting with chamber/builders association and one-on-one business meetings. On Tuesday evening the delegates will reach Kolkata.

On Wednesday morning the delegates will start with a site visit. This will be followed by a briefing meeting, followed by one-on-one meetings. There will also be a meeting with the Government of West Bengal, which will be optional for the participating companies. At noon, there will be a networking luncheon with representatives from Indian architecture firms, project developers, and contracting engineers. After lunch the one-on-one meetings will continue followed by a networking reception. On Thursday morning the delegation will depart for Bangalore.

In Bangalore, the delegates will start with site visits and will also have the opportunity to meet and network with Bangalore-based architectural firms and Government regulators on Thursday. Friday morning will start with an expert briefing, followed by one-on-one business meetings. They will also have a networking lunch meeting with members of the Confederation of Real Estate Developers' Association (CREDIA).

The participants will attend policy, market and commercial briefings by the U.S. Commercial Service and industry experts as well as networking events offering further opportunities to speak with government officials as well as potential distributors, agents, partners and end users. U.S. participants will be counseled before and after the mission by CS India staff. Participation in the mission will include the following:

- Pre-travel briefings on subjects from business practices in India to security;
- Pre-scheduled meetings with government officials, potential partners, distributors, agents, end users and local industry contacts in Chennai, Kolkata and Bangalore;
- Airport transfers in Chennai, Kolkata and Bangalore;
- Participation in networking receptions in Chennai, Kolkata and Bangalore; and participation in one-on-one business meetings with potential clients, partners and distributors in all three cities.

PROPOSED TIMETABLE

| | |
|---|---|
| **Chennai** | |
| Sunday—October 14 | • Arrive in Chennai.<br>• Evening Welcome Dinner.<br>• Overnight stay at Chennai. |
| Monday—October 15 | • Breakfast briefing by industry experts.<br>• Industry Roundtable on Infrastructure/Architecture/Design.<br>• Networking lunch hosted by a Chamber.<br>• One-on-one business meetings.<br>• Overnight stay in Chennai. |
| **Chennai/Kolkata** | |
| Tuesday—October 16 | • Afternoon travel to Kolkata.<br>• Overnight stay in Kolkata. |
| **Kolkata** | |
| Wednesday—October 17 | • Site Visit.<br>• Networking lunch with local industry representatives.<br>• One-on-one business meetings.<br>• Evening networking reception hosted by Consul General.<br>• Overnight stay in Kolkata. |
| **Kolkata/Bangalore** | |
| Thursday—October 18 | • Morning travel to Bangalore.<br>• Site visits.<br>• Meetings with local industry and government officials.<br>• Evening networking reception.<br>• Overnight stay in Bangalore. |
| **Bangalore** | |
| Friday—October 19 | • Breakfast briefing.<br>• Roundtable/Workshop: Networking with Indian Architectural firms.<br>• Networking lunch hosted by CREDAI—The Confederation of Real Estate Developers' Association of India.<br>• One-on-one business meetings.<br>• Wrap-up discussion followed by dinner.<br>• Mission ends. |

**Participation Requirements**

All parties interested in participating in the trade mission must complete and submit an application package for consideration by the U.S. Department of Commerce. All applicants will be evaluated on their ability to meet certain conditions and best satisfy the selection criteria as outlined below. A minimum of 15 and maximum of 25 participants will be selected from the applicant pool to participate in the mission.

*Fees and Expenses*

After a company or trade association has been selected to participate on the mission, a payment to the U.S. Department of Commerce in the form of a participation fee is required. The participation fee is $4,735 for large firms and $4,575 for small or medium-sized enterprises (SME).[1] The fee for each additional representative (large firm or SME/trade organization) is $750. After the mission there is the option for gold key service match-making meetings arranged in Mumbai, New Delhi or Ahmedabad for additional fees.

*Exclusions*

The mission fee does not include any personal travel expenses such as lodging, most meals, local ground transportation (except for transportation to and from meetings), and air transportation from the U.S. to the mission sites and return to the U.S. Delegate members will, however, be able to take advantage of U.S. Government rates for hotel rooms. Business visas may be required. Government fees and processing expenses to obtain such visas are also not included in the mission costs. However, the U.S. Department of Commerce will provide instructions to each participant on the procedures required to obtain necessary business visas.

**Conditions for Participation**

Applicants must submit a completed and signed mission application and supplemental application materials, including adequate information on the company's products and/or services, primary market objectives, and goals for participation. If the Department of Commerce receives an incomplete application, the Department may either: reject the application, request additional information/clarification, or take the lack of information into account when evaluating the applications.

Each applicant must also certify that the products and services it seeks to export through the mission are either produced in the United States, or, if not, are marketed under the name of a U.S. firm and have at least fifty-one percent

[1] An SME is defined as a firm with 500 or fewer employees or that otherwise qualifies as a small business under SBA regulations (see *http://www.sba.gov/services/contracting opportunities/sizestandardstopics/index.html*). Parent companies, affiliates, and subsidiaries will be considered when determining business size. The dual pricing reflects the Commercial Service's user fee schedule that became effective May 1, 2008 (see *http://www.export.gov/newsletter/march2008/initiatives.html* for additional information).

U.S. content. In the case of a trade association or trade organization, the applicant must certify that for each company to be represented by the association or trade organizations, the products and/or services the represented company seeks to export are either produced in the United States or, if not, marketed under the name of a U.S. firm and have at least fifty-one percent U.S. content.

In addition, each applicant must:

- Certify that the products and services that it wishes to market through the mission would be in compliance with U.S. export controls and regulations;
- Certify that it has identified to the Department of Commerce for its evaluation any business pending before the Department that may present the appearance of a conflict of interest;
- Certify that it has identified any pending litigation (including any administrative proceedings) to which it is a party that involves the Department of Commerce; and
- Sign and submit an agreement that it and its affiliates (1) have not and will not engage in the bribery of foreign officials in connection with a company's/participant's involvement in this mission, and (2) maintain and enforce a policy that prohibits the bribery of foreign officials.

**Selection Criteria for Participation**

Targeted mission participants are U.S. companies and trade associations providing architectural services that have an interest in entering or expanding their business in the Indian market. The following criteria will be evaluated in selecting participants:

- Suitability of a company's (or in the case of a trade association or trade organization, represented companies') products or services to the Indian market.
- Company's (or in the case of a trade association or trade organization, represented companies') potential for business in India, including likelihood of exports resulting from the mission.
- Consistency of the applicant company's (or in the case of a trade association or trade organization, represented companies') goals and objectives with the stated scope of the mission.
- Current or pending major project participation.
- Rank/seniority of the designated company representative.

Additional factors, such as diversity of company size, type, location, and demographics, may also be considered during the review process.

Referrals from political organizations and any documents, including the application, containing references to partisan political activities (including political contributions) will be removed from an applicant's submission and not considered during the selection process.

**Timeframe for Recruitment and Application**

Mission recruitment will be conducted in an open and public manner, including publication in the **Federal Register**, posting on the Commerce Department trade mission calendar (*http://www.export.gov/trademissions/*) and other Internet web sites, press releases to general and trade media, direct mail, broadcast fax, notices by industry trade associations and other multiplier groups, and publicity at industry meetings, symposia, conferences, and trade shows.

Recruitment for this mission will begin immediately and conclude no later than August 24, 2012. The U.S. Department of Commerce will review applications and make selection decisions on a rolling basis beginning June 4, 2012, until the maximum of 25 participants is selected. Applications received after August 24, 2012 will be considered only if space and scheduling constraints permit.

**Contacts**

*U.S. Commercial Service Washington, DC*

Arica Young, U.S. Commercial Service, Washington, DC, Tel: 202–482–2833, Email: *Arica.Young@trade.gov*.

*U.S. Commercial Service India*

Sangeeta Taneja, U.S. Commercial Service, Ahmedabad, India, Tel: +91–79–2656–5216, Email: *Sangeeta.Taneja@trade.gov*.

**Frank Spector,**

*Senior International Trade Specialist, Global Trade Programs.*

[FR Doc. 2012–12931 Filed 5–25–12; 8:45 am]

BILLING CODE 3510–FP–P

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## DEPARTMENT OF COMMERCE

### National Institute of Standards and Technology

### Proposed Information Collection; Comment Request; Generic Clearance for Program Evaluation Data Collection

**AGENCY:** National Institute of Standards and Technology (NIST), Commerce.

**ACTION:** Notice.

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

**DATES:** Written comments must be submitted on or before July 30, 2012.

**ADDRESSES:** Direct all written comments to Jessica Jessup, Departmental Paperwork Clearance Officer, (202) 482–0336, Department of Commerce, Room 6616, 14th and Constitution Avenue NW., Washington, DC 20230 (or via the Internet at *jjessup@doc.gov*).

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the information collection instrument and instructions should be directed to Darla Yonder, Management Analyst, NIST, 100 Bureau Drive, MS 1710, Gaithersburg, MD 20899–1710, telephone 301–975–4064 or via email to *darla.yonder@nist.gov*.

**SUPPLEMENTARY INFORMATION:**

**I. Abstract**

In accordance with Executive Order 12862, the National Institute of Standards and Technology (NIST), a non-regulatory agency of the Department of Commerce, proposes to conduct a number of surveys—both quantitative and qualitative—designed to evaluate our current programs from a customer's perspective. NIST proposes to perform program evaluation data collections by means of, but not limited to, focus groups, reply cards that accompany product distributions, and Web-based surveys and dialogue boxes that offer customers the opportunity to express their views on the programs they are asked to evaluate. NIST will limit its inquiries to data collections that solicit strictly voluntary opinions and will not collect information that is required or regulated. Steps will be taken to assure anonymity of respondents in each activity covered under this request.

**II. Method of Collection**

NIST will collect this information by mail, fax, electronically, telephone and person-to-person sessions.

**III. Data**

*OMB Control Number:* 0693–0033.

*Form Number:* None

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

*Affected Public:* Business or other for-profit organizations, not-for-profit institutions, individuals or households, Federal Government, and State, Local, or Tribal Government.

*Estimated Number of Respondents:* 12,000.

*Estimated Time per Response:* Varied dependent upon the data collection. The response time may vary from two minutes for a response card or two hours for focus group participation. The average time per response is expected to be 30 minutes.

*Estimated Total Annual Burden Hours:* 3,022.

*Estimated Total Annual Cost to Public:* $0.

**IV. Request for Comments**

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

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

Dated: May 23, 2012.

**Gwellnar Banks,**

*Management Analyst, Office of the Chief Information Officer.*

[FR Doc. 2012–12903 Filed 5–25–12; 8:45 am]

BILLING CODE 3510–13–P

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**RIN 0648–XB154**

### Marine Mammals; File No. 16388

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

**ACTION:** Notice; receipt of application.

**SUMMARY:** Notice is hereby given that Mark Baumgartner, Ph.D., Woods Hole Oceanographic Institution, MS#33 Biology Department, Woods Hole, MA 02543, has applied in due form for a permit to conduct research on humpback whales (*Megaptera novaeangliae*), fin whales (*Balaenoptera physalus*), blue whales (*B. musculus*), sei whales (*B. borealis*), bowhead whales (*Balaena mysticetus*), North Atlantic right whales (*Eubalaena glacialis*), North Pacific right whales (*E. japonica*), and Eastern North Pacific gray whales (*Eschrichtius robustus*).

**DATES:** Written, telefaxed, or email comments must be received on or before June 28, 2012.

**ADDRESSES:** The application and related documents are available for review by selecting ''Records Open for Public Comment'' from the *Features* box on the Applications and Permits for Protected Species (APPS) home page, *https://apps.nmfs.noaa.gov,* and then selecting File No. 16388 from the list of available applications.

These documents are also available upon written request or by appointment in the following offices: See **SUPPLEMENTARY INFORMATION.**

Written comments on this application should be submitted to the Chief, Permits and Conservation Division, at the address listed above. Comments may also be submitted by facsimile to (301) 713–0376, or by email to *NMFS.Pr1Comments@noaa.gov.* Please include the File No. in the subject line of the email comment.

Those individuals requesting a public hearing should submit a written request to the Chief, Permits and Conservation Division at the address listed above. The request should set forth the specific reasons why a hearing on this application would be appropriate.

**FOR FURTHER INFORMATION CONTACT:** Joselyd Garcia-Reyes or Carrie Hubard, (301) 427–8401.

**SUPPLEMENTARY INFORMATION:** The subject permit is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (MMPA; 16 U.S.C. 1361 *et seq.*), the regulations governing the taking and importing of marine mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR parts 222–226).

The applicant requests a five-year permit to study the diving behavior and foraging ecology of baleen whales. The purposes of the research are to: (1) Characterize diving and foraging behavior in the context of the oceanographic and acoustic environment to support improved management of baleen whales, (2) elucidate day-night cycles of foraging behavior, (3) study the environmental factors that influence diving behavior of all demographic groups, and (4) identify preferred prey species, but also the oceanographic conditions that help to concentrate prey to develop a predictive model of baleen whale distribution. Research would occur in: The northwest Atlantic from Maine to Florida; Canadian waters of the Gulf of Maine, Labrador Sea, Davis Strait, Baffin Bay, and Hudson Bay; waters off the U.S. North Pacific (California to Washington); and the Arctic Ocean including Bering, Chukchi and Beaufort Seas. The applicant requests takes of humpback, fin, blue, sei, bowhead, North Atlantic right and North Pacific right, and Eastern North Pacific gray whales. See the application for specific take numbers by location and species/stock. Activities would include vessel surveys for passive acoustic recording, dermal and suction cup tagging, behavioral observations, photo-id, and tracking.

A draft environmental assessment (EA) has been prepared in compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), to examine whether significant environmental impacts could result from issuance of the proposed scientific research permit. The draft EA is available for review and comment simultaneous with the scientific research permit application.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of the application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Documents may be reviewed in the following locations:

Permits and Conservation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301) 427–8401; fax (301) 713–0376;

Northwest Region, NMFS, 7600 Sand Point Way NE., BIN C15700, Bldg. 1, Seattle, WA 98115–0700; phone (206) 526–6150; fax (206) 526–6426;

Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802–1668; phone (907) 586–7221; fax (907) 586–7249;

Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213; phone (562) 980–4001; fax (562) 980–4018;

Northeast Region, NMFS, 55 Great Republic Drive, Gloucester, MA 01930; phone (978) 281–9328; fax (978) 281–9394; and

Southeast Region, NMFS, 263 13th Avenue South, Saint Petersburg, FL 33701; phone (727) 824–5312; fax (727) 824–5309.

Dated: May 22, 2012.

**Tammy C. Adams,**

*Acting Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service.*

[FR Doc. 2012–12962 Filed 5–25–12; 8:45 am]

**BILLING CODE 3510–22–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**RIN 0648–XC037**

### Endangered Species; File No. 16556

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

**ACTION:** Notice; receipt of application.

**SUMMARY:** Notice is hereby given that NMFS Northeast Fisheries Science Center (NEFSC; Responsible Party: Frank Almeida), 166 Water St., Woods Hole, MA, 02543 has applied in due form for a permit to take loggerhead (*Caretta caretta*), leatherback (*Dermochelys coriacea*), Kemp's ridley (*Lepidochelys kempii*), and green (*Chelonia mydas*) sea turtles for purposes of scientific research.

**DATES:** Written, telefaxed, or email comments must be received on or before June 28, 2012.

**ADDRESSES:** The application and related documents are available for review by selecting ''Records Open for Public Comment'' from the *Features* box on the Applications and Permits for Protected Species (APPS) home page, *https://apps.nmfs.noaa.gov,* and then selecting File No. 16556 from the list of available applications.

These documents are also available upon written request or by appointment in the following offices:

Permits and Conservation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301) 427–8401; fax (301) 713–0376;

Northeast Region, NMFS, 55 Great Republic Drive, Gloucester, MA 01930; phone (978) 281–9328; fax (978) 281–9394; and

Southeast Region, NMFS, 263 13th Avenue South, Saint Petersburg, FL 33701; phone (727) 824–5312; fax (727) 824–5309.

Written comments on this application should be submitted to the Chief, Permits and Conservation Division.

- By email to *NMFS.Pr1Comments@noaa.gov* (include the File No. in the subject line of the email),
- By facsimile to (301) 713–0376, or
- At the address listed above.

Those individuals requesting a public hearing should submit a written request to the Chief, Permits and Conservation Division at the address listed above. The request should set forth the specific reasons why a hearing on this application would be appropriate.

**FOR FURTHER INFORMATION CONTACT:** Amy Hapeman or Kristy Beard, (301) 427–8401.

**SUPPLEMENTARY INFORMATION:** The subject permit is requested under the authority of the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*) and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR parts 222–226).

The NEFSC requests a five-year permit to continue sea turtle ecological research in the Western Atlantic (Florida Keys through Maine). Researchers would capture animals by hand, dip net, encircle net, hoop net, or obtain animals for research from other legal authorities. Sea turtles would have a combination of the following procedures performed: epibiota removal; collect tumors; count/survey; imaging; insert stomach telemeter pill; instrument attachment by drilling the carapace, epoxy or suction-cup; laparoscopy; gastric or cloacal lavage; temporary carapace mark; living, flipper, and passive integrated transponder tagging; measure; photograph/video; blood, fat, feces, scute, tissue, organ and muscle sample; nasal, cloacal, lesion, and oral swab; transport; ultrasound; weigh; tracking by vessel or remotely operated vehicle (ROV); observation by ROV; and recapture for gear removal. Up to one animal of each species could be unintentionally killed over the life of the permit. Researchers may also salvage carcass, tissue, and parts from dead animals encountered during surveys. Up to 541 loggerhead, 516 Kemp's ridley, 498 leatherback, 500 green, and 427 unidentified sea turtles would be taken annually.

Dated: May 23, 2012.

**Tammy C. Adams,**

*Acting Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service.*

[FR Doc. 2012–12960 Filed 5–25–12; 8:45 am]

**BILLING CODE 3510–22–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**RIN 0648–XC022**

### Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Fishery of the Gulf of Mexico; Exempted Fishing Permit

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

**ACTION:** Notice of receipt of an application for an exempted fishing permit; request for comments.

**SUMMARY:** NMFS announces the receipt of an application for an exempted fishing permit (EFP) from Florida Sea Grant. If granted, the EFP would exempt Florida Sea Grant agents from regulations at § 622.41(m)(3), requiring the use of venting tools when releasing regulatory discarded fish back to the water from July 1, 2012, through July 1, 2013. This study, to be conducted in the exclusive economic zone (EEZ) of the Gulf of Mexico (Gulf) off Florida, is intended to better document the efficacy and practicality of various recompression gear methods.

**DATES:** Comments must be received no later than 5 p.m., eastern time, on June 28, 2012.

**ADDRESSES:** You may submit comments on the application by any of the following methods:

- *Email: 0648-XC022.FLSeagrant@noaa.gov*. Include in the subject line of the email comment the following document identifier: ''FL Sea Grant EFP''.
- *Mail:* Rich Malinowski, Southeast Regional Office, NMFS, 263 13th Avenue South, St. Petersburg, FL 33701.

The application and related documents are available for review upon written request to any of the above addresses.

**FOR FURTHER INFORMATION CONTACT:** Rich Malinowski, 727–824–5305; email: *rich.malinowski@noaa.gov.*

**SUPPLEMENTARY INFORMATION:** The EFP is requested under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*), and regulations at 50 CFR 600.745(b) concerning exempted fishing.

The described research is part of a new research program by Florida Sea Grant. The research is intended to involve recreational fishermen in the collection of fundamental biological information of Gulf reef fish. The

proposed sampling for scientific research involves activities that could otherwise be prohibited by regulations at 50 CFR part 622, as they pertain to reef fish managed by the Gulf of Mexico Fishery Management Council (Council). The applicant requires authorization through the EFP to not vent these Council-managed species using recompression gears as part of the normal fishing activities of the recreational sector of the Gulf reef fish fishery. Florida Sea Grant is requesting that selected participants use various types of recompression gears instead of venting tools as currently required by regulation. The goal of the research is to provide evaluation of the various recompression gears for industry use.

NMFS finds this application warrants further consideration. Possible conditions the agency may impose on this permit, if it is indeed granted, include but are not limited to, a prohibition of conducting research within marine protected areas, marine sanctuaries, or special management zones, without additional authorization. A report on the research would be due at the end of the collection period, to be submitted to NMFS and reviewed by the Council.

A final decision on issuance of the EFP will depend on NMFS's review of public comments received on the application, consultations with the affected states, the Council, and the U.S. Coast Guard, as well as a determination that it is consistent with all applicable laws.

**Authority:** 16 U.S.C. 1801 *et seq.*

Dated: May 22, 2012.

**Carrie Selberg,**

*Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

[FR Doc. 2012–12961 Filed 5–25–12; 8:45 am]

BILLING CODE 3510–22–P

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**RIN 0648–XC048**

### Fishing Capacity Reduction Program for the Pacific Coast Groundfish Fishery

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

**ACTION:** Notice of loan repayment.

**SUMMARY:** NMFS issues this notice to inform interested parties that the Oregon Pink Shrimp sub-loan in the fishing capacity reduction program for the Pacific Coast Groundfish Fishery has been repaid. Therefore, buyback fee collections on Oregon pink shrimp will cease.

**DATES:** Comments must be submitted on or before 5 p.m. EST June 13, 2012.

**ADDRESSES:** Send comments about this notice to Paul Marx, Chief, Financial Services Division, NMFS, Attn: Oregon Pink Shrimp Buyback, 1315 East-West Highway, Silver Spring, MD 20910 (see **FOR FURTHER INFORMATION CONTACT**).

**FOR FURTHER INFORMATION CONTACT:** Michael A. Sturtevant at (301) 427–8799, fax (301) 713–1306, or *michael.a.sturtevant@noaa.gov*.

**SUPPLEMENTARY INFORMATION:** On November 16, 2004, NMFS published a **Federal Register** document (69 FR 67100) proposing regulations to implement an industry fee system for repaying the reduction loan. The final rule was published July 13, 2005 (70 FR 40225) and fee collection began on September 8, 2005. Interested persons should review these for further program details.

The Oregon pink shrimp sub-loan of the Pacific Coast Groundfish Capacity Reduction (Buyback) loan in the amount of $2,228,844.53 has now been repaid in full. NMFS has received $3,253,336.34 to repay the principal and interest on this sub-loan since fee collection began September 8, 2005. Landings in the Oregon pink shrimp fishery increased in recent seasons, particularly in the 2011 season, which resulted in this sub-loan being repaid on or about May 17, 2012. As a result, buyback loan fees will no longer be collected in the Oregon pink shrimp fishery.

Based upon the best available data from the Oregon Department of Fish and Wildlife, landings after April 19, 2012, will not be subject to the buyback fee. Any funds submitted to NMFS for landings after this date will be refunded on a pro-rata basis to the fish buyers/processors. The fish buyers/processors should return excess fees collected to the harvesters, including buyback fees collected but not yet remitted to NMFS.

Dated: May 23, 2012.

**Cherish Johnson,**

*Acting Director, Office of Management and Budget, National Marine Fisheries Service.*

[FR Doc. 2012–12969 Filed 5–25–12; 8:45 am]

BILLING CODE 3510–22–P

## COMMODITY FUTURES TRADING COMMISSION

### Sunshine Act Meeting Notice

**AGENCY HOLDING THE MEETING:** Commodity Futures Trading Commission.

**TIME AND DATE:** 10:00 a.m., Friday June 29, 2012.

**PLACE:** 1155 21st St. NW., Washington, DC, 9th Floor Commission Conference Room.

**STATUS:** Closed.

**MATTERS TO BE CONSIDERED:** Surveillance and Enforcement Matters. In the event that the times or dates of these or any future meetings change, an announcement of the change, along with the new time and place of the meeting will be posted on the Commission's Web site at *http://www.cftc.gov.*

**CONTACT PERSON FOR MORE INFORMATION:** Sauntia S. Warfield, 202–418–5084.

**Sauntia S. Warfield,**

*Assistant Secretary of the Commission.*

[FR Doc. 2012–13059 Filed 5–24–12; 4:15 pm]

BILLING CODE 6351–01–P

## COMMODITY FUTURES TRADING COMMISSION

### Sunshine Act Meeting Notice

**AGENCY HOLDING THE MEETING:** Commodity Futures Trading Commission.

**TIME AND DATE:** 10:00 a.m., Friday, June 1, 2012.

**PLACE:** 1155 21st St. NW., Washington, DC, 9th Floor Commission Conference Room.

**STATUS:** Closed.

**MATTERS TO BE CONSIDERED:** Surveillance and Enforcement Matters. In the event that the times or dates of these or any future meetings change, an announcement of the change, along with the new time and place of the meeting will be posted on the Commission's Web site at *http://www.cftc.gov.*

**CONTACT PERSON FOR MORE INFORMATION:** Sauntia S. Warfield, 202–418–5084.

**Sauntia S. Warfield,**

*Assistant Secretary of the Commission.*

[FR Doc. 2012–13063 Filed 5–24–12; 4:15 pm]

BILLING CODE 6351–01–P

## COMMODITY FUTURES TRADING COMMISSION

### Sunshine Act Meeting Notice

**AGENCY HOLDING THE MEETING:** Commodity Futures Trading Commission.

**TIME AND DATE:** 10:00 a.m., Friday, June 8, 2012.

**PLACE:** 1155 21st St. NW., Washington, DC, 9th Floor Commission Conference Room.

**STATUS:** Closed.

**MATTERS TO BE CONSIDERED:** Surveillance and Enforcement Matters. In the event that the times or dates of these or any future meetings change, an announcement of the change, along with the new time and place of the meeting will be posted on the Commission's Web site at *http://www.cftc.gov*.

**CONTACT PERSON FOR MORE INFORMATION:** Sauntia S. Warfield, 202–418–5084.

**Sauntia S. Warfield,**

*Assistant Secretary of the Commission.*

[FR Doc. 2012–13062 Filed 5–24–12; 4:15 pm]

**BILLING CODE 6351–01–P**

## COMMODITY FUTURES TRADING COMMISSION

### Sunshine Act Meeting Notice

**AGENCY HOLDING THE MEETING:** Commodity Futures Trading Commission.

**TIME AND DATE:** 10:00 a.m., Friday June 15, 2012.

**PLACE:** 1155 21st St. NW., Washington, DC, 9th Floor Commission Conference Room.

**STATUS:** Closed.

**MATTERS TO BE CONSIDERED:** Surveillance, Enforcement Matters and a Rule Enforcement Review. In the event that the times or dates of these or any future meetings change, an announcement of the change, along with the new time and place of the meeting will be posted on the Commission's Web site at *http://www.cftc.gov.*

**CONTACT PERSON FOR MORE INFORMATION:** Sauntia S. Warfield, 202–418–5084.

**Sauntia S. Warfield,**

*Assistant Secretary of the Commission.*

[FR Doc. 2012–13060 Filed 5–24–12; 4:15 pm]

**BILLING CODE 6351–01–P**

## COMMODITY FUTURES TRADING COMMISSION

### Sunshine Act Meeting Notice

**AGENCY HOLDING THE MEETING:** Commodity Futures Trading Commission.

**TIME AND DATE:** 10:00 a.m., Friday June 22, 2012.

**PLACE:** 1155 21st St. NW., Washington, DC, 9th Floor Commission Conference Room.

**STATUS:** Closed.

**MATTERS TO BE CONSIDERED:** Surveillance and Enforcement Matters. In the event that the times or dates of these or any future meetings change, an announcement of the change, along with the new time and place of the meeting will be posted on the Commission's Web site at *http://www.cftc.gov*.

**CONTACT PERSON FOR MORE INFORMATION:** Sauntia S. Warfield, 202–418–5084.

**Sauntia S. Warfield,**

*Assistant Secretary of the Commission.*

[FR Doc. 2012–13061 Filed 5–24–12; 4:15 pm]

**BILLING CODE 6351–01–P**

## DEPARTMENT OF DEFENSE

### Office of the Secretary

**[Transmittal Nos. 12–21]**

### 36(b)(1) Arms Sales Notification

**AGENCY:** Department of Defense, Defense Security Cooperation Agency.

**ACTION:** Notice.

**SUMMARY:** The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104–164 dated July 21, 1996.

**FOR FURTHER INFORMATION CONTACT:** Ms. B. English, DSCA/DBO/CFM, (703) 601–3740.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittals 12–21 with attached transmittal, policy justification, and Sensitivity of Technology.

Dated: May 22, 2012.

**Aaron Siegel,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

**BILLING CODE 5001–06–P**

DEFENSE SECURITY COOPERATION AGENCY
201 12TH STREET SOUTH, STE 203
ARLINGTON, VA 22202-5408

MAY 16 2012

The Honorable John A. Boehner
Speaker of the House
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 12-21, concerning the Department of the Navy's proposed Letter(s) of Offer and Acceptance to the Republic of Korea for defense articles and services estimated to cost $1.0 billion. After this letter is delivered to your office, we plan to issue a press statement to notify the public of this proposed sale.

Sincerely,

**Richard A. Genaille, Jr.**
**Deputy Director**

Enclosures:
1. Transmittal
2. Policy Justification
3. Sensitivity of Technology

BILLING CODE 5001–06–C

**Transmittal No. 12–21**

*Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act, as Amended*

(i) *Prospective Purchaser:* Republic of Korea.

(ii) *Total Estimated Value:*

| | |
|---|---|
| Major Defense Equipment * | $ .600 billion. |
| Other | .400 billion. |
| Total | 1.000 billion. |

* as defined in Section 47(6) of the Arms Export Control Act.

(iii) *Description and Quantity or Quantities of Articles or Services under Consideration for Purchase:* 8 MH–60R SEAHAWK Multi-Mission Helicopters, 18 T–700 GE 401C Engines (16 installed and 2 spares), communication equipment, electronic warfare systems, support equipment, spare engine containers, spare and repair parts, tools and test equipment, technical data and publications, personnel training and training equipment, U.S. government and contractor engineering, technical, and logistics support services, and other related elements of logistics and program support.

(iv) *Military Department:* Navy (SDY).

(v) *Prior Related Cases, if any:* None.

(vi) *Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid:* None.

(vii) *Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold:* See Annex attached.

(viii) *Date Report Delivered to Congress:* May 16, 2012.

Policy Justification

Korea—MH–60R SEAHAWK Multi-Mission Helicopters

The Government of the Republic of Korea has requested a possible sale of 8 MH–60R SEAHAWK Multi-Mission Helicopters, 18 T–700 GE 401C Engines (16 installed and 2 spares), communication equipment, electronic warfare systems, support equipment, spare engine containers, spare and repair parts, tools and test equipment, technical data and publications, personnel training and training equipment, U.S. government and contractor engineering, technical, and logistics support services, and other related elements of logistics and program support. The estimated cost is $1.0 billion.

The Government of the Republic of Korea is one of the major political and economic powers in East Asia and the Western Pacific and a key partner of the United States in ensuring peace and stability in that region. It is vital to the U.S. national interest to assist our Korean ally in developing and maintaining a strong and ready self-defense capability, which will contribute to an acceptable military balance in the area. This proposed sale is consistent with those objectives.

The proposed sale of the MH–60R SEAHAWK helicopter will improve South Korea's capability to meet current and future threats from enemy Anti-Surface Warfare (ASW) capabilities. The sale of these MH–60R helicopters will enhance interoperability with U.S. Naval forces, and add to the military stability of the region. Korea will have no difficulty absorbing these helicopters into its armed forces.

The proposed sale of this system and support will not alter the basic military balance in the region.

The prime contractors will be Sikorsky Aircraft Corporation in Stratford, Connecticut; Lockheed Martin in Owego, New York; and General Electric in Lynn, Massachusetts. There are no offset agreements proposed in connection with this potential sale.

Implementation of this proposed sale will require multiple trips to Korea involving U.S. Government or contractor representatives on a temporary basis for program and technical support, and management oversight.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

**Transmittal No. 12–21**

*Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act, as Amended*

Annex Item No. vii

(vii) *Sensitivity of Technology:*

1. The MH–60R SEAHAWK Multi-Mission Helicopter contains new generation technology. It is equipped for a range of missions including: anti-submarine warfare (ASW), anti-surface warfare (ASuW), search and rescue (SAR), naval gunfire support, surveillance, communications relay, logistics support, personnel transfer, and vertical replenishment. The navigation suite includes an LN–100G dual embedded global positioning system and inertial navigation system. The helicopter is equipped with a fully digital communications suite with ARC–210 radios for Ultra High Frequency/Very High Frequency voice communications, and an L–3 Communications Ku-band Data Link. The helicopter is fitted with the AN/AAS–44 Multi-Spectral Targeting System (MTS), AN/ALQ–210 electronic support measures system (ESM), and AN/APS–153 Multi-Mode Radar (MMR). The electronic warfare systems include the AN/AAR–47 missile warning system, AN/ALQ–144 infrared jammer, Identify Friend or Foe (IFF) Mode-4 and AN/ALE–47 chaff and flare decoy dispenser. The MH–60R, including the mission equipment, is classified Secret.

2. If a technologically advanced adversary were to obtain knowledge of the specific hardware and software elements, the information could be used to develop countermeasures which might reduce weapons systems effectiveness or be used in the development of a system with similar or advanced capabilities.

[FR Doc. 2012–12837 Filed 5–25–12; 8:45 am]

**BILLING CODE 5001–06–P**

## DEPARTMENT OF DEFENSE

### Office of the Secretary

### Reserve Forces Policy Board (RFPB); Notice of Advisory Committee Meeting

**AGENCY:** Department of Defense, Office of the Secretary of Defense Reserve Forces Policy Board.

**ACTION:** Notice of Advisory Committee meeting.

**SUMMARY:** Pursuant to the Federal Advisory Committee Act of 1972 (5 U.S.C., Appendix, as amended), the Sunshine in the Government Act of 1976 (5 U.S.C. 552b, as amended), and 41 CFR 102–3.150, the Department of Defense announces the following Federal advisory committee meeting of the Reserve Forces Policy Board.

**DATES:** Wednesday, June 13, 2012, from 8:00 a.m.–3:40 p.m.

**ADDRESSES:** Meeting address is the Pentagon, Room 3E863, Arlington, VA. Mailing address is Reserve Forces Policy Board, 5113 Leesburg Pike, Suite 601, Falls Church, VA 22041.

**FOR FURTHER INFORMATION CONTACT:** CDR Steven Knight, Designated Federal Officer, (703) 681–0608 (Voice), (703) 681–0002 (Facsimile), *RFPB@osd.mil.* Mailing address is Reserve Forces Policy Board, 5113 Leesburg Pike, Suite 601, Falls Church, VA 22041. Web site: ✖*http://ra.defense.gov/rfpb/.*

**SUPPLEMENTARY INFORMATION:**

*Purpose of the Meeting:* The Reserve Forces Policy Board will hold a meeting from 8:00 a.m. until 3:40 p.m. The portion of the meeting from 9:00 a.m. until 11:30 a.m. will be closed and is not open to the public.

*Agenda:* National Security, Budget and Force Structure Issues, and Subcommittee Briefs.

*Meeting Accessibility:* In accordance with section 10(d) of the Federal Advisory Committee Act, Public Law 92–463, as amended (5 U.S.C. App. 2) and 41 CFR 102–3.155, the Department of Defense has determined that the portion of this meeting from 9:00 a.m. until 11:30 a.m. will be closed to the public. Specifically, the Under Secretary of Defense (Personnel and Readiness), with the coordination of the DoD Office of General Counsel, has determined in writing that this portion of the meeting will be closed to the public because it will discuss matters listed in 5 U.S.C. 552b(c)(1). Pursuant to 5 U.S.C. 552b, as amended, and 41 CFR 102–3.140 through 102–3.165, and the availability of space, the open portion of the meeting is open to the public. To request a seat, interested persons must phone the Designated Federal Officer not later than June 4, 2012 at the number in **FOR FURTHER INFORMATION CONTACT.**

*Written Statements:* Pursuant to 41 CFR 102–3.105(j) and 102–3.140, interested persons may submit written statements to the Reserve Forces Policy Board at any time. Written statements should be submitted to the Reserve Forces Policy Board's Designated Federal Officer at the address or facsimile number in **FOR FURTHER INFORMATION CONTACT.** If statements pertain to a specific topic being discussed at a planned meeting, then these statements must be submitted no later than five (5) business days prior to

the meeting in question. The Designated Federal Officer will review all submitted written statements and provide copies to all the committee members.

Dated: May 23, 2012.

**Aaron Siegel,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 2012–12894 Filed 5–25–12; 8:45 am]

BILLING CODE 5001–06–P

## DEPARTMENT OF DEFENSE

### Department of the Air Force

**[Docket ID USAF–2012–0011]**

### Privacy Act of 1974; System of Records

**AGENCY:** Department of the Air Force, DoD.

**ACTION:** Notice to Alter a System of Records.

**SUMMARY:** The Department of the Air Force proposes to alter a system of records in its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

**DATES:** This proposed action will be effective on June 28, 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:** Mr. Charles J. Shedrick, (202) 404–6575. Department of the Air Force Privacy Office, Air Force Privacy Act Office, Office of Warfighting Integration and Chief Information officer, ATTN: SAF/CIO A6, 1800 Air Force Pentagon, Washington, DC 20330–1800.

**SUPPLEMENTARY INFORMATION:** The Department of the Air Force's 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 May 17, 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: May 23, 2012.

**Aaron Siegel,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

**F090 AF IG B**

**SYSTEM NAME:**

Inspector General Records (December 2, 2008, 73 FR 73252).

* * * * *

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Delete entry and replace with ''Individual's name, Social Security Number (SSN), case number, address, phone number, reports of investigations, statements of individuals, correspondence, and other information collected during investigation of and pertaining to complaints made to or investigated by the Air Force Inspector General.''

* * * * *

**RETRIEVABILITY:**

Delete entry and replace with ''Retrieved by last name and either SSN or case number.''

* * * * *

[FR Doc. 2012–12901 Filed 5–25–12; 8:45 am]

BILLING CODE 5001–05–P

## DEPARTMENT OF DEFENSE

### Department of the Navy

### Secretarial Authorization for a Member of the Department of the Navy to Serve on the Board of Directors, Navy-Marine Corps Relief Society

**AGENCY:** Department of the Navy, DoD.

**ACTION:** Notice.

**SUMMARY:** In accordance with 10 U.S.C. 1033, the Secretary of the Navy, with the concurrence of the Department of Defense General Counsel, has authorized Vice Admiral W.D. French, Commander, Navy Installations Command, to serve without compensation on the Board of Directors of the Navy-Marine Corps Relief Society.

Authorization to serve on the Board of Directors has been made for the purpose of providing oversight and advice to, and coordination with, the Navy-Marine Corps Relief Society. Participation of the above official in the activities of the Society will not extend to participation in day-to-day operations.

**FOR FURTHER INFORMATION CONTACT:** Lieutenant Commander Mary Pohanka, Office of the Judge Advocate General, Administrative Law Division, 703–614–6005.

**Authority:** 10 U.S.C. 1033(c)

Dated: May 21, 2012.

**J.M. Beal,**

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

[FR Doc. 2012–12904 Filed 5–25–12; 8:45 am]

BILLING CODE 3810–FF–P

## DEPARTMENT OF DEFENSE

### Department of the Navy

### Meeting of the U.S. Naval Academy Board of Visitors

**AGENCY:** Department of the Navy, DoD.

**ACTION:** Notice of partially closed meeting.

**SUMMARY:** The U.S. Naval Academy Board of Visitors will meet to make such inquiry, as the Board shall deem necessary, into the state of morale and discipline, the curriculum, instruction, physical equipment, fiscal affairs, and academic methods of the Naval Academy. The executive session of this meeting from 11:00 a.m. to 12:00 p.m. on June 11, 2012, will include discussions of disciplinary matters, law enforcement investigations into allegations of criminal activity, and personnel issues at the Naval Academy, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy. For this reason, the executive session of this meeting will be closed to the public.

**DATES:** The open session of the meeting will be held on June 11, 2012, from 8:30 a.m. to 11:00 a.m. The closed session of this meeting will be the executive session held from 11:00 a.m. to 12:00 p.m.

**ADDRESSES:** The meeting will be held in the Bo Coppege Room at the Naval Academy in Annapolis, Maryland. The meeting will be handicap accessible.

**FOR FURTHER INFORMATION CONTACT:** Lieutenant Commander Travis Haire, USN, Executive Secretary to the Board of Visitors, Office of the Superintendent, U.S. Naval Academy, Annapolis, MD 21402–5000, 410–293–1503.

**SUPPLEMENTARY INFORMATION:** This notice of meeting is provided per the Federal Advisory Committee Act, as amended (5 U.S.C. App.). The executive session of the meeting from 11:00 a.m. to 12:00 p.m. on June 11, 2012, will consist of discussions of law enforcement investigations into allegations of criminal activity, new and pending administrative/minor disciplinary infractions and nonjudicial punishments involving the Midshipmen attending the Naval Academy to include but not limited to individual honor/conduct violations within the Brigade, and personnel issues. The discussion of such information cannot be adequately segregated from other topics, which precludes opening the executive session of this meeting to the public. Accordingly, the Secretary of the Navy has determined in writing that the meeting shall be partially closed to the public because the discussions during the executive session from 11:00 a.m. to 12:00 p.m. will be concerned with matters coming under sections 552b(c)(5), (6), and (7) of title 5, United States Code.

Dated: May 17, 2012.

**J.M. Beal,**

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

[FR Doc. 2012–12902 Filed 5–25–12; 8:45 am]

**BILLING CODE 3810–FF–P**

## DEPARTMENT OF EDUCATION

### Notice of Proposed Information Collection Requests; Institute of Education Sciences; What Works Clearinghouse

**SUMMARY:** The What Works Clearinghouse (WWC) was established to develop, maintain, and make accessible a system of high-quality reviews of studies of the effectiveness of education-related interventions.

**DATES:** Interested persons are invited to submit comments on or before July 30, 2012.

**ADDRESSES:** Written comments regarding burden and/or the collection activity requirements should be electronically mailed to *ICDocketMgr@ed.gov* or mailed to U.S. Department of Education, 400 Maryland Avenue SW., LBJ, Washington, DC 20202–4537. Copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov,* by selecting the ''Browse Pending Collections'' link and by clicking on link number 04867. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue SW., LBJ, Washington, DC 20202–4537. Requests may also be electronically mailed to *ICDocketMgr@ed.gov* or faxed to 202–401–0920. Please specify the complete title of the information collection and OMB Control Number when making your request.

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

**SUPPLEMENTARY INFORMATION:** Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that Federal agencies provide interested parties an early opportunity to comment on information collection requests. The Acting Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management, publishes this notice containing proposed information collection requests at the beginning of the Departmental review of the information collection. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

*Title of Collection:* What Works Clearinghouse.

*OMB Control Number:* 1850–0788.

*Type of Review:* Extension.

*Total Estimated Number of Annual Responses:* 580.

*Total Estimated Number of Annual Burden Hours:* 163.

*Abstract:* The What Works Clearinghouse (WWC) was established to develop, maintain, and make accessible a system of high-quality reviews of studies of the effectiveness of education-related interventions. In support of this effort, the WWC currently collects information from users including nominations for studies, interventions, and topics to review, as well as evaluator and randomized controlled trials information. Primary members of the affected public include individuals or households. Information from the submissions will be used to further the work of the WWC in reviewing studies and interventions, developing topic areas and practice guides, and populating the Registry of Evaulation Reserachers and Registry of Randomized Controlled Trials for the WWC.

Dated: May 23, 2012.

**Tomakie Washington,**

*Acting Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management.*

[FR Doc. 2012–12942 Filed 5–25–12; 8:45 am]

**BILLING CODE 4000–01–P**

## DEPARTMENT OF EDUCATION

### Applications for New Awards; State-Tribal Education Partnership (STEP) Pilot Grant Competition

**AGENCY:** Office of Elementary and Secondary Education, Department of Education.

**ACTION:** Notice.

### Overview Information

State-Tribal Education Partnership (STEP) Pilot Notice inviting applications for new awards for fiscal year (FY) 2012.

*Catalog of Federal Domestic Assistance (CFDA) Number:* 84.415A.

**DATES:**

*Applications Available:* May 29, 2012.

*Deadline for Notice of Intent to Apply:* June 12, 2012.

*Dates of Pre-Application Meetings:* June 1, 2012, and June 5, 2012.

*Deadline for Transmittal of Applications:* July 13, 2012.

### Full Text of Announcement

### I. Funding Opportunity Description

*Purpose of Program:* The fiscal year 2012 appropriation for the Department of Education includes funding for a pilot program under the Indian Education National Activities authority. Under the pilot, the Department will award competitive grants to Tribal Education Agencies (TEAs) to increase their role in the education of American Indian and Alaska Native (AI/AN) students, including education to meet the unique educational and cultural needs of AI/AN students and improve their academic achievement.

Specifically, the purposes of these grants are to (a) promote increased collaboration between TEAs and State educational agencies (SEAs) in the administration of certain State-administered formula grant programs, and (b) build the capacity of TEAs to conduct certain State-level administrative functions under those programs for eligible schools located on a reservation.

*Requirements and Definitions:*

*Background:* Under this pilot program, known as the State-Tribal Education Partnership (STEP) Pilot, the Department intends to fund the implementation of collaborative agreements between Tribal Education Agencies (TEAs) (as defined in this notice) and SEAs. Under these agreements, SEAs will transfer to TEAs some State-level functions related to the administration of certain Elementary and Secondary Education Act (ESEA) programs for eligible schools (as defined in this notice) located on a reservation (as defined in this notice), with the goal of improving educational outcomes for AI/AN students.

The most critical aspect of the STEP Pilot will be the strength of the collaborative agreement between the TEA and the SEA. The agreement must document the SEA's and the TEA's commitment to the pilot project and describe in detail what is to be accomplished during the project period (as defined in this notice). However, the Department recognizes that, given the complexities involved in developing such an agreement, the application period for the STEP Pilot grant program likely will not be long enough for TEAs and SEAs to complete a detailed collaborative agreement that adequately addresses each of the issues that need to be considered. Therefore, we are requiring an application for a STEP Pilot grant to include a written preliminary agreement between the participating SEA and the TEA under which the SEA and TEA agree to (a) work together toward the transfer of agreed-upon State-level ESEA formula grant administrative functions to the TEA over the course of the project, and (b) collaborate on activities that will enable the TEA to begin to carry out those functions by July 2, 2013. Within nine months from the start of the grant period, the TEA and SEA must enter into a final collaborative agreement that builds on the preliminary agreement and details the activities that the two agencies will carry out under the grant to enable the TEA to perform the agreed-upon State-level administrative functions by the end of the project period and beyond. Each TEA grantee must submit the final agreement to the Department by June 29, 2013. The Department's review of the final agreement will serve as one basis for continued funding in grant years two and three.

The Department expects that, during the first year of the STEP Pilot, the SEA will work with the TEA to prepare the TEA to perform the State-level administrative functions detailed in the preliminary agreement, so that by July 2, 2013, the TEA will begin to perform those functions. By the end of the project, the Department expects that each TEA grantee will be able to carry out selected State-level administrative functions under ESEA State-administered formula grant programs and that the TEA will have strengthened its relationship with the SEA, local educational agencies (LEAs), and schools on a reservation in a manner that is sustainable and supports the TEA's efforts to improve educational services and outcomes for AI/AN students.

**Note:** The Department will not grant formula funds to TEAs as a part of this pilot program. We cannot change the designated grantee, under an ESEA program, from an SEA to a different entity without a statutory change to the ESEA, and the FY 2012 Appropriations Act does not provide that authority. Grant funds awarded to successful applicants (as defined in this notice) will consist only of discretionary funds appropriated for this competition. SEAs that participate in a project under the pilot will continue to subgrant ESEA State-administered formula funds to LEAs that are eligible to receive them, including LEAs with schools participating in that project. SEAs will continue to have the responsibility to ensure subrecipient compliance with the applicable laws and regulations governing all ESEA State-administered formula grant programs. However, an SEA could, as part of its agreement with a TEA, provide a portion of the SEA's administrative set-aside funds under ESEA programs to a TEA in accordance with applicable State procurement law. The Department will continue to monitor the performance of the SEA as the agent required to comply with Federal law.

*Preliminary Agreement Requirements:*

An applicant must submit a preliminary agreement between the TEA and the SEA with its application for funding. Letters of support from an SEA will not meet this requirement.

The preliminary agreement must include—

(a) A clear vision for how the SEA and TEA will work collaboratively to administer selected ESEA State-administered formula grant programs in eligible schools;

(b) A list of the ESEA State-administered formula programs for which the TEA will assume State-level administrative functions;

(c) A description of the State-level administrative functions the TEA will assume by July 2, 2013, and by the end of the project period;

(d) The capacity-building activities that both the TEA and the SEA will carry out before July 2, 2013, in order for the TEA to be ready to assume those functions;

(e) A description of the capacity-building (as defined in this notice) activities that the SEA will undertake to prepare the TEA to assume those functions, and of any assistance that the TEA will provide to the SEA to facilitate the project. This assistance may include, among other things, (1) Increasing the SEA's knowledge about the unique cultural and academic needs of AI/AN students enrolled in schools that will participate in the project, (2) addressing those needs more effectively, and (3) increasing the SEA's ability to work effectively with TEAs in a culturally competent manner (as defined in this notice);

(f) A list of the LEAs and eligible schools expected to participate in the project;

(g) The collaborative activities the SEA and TEA will undertake to produce a final agreement; and

(h) The activities the SEA and the TEA will undertake to engage LEAs' participation in the grant project.

*Final Agreement Requirements:*

By June 29, 2013, nine months after the start of the first grant period, each TEA grantee must submit to the Department a final agreement that builds on the preliminary agreement and details a feasible, sustainable plan for how the TEA and SEA will work together and in collaboration with affected LEAs to administer selected ESEA State-administered formula grant programs to children in public schools on reservations. The final agreement must—

(a) Expand and refine, as appropriate, the vision presented in the preliminary agreement for how the TEA and SEA will work together and in collaboration with the selected LEAs to administer ESEA formula grant programs in ways that (1) acknowledge and support the role of the tribe in educating its students, and (2) account for the responsibility of the SEA to ensure that LEAs are in compliance with the laws and regulations that govern the relevant formula grant programs.

(b) Make explicit what will be accomplished during the remainder of the project period in order to fully realize that vision, including by providing detailed descriptions of (1)

The specific functions that the TEA will assume for one or more ESEA State-administered programs, (2) the timetable for the TEA assuming those functions, (3) the knowledge and competencies the TEA will need to acquire over the remainder of the project period in order to perform those functions successfully, (4) the functions or aspects of functions that the SEA will retain for the programs and schools covered by the agreement, (5) the activities that the SEA (directly or through contracted entities) will conduct to ensure that the TEA is able to perform its new functions successfully, (6) the activities, if appropriate, that the TEA and SEA will carry out in order to increase the SEA's knowledge about the unique cultural and academic needs of AI/AN students enrolled in participating schools and about how to address those needs more effectively, and (7) the activities, if appropriate, that the SEA and TEA will undertake to further their ability to work together effectively in a culturally competent manner.

(c) Discuss the actions that the TEA and SEA will take to sustain the TEA's assumption of State-level responsibilities for the ESEA programs for the participating schools after the project ends.

(d) Include a list of the eligible schools that will participate in the second and third grant periods. The list may differ from the list of schools included in the preliminary agreement.

(e) Make explicit how the specific functions that the TEA will assume during the course of the grant will (1) align with and support Federal and State education priorities and initiatives to improve the education outcomes for all students and ensure that all students graduate high school college- and career-ready; and (2) address the unique educational and cultural needs of the students.

(f) Identify challenges (e.g., legislative constraints, State policy constraints, local school board rules, collective bargaining agreements) that may pose a risk to the implementation of the project and the strategies that the TEA and SEA will pursue in order to overcome those challenges.

(g) Assure that the TEA and SEA understand the continued responsibility of the SEA to ensure that affected LEAs are in compliance with the relevant ESEA formula grant laws and regulations.

(h) Describe how the TEA and SEA will work together to support the SEA's continued oversight responsibilities.

(i) Describe the relationships to be built among the TEA, the SEA, and the affected LEAs, including lines of authority, responsibility, and methods of communication.

(j) Include a letter of support from the superintendent of each LEA that will participate in the project indicating that the superintendent understands and supports the purposes, activities, and outcomes of the project as proposed in the application and defined in the final agreement.

*Application Requirements:*

To be considered for an award under this competition, each applicant must complete an application for funding. Detailed application instructions can be found in the application package. The application package will be available online at *www.grants.gov* on May 29, 2012.

As a part of the application for the STEP Pilot, each applicant must provide a detailed project narrative and a budget narrative.

*Project Narrative.* The project narrative must explain how the terms of the agreement between the TEA and SEA, as outlined in the preliminary agreement, will be met. At minimum, the project narrative must—

(a) Describe the proposed STEP Pilot project goals and objectives pursuant to the vision and terms of agreement outlined in the preliminary agreement and the timeline for accomplishing the goals and objectives over the project period;

(b) Describe the demographics of the LEA (or LEAs) and eligible schools for which the TEA will perform ESEA State-level administrative functions and explain the rationale for selecting those LEAs and schools;

(c) Explain the rationale for selecting the ESEA State-administered formula grant program(s) for which the TEA will perform State-level administrative functions;

(d) Explain the rationale for selecting the State-level functions the TEA will perform during the project period and the timeline for the TEA assuming those functions;

(e) Explain how the TEA's performance of those functions will support the implementation of State and local efforts to improve services to and the educational outcomes for AI/AN children;

(f) Describe the functions the TEA will be able to perform during each year of the grant;

(g) Describe how the STEP Pilot grant funds will enable the TEA capacity to carry out the agreed upon State-level functions;

(h) Discuss the actions that the TEA and SEA will take during the first nine months of the grant toward developing a final agreement;

(i) Identify the members of the applicant's project team and each member's role and responsibility;

(j) Describe the qualifications of key personnel on the project team and the time each will allocate to the project;

(k) Identify the key SEA contacts and the role each will have in carrying out the activities of the project;

(l) If the application is submitted by a consortium, describe each consortium member's role, activities, and time allocated to the project;

(m) If applicable, identify consultants to the project, their role, and their qualifications;

(n) Describe the organizational structure for managing project activities and resources, including lines of authority and procedures for decision-making;

(o) Include a schedule of tasks and timelines for carrying out the activities of the grant that assign responsibility for each task, including milestones and deliverables;

(p) Describe the procedures and measures that the applicant will use to document project activities, monitor progress in implementing those activities, and assess how effectively project activities meet the goals and objectives of the grant; and

(q) To the extent the TEA's performance under this agreement requires the use of information from student education records covered by the Family Educational Rights and Privacy Act (FERPA) or other privacy statutes, explain how compliance with FERPA and other privacy statutes will be achieved (e.g. under FERPA, the participating LEA(s) may designate the TEA as a school official for certain functions; or the SEA may designate the TEA as an authorized representative under the audit and evaluation exception).

**Note:** In drafting the project narrative, applicants should keep in mind that peer reviewers must consider only the information provided in the written project narrative when scoring and commenting on the application. Therefore, applicants should draft their project narratives with the goal of helping peer reviewers understand how the narrative content aligns with the selection criteria described in section V of this notice.

*Budget Narrative.* Specific requirements for the budget narrative are in the application package. In general, the budget narrative must, for each year of funding—

(a) Detail the amount of grant funds that will be allocated to each budget category;

(b) Explain how grant funds allocated to each category will be used (e.g., by the TEA to hire and train personnel, to

acquire data systems, to purchase supplies and equipment, or for travel; by the SEA for training of TEA personnel or for travel).

In addition, the budget narrative must identify any procurements that will be required, the purpose for the procurements, and the procurement process that will be used.

*Eligibility Requirements:*

To be eligible for an award, an applicant must include, as a part of its application, evidence that documents the applicant's eligibility, including:

(a) Certification by the eligible Indian tribe, as defined in this notice, that the applicant is the agency, department, or instrumentality of the Indian tribe that is primarily responsible for supporting the elementary and secondary education of the tribe's students.

(b) Certification by the eligible Indian tribe that it has a reservation; the certification must specify the census designation under which the reservation qualifies.

(c) Confirmation by the SEA that the schools that will participate in the project are eligible schools.

*Grant Award Limitations*

No applicant may receive more than one grant award under this competition.

*Definitions:*

The following definitions apply to this program:

*Applicant* means the single entity that applies for a grant under this program. The applicant may be a single TEA in partnership with an SEA, or a single TEA applying on behalf of a consortium of eligible TEAs in partnership with an SEA.

*Capacity* refers to the level of knowledge, skills, and ability of individuals or groups to perform specific activities or functions.

*Capacity-building* refers to activities to strengthen the knowledge, skills, and abilities of individuals or groups to perform specific activities or functions.

*Consortium of TEAs* means two or more Tribal Education Agencies acting collaboratively for the purpose of applying for and implementing a joint project as part of the STEP Pilot program.

*Culturally competent manner* means an ability to understand, communicate with, and interact effectively with people of different cultures. Cultural competence involves (a) awareness of one's own cultural worldview and (b) knowledge of and the capacity to value different cultural practices and worldviews.

*Eligible Indian tribe* means a federally recognized or State-recognized tribe that has an Indian reservation on which one or more eligible schools are operating.

*Eligible school* means a public school operating on an eligible Indian tribe's reservation. Eligible schools do not include schools that are funded primarily by the Department of Interior's Bureau of Indian Education.

*Project period* for this pilot consists of three grant periods, each of 12 months duration, for a total of 36 months.

*Reservation* means an ''American Indian Reservation or Off-Reservation Trust Land (Federal),'' ''Oklahoma Tribal Statistical Area,'' ''American Indian Reservation (State),'' or ''Alaska Native Village Statistical Areas,'' as those terms are used by the U.S. Census Bureau (see definitions at *www.census.gov/geo/www/2010census/gtc/gtc_aiannha.html*).

**Note:** If you are unsure of a reservation's status, contact the person listed as the Agency Contact in section VII of this notice.

*State-administered formula grant program* means a program authorized under the Elementary and Secondary Education Act of 1965, as amended (ESEA), for which States receive formula funding, sub-grant (distribute) funds to LEAs or other entities in accordance with a statutory allocation formula and other criteria established in the statute, and oversee the use of those funds by sub-recipients. As such, State-administered ESEA formula grant programs do not include programs for which formula funds are not granted directly to the State.

Programs that could be included in a STEP Pilot project are: Title I, Part A; School Improvement Grants (ESEA § 1003(g)); Migrant Education (Title I, Part C); Neglected and Delinquent State Grants (Title I, Part D); Improving Teacher Quality State Grants (Title II, Part A); English Learner Education State Grants (Title III, Part A); 21st Century Community Learning Centers (Title IV, Part B), and Rural and Low-Income School Program (Title VI, Part B).

**Note:** Impact Aid (Title VIII) and the Indian Education Formula Grants program (Title VII, Part A) are not included in this definition as funds for those programs are granted by the Department directly to LEAs, not SEAs.

*Tribal Education Agency (TEA)* means the agency, department, or instrumentality of an eligible Indian tribe that is primarily responsible for supporting the elementary and secondary education of tribal students.

*Waiver of Proposed Rulemaking:* Under the Administrative Procedure Act (5 U.S.C. 553), the Department generally offers interested parties the opportunity to comment on proposed requirements, definitions, and selection criteria. Section 437(d)(1) of GEPA, however, allows the Secretary to exempt from rulemaking requirements, regulations governing the first grant competition under a new or substantially revised program authority. This is the first grant competition for the STEP program under section 7131(a)(4) of the ESEA, 20 U.S.C. 7451(a)(4), and therefore qualifies for this exemption. The Secretary has decided to forgo public comment under the waiver authority in section 437(d)(1) of GEPA in order to ensure timely grant awards. However, we have solicited public participation in two important ways as we developed an approach to conducting and implementing this competition. First, we invited the public to provide input on the program from February 23, 2012 through March 9, 2012, on the ED.gov blog. In response to this invitation, we received many comments on the questions that we posted on the blog, and we considered those comments in our development of this notice. Second, to gain further input we conducted telephone conferences with various stakeholder groups to obtain additional responses to the questions we posed on the blog, and we considered those comments as well. Several commenters requested that the Department distribute ESEA formula grant funds directly to TEAs under this pilot. As explained in the note in section I, the Department does not have statutory authority to do so.

The definitions, requirements, and selection criteria in this notice will apply to the FY 2012 grant competition and any subsequent year in which we make awards from the list of unfunded applicants from this competition.

*Program Authority:* Section 7131(a)(4) of the Elementary and Secondary Education Act, 20 U.S.C. 7451(a)(4).

*Applicable Regulations:* (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 84, 86, 97, 98, and 99. (b) The Education Department suspension and debarment regulations in 2 CFR part 3485.

**Note:** The regulations in 34 CFR part 79 apply to all applicants except federally recognized Indian tribes.

## II. Award Information

*Type of Award:* Discretionary grants.

*Estimated Available Funds:* $1,977,000.

*Estimated Range of Awards:* $400,000–$500,000 for a single TEA in partnership with a single SEA. $500,000–$750,000 for a consortium of TEAs in partnership with a single SEA.

Contingent upon the availability of funds and the quality of applications, we may make additional awards in FY 2013 from the list of unfunded applicants from this competition.

*Estimated Average Size of Awards:* $450,000 for a single TEA in partnership with a single SEA; $600,000 for a consortium of TEAs in partnership with a single SEA.

*Maximum Award:* We will reject any application from a single TEA that proposes a budget exceeding $500,000 for a single budget period of 12 months. In addition, we will reject any application from a consortium of TEAs that proposes a budget exceeding $750,000 for a single budget period of 12 months.

The Assistant Secretary for Elementary and Secondary Education may change the maximum amount through a notice published in the **Federal Register**.

*Estimated Number of Awards:* 3 to 5.

**Note:** The Department is not bound by any estimates in this notice.

*Project Period:* Up to 36 months.

**Note:** Continuation of each successive grant period is subject to satisfactory performance and availability of funds.

*Grant Award Limitations:* No applicant may receive more than one grant award.

## III. Eligibility Information

1. *Eligible Applicants:* A TEA in partnership with an SEA, or a consortium of TEAs in partnership with an SEA. In all cases a single TEA will serve as the applicant. A TEA consortium application must comply with the Department's regulations governing group applications in 34 CFR 75.127 through 75.129 and must include a signed consortium agreement that identifies each member of the consortium, binds each member of the group to every statement and assurance made by the applicant in the application, and details the activities that each member of the group would perform under the grant. Letters of support from proposed consortium members do not meet the requirement for a consortium agreement.

2. *Cost Sharing or Matching:* This competition does not require cost sharing or matching.

## IV. Application and Submission Information

1. *Address to Request Application Package:* You can obtain an application package via the Internet or from the Education Publications Center (ED Pubs).

To obtain a copy via the Internet, use the following address: *www.ed.gov/fund/grant/apply/grantapps/index.html.* To obtain a copy from ED Pubs, write, fax, or call the following: ED Pubs, U.S. Department of Education, P.O. Box 22207, Alexandria, VA 22304. Telephone, toll free: 1–877–433–7827. Fax: (703) 605–6794. If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call, toll free: 1–877–576–7734.

You can contact ED Pubs at its Web site, also: *www.EDPubs.gov* or at its email address: *edpubs@inet.ed.gov.*

If you request an application from ED Pubs, be sure to identify this competition as follows: CFDA number 84.415.

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 person listed under *Accessible Format* in section VIII of this notice.

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.

Notice of Intent to Apply: The Department will be able to review grant applications more efficiently if we know the approximate number of applicants that intend to apply. Therefore, the Secretary strongly encourages each potential applicant to notify us of the applicant's intent to submit an application for funding by sending the following information via email to *STEP@ed.gov* no later than June 12, 2012:

1. Applicant name, mailing address and phone number.
2. Contact person's name and email address.
3. Name of State Education Agency.
4. Whether the applicant intends to apply as a single TEA or a consortium of TEAs.

Applicants that do not complete this form may still apply for funding.

*Pre-Application:* The Department intends to hold pre-application Webinars designed to provide technical assistance to interested applicants. The first Webinar will be held on June 1, 2012, and repeated on June 5, 2012. Information about Webinar times and instructions for registering are on the Department Web site at *http://www2.ed.gov/programs/STEP/index.html.* In addition, as a supplement to this notice, the Department has developed a document called ''State-Tribal Education Partnership (STEP) Pilot: Responses to Frequently Asked Questions.'' This supplemental document is available at *http://www2.ed.gov/programs/STEP/index.html.*

*Page Limit:* The application narrative is where you, the applicant, provide the project narrative and management plan to address the selection criteria that reviewers use to evaluate your application. The required budget and budget narrative will be provided in a separate section. You must limit the application narrative 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 the cover sheet; the budget section, including the narrative budget justification; the assurances and certifications; or the one-page abstract, the resumes, the bibliography, or the letters of support. However, the page limit does apply to all of the application narrative section.

Our reviewers will not read any pages of your application that exceed the page limit.

3. *Submission Dates and Times:*

*Applications Available:* May 29, 2012.

*Deadline for Notice of Intent to Apply:* June 12, 2012.

*Date of Pre-Application Meeting:* June 1, 2012, and June 5, 2012.

*Deadline for Transmittal of Applications:* July 13, 2012.

Applications for grants under this competition 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, 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.

4. *Intergovernmental Review:* This competition is subject to Executive Order 12372 and the regulations in 34 CFR part 79.

5. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section of 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)—and, after July 2012, with the System for Award Management (SAM), the Government's primary registrant database;

c. Provide your DUNS number and TIN on your application; and

d. Maintain an active CCR or SAM 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 or SAM 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. Information on SAM is available at SAM.gov.

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 at the following Grants.gov Web page: *www.grants.gov/applicants/get_registered.jsp.*

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 State-Tribal Education Partnership (STEP) Pilot, CFDA number 84.415, 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 State-Tribal Education Partnership (STEP) Pilot at *www.Grants.gov.* You must search for the downloadable application package for this competition by the CFDA number.

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 dated 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 competition 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. (Additional, detailed information on how to attach files is in the application instructions.)
- 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: Joyce Silverthorne, U.S. Department of Education, 400 Maryland Avenue SW., Room 3E201, Washington, DC 20202

Fax: (202) 401–0606.

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 84.415, 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 84.415, 550 12th Street, SW., Room 7041, Potomac Center Plaza, Washington, DC 20202–4260.

The Application Control Center accepts hand deliveries daily between 8:00 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. *Selection Criteria:* We will use the following selection criteria to evaluate applications submitted under this competition.

The maximum score for all the selection criteria is 100 points. The maximum score for each criterion is indicated in parentheses.

*Significance* (20 points). In determining the significance of the project the Secretary considers:

(1) The significance of the problem or issue to be addressed by the proposed project.

(2) The potential replicability of the proposed project or strategies, including, as appropriate, the potential for implementation in a variety of settings.

(3) The likelihood that the proposed project will result in system change or improvement.

*Quality of the Project Design and Services* (30 points). The Secretary considers the quality of the design and services of the proposed project. In determining the quality of the design and services of the proposed project, the Secretary considers:

(1) The extent to which the goals, objectives, and outcomes to be achieved by the proposed project are clearly specified and measurable.

(2) The extent to which the design of the proposed project is appropriate to, and will successfully address, the needs of the target population or other identified needs.

(3) The extent to which the proposed project is designed to build capacity and yield results that will extend beyond the period of Federal financial assistance.

(4) The extent to which the services to be provided by the proposed project involve the collaboration of appropriate partners for maximizing the effectiveness of project services.

*Quality of the Management Plan and Personnel* (20 points). The Secretary considers the quality of the management plan for the proposed project and of the personnel who will carry out the proposed project. In determining the quality of the management plan and the project personnel, the Secretary considers:

(1) 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.

(2) The qualifications, including relevant training and experience, of key project personnel.

(3) The qualifications, including relevant training and experience, of project consultants or subcontractors.

*Adequacy of Resources* (30 points). The Secretary considers the adequacy of resources for the proposed project. In determining the adequacy of resources for the proposed project, the Secretary considers:

(1) The adequacy of support, including facilities, equipment, supplies, and other resources, from the applicant organization.

(2) The extent to which the costs are reasonable in relation to the objectives, design, and potential significance of the proposed project.

(3) The relevance and demonstrated commitment of each partner in the proposed project to the implementation and success of the project.

(4) The potential for continued support of the project after Federal funding ends, including, as appropriate, the demonstrated commitment of appropriate entities to such support.

(5) The potential for the incorporation of project purposes, activities, or benefits into the ongoing program of the agency or organization at the end of Federal funding.

2. *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).

3. *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) In addition, within nine months from the start of the grant (by June 29, 2013), you must submit to the Department a final agreement described in section I of this notice.

(c) 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 Department has established the following performance measures for the Pilot:

(1) The number of funded projects for which the TEA assumes State-level functions by the beginning of the second grant period.

(2) The number of funded projects that, at the end of the project period, report that the project has resulted in creation of an arrangement under which the TEA will continue to be responsible for the State-level functions delineated in its TEA–SEA agreement after Federal funding ends.

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 addition, a major factor the Secretary will consider will be the quality and completeness of the final agreement between the TEA and SEA.

In making a continuation grant, 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:** Joyce Silverthorne U.S. Department of Education, 400 Maryland Avenue SW.,

3E201 Washington, DC 20202. Telephone: (202) 401–0767 or by email: *joyce.silverthorne@ed.gov*.

If you use a TDD or a TTY, 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.

**Michael Yudin,**

*Deputy Assistant Secretary for Policy and Strategic Initiatives, Delegated Authority To Perform the Functions and Duties of the Assistant Secretary for Elementary and Secondary Education.*

[FR Doc. 2012–12835 Filed 5–25–12; 8:45 am]

**BILLING CODE 4000–01–P**

## DEPARTMENT OF EDUCATION

### Applications for New Awards; Technology and Media Services for Individuals With Disabilities—Stepping-Up Technology Implementation

*Correction*

In notice document 2012–12278 appearing on pages 29989 through 29995 in the issue of Monday, May 21, 2012 make the following correction:

On page 29989, in the second column, under the heading ''Deadline for Intergovernmental Review:'', ''September 3, 2012'' should read ''September 4, 2012''.

[FR Doc. C1–2012–12278 Filed 5–25–12; 8:45 am]

**BILLING CODE 1505–01–D**

## DEPARTMENT OF EDUCATION

### Federal Need Analysis Methodology for the 2013–2014 Award Year: Federal Pell Grant, Federal Perkins Loan, Federal Work-Study, Federal Supplemental Educational Opportunity Grant, William D. Ford Federal Direct Loan, and TEACH Grant Programs

**AGENCY:** Federal Student Aid, Department of Education.

**ACTION:** Notice.

*Overview Information:* Catalog of Federal Domestic Assistance (CFDA) Numbers: 84.063 Federal Pell Grant Program; 84.038 Federal Perkins Loan Program; 84.033 Federal Work-Study Programs; 84.007 Federal Supplemental Educational Opportunity Grant Program; 84.268 William D. Ford Federal Direct Loan Program; 84.379 TEACH Grant Program.

**SUMMARY:** The Secretary announces the annual updates to the tables that will be used in the statutory ''Federal Need Analysis Methodology'' to determine a student's expected family contribution (EFC) for award year 2013–2014 for the student financial aid programs authorized under title IV of the Higher Education Act of 1965, as amended (HEA). An EFC is the amount that a student and his or her family may reasonably be expected to contribute toward the student's postsecondary educational costs for purposes of determining financial aid eligibility. The title IV programs include the Federal Pell Grant, Federal Perkins Loan, Federal Work-Study, Federal Supplemental Educational Opportunity Grant, William D. Ford Federal Direct Loan, and the Teach Grant Programs (title IV, HEA programs).

**FOR FURTHER INFORMATION CONTACT:** Ms. Marya Dennis, Management and Program Analyst, U.S. Department of Education, room 63G2, Union Center Plaza, 830 First Street NE., Washington, DC 20202–5454. Telephone: (202) 377–3385.

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:** Part F of title IV of the HEA specifies the criteria, data elements, calculations, and tables used in the Federal Need Analysis Methodology EFC calculations.

Section 478 of part F of title IV of the HEA requires the Secretary to adjust four of the tables—the Income Protection Allowance, the Adjusted Net Worth of a Business or Farm, the Education Savings and Asset Protection Allowance, and the Assessment Schedules and Rates—each award year for general price inflation. The changes are based, in general, upon increases in the Consumer Price Index (CPI).

For award year 2013–2014, the Secretary is charged with updating the income protection allowance for parents of dependent students, adjusted net worth of a business or farm, and the assessment schedules and rates to account for inflation that took place between December 2011 and December 2012. However, because the Secretary must publish these tables before December 2012, the increases in the tables must be based upon a percentage equal to the estimated percentage increase in the Consumer Price Index for All Urban Consumers (CPI–U) for 2012. The Secretary must also account for any misestimation of inflation for the prior year. In developing the table values for the 2012–13 award year, the Secretary assumed a 0.8 percent increase in the CPI–U for the period December 2010 through December 2011. Actual inflation for this time period was 2.9 percent. The Secretary estimates that the increase in the CPI–U for the period December 2011 through December 2012 will be 2.2 percent. Additionally, section 601 of the College Cost Reduction and Access Act of 2007 (CCRAA, Pub. L. 110–84) amended sections 475 through 478 of the HEA by updating the procedures for determining the income protection allowance for dependent students, as well as the income protection allowance tables for both independent students with dependents other than a spouse, and independent students without dependents other than a spouse. As amended by the CCRAA, the HEA now includes new 2013–2014 award year values for these income protection allowances. The updated tables are in sections 1, 2, and 4 of this notice.

The Secretary must also revise, for each award year, the education savings and asset protection allowances as provided for in section 478(d) of the HEA. The Education Savings and Asset Protection Allowance table for award year 2013–2014 has been updated in section 3 of this notice.

Section 478(h) of the HEA also requires the Secretary to increase the amount specified for the Employment Expense Allowance, adjusted for inflation. This calculation is based upon increases in the Bureau of Labor Statistics budget of the marginal costs for a two-worker family compared to a one-worker family for food away from home, apparel, transportation, and household furnishings and operations. The Employment Expense Allowance

table for award year 2013–2014 has been updated in section 5 of this notice.

The HEA provides for the following annual updates:

1. *Income Protection Allowance (IPA).* This allowance is the amount of living expenses associated with the maintenance of an individual or family that may be offset against the family's income. It varies by family size. The IPA for the dependent student is $6,130. The IPAs for parents of dependent students for award year 2013–2014 are:

PARENTS OF DEPENDENT STUDENTS

| Family size | Number in college | | | | |
|---|---|---|---|---|---|
| | 1 | 2 | 3 | 4 | 5 |
| 2 | $17,100 | $14,170 | ..... | ..... | ..... |
| 3 | 21,290 | 18,380 | 15,450 | ..... | ..... |
| 4 | 26,290 | 23,370 | 20,460 | 17,530 | ..... |
| 5 | 31,020 | 28,100 | 25,190 | 22,260 | 19,350 |
| 6 | 36,290 | 33,360 | 30,450 | 27,530 | 24,620 |

For each additional family member add $4,100.

For each additional college student subtract $2,910.

The IPAs for independent students with dependents other than a spouse for award year 2013–14 are:

INDEPENDENT STUDENTS WITH DEPENDENTS OTHER THAN A SPOUSE

| Family size | Number in college | | | | |
|---|---|---|---|---|---|
| | 1 | 2 | 3 | 4 | 5 |
| 2 | $24,150 | $20,020 | ..... | ..... | ..... |
| 3 | 30,070 | 25,960 | 21,830 | ..... | ..... |
| 4 | 37,130 | 33,010 | 28,900 | 24,760 | ..... |
| 5 | 43,810 | 39,670 | 35,570 | 31,450 | 27,340 |
| 6 | 51,230 | 47,110 | 43,020 | 38,870 | 34,770 |

For each additional family member add $5,780.

For each additional college student subtract $4,110.

The IPAs for single independent students and independent students without dependents other than a spouse for award year 2013–14 are:

| Marital status | Number in college | IPA |
|---|---|---|
| Single | 1 | $9,540 |
| Married | 2 | 9,540 |
| Married | 1 | 15,290 |

2. *Adjusted Net Worth (NW) of a Business or Farm.* A portion of the full net worth (assets less debts) of a business or farm is excluded from the calculation of an expected contribution because—(1) the income produced from these assets is already assessed in another part of the formula; and (2) the formula protects a portion of the value of the assets. The portion of these assets included in the contribution calculation is computed according to the following schedule. This schedule is used for parents of dependent students, independent students without dependents other than a spouse, and independent students with dependents other than a spouse.

| If the net worth (NW) of a business or farm is— | Then the adjusted net worth is— |
|---|---|
| Less than $1 | $0. |
| $1 to $120,000 | 0 + 40% of NW. |
| $120,001 to $365,000 | 48,000 + 50% of NW over $120,000. |
| $365,001 to $610,000 | 170,500 + 60% of NW over $365,000. |
| $610,001 or more | 317,500 + 100% of NW over $610,000. |

3. *Education Savings and Asset Protection Allowance.* This allowance protects a portion of net worth (assets less debts) from being considered available for postsecondary educational expenses. There are three asset protection allowance tables—one for parents of dependent students, one for independent students without dependents other than a spouse, and one for independent students with dependents other than a spouse.

PARENTS OF DEPENDENT STUDENTS

| If the age of the older parent is | And they are | |
|---|---|---|
| | Married | Single |
| | Then the education savings and asset protection allowance is— | |
| 25 or less | 0 | 0 |
| 26 | 2,100 | 600 |
| 27 | 4,300 | 1,300 |
| 28 | 6,400 | 1,900 |
| 29 | 8,600 | 2,500 |
| 30 | 10,700 | 3,200 |
| 31 | 12,800 | 3,800 |
| 32 | 15,000 | 4,400 |
| 33 | 17,100 | 5,100 |
| 34 | 19,300 | 5,700 |
| 35 | 21,400 | 6,300 |
| 36 | 23,500 | 7,000 |
| 37 | 25,700 | 7,600 |
| 38 | 27,800 | 8,200 |
| 39 | 30,000 | 8,900 |
| 40 | 32,100 | 9,500 |
| 41 | 32,900 | 9,700 |
| 42 | 33,700 | 9,900 |
| 43 | 34,500 | 10,100 |
| 44 | 35,400 | 10,300 |
| 45 | 36,200 | 10,600 |
| 46 | 37,100 | 10,800 |
| 47 | 38,000 | 11,100 |
| 48 | 39,000 | 11,300 |
| 49 | 39,900 | 11,600 |
| 50 | 40,900 | 11,900 |
| 51 | 42,100 | 12,200 |
| 52 | 43,100 | 12,500 |
| 53 | 44,200 | 12,800 |
| 54 | 45,500 | 13,100 |
| 55 | 46,800 | 13,400 |
| 56 | 47,900 | 13,700 |
| 57 | 49,300 | 14,100 |
| 58 | 50,800 | 14,400 |
| 59 | 52,200 | 14,800 |
| 60 | 53,500 | 15,100 |
| 61 | 55,000 | 15,600 |
| 62 | 56,900 | 16,000 |
| 63 | 58,500 | 16,400 |
| 64 | 60,100 | 16,900 |
| 65 or older | 61,800 | 17,400 |

INDEPENDENT STUDENTS WITHOUT DEPENDENTS OTHER THAN A SPOUSE

| | | |
|---|---|---|
| | Then the education savings and asset protection allowance is— | |
| 25 or less | 0 | 0 |
| 26 | 2,100 | 600 |
| 27 | 4,300 | 1,300 |
| 28 | 6,400 | 1,900 |
| 29 | 8,600 | 2,500 |
| 30 | 10,700 | 3,200 |
| 31 | 12,800 | 3,800 |
| 32 | 15,000 | 4,400 |
| 33 | 17,100 | 5,100 |
| 34 | 19,300 | 5,700 |
| 35 | 21,400 | 6,300 |
| 36 | 23,500 | 7,000 |
| 37 | 25,700 | 7,600 |
| 38 | 27,800 | 8,200 |
| 39 | 30,000 | 8,900 |
| 40 | 32,100 | 9,500 |
| 41 | 32,900 | 9,700 |
| 42 | 33,700 | 9,900 |
| 43 | 34,500 | 10,100 |
| 44 | 35,400 | 10,300 |

INDEPENDENT STUDENTS WITHOUT DEPENDENTS OTHER THAN A SPOUSE—Continued

| | | |
|---|---|---|
| 45 | 36,200 | 10,600 |
| 46 | 37,100 | 10,800 |
| 47 | 38,000 | 11,100 |
| 48 | 39,000 | 11,300 |
| 49 | 39,900 | 11,600 |
| 50 | 40,900 | 11,900 |
| 51 | 42,100 | 12,200 |
| 52 | 43,100 | 12,500 |
| 53 | 44,200 | 12,800 |
| 54 | 45,500 | 13,100 |
| 55 | 46,800 | 13,400 |
| 56 | 47,900 | 13,700 |
| 57 | 49,300 | 14,100 |
| 58 | 50,800 | 14,400 |
| 59 | 52,200 | 14,800 |
| 60 | 53,500 | 15,100 |
| 61 | 55,000 | 15,600 |
| 62 | 56,900 | 16,000 |
| 63 | 58,500 | 16,400 |
| 64 | 60,100 | 16,900 |
| 65 or older | 61,800 | 17,400 |

INDEPENDENT STUDENTS WITH DEPENDENTS OTHER THAN A SPOUSE

| If the age of the older student is | And they are | |
|---|---|---|
| | Married | Single |
| | Then the education savings and asset protection allowance is— | |
| 25 or less | 0 | 0 |
| 26 | 2,100 | 600 |
| 27 | 4,300 | 1,300 |
| 28 | 6,400 | 1,900 |
| 29 | 8,600 | 2,500 |
| 30 | 10,700 | 3,200 |
| 31 | 12,800 | 3,800 |
| 32 | 15,000 | 4,400 |
| 33 | 17,100 | 5,100 |
| 34 | 19,300 | 5,700 |
| 35 | 21,400 | 6,300 |
| 36 | 23,500 | 7,000 |
| 37 | 25,700 | 7,600 |
| 38 | 27,800 | 8,200 |
| 39 | 30,000 | 8,900 |
| 40 | 32,100 | 9,500 |
| 41 | 32,900 | 9,700 |
| 42 | 33,700 | 9,900 |
| 43 | 34,500 | 10,100 |
| 44 | 35,400 | 10,300 |
| 45 | 36,200 | 10,600 |
| 46 | 37,100 | 10,800 |
| 47 | 38,000 | 11,100 |
| 48 | 39,000 | 11,300 |
| 49 | 39,900 | 11,600 |
| 50 | 40,900 | 11,900 |
| 51 | 42,100 | 12,200 |
| 52 | 43,100 | 12,500 |
| 53 | 44,200 | 12,800 |
| 54 | 45,500 | 13,100 |
| 55 | 46,800 | 13,400 |
| 56 | 47,900 | 13,700 |
| 57 | 49,300 | 14,100 |
| 58 | 50,800 | 14,400 |
| 59 | 52,200 | 14,800 |
| 60 | 53,500 | 15,100 |
| 61 | 55,000 | 15,600 |
| 62 | 56,900 | 16,000 |
| 63 | 58,500 | 16,400 |
| 64 | 60,100 | 16,900 |

INDEPENDENT STUDENTS WITH DEPENDENTS OTHER THAN A SPOUSE—Continued

| If the age of the older student is | And they are | |
|---|---|---|
| | Married | Single |
| | Then the education savings and asset protection allowance is— | |
| 65 or older | 61,800 | 17,400 |

4. *Assessment Schedules and Rates.* Two schedules that are subject to updates, one for parents of dependent students and one for independent students with dependents other than a spouse, are used to determine the EFC toward educational expenses from family financial resources. For dependent students, the EFC is derived from an assessment of the parents' adjusted available income (AAI). For independent students with dependents other than a spouse, the EFC is derived from an assessment of the family's AAI. The AAI represents a measure of a family's financial strength, which considers both income and assets.

Parents' contribution for a dependent student is computed according to the following schedule:

| If AAI is— | Then the contribution is— |
|---|---|
| Less than −$3,409 | −$750 |
| ($3,409) to $15,300 | 22% of AAI |
| $15,301 to $19,200 | $3,366 + 25% of AAI over $15,300 |
| $19,201 to $23,100 | $4,341 + 29% of AAI over $19,200 |
| $23,101 to $27,000 | $5,472 + 34% of AAI over $23,100 |
| $27,001 to $30,900 | $6,798 + 40% of AAI over $27,000 |
| $30,901 or more | $8,358 + 47% of AAI over $30,900 |

The contribution for an independent student with dependents other than a spouse is computed according to the following schedule:

| If AAI is— | Then the contribution is— |
|---|---|
| Less than −$3,409 | −$750 |
| ($3,409) to $15,300 | 22% of AAI |
| $15,301 to $19,200 | $3,366 + 25% of AAI over $15,300 |
| $19,201 to $23,100 | $4,341 + 29% of AAI over $19,200 |
| $23,101 to $27,000 | $5,472 + 34% of AAI over $23,100 |
| $27,001 to $30,900 | $6,798 + 40% of AAI over $27,000 |
| $30,901 or more | $8,358 + 47% of AAI over $30,900 |

5. *Employment Expense Allowance.* This allowance for employment-related expenses, which is used for the parents of dependent students and for married independent students, recognizes additional expenses incurred by working spouses and single-parent households. The allowance is based upon the marginal differences in costs for a two-worker family compared to a one-worker family for food away from home, apparel, transportation, and household furnishings and operations.

The employment expense allowance for parents of dependent students, married independent students without dependents other than a spouse, and independent students with dependents other than a spouse is the lesser of $3,900 or 35 percent of earned income.

6. *Allowance for State and Other Taxes.* The allowance for State and other taxes protects a portion of the parents' and students' income from being considered available for postsecondary educational expenses. There are four categories for State and other taxes, one each for parents of dependent students, independent students with dependents other than a spouse, dependent students, and independent students without dependents other than a spouse. Section 478(g) of the HEA directs the Secretary to update the tables for State and other taxes after reviewing the Statistics of Income file data maintained by the Internal Revenue Service.

| State | Parents of dependents and independents with dependents other than a spouse | | Dependents and independents without dependents other than a spouse |
|---|---|---|---|
| | Percent of total income | | |
| | Under $15,000 | $15,000 & Up | All |
| Alabama | 3 | 2 | 2 |
| Alaska | 2 | 1 | 0 |
| Arizona | 4 | 3 | 2 |
| Arkansas | 4 | 3 | 3 |
| California | 8 | 7 | 5 |

| State | Parents of dependents and independents with dependents other than a spouse | | Dependents and independents without dependents other than a spouse |
|---|---|---|---|
| | Percent of total income | | |
| | Under $15,000 | $15,000 & Up | All |
| Colorado | 5 | 4 | 3 |
| Connecticut | 8 | 7 | 5 |
| Delaware | 5 | 4 | 3 |
| District of Columbia | 7 | 6 | 5 |
| Florida | 3 | 2 | 1 |
| Georgia | 6 | 5 | 3 |
| Hawaii | 4 | 3 | 3 |
| Idaho | 5 | 4 | 3 |
| Illinois | 5 | 4 | 2 |
| Indiana | 4 | 3 | 3 |
| Iowa | 5 | 4 | 3 |
| Kansas | 5 | 4 | 3 |
| Kentucky | 5 | 4 | 4 |
| Louisiana | 3 | 2 | 2 |
| Maine | 6 | 5 | 4 |
| Maryland | 8 | 7 | 6 |
| Massachusetts | 7 | 6 | 4 |
| Michigan | 5 | 4 | 3 |
| Minnesota | 6 | 5 | 4 |
| Mississippi | 3 | 2 | 3 |
| Missouri | 5 | 4 | 3 |
| Montana | 5 | 4 | 3 |
| Nebraska | 5 | 4 | 3 |
| Nevada | 3 | 2 | 1 |
| New Hampshire | 5 | 4 | 1 |
| New Jersey | 9 | 8 | 4 |
| New Mexico | 3 | 2 | 2 |
| New York | 9 | 8 | 6 |
| North Carolina | 6 | 5 | 4 |
| North Dakota | 3 | 2 | 1 |
| Ohio | 6 | 5 | 3 |
| Oklahoma | 4 | 3 | 3 |
| Oregon | 7 | 6 | 5 |
| Pennsylvania | 5 | 4 | 3 |
| Rhode Island | 7 | 6 | 4 |
| South Carolina | 5 | 4 | 3 |
| South Dakota | 2 | 1 | 1 |
| Tennessee | 2 | 1 | 1 |
| Texas | 3 | 2 | 1 |
| Utah | 5 | 4 | 3 |
| Vermont | 6 | 5 | 3 |
| Virginia | 6 | 5 | 4 |
| Washington | 4 | 3 | 1 |
| West Virginia | 3 | 2 | 2 |
| Wisconsin | 7 | 6 | 4 |
| Wyoming | 2 | 1 | 1 |
| Other | 2 | 1 | 2 |

*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 contact person listed under **FOR FURTHER INFORMATION CONTACT** in this section.

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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.

**Program Authority:** 20 U.S.C. 1087rr.

Dated: May 23, 2012.

**James W. Runcie,**

*Chief Operating Officer, Federal Student Aid.*

[FR Doc. 2012–12939 Filed 5–25–12; 8:45 am]

BILLING CODE 4000–01–P

## DEPARTMENT OF EDUCATION

### Equity and Excellence Commission

**AGENCY:** Office for Civil Rights, U.S. Department of Education.

**ACTION:** Notice of an open meeting.

**SUMMARY:** This notice sets forth the schedule and proposed agenda of an up-

coming meeting of the Equity and Excellence Commission (Commission). The notice also describes the functions of the Commission. Notice of this meeting is required by section 10(a)(2) of the Federal Advisory Committee Act (FACA) and is intended to notify the public of their opportunity to attend.

**DATES:** June 13, 2012.

*Time:* 11:00 a.m. to 6:00 p.m. Eastern Standard Time.

**ADDRESSES:** The Commission will meet in Washington, DC at the United States Department of Education at 400 Maryland Avenue SW., Washington, DC 20202, in Barnard Auditorium.

**FOR FURTHER INFORMATION CONTACT:** Guy Johnson, Designated Federal Official, Equity and Excellence Commission, U.S. Department of Education, 400 Maryland Avenue SW., Washington, DC 20202. Email: *equitycommission@ed.gov.* Telephone: (202) 453–6567.

**SUPPLEMENTARY INFORMATION:**

On June 13, 2012 from 11:00 a.m. to 6:00 p.m. Eastern Standard Time, the Equity and Excellence Commission will hold an open meeting in Washington, DC at the United States Department of Education at 400 Maryland Avenue SW., Washington, DC 20202, in Barnard Auditorium.

The purpose of the Commission is to collect information, analyze issues, and obtain broad public input regarding how the Federal government can increase educational opportunity by improving school funding equity. The Commission will also make recommendations for restructuring school finance systems to achieve equity in the distribution of educational resources and further student performance, especially for the students at the lower end of the achievement gap. The Commission will examine the disparities in meaningful educational opportunities that give rise to the achievement gap, with a focus on systems of finance, and recommend appropriate ways in which Federal policies could address such disparities.

The agenda for the Commission's June 13, 2012 meeting will include continuation of the review and deliberation related to the draft report to the Secretary of the U.S. Department of Education (Secretary), prepared by the Draft Review subcommittee, summarizing the Commission's findings and recommendations for appropriate ways in which Federal policies can improve equity in school finance. The Commission is also expected to discuss what materials, if any, will accompany its report to the Secretary and the timing of the release of the report. Due to time constraints, there will not be a public comment period. However, individuals wishing to provide written comments may send their comments to the Commission via email at *equitycommission@ed.gov* or via U.S. mail to Guy Johnson, Designated Federal Official, Equity and Excellence Commission, U.S. Department of Education, 400 Maryland Avenue SW., Washington, DC 20202. For comments related to the upcoming meeting, please submit comments for receipt no later than June 6, 2012.

Individuals interested in attending the meeting must register in advance, as meeting room seating may be limited. Please contact Guy Johnson at (202) 453–6567 or by email at *equitycommission@ed.gov.* Individuals who will need accommodations for a disability in order to attend the meeting (e.g., interpreting services, assistive listening devices, or materials in alternative format) should notify Guy Johnson at (202) 453–6567 no later than June 6, 2012. We will attempt to meet requests for accommodations after this date but cannot guarantee availability. The meeting site is accessible to individuals with disabilities.

Records are kept of all Commission proceedings and are available for public inspection at the Department of Education, 400 Maryland Avenue SW., Washington, DC 20202 between the hours of 9 a.m. to 5 p.m. Eastern Standard Time. You may contact Guy Johnson, Designated Federal Official, Equity and Excellence Commission, at *equitycommission@ed.gov,* or at (202) 453–6567 if you have additional questions regarding inspection of records.

**Sandra Battle,**

*Deputy Assistant Secretary for Enforcement, Office for Civil Rights.*

[FR Doc. 2012–12941 Filed 5–25–12; 8:45 am]

BILLING CODE 4000–01–P

## DEPARTMENT OF EDUCATION

### Privacy Act of 1974; System of Records

**AGENCY:** Office of English Language Acquisition, Language Enhancement and Academic Achievement for Limited English Proficient Students, Department of Education.

**ACTION:** Notice of deletion of existing system of records.

**SUMMARY:** In accordance with the Privacy Act of 1974, as amended (Privacy Act), the Department of Education (Department) deletes one system of records from its existing inventory of systems of records subject to the Privacy Act.

**DATES:** This deletion is effective May 29, 2012.

**FOR FURTHER INFORMATION CONTACT:** Dr. Rosalinda B. Barrera, Assistant Deputy Secretary, Office of English Language Acquisition, Language Enhancement and Academic Achievement for Limited English Proficient Students, U.S. Department of Education, 400 Maryland Avenue SW., room 5C132, Washington, DC 20202–6510. Telephone: (202) 401–4300.

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 may obtain this document in an accessible format (e.g., braille, large print, audiotape, or compact disc) on request to the contact person listed in this section.

**SUPPLEMENTARY INFORMATION:** The Department deletes one system of records from its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended. The deletion is not within the purview of subsection (r) of the Privacy Act, which requires submission of a report on a new or altered system of records.

This system of records is no longer needed because the study has been completed. Further, the system of records has been destroyed; therefore, the following system of records is deleted:

(18–15–01) Bilingual Education Graduate Fellowship Program, 64 FR 30106–30191 (June 4, 1999).

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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: May 22, 2012.

**Rosalinda B. Barrera,**

*Assistant Deputy Secretary and Director for English Language Acquisition, Language Enhancement and Academic Achievement for Limited English Proficient Students.*

For the reasons discussed in the preamble, the Assistant Deputy Secretary of the Office of English Language Acquisition deletes the following system of records:

**System Number/System Name**

18–15–01 Bilingual Education Graduate Fellowship Program, 64 FR 30106–30191 (June 4, 1999).

[FR Doc. 2012–12930 Filed 5–25–12; 8:45 am]

BILLING CODE 4000–01–P

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. IC12–7–000]**

## Commission Information Collection Activities (FERC–587); Comment Request

**AGENCY:** Federal Energy Regulatory Commission, DOE.

**ACTION:** Comment request.

**SUMMARY:** In compliance with the requirements of the Paperwork Reduction Act of 1995, 44 United States Code (U.S.C.) 3507(a)(1)(D), the Federal Energy Regulatory Commission (Commission or FERC) is submitting the information collection FERC–587, Land Description (Public Land States/Non-Public Land States [Rectangular or Non-Rectangular Survey System Lands in Public Land States]) to the Office of Management and Budget (OMB) for review of the information collection requirements. Any interested person may file comments directly with OMB and should address a copy of those comments to the Commission as explained below. The Commission issued a Notice in the **Federal Register** (77 FR 11518, 02/27/2012) requesting public comments. FERC received no comments on the FERC–587 and is making this notation in its submittal to OMB.

**DATES:** Comments on the collection of information are due by June 28, 2012.

**ADDRESSES:** Comments filed with OMB, identified by the OMB Control No. 1902–0145, should be sent via email to the Office of Information and Regulatory Affairs: *oira_submission@omb.gov.* Attention: Federal Energy Regulatory Commission Desk Officer. The Desk Officer may also be reached via telephone at 202–395–4718.

A copy of the comments should also be sent to the Federal Energy Regulatory Commission, identified by the Docket No. IC12–7–000, by either of the following methods:

- *eFiling at Commission's Web Site: http://www.ferc.gov/docs-filing/efiling.asp.*
- *Mail/Hand Delivery/Courier:* Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street NE., Washington, DC 20426.

*Instructions:* All submissions must be formatted and filed in accordance with submission guidelines at: *http://www.ferc.gov/help/submission-guide.asp.* For user assistance contact FERC Online Support by email at *ferconlinesupport@ferc.gov,* or by phone at: (866) 208–3676 (toll-free), or (202) 502–8659 for TTY.

*Docket:* Users interested in receiving automatic notification of activity in this docket or in viewing/downloading comments and issuances in this docket may do so at *http://www.ferc.gov/docs-filing/docs-filing.asp.*

**FOR FURTHER INFORMATION CONTACT:** Ellen Brown may be reached by email at *DataClearance@FERC.gov,* by telephone at (202) 502–8663, and by fax at (202) 273–0873.

**SUPPLEMENTARY INFORMATION:**

*Title:* FERC–587, Land Description (Public Land States/Non-Public Land States [Rectangular or Non-Rectangular Survey System Lands in Public Land States]).

*OMB Control No.:* 1902–0145.

*Type of Request:* Three-year extension of the FERC–587 information collection requirements with no changes to the reporting requirements.

*Abstract:* The Commission requires the FERC–587 information collection to satisfy the requirements of section 24 of the Federal Power Act (FPA). The Federal Power Act grants the Commission authority to issue licenses for the development and improvement of navigation and for the development, transmission, and utilization of power across, along, from or in any of the steams or other bodies of water over which Congress has jurisdiction.[1] The Electric Consumers Protection Act (ECPA) amended the FPA to allow the Commission the responsibility of issuing licenses for nonfederal hydroelectric plants.[2] Section 24 of the FPA requires that applicants proposing hydropower projects on (or changes to existing projects located within) lands owned by the United States to provide a description of the applicable U.S. land. Additionally, the FPA requires the notification of the Commission and Secretary of the Interior of the hydropower proposal. FERC–587 consolidates the information required and identifies hydropower project boundary maps associated with the applicable U.S. land.

The information consolidated by the Form No. 587 verifies the accuracy of the information provided for the FERC–587 to the Bureau of Land Management (BLM) and the Department of the Interior (DOI). Moreover, this information ensures that U.S. lands can be reserved as hydropower sites and withdrawn from other uses.

*Type of Respondents:* Applicants proposing hydropower projects on (or changes to existing projects located within) lands owned by the United States.

*Estimate of Annual Burden:*[3] The Commission estimates the total Public Reporting Burden for this information collection as:

[1] 16 U.S.C. 797d (2010).

[2] Public Law 99–495, 100 Stat. 1243 (1996).

[3] Burden is defined as the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. For further explanation of what is included in the information collection burden, reference 5 Code of Federal Regulations 1320.3.

FERC–587 (IC12–7–000): LAND DESCRIPTION (PUBLIC LAND STATES/NON-PUBLIC LAND STATES [RECTANGULAR OR NON-RECTANGULAR SURVEY SYSTEM LANDS IN PUBLIC LAND STATES])

| | Number of respondents (A) | Number of responses per respondent (B) | Total number of responses (A) × (B) = (C) | Average burden hours per response (D) | Estimated total annual burden (C) × (D) |
|---|---|---|---|---|---|
| Hydropower Project Applicants | 250 | 1 | 250 | 1 | 250 |

The total estimated annual cost burden to respondents is $17,252 [250 hours ÷ 2,080[4] hours/year = 0.12019 * $143,540/year[5] = $17,252].

The estimated annual cost of filing the FERC–587 per response is $69 [$17,252 ÷ 250 responses = $69/response].

*Comments:* Comments are invited on: (1) Whether the collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden and cost of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Dated: May 21, 2012.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. 2012–12869 Filed 5–25–12; 8:45 am]

**BILLING CODE 6717–01–P**

[4] 2080 hours = 40 hours/week * 52 weeks (1 year).

[5] Average annual salary per employee in 2012.

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

### Combined Notice of Filings #1

Take notice that the Commission received the following electric rate filings:

*Docket Numbers:* ER10–1556–005.
*Applicants:* Longview Power.
*Description:* Supplement to Notice of Change in Status of Longview Power, LLC.
*Filed Date:* 5/18/12.
*Accession Number:* 20120518–5085.
*Comments Due:* 5 p.m. ET 6/8/12.

*Docket Numbers:* ER10–2564–001; ER10–2600–001; ER10–2289–001.
*Applicants:* Tucson Electric Power Company, UNS Electric, Inc., UniSource Energy Development Company.
*Description:* Change in Status Filing Tucson Electric Power Company, *et al.*
*Filed Date:* 5/17/12.
*Accession Number:* 20120517–5025.
*Comments Due:* 5 p.m. ET 6/7/12.

*Docket Numbers:* ER12–667–000.
*Applicants:* ITC Midwest LLC.
*Description:* Filing of a Refund Report to be effective N/A.
*Filed Date:* 5/18/12.
*Accession Number:* 20120518–5132.
*Comments Due:* 5 p.m. ET 6/8/12.

*Docket Numbers:* ER12–1531–001.
*Applicants:* AEP Texas Central Company.
*Description:* 20120518 TCC OATT Conc to be effective 1/1/2012.
*Filed Date:* 5/18/12.
*Accession Number:* 20120518–5135.
*Comments Due:* 5 p.m. ET 6/8/12.

*Docket Numbers:* ER12–1532–001.
*Applicants:* AEP Texas North Company.
*Description:* 20120518 TNC OATT Conc to be effective 1/1/2012.
*Filed Date:* 5/18/12.
*Accession Number:* 20120518–5158.
*Comments Due:* 5 p.m. ET 6/8/12.

*Docket Numbers:* ER12–1533–001.
*Applicants:* Indiana Michigan Power Company.
*Description:* 20120518 I&M OATT Conc to be effective 1/1/2012.
*Filed Date:* 5/18/12.
*Accession Number:* 20120518–5159.
*Comments Due:* 5 p.m. ET 6/8/12.

*Docket Numbers:* ER12–1534–001.
*Applicants:* Kentucky Power Company.
*Description:* 20120518 OATT Conc to be effective 1/1/2012.
*Filed Date:* 5/18/12.
*Accession Number:* 20120518–5163.
*Comments Due:* 5 p.m. ET 6/8/12.

*Docket Numbers:* ER12–1535–001.
*Applicants:* Kingsport Power Company.
*Description:* 20120518 OATT Conc to be effective 1/1/2012.
*Filed Date:* 5/18/12.
*Accession Number:* 20120518–5160.
*Comments Due:* 5 p.m. ET 6/8/12.

*Docket Numbers:* ER12–1536–001.
*Applicants:* Ohio Power Company.
*Description:* 20120518 OPCo OATT Conc to be effective 1/1/2012.
*Filed Date:* 5/18/12.
*Accession Number:* 20120518–5166.
*Comments Due:* 5 p.m. ET 6/8/12.

*Docket Numbers:* ER12–1537–001.
*Applicants:* Public Service Company of Oklahoma.
*Description:* 20120518 PSO OATT Conc to be effective 1/1/2012.
*Filed Date:* 5/18/12.
*Accession Number:* 20120518–5169.
*Comments Due:* 5 p.m. ET 6/8/12.

*Docket Numbers:* ER12–1538–001.
*Applicants:* Southwestern Electric Power Company.
*Description:* 20120518 SWEPCO OATT Conc to be effective 1/1/2012.
*Filed Date:* 5/18/12.
*Accession Number:* 20120518–5172.
*Comments Due:* 5 p.m. ET 6/8/12.

*Docket Numbers:* ER12–1539–001.
*Applicants:* Wheeling Power Company.
*Description:* 20120518 WPCo OATT Conc to be effective 1/1/2012 under ER12–1539 Filing Type: 130.
*Filed Date:* 5/18/12.
*Accession Number:* 20120518–5137.
*Comments Due:* 5 p.m. ET 6/8/12.

*Docket Numbers:* ER12–1540–001.
*Applicants:* Indiana Michigan Power Company.
*Description:* 20120518 I&M MBR Conc to be effective 1/1/2012.
*Filed Date:* 5/18/12.
*Accession Number:* 20120518–5144.
*Comments Due:* 5 p.m. ET 6/8/12.

*Docket Numbers:* ER12–1541–001.
*Applicants:* Kentucky Power Company.
*Description:* 20120518 KPCo MBR Conc to be effective 1/1/2012.
*Filed Date:* 5/18/12.
*Accession Number:* 20120518–5149.
*Comments Due:* 5 p.m. ET 6/8/12.

*Docket Numbers:* ER12–1542–001.
*Applicants:* Kingsport Power Company.
*Description:* 20120518 KgPCo MBR Conc to be effective 1/1/2012.
*Filed Date:* 5/18/12.
*Accession Number:* 20120518–5152.
*Comments Due:* 5 p.m. ET 6/8/12.

*Docket Numbers:* ER12–1543–001.
*Applicants:* Ohio Power Company.
*Description:* 20120518 OPCo MBR Conc to be effective 1/1/2012.

*Filed Date:* 5/18/12.
*Accession Number:* 20120518–5154.
*Comments Due:* 5 p.m. ET 6/8/12.

*Docket Numbers:* ER12–1544–001.
*Applicants:* Wheeling Power Company.
*Description:* 20120518 WPCo MBR Conc to be effective 1/1/2012.
*Filed Date:* 5/18/12.
*Accession Number:* 20120518–5156.
*Comments Due:* 5 p.m. ET 6/8/12.

*Docket Numbers:* ER12–1666–000.
*Applicants:* Longview Power, LLC.
*Description:* Supplement to April 30, 2012 filing to be effective N/A.
*Filed Date:* 5/18/12.
*Accession Number:* 20120518–5063.
*Comments Due:* 5 p.m. ET 6/8/12.

*Docket Numbers:* ER12–1816–000.
*Applicants:* Pacific Gas and Electric Company.
*Description:* Amended E&P Agreement for PG&E's Schindler 3 Project to be effective 5/21/2012.
*Filed Date:* 5/18/12.
*Accession Number:* 20120518–5177.
*Comments Due:* 5 p.m. ET 6/8/12.

*Docket Numbers:* ER12–1817–000.
*Applicants:* Florida Power & Light Company.
*Description:* FPL and Orlando Utilities Commission Service Agreement No. 307 to be effective 7/17/2012.
*Filed Date:* 5/18/12.
*Accession Number:* 20120518–5188.
*Comments Due:* 5 p.m. ET 6/8/12.

*Docket Numbers:* ER12–1818–000.
*Applicants:* Florida Power & Light Company.
*Description:* FPL and Orlando Utilities Commission Service Agreement No. 308 to be effective 7/17/2012.
*Filed Date:* 5/18/12.
*Accession Number:* 20120518–5189.
*Comments Due:* 5 p.m. ET 6/8/12.

Take notice that the Commission received the following electric securities filings:

*Docket Numbers:* ES12–34–000.
*Applicants:* El Paso Electric Company.
*Description:* Submission of El Paso Electric Company of substitute page 5 to its April 13, 2012 filed application.
*Filed Date:* 5/17/12.
*Accession Number:* 20120517–5077.
*Comments Due:* 5 p.m. ET 5/29/12.

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 5:00 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: May 21, 2012.

**Nathaniel J. Davis, Sr.,**

*Deputy Secretary.*

[FR Doc. 2012–12891 Filed 5–25–12; 8:45 am]

**BILLING CODE 6717–01–P**

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

### Combined Notice of Filings #2

Take notice that the Commission received the following exempt wholesale generator filings:

*Docket Numbers:* EG12–68–000.
*Applicants:* Colorado Highlands Wind, LLC.
*Description:* Self-Certification of EWG of Colorado Highlands Wind, LLC.
*Filed Date:* 5/21/12.
*Accession Number:* 20120521–5071.
*Comments Due:* 5 p.m. ET 6/11/12.

Take notice that the Commission received the following electric rate filings:

*Docket Numbers:* ER12–1559–001.
*Applicants:* High Majestic Wind Energy Center, LLC.
*Description:* High Majestic Wind Energy Center, LLC submits tariff filing per 35.17(b): Amendment to the CFA Between HM I, HM II, and HM Interconnection to be effective 6/16/2012.
*Filed Date:* 5/21/12.
*Accession Number:* 20120521–5132.
*Comments Due:* 5 p.m. ET 6/11/12.

*Docket Numbers:* ER12–1819–000.
*Applicants:* Southwest Power Pool, Inc.
*Description:* Southwest Power Pool, Inc.'s Notice of Cancellation of Large Generator Interconnection Agreement.
*Filed Date:* 5/21/12.
*Accession Number:* 20120521–5062.
*Comments Due:* 5 p.m. ET 6/11/12.

*Docket Numbers:* ER12–1820–000.
*Applicants:* Southwest Power Pool, Inc.
*Description:* Southwest Power Pool, Inc.'s Notice of Cancellation of Generator Interconnection Agreement.
*Filed Date:* 5/21/12.
*Accession Number:* 20120521–5063.
*Comments Due:* 5 p.m. ET 6/11/12.

*Docket Numbers:* ER12–1821–000.
*Applicants:* Colorado Highlands Wind, LLC.
*Description:* Market-Based Rate Tariff to be effective 7/20/2012.
*Filed Date:* 5/21/12.
*Accession Number:* 20120521–5090.
*Comments Due:* 5 p.m. ET 6/11/12.

*Docket Numbers:* ER12–1822–000.
*Applicants:* IPR–GDF SUEZ Energy Marketing North America, Inc.
*Description:* Notice of Succession to be effective 5/22/2012.
*Filed Date:* 5/21/12.
*Accession Number:* 20120521–5128.
*Comments Due:* 5 p.m. ET 6/11/12.

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 5:00 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: May 21, 2012.

**Nathaniel J. Davis, Sr.,**

*Deputy Secretary.*

[FR Doc. 2012–12892 Filed 5–25–12; 8:45 am]

**BILLING CODE 6717–01–P**

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

### Combined Notice of Filings #1

Take notice that the Commission received the following electric rate filings:

*Docket Numbers:* ER12–1103–002.
*Applicants:* Tucson Electric Power Company.
*Description:* TEP Compliance Filing—2nd Revised Participation Agmt and 230kV Attachment Agmt to be effective 4/17/2012.
*Filed Date:* 5/17/12.
*Accession Number:* 20120517–5047.
*Comments Due:* 5 p.m. ET 6/7/12.

*Docket Numbers:* ER12–1144–001.
*Applicants:* WSPP Inc.

*Description:* Compliance Filing Regarding Service Schedule R to WSPP Agreement to be effective 4/23/2012.
*Filed Date:* 5/17/12.
*Accession Number:* 20120517–5087.
*Comments Due:* 5 p.m. ET 6/7/12.

*Docket Numbers:* ER12–1807–000.
*Applicants:* HL Power Company, LP.
*Description:* Filing of Notice of Cancellation of Rate Schedule No. 2 to be effective 5/18/2012.
*Filed Date:* 5/17/12.
*Accession Number:* 20120517–5055.
*Comments Due:* 5 p.m. ET 6/7/12.

*Docket Numbers:* ER12–1808–000.
*Applicants:* Invenergy Wind Development Michigan LLC.
*Description:* Filing of Notice of Termination of Facilities Use Agreement to be effective 7/17/2012.
*Filed Date:* 5/17/12.
*Accession Number:* 20120517–5075.
*Comments Due:* 5 p.m. ET 6/7/12.

*Docket Numbers:* ER12–1809–000.
*Applicants:* ISO New England Inc.
*Description:* Posturing Rule Changes to be effective 5/18/2012.
*Filed Date:* 5/17/12.
*Accession Number:* 20120517–5079.
*Comments Due:* 5 p.m. ET 6/4/12.

*Docket Numbers:* ER12–1810–000.
*Applicants:* PJM Interconnection, LLC.
*Description:* Amendments to Sch 12 Appx of the PJM Tariff re 4/17/2012 Board Approval to be effective 8/15/2012.
*Filed Date:* 5/17/12.
*Accession Number:* 20120517–5082.
*Comments Due:* 5 p.m. ET 6/7/12.

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 5:00 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: May 17, 2012.

**Nathaniel J. Davis, Sr.,**

*Deputy Secretary.*

[FR Doc. 2012–12890 Filed 5–25–12; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Project No. 14403–000]**

### FFP Project 110, LLC; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

On May 1, 2012, the FFP Project 110, LLC filed an application for a preliminary permit under section 4(f) of the Federal Power Act proposing to study the feasibility of the proposed Mississippi River Lock and Dam #25—Project No. 14403, to be located at the existing Mississippi River Lock and Dam No. 25 on the Mississippi River, near the City of Winfield in Lincoln County, Missouri and Calhoun County, Illinois. The Mississippi River Lock and Dam No. 25 is owned by the United States government and operated by the United States Army Corps of Engineers.

The proposed project would consist of: (1) Fourteen new 60-foot by 60-foot reinforced concrete powerhouses, each containing two 500-kilowatt bulb turbine-generators, having a total combined generating capacity of 14 megawatts; (2) fourteen existing submersible tainter gates; (3) a new 40-foot by 35-foot substation; (4) a new 10-foot by 60-foot intake structure; (5) a new 3-mile-long, 34.5-kilovolt transmission line; and (6) appurtenant facilities. The project would have an estimated annual generation of 56 gigawatt-hours.

*Applicant Contact:* Ms. Ramya Swaminathan, 239 Causeway Street, Suite 300, Boston, MA 02114; (978) 283–2822.

*FERC Contact:* Tyrone A. Williams, (202) 502–6331.

Deadline for filing comments, motions to intervene, and 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–14403) in the docket number field to access the document. For assistance, contact FERC Online Support.

Dated: May 21, 2012.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. 2012–12868 Filed 5–25–12; 8:45 am]

**BILLING CODE 6717–01–P**

## ENVIRONMENTAL PROTECTION AGENCY

**[EPA–HQ–OAR–2003–0053 and EPA–HQ–OAR–2006–0947; FRL 9517–7]**

### Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; CAIR To Reduce Interstate Transport of Fine Particle Matter and Ozone (Renewal); Correction

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice; correction.

**SUMMARY:** The EPA published a document in the **Federal Register** of May 22, 2012, concerning the Clean Air Interstate Rule to Reduce Interstate Transport of Fine Particle Matter Information Collection Request, including a notice of submission to OMB and a request for comments. The document contained an incorrect docket identification number.

**FOR FURTHER INFORMATION CONTACT:** Karen VanSickle, Clean Air Markets Division, (6204J), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: 202–343–9220; fax number: 202–343–2361; email address: *vansickle.karen@epa.gov.*

**Correction**

In the **Federal Register** of May 22, 2012, in FR Doc. 2012–12322, on page 30279, in the first column, correct line

after ''ENVIRONMENT PROTECTION AGENCY'' to read:

[EPA–HQ–OAR–2003–0053; FRL 9516–8]

In the **Federal Register** of May 22, 2012, in FR Doc. 2012–12322, on page 30279, in the second column, correct the **ADDRESSES** caption to read:

**ADDRESSES:** Submit your comments, referencing Docket ID No. EPA–HQ–OAR–2003–0053, to (1) EPA online using *www.regulations.gov* (our preferred method), by email to *a-and-r-Docket@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Air and Radiation Docket (Mail Code 28221T), 1200 Pennsylvania Ave. NW., Washington, DC 20460, and (2) OMB by mail to: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street NW., Washington, DC 20503.

In the **Federal Register** of May 22, 2012, in FR Doc. 2012–12322, on page 30279, in the second column, correct the first line of the second paragraph of the **SUPPLEMENTARY INFORMATION** caption to read:

EPA has established a public docket for this ICR under EPA Docket ID No. EPA–HQ–OAR–2003–0053, which is available for online viewing at *http://www.regulations.gov,* or in person viewing at the Air and Radiation Docket, in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Ave. NW., Washington, DC.

**Joe Sierra,**

*Acting Director, Collection Strategies Division.*

[FR Doc. 2012–12898 Filed 5–25–12; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–9678–4]**

### Proposed CERCLA Section 122(g)(4) Administrative Agreement and Order on Consent for the Mercury Refining Superfund Site, Towns of Guilderland and Colonie, Albany County, NY

**AGENCY:** Environmental Protection Agency.

**ACTION:** Notice; request for public comment.

**SUMMARY:** In accordance with Section 122(i) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (''CERCLA''), 42 U.S.C. 9622(i), notice is hereby given by the U.S. Environmental Protection Agency (''EPA''), Region II, of a proposed *de minimis* administrative settlement agreement and order on consent pursuant to Section 122(g)(4) of CERCLA, 42 U.S.C. 9622(g)(4), between EPA and Recycle Technologies, Inc., American Lamp Recycling, LLC, Lighting Resources, LLC, Western Finger Lakes Solid Waste Management Authority, H–B Instrument Company, Inc. and H.J. Heinz Company (hereinafter ''Settling Parties'') pertaining to the Mercury Refining Superfund Site (''Site'') located in the Towns of Guilderland and Colonie, Albany County, New York. The settlement requires specified individual payments by each settling party to the EPA Hazardous Substance Superfund Mercury Refining Superfund Site Special Account, which combined total $76,562.04. Each settling party's individual settlement amount is considered to be either that party's fair share of cleanup costs incurred and anticipated to be incurred in the future, plus a ''premium'' that accounts for, among other things, uncertainties associated with the costs of that future work at the Site, or the amount that EPA has determined the settling party can afford to pay. The settlement includes a covenant not to sue pursuant to Sections 106 and 107 of CERCLA, 42 U.S.C. 9606 and 9607, relating to the Site, subject to limited reservations, and protection from contribution actions or claims as provided by Sections 113(f)(2) and 122(g)(5) of CERCLA, 42 U.S.C. 9613(f)(2) and 9622(g)(5). For thirty (30) days following the date of publication of this notice, EPA will receive written comments relating to the settlement. EPA will consider all comments received and may modify or withdraw its consent to the settlement if comments received disclose facts or considerations that indicate that the proposed settlement is inappropriate, improper, or inadequate. EPA's response to any comments received will be available for public inspection at EPA Region II, 290 Broadway, New York, New York 10007–1866.

**DATES:** Comments must be submitted on or before June 28, 2012.

**ADDRESSES:** The proposed settlement is available for public inspection at EPA Region II offices at 290 Broadway, New York, New York 10007–1866. Comments should be sent to the individual identified below and should reference the Mercury Refining Superfund Site, Index No. CERCLA–02–2009–2006. To request a copy of the proposed settlement agreement, please contact the individual identified below.

**FOR FURTHER INFORMATION CONTACT:** Sharon E. Kivowitz, Assistant Regional Counsel, New York/Caribbean Superfund Branch, Office of Regional Counsel, U.S. Environmental Protection Agency, 17th Floor, 290 Broadway, New York, New York 10007–1866. Telephone: 212–637–3183. Email: *kivowitz.sharon@epa.gov.*

Dated: May 10, 2012.

**Walter Mugdan,**

*Director, Emergency and Remedial Response Division, EPA, Region 2.*

[FR Doc. 2012–12921 Filed 5–25–12; 8:45 am]

**BILLING CODE 6560–50–P**

## FEDERAL COMMUNICATIONS COMMISSION

**[DA 12–770]**

### Consumer Advisory Committee

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice.

**SUMMARY:** The Commission announces the next meeting date, time, and agenda of its Consumer Advisory Committee (Committee). The purpose of the Committee is to make recommendations to the Commission regarding matters within the jurisdiction of the Commission and to facilitate the participation of all consumers in proceedings before the Commission.

**DATES:** The next meeting of the Committee will take place on Friday, June 15, 2012, 8:30 a.m. to 4:00 p.m., at the Commission's Headquarters Building, Room TW–C305.

**ADDRESSES:** Federal Communications Commission, 445 12th Street SW., Washington, DC 20554.

**FOR FURTHER INFORMATION CONTACT:** Scott Marshall, Consumer and Governmental Affairs Bureau, (202) 418–2809 (voice or TTY), or email *Scott.Marshall@fcc.gov.*

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's document DA 12–770 released May 17, 2012, announcing the agenda, date and time of the Committee's next meeting.

**Meeting Agenda**

At its June 15, 2012 meeting, it is expected that the Committee will consider a recommendation from its Broadband Working group regarding the Global Public Inclusive Infrastructure Initiative. The Committee will also consider two recommendations from the Committee's Consumer Empowerment Group regarding text spamming and third party wireless shutdowns. In

addition four recommendations from the Media Working Group regarding political advertising, spectrum, the Emergency Alert System, and privacy will also be considered. The Committee may also consider other recommendations from its working groups, and may also receive briefings from FCC staff and outside speakers on matters of interest to the Committee. A limited amount of time will be available on the agenda for questions and comments from the public.

Meetings of the Committee are also broadcast live with open captioning over the Internet from the FCC Live Web page at *www.fcc.gov/live/*.

Simultaneous with the webcast, the meeting will be available through Accessible Event, a service that works with a web browser to make presentations accessible to people with disabilities. Persons wishing to attend through Accessible Event can listen to the audio and use a screen reader to read displayed documents, and can watch the video with open captioning. The Web site to access Accessible Event is *http://accessibleevent.com*. The Web page prompts for an Event Code which is: 005202376. To learn about the features of Accessible Event, consult its User's Guide at: *http://accessibleevent.com/doc/user_guide/*.

The public may ask questions of presenters via email *livequestions@fcc.gov* or via Twitter using the hashtab #fcclive. In addition, the public may also follow the meeting on Twitter @fcc or via the Commission's Facebook page at *www.facebook.com/fcc*.

Alternatively, written comments to the Committee may be sent to: Scott Marshall, Designated Federal Officer of the Committee at the address provided above.

The meeting is open to the public and the site is fully accessible to people using wheelchairs or other mobility aids. Sign language interpreters, open captioning, assistive listening devices, and Braille copies of the agenda and handouts will be provided on site.

Other reasonable accommodations for people with disabilities are available upon request. The request should include a detailed description of the accommodation needed and contact information. Please provide as much advance notice as possible; last minute requests will be accepted, but may be impossible to fill. Send an email to *fcc504@fcc.gov* or call the Consumer and Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (TTY).

Federal Communications Commission.

**Kris Anne Monteith,**

*Acting Chief, Consumer and Governmental Affairs Bureau.*

[FR Doc. 2012–12956 Filed 5–25–12; 8:45 am]

**BILLING CODE 6712–01–P**

## FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

### Sunshine Act Meeting Notice

May 22, 2012.

**TIME AND DATE:** 10:00 a.m., Thursday, May 31, 2012.

**PLACE:** The Richard V. Backley Hearing Room, 9th Floor, 601 New Jersey Avenue NW., Washington, DC.

**STATUS:** Open.

**MATTERS TO BE CONSIDERED:** The Commission will consider and act upon the following in open session: *Secretary of Labor* v. *Shamokin Filler Co.,* Docket Nos. PENN 2009–775, et al. (Issues include whether the Mine Safety and Health Administration has regulatory jurisdiction over the company's facility.)

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. 2012–13024 Filed 5–24–12; 4:15 pm]

**BILLING CODE 6735–01–P**

## FEDERAL RESERVE SYSTEM

### Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than June 12, 2012.

A. Federal Reserve Bank of St. Louis (Glenda Wilson, Community Affairs Officer) P.O. Box 442, St. Louis, Missouri 63166–2034:

1. *Eddie D. Franklin,* Columbia, Kentucky; to retain control of United Citizens Bancorp, Inc., and thereby indirectly retain control of United Citizens Bank of Southern Kentucky, both in Columbia, Kentucky.

Board of Governors of the Federal Reserve System, May 23, 2012.

**Robert deV. Frierson,**

*Deputy Secretary of the Board.*

[FR Doc. 2012–12915 Filed 5–25–12; 8:45 am]

**BILLING CODE 6210–01–P**

## FEDERAL TRADE COMMISSION

### Agency Information Collection Activities; Proposed Collection; Comment Request; Extension

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

**ACTION:** Notice.

**SUMMARY:** The FTC intends to ask the Office of Management and Budget (''OMB'') to extend through September 30, 2015, the current Paperwork Reduction Act (''PRA'') clearance for the information collection requirements in the Health Breach Notification Rule. That clearance expires on September 30, 2012.

**DATES:** Comments must be filed by July 30, 2012.

**ADDRESSES:** Interested parties may file a comment online or on paper, by following the instructions in the Request for Comment part of the **SUPPLEMENTARY INFORMATION** section below. Write ''Health Breach Notification Rule, PRA Comments, P–125402'' on your comment and file your comment online at *https://ftcpublic.commentworks.com/ftc/healthbreachnotificationPRA* by following the instructions on the web-based form. If you prefer to file your comment on paper, mail or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Room H–113 (Annex J), 600 Pennsylvania Avenue NW, Washington, DC 20580.

**FOR FURTHER INFORMATION CONTACT:** Amanda Koulousias, Attorney, Division of Privacy and Identity Protection, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania

Avenue NW., Washington, DC 20580, (202) 326–2252.

**SUPPLEMENTARY INFORMATION:** On February 17, 2009, President Obama signed the American Recovery and Reinvestment Act of 2009 (the ''Recovery Act'' or ''the Act'') into law. The Act includes provisions to advance the use of health information technology and, at the same time, strengthen privacy and security protections for health information. The Act required the FTC to adopt a rule implementing the breach notification requirements applicable to vendors of personal health records, ''PHR related entities,'' [1] and third party service providers, and the Commission issued a final rule on August 25, 2009. 74 FR 42962.

The Health Breach Notification Rule (''Rule''), 16 CFR part 318, requires vendors of personal health records and PHR related entities to provide: (1) notice to consumers whose unsecured personally identifiable health information has been breached; and (2) notice to the Commission. The Rule only applies to electronic health records and does not include recordkeeping requirements. The Rule requires third party service providers (i.e., those companies that provide services such as billing or data storage) to vendors of personal health records and PHR related entities to provide notification to such vendors and PHR related entities following the discovery of a breach. To notify the FTC of a breach, the Commission developed a form, which is posted at *www.ftc.gov/healthbreach,* for entities subject to the rule to complete and return to the agency.

These notification requirements are subject to the provisions of the PRA, 44 U.S.C. Chapter 35. Under the PRA, Federal agencies must get OMB approval for each collection of information they conduct or sponsor. ''Collection of information'' includes agency requests or requirements to submit reports, keep records, or provide information to a third party. 44 U.S.C. 3502(3); 5 CFR 1320.3(c). On September 22, 2009, OMB granted the FTC clearance (under Control Number 3084–0150) for these notification requirements through September 30, 2012. As required by the PRA, the FTC is providing this opportunity for public comment before requesting that OMB extend the existing paperwork clearance for the Rule. 44 U.S.C. 3506(c)(2)(A).

The FTC invites comments on: (1) Whether the notification requirements in the Rule and associated form are necessary, including whether the information will be practically useful; (2) the accuracy of our burden estimates, including whether the methodology and assumptions used are valid; (3) how to improve the quality, utility, and clarity of the required notifications; and (4) how to minimize the burden of providing the required information to consumers and to the agency. All comments should be filed as prescribed in the **ADDRESSES** section above, and must be received on or before July 30, 2012.

In the Commission's view, it has maximized the practical utility of the breach notification requirements in the Rule, consistent with the requirements of the Recovery Act. Under the Rule, consumers whose information has been affected by a breach of security receive notice of it ''without unreasonable delay and in no case later than 60 calendar days'' after discovery of the breach. Among other information, the notices must provide consumers with steps they can take to protect themselves from harm. Moreover, the breach notice requirements encourage entities to safeguard the information of their customers, thereby potentially reducing the incidence of harm.

The form entities must use to inform the Commission of a security breach requests minimal information, mostly in the form of replies to check boxes; thus, entities do not require extensive time to complete it. The Commission inputs the information it receives from entities into a database that the Commission updates periodically and makes available to the public. The publicly-available database serves businesses, the public, and policymakers. It provides businesses with information about potential sources of data breaches, which is particularly helpful to those setting up data security procedures. It provides the public with information about the extent of data breaches. Finally, it helps policymakers in developing breach notification requirements in non-health-related areas. Thus, in the Commission's view, the Rule and form have significant practical utility.

*Burden Statement:*

The PRA burden of the Rule's requirements depends on a variety of factors, including the number of covered firms; the percentage of such firms that will experience a breach requiring further investigation and, if necessary, the sending of breach notices; and the number of consumers notified. The annual hours and cost estimates below likely overstate the burden because, among other things, they assume, though it is not necessarily so, that all breaches subject to the Rule's notification requirements will be required to take all of the steps described below.

At the time the Rule was issued, insufficient data was available about the incidence of breaches in the PHR industry. Accordingly, staff based its burden estimate on data pertaining to private sector breaches across multiple industries. Staff estimated that there would be 11 breaches per year requiring notification of 232,000 consumers.[2]

As described above, the Rule requires covered entities that have suffered a breach to notify the Commission. Since the Rule has now been in effect for over two years,[3] staff is now able to base the burden estimate on the actual notifications received from covered entities, which include the number of consumers notified. Accordingly, staff has used this information to update its burden estimate.

During 2010 and 2011, two firms informed the Commission of events that resulted in notices to consumers. In 2010, one firm sent notices to 2,094 consumers, and another firm sent notices to 3 consumers. This second firm sent an additional 2,899 notices (conveying similar information as in its 2010 notices) in 2011.

This information indicates that an average of about 2,500 consumers per year received notifications over the years 2010 and 2011. This number is about one percent of the figure staff had previously projected would require notification. Among other things, staff believes that this lower incidence rate may be due to a reported low utilization by consumers of PHR vendors.[4] Among the barriers cited to adoption of PHRs are consumer resistance due to concerns about privacy and the lack of consumer

[1] ''PHR related entity'' means an entity, other than a HIPAA-covered entity or an entity to the extent that it engages in activities as a business associate of a HIPAA-covered entity, that: (1) Offers products or services through the Web site of a vendor of personal health records; (2) offers products or services through the Web sites of HIPAA-covered entities that offer individuals personal health records; or (3) accesses information in a personal health record or sends information to a personal health record. 16 CFR 318.2(f).

[2] 74 FR at 42977.

[3] The rule became effective on September 24, 2009. Full compliance was required by February 22, 2010.

[4] For example, the New York Times reported in June 2011 that Google was ending its PHR service after failing to attract sufficient users. Steve Lohr, ''Google to End Health Records Service After It Fails to Attract Users,'' New York Times, June 24, 2011, available at *http://www.nytimes.com/2011/06/25/technology/25health.html?_r=1&emc=eta1.* The article reported that according to a survey performed by the research firm IDC Health Insights, ''7 percent of consumers had tried online personal health records, and fewer than half of those continued to use them.''

motivation to manage their own health data.[5]

Given the information it has received to date from covered entities, staff bases its current burden estimate on an assumed two breach incidents per year that, together, require the notification of approximately 2,500 consumers.

*Estimated Annual Labor Costs:* $13,379.

FTC staff projects that covered firms will require on average, per breach, 100 hours of employee labor to determine what information has been breached, identify the affected customers, prepare the breach notice, and make the required report to the Commission, at an estimated cost of $5,268 [6] (staff assumes that outside services of a forensic expert will also be required and those services are separately accounted for under ''Estimated Annual Non-Labor Costs'' below). Based on an estimated 2 breaches per year, the annual employee labor cost burden for affected entities to perform these tasks is $10,536.[7]

Additionally, covered entities will incur labor costs associated with processing calls they may receive in the event of a data breach. The rule requires that covered entities that fail to contact 10 or more consumers because of insufficient or out-of-date contact information must provide substitute notice through either a clear and conspicuous posting on their web site or media notice. Such substitute notice must include a toll-free number for the purpose of allowing a consumer to learn whether or not his/her information was affected by the breach.

Individuals contacted directly will have already received this information. Staff estimates that no more than 10 percent of affected consumers will utilize the offered toll-free number. Thus, of the 2,500 consumers affected by a breach annually, staff estimates that 250 may call the companies over the 90 days they are required to provide such access. Staff additionally projects that 250 additional consumers who are not affected by the breach will also call the companies during this period. Staff estimates that processing all 500 calls will require an average of 192 hours of employee labor at a cost of $2,843.[8]

Accordingly, estimated cumulative annual labor costs, excluding outside forensic services, is $13,379.

*Estimated Annual Non-Labor Costs:* $7,918.

Commission staff anticipates that capital and other non-labor costs associated with the Rule will consist of the following:

1. The services of a forensic expert in investigating the breach; and

2. Notification of consumers via email, mail, web posting, or media.[9]

Staff estimates that covered firms (breached entities) will require 30 hours of a forensic expert's time, at a cumulative cost of $3,534 for each breach. This is the product of hourly wages of an information security analyst ($39.27), tripled to reflect profits and overhead for an outside consultant ($117.81), and multiplied by 30 hours. Based on the estimate that there will be 2 breaches per year, the annual cost associated with the services of an outside forensic expert is $7,068.

As explained above, staff estimates that an average of 2,500 consumers per year will receive a breach notification. Given the online relationship between consumers and vendors of personal health records and PHR related entities, most notifications will be made by email and the cost of such notifications will be minimal.[10]

In some cases, however, vendors of personal health records and PHR related entities will need to notify individuals by postal mail, either because these individuals have asked for such notification, or because the email addresses of these individuals are not current or not working. Staff estimates that the cost of notifying an individual by postal mail is approximately $2.50 per letter.[11] Assuming that vendors of personal health records and PHR related entities will need to notify by postal mail 10 percent of the 2,500 customers whose information is breached, the estimated cost of this notification will be $625 per year.

In addition, vendors of personal health records and PHR related entities sometimes may need to notify consumers by posting a message on their home page, or by providing media notice. Based on a recent study on data breach costs, staff estimates the cost of providing notice via Web site posting to be 6 cents per breached record, and the cost of providing notice via published media to be 3 cents per breached record.[12] Applied to the above-stated estimate of 2,500 affected consumers, the estimated total annual cost of Web site notice will be $150, and the estimated total annual cost of media notice will be $75, yielding an estimated total annual cost for all forms of notice to consumers of $225.

In sum, the total estimate for non-labor costs is $7,918: $7,068 (services of a forensic expert) + $850 (costs of notifying consumers).

*Request for Comment:* You can file a comment online or on paper. For the Commission to consider your comment, we must receive it on or before July 30, 2012. Write ''Health Breach Notification Rule, PRA Comments, P–125402'' on your comment. Your comment—including your name and your state—will be placed on the public record of this proceeding, including to the extent practicable, on the public Commission

[5] *Id.; see also,* Wes Richsel and Robert H. Booz, ''Google Health Shutdown Underscores Uncertain Future of PHRs,'' Gartner, July 1, 2011, available at *http://www.gartner.com/id=1736829.*

[6] Hourly wages throughout this document are based on mean hourly wages found at *http://www.bls.gov/news.release/archives/ocwage_03272012.pdf* (''Occupational Employment and Wages—May 2011,'' U.S. Department of Labor, released March 2012, Table 1 (''National employment and wage data from the Occupational Employment Statistics survey by occupation, May 2011'').

The breakdown of labor hours and costs is as follows: 50 hours of computer and information systems managerial time at $60.41 per hour; 12 hours of marketing manager time at $60.67 per hour; 33 hours of computer programmer time at $36.54 per hour; and 5 hours of legal staff time at $62.74 per hour.

[7] Labor hours and costs pertaining to reporting to the Commission are subsumed within this total. Specifically, staff estimates that covered firms will require per breach, on average, 1 hour of employee labor at an approximate cost of $62 to complete the required form. This is composed of 30 minutes of marketing managerial time at $60.67 per hour, and 30 minutes of legal staff time at $62.74 per hour, with the hourly rates based on the above-referenced Department of Labor table. *See* note 6, *supra.* Thus, based on 2 breaches per year for which notification may be required, the cumulative annual hours burden for covered entities to complete the notification to the Commission is 2 hours and the annual labor cost is $124.

[8] This assumes telephone operator time of 8 minutes per call and information processor time of 15 minutes per call. The cost estimate above is arrived at as follows: 66.7 hours of telephone operator time (8 minutes per call × 500 calls) at $16.48 per hour, and 125 hours of information processor time (15 minutes per call × 500 calls) at $13.95 per hour.

[9] Staff's earlier estimate also included costs associated with obtaining a T1 line (a specific type of telephone line that can carry more data than traditional telephone lines) and services such as queue messaging that are necessary when handling large call volumes. Since staff's current estimate does not include large projected call volumes, staff believes that affected entities will not need these additional services and equipment and did not include those cost estimates here.

[10] *See* National Do Not Email Registry, A Report to Congress, June 2004 n.93, available at *www.ftc.gov/reports/dneregistry/report.pdf.*

[11] Robin Sidel and Mitchell Pacelle, ''Credit-Card Breach Tests Banking Industry's Defenses,'' Wall Street Journal, June 21, 2005, p. C1. Sidel and Pacelle reported that industry sources estimated the cost per letter to be about $2.00 in 2005. Allowing for inflation, staff estimates the cost to average about $2.50 per letter over the next three years of prospective PRA clearance sought from OMB.

[12] Ponemon Institute, 2006 Annual Study: Cost of a Data Breach, Understanding Financial Impact, Customer Turnover, and Preventative Solutions, Table 2. In studies conducted for subsequent years, the Ponemon Institute does not report this level of detail, but it notes that overall notification costs have not increased.

Web site, at *http://www.ftc.gov/os/publiccomments.shtm.* As a matter of discretion, the Commission tries to remove individuals' home contact information from comments before placing them on the Commission Web site.

Because your comment will be made public, you are solely responsible for making sure that your comment does not include any sensitive personal information, like anyone's Social Security number, date of birth, driver's license number or other state identification number or foreign country equivalent, passport number, financial account number, or credit or debit card number. You are also solely responsible for making sure that your comment does not include any sensitive health information, like medical records or other individually identifiable health information. In addition, do not include any ''[t]rade secret or any commercial or financial information which is obtained from any person and which is privileged or confidential'' as provided in Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2). In particular, do not include competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

If you want the Commission to give your comment confidential treatment, you must file it in paper form, with a request for confidential treatment, and you have to follow the procedure explained in FTC Rule 4.9(c).[13] Your comment will be kept confidential only if the FTC General Counsel, in his or her sole discretion, grants your request in accordance with the law and the public interest.

Postal mail addressed to the Commission is subject to delay due to heightened security screening. As a result, we encourage you to submit your comments online. To make sure that the Commission considers your online comment, you must file it at *https://ftcpublic.commentworks.com/ftc/healthbreachnotificationPRA,* by following the instructions on the web-based form. If this Notice appears at *http://www.regulations.gov/#!home,* you also may file a comment through that Web site.

If you file your comment on paper, write ''Health Breach Notification Rule, PRA comments, P–125402'' on your comment and on the envelope, and mail or deliver it to the following address: Federal Trade Commission, Office of the Secretary, Room H–113 (Annex J), 600 Pennsylvania Avenue NW., Washington, DC 20580. If possible, submit your paper comment to the Commission by courier or overnight service.

Visit the Commission Web site at to read this Notice and the news release describing it. The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives on or before July 30, 2012. You can find more information, including routine uses permitted by the Privacy Act, in the Commission's privacy policy, at *http://www.ftc.gov/ftc/privacy.htm.*

**Christian S. White,**

*Acting General Counsel.*

[FR Doc. 2012–12863 Filed 5–25–12; 8:45 am]

BILLING CODE 6750–01–P

[13] In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. *See* FTC Rule 4.9(c), 16 CFR 4.9(c).

## GENERAL SERVICES ADMINISTRATION

**[Notice–FMR–2012–G–03; Docket No. 2012–0004, Sequence 3]**

### Improving Mail Management Policies, Procedures, and Activities

**AGENCY:** Office of Governmentwide Policy, General Services Administration (GSA).

**ACTION:** Notice of FMR Bulletin G–03.

**SUMMARY:** The General Services Administration (GSA) has issued Federal Management Regulation (FMR) Bulletin G–03 which provides guidance to Executive Branch agencies for improving mail management policies, procedures, and activities. FMR Bulletin G–03 and all other FMR Bulletins may be found at *http://www.gsa.gov/portal/content/102955#MailManagement.*

**DATES:** *Effective Date:* This notice is effective May 29, 2012.

*Applicability Date:* This notice applies to Mail Management Policy performed on or after May 2, 2012.

**FOR FURTHER INFORMATION CONTACT:** Mr. Derrick Miliner, Office of Governmentwide Policy (MAF), Office of Asset and Transportation Management, General Services Administration at (202) 273–3564 or via email at *derrick.miliner@gsa.gov*. Please cite FMR Bulletin G–03.

**SUPPLEMENTARY INFORMATION:** In an effort to cut waste, increase sustainable practices, remain in compliance with Executive Orders and the Federal Management Regulation, Federal agencies, internal policies should address the four requirements described in this bulletin. These include: (1) Consolidation of mail including presorting; (2) reductions of hard copy agency-to-agency mailings; (3) sustainable mail practices; and (4) secure mail for teleworkers.

Dated: May 16, 2012.

**Carolyn Austin Diggs,**

*Assistant Deputy Associate Administrator, Office of Asset and Transportation Management, Office of Governmentwide Policy.*

[FR Doc. 2012–12985 Filed 5–25–12; 8:45 am]

BILLING CODE 6860–14–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Medicare & Medicaid Services

**[Document Identifier CMS–1500 (08/05) and CMS–1500 (2/12)]**

### Agency Information Collection Activities: Proposed Collection; Comment Request

**AGENCY:** Centers for Medicare & Medicaid Services, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare & Medicaid Services (CMS) is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

1. *Type of Information Collection Request:* Reinstatement without change of a previously approved collection; *Title of Information Collection:* Health Insurance Common Claims Form and Supporting Regulations at 42 CFR part 424, Subpart C; *Use:* The Form CMS–1500 answers the needs of many health insurers. It is the basic form prescribed by CMS for the Medicare program for

claims from physicians and suppliers. The Medicaid State Agencies, CHAMPUS/TriCare, Blue Cross/Blue Shield Plans, the Federal Employees Health Benefit Plan, and several private health plans also use it; it is the de facto standard ''professional'' claim form.

Medicare carriers use the data collected on the CMS–1500 and the CMS–1490S to determine the proper amount of reimbursement for Part B medical and other health services (as listed in section 1861(s) of the Social Security Act) provided by physicians and suppliers to beneficiaries. The CMS–1500 is submitted by physicians/suppliers for all Part B Medicare. Serving as a common claim form, the CMS–1500 can be used by other third-party payers (commercial and nonprofit health insurers) and other Federal programs (e.g., CHAMPUS/TriCare, Railroad Retirement Board (RRB), and Medicaid).

However, as the CMS–1500 displays data items required for other third-party payers in addition to Medicare, the form is considered too complex for use by beneficiaries when they file their own claims. Therefore, the CMS–1490S (Patient's Request for Medicare Payment) was explicitly developed for easy use by beneficiaries who file their own claims. The form can be obtained from any Social Security office or Medicare carrier. *Form Number:* CMS–1500(08/05), CMS–1490–S (OMB#: 0938–0999); *Frequency:* Reporting—On occasion; *Affected Public:* State, Local, or Tribal Government, Business or other-for-profit, Not-for-profit institutions; *Number of Respondents:* 1,448,346; *Total Annual Responses:* 988,005,045; *Total Annual Hours:* 21,418,336. (For policy questions regarding this collection contact Brian Reitz at 410–786–5001. For all other issues call 410–786–1326.)

2. *Type of Information Collection Request:* New collection; *Title of Information Collection:* Health Insurance Common Claims Form and Supporting Regulations at 42 CFR part 424, Subpart C; *Use:* The Form CMS–1500 answers the needs of many health insurers. It is the basic form prescribed by CMS for the Medicare program for claims from physicians and suppliers. The Medicaid State Agencies, CHAMPUS/TriCare, Blue Cross/Blue Shield Plans, the Federal Employees Health Benefit Plan, and several private health plans also use it; it is the de facto standard ''professional'' claim form.

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Most recently, the National Uniform Claim Committee (NUCC) has revised the CMS–1500. The NUCC began revision work on the 1500 Claim Form, version 02/12 in 2009. The goal of this work was to align the paper form with some of the changes in the electronic Health Care Claim: Professional (837), 005010X222 Technical Report Type 3 (5010) and 005010X222A1 Technical Report Type 3 (5010A1). During the revision work, consideration was given to different approaches to revising the form. The NUCC decided to proceed with making ''minor changes'' to the current form, which was defined as no physical changes to the existing form lines or underlying layout of the form. Once the CMS–1500 (02/12) has been approved, the CMS–1500 (08/05) will be discontinued after a form runoff period during which both the CMS–1500 (08/05) and the CMS–1500 (02/12) can be used. *Form Number:* CMS–1500(02/12), CMS–1490–S (OMB#: 0938–New); *Frequency:* Reporting—On occasion; *Affected Public:* State, Local, or Tribal Government, Business or other-for-profit, Not-for-profit institutions; *Number of Respondents:* 1,448,346; *Total Annual Responses:* 988,005,045; *Total Annual Hours:* 21,418,336. (For policy questions regarding this collection contact Brian Reitz at 410–786–5001. For all other issues call 410–786–1326.)

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS' Web Site address at *http://www.cms.hhs.gov/PaperworkReductionActof1995,* or Email your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov*, or call the Reports Clearance Office on (410) 786–1326.

In commenting on the proposed information collections please reference the document identifier or OMB control number. To be assured consideration, comments and recommendations must be submitted in one of the following ways by July 30, 2012:

1. *Electronically.* You may submit your comments electronically to *http://www.regulations.gov*. Follow the instructions for ''Comment or Submission'' or ''More Search Options'' to find the information collection document(s) accepting comments.

2. *By regular mail.* You may mail written comments to the following address: CMS, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development, Attention: Document Identifier/OMB Control Number _____, Room C4–26–05, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: May 22, 2012.

**Martique Jones,**

*Director, Regulations Development Group, Division B, Office of Strategic Operations and Regulatory Affairs.*

[FR Doc. 2012–12810 Filed 5–25–12; 8:45 am]

BILLING CODE 4120–01–P

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Medicare & Medicaid Services

**[Document Identifier CMS–10426, CMS–10421 and CMS–10415]**

### Agency Information Collection Activities: Submission for OMB Review; Comment Request

**AGENCY:** Centers for Medicare & Medicaid Services, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare & Medicaid Services (CMS), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the Agency's function; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of

automated collection techniques or other forms of information technology to minimize the information collection burden.

1. *Type of Information Collection Request:* New collection; *Title of Information Collection:* End Stage Renal Disease (ESRD) System Access Request Form; *Use:* Within CMS, the Office of Clinical Standards and Quality is developing a new suite of systems to support the End Stage Renal Disease (ESRD) program. Due to the sensitivity of the data being collected and reported, CMS must ensure that only authorized personnel have access to data. Personnel are given access to the ESRD systems through the creation of user IDs and passwords within the QualityNet Identity Management System (QIMS); however, once within the system, the system determines the rights and privileges the personnel has over the data within the system.

The sole purpose the End Stage Renal Disease System (ESRD) System Access Request Form is to identify the individual's data access rights once within the ESRD system. This function and the associated data collection is currently being accomplished under ''Part B'' of the QualityNet Identity Management System Account Form (CMS–10267; OCN: 0938–1050). Once the ESRD System Access Form is approved, the QualityNet Identity Management System (QIMS) Account Form will be revised to remove Part B from the QIMS data collection. *Form Number:* CMS–10426 (OCN: 0938–New); *Frequency:* Yearly; *Affected Public:* Private Sector—Business or other for-profits. *Number of Respondents:* 25,000. *Number of Responses:* 25,000. *Total Annual Hours:* 6,250. (For policy questions regarding this collection contact Michelle Tucker at 410–786–0736. For all other issues call 410–786–1326.)

2. *Type of Information Collection Request:* New collection; *Title of Information Collection:* Fee-for-Service Recovery Audit Prepayment Review Demonstration and Prior Authorization Demonstration; *Use:* The Centers for Medicare & Medicaid Services (CMS) is requesting the Office of Management and Budget (OMB) approval of the collections required for two demonstrations of prepayment review and prior authorization. The first demonstration would allow Medicare Recovery Auditors to review claims on a pre-payment basis in certain States. The second demonstration would establish a prior authorization program for Power Mobility Device claims in certain States.

For the Recovery Audit Prepayment Review Demonstration, CMS and its agents will request additional documentation, including medical records, to support submitted claims. As discussed in more detail in Chapter 3 of the Program Integrity Manual, additional documentation includes any medical documentation, beyond what is included on the face of the claim that supports the item or service that is billed. For Medicare to consider coverage and payment for any item or service, the information submitted by the provider or supplier (e.g., claims) must be supported by the documentation in the patient's medical records. When conducting complex medical review, the contractor specifies documentation they require in accordance with Medicare's rules and policies. In addition, providers and suppliers may supply additional documentation not explicitly listed by the contractor. This supporting information may be requested by CMS and its agents on a routine basis in instances where diagnoses on a claim do not clearly indicate medical necessity, or if there is a suspicion of fraud.

For the Prior Authorization of Power Mobility Devices (PMDs) Demonstration, CMS will pilot prior authorization for Power Mobility Devices. Prior authorization will allow the applicable documentation that supports a claim to be submitted before the item is delivered. For prior authorization, relevant documentation for review is submitted before the item is delivered or the service is rendered. CMS will conduct this demonstration in California, Florida, Illinois, Michigan, New York, North Carolina and Texas based on beneficiary address as reported to the Social Security Administration and recorded in the Common Working File (CWF). For the demonstration, a prior authorization request can be completed by the (ordering) physician or treating practitioner and submitted to the appropriate DME MAC for an initial decision. The supplier may also submit the request on behalf of the physician or treating practitioner. The physician, treating practitioner or supplier who submits the request on behalf of the physician or treating practitioner, is referred to as the ''submitter.'' Under this demonstration, the submitter will submit to the DME MAC a request for prior authorization and all relevant documentation to support Medicare coverage of the PMD item.

CMS has decided to amend the requirement when subsequent prior authorization requests are submitted. Currently, CMS or its agents have up to 30 business days in which to conduct a review and communicate a decision. CMS now proposes to allow up to 20 business days to provide suppliers and the Medicare beneficiaries' quality services within reasonable time period to facilitate the delivery of necessary equipment which enhances mobility related activities of daily living and supports independence.

These demonstrations have been designed to develop and demonstrate improved methods for the investigation and prosecution of fraud in the provision of care or services under the health programs established by the Social Security Act. The information required under this information collection request is requested by Medicare contractors to determine proper payment or if there is a suspicion of fraud. For the RAC demonstration, Medicare contractors may request the information from providers or suppliers submitting claims for payment from the Medicare program when data analysis indicates aberrant billing patterns or other information which may present a vulnerability to the Medicare program. Under the prior authorization demonstration, for certain PMDs, with a history of aberrant billing patterns, this information is requested in advance to determine appropriate payment or if there is a suspicion of fraud. *Form Number:* CMS–10421 (OCN 0938—New); *Frequency:* Occasionally; *Affected Public:* State, Local or Tribal Governments; *Number of Respondents:* 479,750; *Total Annual Responses:* 479,750; *Total Annual Hours:* 243,060. (For policy questions regarding this collection contact Debbie Skinner at 410–786–7480. For all other issues call 410–786–1326.)

3. *Type of Information Collection Request:* New collection; *Title of Information Collection:* Generic Clearance for the Collection Customer Satisfaction Surveys; *Use:* This collection of information is necessary to enable the Agency to garner customer and stakeholder feedback in an efficient, timely manner, in accordance with our commitment to improving service delivery. The information collected from our customers and stakeholders will help ensure that users have an effective, efficient, and satisfying experience with the Agency's programs. This feedback will provide insights into customer or stakeholder perceptions, experiences and expectations, provide an early warning of issues with service, or focus attention on areas where communication, training or changes in operations might improve delivery of products or services. These collections will allow for ongoing, collaborative and actionable communications between the

Agency and its customers and stakeholders. It will also allow feedback to contribute directly to the improvement of program management.

Collecting voluntary customer feedback is the least burdensome, most effective way for the Agency to determine whether or not its public Web sites are useful to and used by its customers. Generic clearance is needed to ensure that the Agency can continuously improve its Web sites though regular surveys developed from these pre-defined questions. Surveying the Agency Web sites on a regular, ongoing basis will help ensure that users have an effective, efficient, and satisfying experience on any of the Web sites, maximizing the impact of the information and resulting in optimum benefit for the public. The surveys will ensure that this communication channel meets customer and partner priorities, builds the Agency's brands, and contributes to the Agency's health and human services impact goals. *Form Number:* CMS–10415 (OCN 0938—New); *Frequency:* Occasionally; *Affected Public:* Individuals and Households, Business or other for-profits and Not-for-profit institutions, State, Local or Tribal Governments; *Number of Respondents:* 1,000,000; *Total Annual Responses:* 1,000,000; *Total Annual Hours:* 67,000. (For policy questions regarding this collection contact John Booth at 410–786–6577. For all other issues call 410–786–1326.)

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS Web Site address at *http://www.cms.hhs.gov/PaperworkReductionActof1995,* or Email your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov,* or call the Reports Clearance Office on (410) 786–1326.

To be assured consideration, comments and recommendations for the proposed information collections must be received by the OMB desk officer at the address below, no later than 5 p.m. on June 28, 2012. OMB, Office of Information and Regulatory Affairs, Attention: CMS Desk Officer, Fax Number: (202) 395–6974, Email: *OIRA_submission@omb.eop.gov*.

Dated: May 22, 2012.

**Martique Jones,**

*Director, Regulations Development Group, Division B, Office of Strategic Operations and Regulatory Affairs.*

[FR Doc. 2012–12811 Filed 5–25–12; 8:45 am]

**BILLING CODE 4120–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Medicare & Medicaid Services (CMS)

**[CMS–2382–N]**

### Medicaid Program; Announcement of Requirements and Registration for CMS Provider Screening Innovator Challenge

**AGENCY:** Centers for Medicare & Medicaid Services (CMS), HHS.

**ACTION:** Notice.

**SUMMARY:** The Centers for Medicare & Medicaid Services (CMS), is announcing the launch of the ''CMS Provider Screening Innovator Challenge.'' This Challenge is sponsored by CMS and is presented as part of the Partnership for Program Integrity Innovation program, and will be administered by the National Aeronautic and Space Administration's (NASA) Federal Center of Excellence for Collaborative Innovation. This Challenge addresses our goals of improving our abilities to streamline operations, screen providers, and reduce fraud and abuse. Specifically, the challenge is an innovation competition to develop a multi-State, multi-program provider screening software application which would be capable of risk scoring, credentialing validation, identity authentication, and sanction checks, while lowering burden on providers and reducing administrative and infrastructure expenses for States and Federal programs. More information pertaining to the Medicaid and CHIP programs can be found at *www.medicaid.gov.*

**DATES:** Important dates concerning the Challenge include the following:

*Challenge Competition Begin:* 6:00 p.m., e.d.t., May 30, 2012.

*Challenge Competition End:* To be determined, but expected to be completed by October/November 2012 timeframe.

**FOR FURTHER INFORMATION CONTACT:** John ''Chip'' Garner, 410–786–3012.

**SUPPLEMENTARY INFORMATION:**

### Subject of Challenge Competition

Entrants are asked to develop artifacts and components of software applications that can be integrated into an open source solution that can deliver a reliable, scalable, and cost-effective provider-screening capability for multiple States (or for the nation).

We expect the winning entry to exhibit the following characteristics:

1. Reduced processing and transaction time for submitting and receiving queries to authoritative data sources regarding provider credentials and sanctions.
2. Reductions in time needed by providers to submit information and resolve discrepancies.
3. Administrative/infrastructure savings from a multi-tenant provider screening solution.
4. Improved availability of key provider data relevant for program participation and oversight.
5. Improved timeliness and accuracy in provider participation, oversight, and enrollment decisions.
6. Improved ability to implement sections 1902(a)(39) and 1902(a)(77) of the Social Security Act, as amended by the Patient Protection and Affordable Care Act (Pub. L. 111–148 and 111–152) subsections 6401(b) and (c) (Provider Screening and Other Enrollment Requirements Under Medicare, Medicaid, and CHIP), and section 6501 (Termination of Provider Participation Under Medicaid if Terminated by Medicare or Other State Plan).
7. Assist in better driving alignment of the Medicaid Information Technology Architecture (MITA) 3.0 framework to the Information and Technology Architecture levels. More information pertaining to MITA can be found at the following Web site: *www.medicaid.gov/Medicaid-CHIP–Program-Information/By-Topics/Data-and-Systems/Medicaid-Information-Technology-Architecture-MITA.html.*

### General Eligibility Rules for Participating in the Competition

To be eligible to win a prize under this Challenge, an individual or entity must comply with all the requirements under this section.

An individual or entity shall not be deemed ineligible solely because the individual or entity used Federal facilities or consulted with Federal employees during a competition if such facilities and employees are made available to all individuals and entities participating in the competition on an equitable basis.

A Federal entity or Federal employee acting within the scope of his or her employment is not eligible to participate. A Federal employee seeking to participate in this competition outside the scope of his/her employment should consult his/her ethics official prior to developing the submission. Employees of CMS, the Challenge judges, and employees of any other company or individual involved with the design, production, execution, or distribution of the Challenge, along with such employees' or judges' immediate families (spouse, parents and

step-parents, siblings and step-siblings, and children and step-children) and household members (people who share the same residence at least three (3) months out of the year) are not eligible to participate.

Regarding Registration Process for Participants, interested persons should read the Official Rules and register at the Center of Excellence for Collaborative Innovation Challenge portal: *http://community.topcoder.com/coeci/.* Registration is free and can be completed at any time before an entry is submitted in response to a particular competition.

**Amount of the Prize**

Based on our current assumptions, we estimate that the total prize amount for the competitions conducted as part of this Challenge will fall between $500,000 and $600,000.

**Basis Upon Which Winner Will Be Selected**

Challenge competition entries will be judged by an expert panel composed of CMS program staff. Judges shall be named after commencement of the Challenge. Competitions will be judged based upon both subjective and objective criteria. Should the highest-scoring submitted solution be missing requirements or otherwise need modification, it will enter a remediation/fix phase. Projects are posted and administered through a personalized, web-based administration tool. All projects progress, with some variance, through a sequence of phases from Registration to Submission to Screening to Review to Final Fixes. Submissions will be screened to ensure they meet minimum requirements for the project and do not include forbidden material. Competition submissions with subjectively evaluated components (for example, graphical design, workflow, GUI layout, etc.) are anonymized and evaluated by the Judges. Submissions with objectively scored components, such as projects (for example, architecture, development, etc.) are scored by the Judges by their fidelity to exact, enumerated requirements.

Overall, the solution must, at a minimum, meet the following criteria:

1. Capability to Conduct Identity Verification.

a. Capability to link individuals to their organizations and vice versa.

b. Capability to match on multiple variations of an individual's or organization's name to ensure that the correct entity is verified.

c. Ability to apply a range of screening rules to cross check data elements within the enrollment application.

d. Ability to apply a range of screening rules to cross check data elements against authoritative external sources for consistency.

e. Capability to establish and employ a graded screening methodology that escalates the intensity of screening for providers that are flagged as higher risk (that is, Report Card Methodology).

2. Capability to Build Provider Profiles.

a. Capability to retain screening and enrollment information and results, and compare against past and future screening results.

b. Capability to create a watch list to ensure that providers that are suspected or known to be fraudulent are flagged at the time of screening.

c. Capability to track re-enrollment attempts to ensure that slight changes to provider information are not considered a new enrollment.

d. Capability to revalidate periodically to ensure that changes in provider profiles are updated on a regular basis.

e. Capability to leverage public Web sites to conduct link analysis through which provider associations could be explored, and alerts posted on similar Web sites could be considered.

f. Capability to capture critical attributes

- Collection of application fees status.
- Exception waiver approved status.
- Incorporating enhanced screening data, including the results of site visits, criminal background checks, and finger printing.
- Capturing licensing information, financial data, and any other data attributes which could impact a risk lever.
- Other critical attributes.

g. Capability to achieve real time screening, scoring, and system outputs (queries/reports).

3. Capability to Evaluate and Maintain the Integrity of the Results.

a. Capability to persist data sources scores to determine the most reliable source for each data element.

b. Capability to evaluate data sources for reliability and accuracy.

c. Capability to create a learning system to ensure that observed negative trends factor back into screening rules so as to flag suspicious enrollments early in the screening process, ensuring the ability to detect and reduce/eliminate the incidence of false positives.

d. Capability to create system outputs to assign reasons/explanations to each code or score used.

e. Capability to build processes to allow for appropriate interpretation and action on screening and scoring results.

f. Capability to ensure that each rule is tested and its impact is evaluated prior to implementing.

4. Improves Efficiency.

a. Capability to allow searches to find specific provider information with minimal search attempts.

b. Capability to identify applicants, including individual providers and owners of institutional providers.

c. Capability to verify identity and prior history of problems with Medicaid/CHIP or Medicare programs.

d. Capability to identify and schedule revalidation process.

5. Meets Architectural Guidelines.

a. Adheres to the Architectural Guidance and meets the seven conditions and standards detailed in the Guidance for Exchange and Medicaid IT Systems, Version 2.0, located at: *http://www.medicaid.gov/Medicaid-CHIP–Program-Information/By-Topics/Data-and-Systems/Downloads/exchangemedicaiditguidance.pdf.*

b. Integrates into the MITA Framework—Is MITA Compliant. Information regarding MITA can be found at: *http://www.cms.gov/MedicaidInfoTechArch/.*

6. Accurate, Cost Effective, and Timely.

a. Turnaround time for performing automated checks typical for a web-based system.

b. Comprehensive verification of all data fields for all providers enrolled.

c. Efficiency of the Screening Solution in terms of cost and schedule to actually implement: Potential extra costs (for example, licenses, etc.) are documented.

d. Effectiveness of the risk-screening model in detecting fraud based issues.

e. Technical soundness of risk-scoring in flagging potential fraudulent patterns and tendencies.

**Additional Information**

CMS is one of the principal agencies dedicated to protecting the health of citizens by making our world healthier, safer, and better for all Americans. For more information, see *www.cms.gov.*

**General Conditions**

CMS reserves the right to cancel, suspend, and/or modify the Competition, or any part of it, for any reason, at CMS' sole discretion.

**Authority:** This competition is administrated by the Federal Center of Excellence for Collaborative Innovation through a partnership between CMS and NASA. The partnership is in accordance with the National Aeronautics and Space Act (51 U.S.C. 20113(e)) and The Economy Act (31 U.S.C. 1535).

Dated: May 4, 2012.

**Marilyn Tavenner,**

*Acting Administrator, Centers for Medicare & Medicaid Services.*

[FR Doc. 2012–12633 Filed 5–25–12; 8:45 am]

**BILLING CODE 4120–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Medicare & Medicaid Services

**[CMS–1441–N]**

### Medicare Program; Public Meeting in Calendar Year 2012 for New Clinical Laboratory Tests Payment Determinations

**AGENCY:** Centers for Medicare & Medicaid Services (CMS), HHS.

**ACTION:** Notice.

**SUMMARY:** This notice announces a public meeting to receive comments and recommendations from the public on the appropriate basis for establishing payment amounts for new or substantially revised Healthcare Common Procedure Coding System (HCPCS) codes being considered for Medicare payment under the clinical laboratory fee schedule (CLFS) for calendar year (CY) 2013.

**DATES:** *Meeting Dates:* The public meeting is scheduled for Monday, July 16, 2012, from 9:00 a.m. to 5:00 p.m., and Tuesday, July 17, 2012, from 9:00 a.m. to 12:00 p.m. All times are Eastern Daylight Savings Time.

*Deadline for Registration of Presenters:* All presenters for the public meeting must register by July 6, 2012.

*Deadline for Written/Electronic Presentations:* Written presentations must also be electronically submitted to on or before July 6, 2012.

*Deadline for Submitting Requests for Special Accommodations:* Requests for special accommodations must be received no later than 5:00 p.m., on July 6, 2012.

*Deadline for Submission of Written Comments:* Interested parties may submit written comments on the proposed payment determinations by September 28, 2012, to the address specified in the **ADDRESSES** section of this notice.

**ADDRESSES:** The public meeting will be held in the main auditorium of the central building of the Centers for Medicare & Medicaid Services (CMS), 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

**FOR FURTHER INFORMATION CONTACT:** Glenn McGuirk, (410) 786–5723.

**SUPPLEMENTARY INFORMATION:**

## I. Background

Section 531(b) of the Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000 (BIPA) (Pub. L. 106–554) requires the Secretary to establish procedures for coding and payment determinations for new clinical diagnostic laboratory tests under Part B of title XVIII of the Social Security Act (the Act) that permit public consultation in a manner consistent with the procedures established for implementing coding modifications for International Classification of Diseases (ICD–9–CM). The procedures and public meeting announced in this notice for new tests are in accordance with the procedures published in the **Federal Register** on November 23, 2001 (66 FR 58743), to implement section 531(b) of BIPA.

Section 942(b) of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA) (Pub. L. 108–173) added section 1833(h)(8) of the Act. Section 1833(h)(8)(A) of the Act requires the Secretary to ''establish by regulation procedures for determining the basis for, and amount of, payment for any clinical diagnostic laboratory test with respect to which a new or substantially revised HCPCS code is assigned on or after January 1, 2005'' (hereinafter referred to as, ''new test''). A code is considered to be ''substantially revised'' if ''there is a substantive change to the definition of the test or procedure to which the code applies (such as a new analyte or a new methodology for measuring an existing analyte-specific test).'' (See section 1833(h)(8)(E)(ii) of the Act.)

Section 1833(h)(8)(B) of the Act sets forth the process for determining the basis for, and the amount of, payment for new tests. Section 1833(h)(8)(B)(i) and (ii) of the Act requires the Secretary to—(1) ''make available to the public (through an Internet Web site and other appropriate mechanisms)a list that includes any such test for which establishment of a payment amount is being considered for a year''; and (2) ''on the same day such list is made available, causes to have published in the **Federal Register** notice of a meeting to receive comments and recommendations (and data on which recommendations are based) from the public on the appropriate basis * * * for establishing payment amounts for the tests on such list.'' The list of codes for which the establishment of a payment amount under the CLFS is being considered for CY 2013 is posted on our Web site at *http://www.cms.hhs.gov/ClinicalLabFeeSched*.

Section 1833(h)(8)(B)(iii) of the Act requires that we convene a public meeting not less than 30 days after publication of the notice in the **Federal Register**. These requirements are codified at 42 CFR part 414, subpart G.

Two methods are used to establish payment amounts for new tests. The first method called ''crosswalking'' is used when a new test is determined to be comparable to an existing test, multiple existing test codes, or a portion of an existing test code. The new test code is assigned to the local fee schedule amounts and the national limitation amount of the existing test. Payment for the new test is made at the lesser of the local fee schedule amount or the national limitation amount. (See § 414.508(a).)

The second method called ''gapfilling'' is used when no comparable existing test is available. When using this method, instructions are provided to each Medicare carrier or Part A and Part B Medicare Administrative Contractor (MAC) to determine a payment amount for its carrier geographic area(s) for use in the first year. The carrier-specific amounts are established for the new test code using the following sources of information, if available: charges for the test and routine discounts to charges; resources required to perform the test; payment amounts determined by other payers; and charges, payment amounts, and resources required for other tests that may be comparable or otherwise relevant. In the second year, the test code is paid at the national limitation amount, which is the median of the carrier-specific amounts. (See § 414.508(b).)

## II. Proposals in the CY 2013 Physician Fee Schedule Proposed Rule

We are following our process to determine the appropriate basis and payment amount for new test codes under the CLFS for CY 2013. Some of these tests are molecular pathology tests. Stakeholders in the molecular pathology community continue to debate whether Medicare should pay for molecular pathology tests under the CLFS or the physician fee schedule (PFS). Medicare pays for clinical diagnostic laboratory tests through the CLFS and for services that ordinarily require physician work through the PFS. We believe that we would benefit from additional public comments on whether these tests are clinical diagnostic laboratory tests or whether they are services that should be paid under the PFS. Therefore, we intend to solicit public comments on this issue in the CY 2013 PFS proposed rule as well as

public comment on pricing policies for these tests under the PFS. We will make final decisions with respect to molecular pathology codes in the CY 2013 PFS final rule with comment period, and we will post on our Web site the final payment determinations for any codes paid under the CLFS in November.

In addition, we intend to post our proposed determinations with respect to the appropriate basis for establishing a payment amount under the CLFS for each of these new test codes by September 28, 2012. If we later decide, based on comments received in response to the proposals set forth in the CY 2013 PFS proposed rule, that any of these codes are not clinical diagnostic laboratory test codes, we will post our final payment determinations only for the new test codes that we determine are clinical diagnostic laboratory test codes that will be paid under the CLFS. We intend to post these final payment determinations in November (at the same time as the CY 2013 PFS final rule with comment period is published).

Comments and recommendations on whether these codes represent clinical diagnostic laboratory tests that should be paid under the CLFS or services that should be paid under the PFS should be provided in response to the proposals set forth in the CY 2013 PFS proposed rule. For purposes of this public meeting, comments and recommendations should be limited to the appropriate basis for establishing payment amounts for the new test codes under the CLFS for CY 2013.

## III. Format

*Meeting Overview*

This meeting to receive comments and recommendations (including accompanying data on which recommendations are based) on the appropriate payment basis for the new test codes contained on the preliminary list is open to the public. The meeting provides a forum for interested parties to make presentations and submit written comments on new test codes. The development of the codes for clinical laboratory tests is largely performed by the CPT Editorial Panel and will not be further discussed at the meeting. Comments submitted should pertain to the payment basis for establishing a payment amount for the new test codes posted on the CMS Web site.

*Meeting Agenda and Instructions for Presenters*

The on-site check-in for visitors will be held from 8:30 a.m., to 9:00 a.m., followed by opening remarks. Registered persons from the public may discuss and recommend payment determinations for specific new test codes for the CY 2013 CLFS.

Because of time constraints, presentations must be brief, lasting no longer than 10 minutes, and must be accompanied by three written copies. In addition, CMS recommends that presenters make copies available for approximately 50 meeting participants, since additional copies will not be provided. Written presentations must also be electronically submitted to CMS on or before July 6, 2012. In the past, the meeting was held on a single day. This year's meeting will be held for an additional half day, extending the meeting to allow enough time for everyone who is interested in presenting information in person to be accommodated. However, presentation slots will be assigned on a first-come, first-served basis. In the event that there is not enough time for presentations by everyone who is interested in presenting, we will gladly accept written presentations from those who were unable to present due to time constraints. Presentations should be sent via email to Glenn McGuirk, at *Glenn.McGuirk@cms.hhs.gov*. Presenters should address all of the following items:

- New test code(s) and descriptor.
- Test purpose and method.
- Costs.
- Charges.
- A recommendation, with rationale, for one of the two methods (cross-walking or gap-filling) for determining payment for new tests.

Additionally, the presenters should provide the data on which their recommendations are based. Written presentations from the public meeting will be available upon request, via email, to Glenn McGuirk at *Glenn.McGuirk@cms.hhs.gov.* Presentations that do not address the above five items may be considered incomplete and may not be considered by CMS when making a payment determination. We may request missing information following the meeting in order to prevent a recommendation from being considered incomplete.

Taking into account the comments and recommendations (and accompanying data) received at the public meeting, we will post our proposed determinations with respect to the appropriate basis for establishing a payment amount for each such code, an explanation of the reasons for each determination, the data on which the determinations are based, and a request for public written comments on the proposed determinations on the CMS Web site by early September 2012. This Web site can be accessed at *http://www.cms.hhs.gov/ClinicalLabFeeSched.* We also will include a summary of all comments received by August 6, 2012 (15 business days after the meeting). Interested parties may submit written comments on the proposed payment determinations by September 28, 2012, to the address specified in the **ADDRESSES** section of this notice. Final payment determinations on new test codes to be included for payment on the CLFS for CY 2013 will be posted on the CMS Web site in November 2012 along with the rationale for each such determination, the data on which the determinations are based, and responses to comments and suggestions received from the public.

After the final payment determinations have been posted on the CMS Web site, the public may request reconsideration of the basis for, and amount of payment for, a new test as set forth in § 414.509. (See the November 27, 2007 final rule (72 FR 66275 through 66280).)

## IV. Registration Instructions

The Division of Ambulatory Services in CMS is coordinating the public meeting registration. Beginning June 18, 2012, registration may be completed on-line at the following web address: *http://www.cms.hhs.gov/ClinicalLabFeeSched.* All the following information must be submitted when registering:

- Name.
- Company name.
- Address.
- Telephone number(s).
- Email address(es).

When registering, individuals who want to make a presentation must also specify on which new test code(s) they will be presenting comments. A confirmation will be sent upon receipt of the registration. Individuals must register by the date specified in the **DATES** section of this notice.

## V. Special Accommodations

Individuals attending the meeting who are hearing or visually impaired and have special requirements, or a condition that requires special assistance, should provide the information upon registering for the meeting. The deadline for such registrations is listed in the **DATES** section of this notice.

## VI. Security, Building, and Parking Guidelines

The meeting will be held in a Federal government building; therefore, Federal

security measures are applicable. In planning your arrival to the CMS facility, we recommend allowing additional time to clear security. Attendees should arrive between 8:15 a.m. and 8:30 a.m., in order to be prompt for the 9:00 a.m. meeting. Individuals who are not registered in advance will not be permitted to enter the building and will be unable to attend the meeting. The public may not enter the building earlier than 8:15 a.m. (45 minutes before the convening of the meeting).

Security measures include the following:

- Presentation of government-issued photographic identification to the Federal Protective Service or Guard Service personnel. Persons without proper identification may be denied access to the building.
- Interior and exterior inspection of vehicles (this includes engine and trunk inspection) at the entrance to the grounds. Parking permits and instructions will be issued after the vehicle inspection.
- Passing through a metal detector and inspection of items brought into the building. We note that all items brought to CMS, whether personal or for the purpose of demonstration or to support a demonstration, are subject to inspection. We cannot assume responsibility for coordinating the receipt, transfer, transport, storage, set-up, safety, or timely arrival of any personal belongings or items used for demonstration or to support a demonstration.

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: May 22, 2012.

**Marilyn Tavenner,**

*Acting Administrator, Centers for Medicare & Medicaid Services.*

[FR Doc. 2012–12982 Filed 5–25–12; 8:45 am]

BILLING CODE 4120–01–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. FDA–2012–N–0274]**

### Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Adverse Event Reporting and Recordkeeping for Dietary Supplements as Required by the Dietary Supplement and Nonprescription Drug Consumer Protection Act

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

**DATES:** Fax written comments on the collection of information by June 28, 2012.

**ADDRESSES:** To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: FDA Desk Officer, FAX: 202–395–7285, or emailed to *oira_submission@omb.eop.gov*. All comments should be identified with the OMB control number 0910–0428. Also include the FDA docket number found in brackets in the heading of this document.

**FOR FURTHER INFORMATION CONTACT:** Domini Bean, Office of Information Management, Food and Drug Administration, 1350 Piccard Dr., PI50–400T, Rockville, MD 20850, 301–796–5733, *domini.bean@fda.hhs.gov*.

**SUPPLEMENTARY INFORMATION:** In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

### Adverse Event Reporting and Recordkeeping for Dietary Supplements as Required by the Dietary Supplement and Nonprescription Drug Consumer Protection Act—21 U.S.C. 379aa–1(b)(1) (OMB Control Number 0910–0635)—Extension

The Dietary Supplement and Nonprescription Drug Consumer Protection Act (DSNDCPA) (Pub. L. 109–462, 120 Stat. 3469) amends the Federal Food, Drug, and Cosmetic Act (the FD&C Act) with respect to serious adverse event reporting and recordkeeping for dietary supplements and nonprescription drugs marketed without an approved application. Section 761(b)(1) of the FD&C Act (21 U.S.C. 379aa–1(b)(1)) requires the manufacturer, packer, or distributor whose name (under section 403(e)(1) of the FD&C Act (21 U.S.C. 343(e)(1))) appears on the label of a dietary supplement marketed in the United States to submit to FDA all serious adverse event reports associated with the use of a dietary supplement, accompanied by a copy of the product label. The manufacturer, packer, or distributor of a dietary supplement is required by the DSNDCPA to use the MedWatch form (FDA 3500A) when submitting a serious adverse event report to FDA. In addition, under section 761(c)(2) of the FD&C Act, the submitter of the serious adverse event report (referred to in the statute as the ''responsible person'') is required to submit to FDA a followup report of any related new medical information the responsible person receives within 1 year of the initial report.

Section 761(e)(1) of the FD&C Act (21 U.S.C. 379aa–1(e)(1)) requires that responsible persons maintain records related to the dietary supplement adverse event reports they receive, whether or not the adverse event is serious. Under the statute, the records must be retained for a period of 6 years.

As required by section 3(d)(3) of the DSNDCPA, FDA issued guidance to describe the minimum data elements for serious adverse event reports for dietary supplements. In the **Federal Register** of July 14, 2009 (74 FR 34024), FDA announced the availability of guidance entitled ''Guidance for Industry: Questions and Answers Regarding Adverse Event Reporting and Recordkeeping for Dietary Supplements as Required by the Dietary Supplement and Nonprescription Drug Consumer Protection Act.'' The guidance discusses how, when, and where to submit serious adverse event reports for dietary supplements and followup reports. The guidance also provides FDA's recommendation on records maintenance and access for serious and non-serious adverse event reports and related documents.

The guidance recommends that the responsible person document the attempts to obtain the minimum data elements for a serious adverse event report. Along with these records, the guidance recommends that the responsible person keep the following other records: (1) Communications between the responsible person and the initial reporter of the adverse event and

between the responsible person and any other person(s) who provided information about the adverse event, (2) the responsible person's serious adverse event report to FDA with attachments, (3) any new information about the adverse event received by the responsible person, and (4) any reports to FDA of new information related to the serious adverse event report.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

| 21 U.S.C. Section | Number of respondents | Number of responses per respondent | Total annual responses | Average burden per response | Total hours |
|---|---|---|---|---|---|
| 21 U.S.C. 379aa–1(b)(1)—Serious adverse event reports for dietary supplements | 480 | 17 | 8,160 | 2 | 16,320 |
| 21 U.S.C. 379aa–1(c)(2)—Followup reports of new medical information | 120 | 17 | 2,040 | 1 | 2,040 |
| Total | | | | | 18,360 |

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

This estimate is based on FDA's experience with similar adverse event reporting programs and the number of serious adverse event reports and followup reports received in the past 2 years. All dietary supplement manufacturers, packers, or distributors are subject to serious adverse event mandatory reporting. In 2007, we estimated in the final rule entitled ''Current Good Manufacturing Practice in Manufacturing, Packaging, Labeling, or Holding Operations for Dietary Supplements'' (72 FR 34752, June 25, 2007) that there were 1,460 such firms. FDA estimates that, in 2012, there are approximately 1,600 such firms, based on the estimate of 1,460 provided in the rule, with a 2 to 3 percent annual rate of growth applied.

FDA received 830 initial serious adverse event reports in FY 2010. The number of reports more than doubled to 1,777 in FY 2011. We expect this trend to continue and, in fact, increase due to continued industry compliance with mandatory reporting rules. Based on this, FDA expects to receive over the next 3 years an increasing number of reports per year: We estimate that we will receive 3,500 in 2012; 7,000 in 2013; and 14,000 in 2014; for an annual average of 8,166.66 per year, rounded to 8,160. Based on the Agency's records, the average number of initial reports per year on a per firm basis during 2010 and 2011 was 17. Thus, FDA estimates that, on average over the next 3 years, 480 firms will file 17 initial dietary supplement serious adverse event reports, for a total of 8,160 total annual responses.

FDA estimates that it will take respondents an average of 2 hours per report to collect information about a serious adverse event associated with a dietary supplement and report the information to FDA on Form FDA 3500A. Thus, the estimated total annual hour burden of initial dietary supplement serious adverse event reports is 16,320 hours (8,160 responses × 2 hours) as shown in row 1 of table 1 in this document.

If a respondent that has submitted a serious adverse event report receives new information related to the serious adverse event within 1 year of submitting the initial report, the respondent must provide the new information to FDA in a followup report. FDA estimates that 25 percent of serious adverse event reports related to dietary supplements will have a followup report submitted, resulting in approximately 2,040 followup reports submitted annually (8,160 × 0.25 = 2,040). Assuming that 25 percent of submitters of initial reports will submit followup reports (480 × 0.25 = 120) and the average number of followup reports per year per firm to be 17, FDA estimates that, on average over the next 3 years, 120 firms will file 17 followup reports, for a total of 2,040 total annual responses. We estimate that each followup report will require an hour to assemble and submit, including the time needed to copy and attach the initial serious adverse event report as recommended in the guidance. The estimated total annual hour burden for followup reports of new information is 2,040 hours (2,040 responses × 1 hour) as shown in row 2 of table 1.

The total reporting hour burden is 18,360 hours, which equals the burden for the mandatory reports (16,320) plus the burden for the followup new information (2,040).

TABLE 2—ESTIMATED ANNUAL RECORDKEEPING BURDEN [1]

| 21 U.S.C. Section | Number of recordkeepers | Number of records per recordkeeper | Total annual records | Average burden per recordkeeping | Total hours |
|---|---|---|---|---|---|
| (21 U.S.C. 379aa–1(e)(1))—Dietary supplement adverse event records | 1,600 | 74 | 118,400 | [2] 0.5 | 59,200 |

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.
[2] 30 minutes.

All 1,600 dietary supplement manufacturers, packers, or distributors, are subject to serious adverse event mandatory recordkeeping, thus FDA estimates that there are a total of 1,600 recordkeepers. FDA further estimates that each recordkeeper will keep approximately 74 records per year, for a total of 118,400 records. The Agency estimates that assembling and filing these records, including any necessary photocopying, will take approximately 30 minutes, or 0.5 hours, per record. Therefore, 118,400 records × 0.50 hours = 59,200 total hours. FDA bases its estimates on its experience with similar adverse event reporting programs.

Once the documents pertaining to an adverse event report have been assembled and filed under the Safety Reporting Portal, FDA expects the

records retention burden to be minimal, as the Agency believes most establishments would normally keep this kind of record for at least several years after receiving the report, as a matter of usual and customary business practice.

Dated: May 22, 2012.

**Leslie Kux,**

*Assistant Commissioner for Policy.*

[FR Doc. 2012–12878 Filed 5–25–12; 8:45 am]

**BILLING CODE 4160–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Health Resources and Services Administration

### Advisory Commission on Childhood Vaccines; Notice of Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given of the following meeting:

*Name:* Advisory Commission on Childhood Vaccines (ACCV).

*Date and Time:* June 14, 2012, 8:30 a.m. to 11:45 a.m. EDT.

*Place:* Parklawn Building (and via audio conference call), Conference Room 10–65, 5600 Fishers Lane, Rockville, MD 20857.

The ACCV will meet on Thursday, June 14 from 8:30 a.m. to 11:45 a.m. (EDT). The public can join the meeting via audio conference call by dialing 1–800–369–3104 on June 14 and providing the following information:

*Leader's Name:* Dr. Geoffrey Evans.

*Password:* ACCV.

*Agenda:* The agenda items for the June meeting will include, but are not limited to: updates from the Division of Vaccine Injury Compensation (DVIC), Department of Justice (DOJ), National Vaccine Program Office (NVPO), Immunization Safety Office (Centers for Disease Control and Prevention), National Institute of Allergy and Infectious Diseases (National Institutes of Health) and Center for Biologics, Evaluation and Research (Food and Drug Administration). A draft agenda and additional meeting materials will be posted on the ACCV Web site (*http://www.hrsa.gov/vaccinecompensation/accv.htm*) prior to the meeting. Agenda items are subject to change as priorities dictate.

*Public Comment:* Persons interested in attending the meeting in person or providing an oral presentation should submit a written request, along with a copy of their presentation to: Annie Herzog, DVIC, Healthcare Systems Bureau (HSB), Health Resources and Services Administration (HRSA), Room 11C–26, 5600 Fishers Lane, Rockville, Maryland 20857 or email: *aherzog@hrsa.gov.* Requests should contain the name, address, telephone number, email address, and any business or professional affiliation of the person desiring to make an oral presentation. Groups having similar interests are requested to combine their comments and present them through a single representative. The allocation of time may be adjusted to accommodate the level of expressed interest. DVIC will notify each presenter of their assigned presentation time by email, mail, or telephone. Persons who do not file an advance request for a presentation, but desire to make an oral statement, may announce it at the time of the public comment period. Public participation and ability to comment will be limited to space and time as it permits.

*For Further Information Contact:* Anyone requiring information regarding the ACCV should contact: Annie Herzog, DVIC, HSB, HRSA, Room 11C–26, 5600 Fishers Lane, Rockville, MD 20857; telephone (301) 443–6593; email: *aherzog@hrsa.gov.*

Dated: May 22, 2012.

**Reva Harris,**

*Acting Director, Division of Policy and Information Coordination.*

[FR Doc. 2012–12849 Filed 5–25–12; 8:45 am]

**BILLING CODE 4165–15–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Biomedical Imaging and Bioengineering; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute of Biomedical Imaging and Bioengineering Special Emphasis Panel; 2012–10 K and R13 Review Teleconference.

*Date:* June 25, 2012.

*Time:* 9:30 a.m. to 4:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Rm. 951, Bethesda, MD 20892, (Telephone Conference Call).

*Contact Person:* Ruixia Zhou, Ph.D., Scientific Review Officer, 6707 Democracy Boulevard, Democracy Two Building, Suite 957, Bethesda, MD 20892, 301–496–4773, *zhour@mail.nih.gov.*

Dated: May 21, 2012.

**Jennifer Spaeth,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 2012–12866 Filed 5–25–12; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Office of the Director, National Institutes of Health; 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 Recombinant DNA Advisory Committee.

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:* Recombinant DNA Advisory Committee.

*Date:* June 19, 2012.

*Time:* 9:00 a.m. to 3:30 p.m.

*Agenda:* The NIH Recombinant DNA Advisory Committee (RAC) will discuss selected human gene transfer protocols. Please view the meeting agenda at *http://oba.od.nih.gov/rdna_rac/rac_meetings.html* for more information.

*Place:* National Institutes of Health, Building 31C, 9000 Rockville Pike, 6th Floor Conference Room, Rockville, MD 20892.

*Contact Person:* Chezelle George, Office of Biotechnology Activities, Office of Science Policy/OD, National Institutes of Health, 6705 Rockledge Drive, Room 750, Bethesda, MD 20892, 301–496–9838, *georgec@od.nih.gov.*

OBA will again offer those members of the public viewing the meeting via webcast (see OBA Meetings Page available at *http://oba.od.nih.gov/rdna_rac/rac_meetings.html*) the opportunity to submit comments during the public comment periods. Individuals wishing to submit comments should use the comment form, which will accommodate comments up to 1500 characters, and will be available on the OBA Web site during the meeting (see OBA Meetings Page). Please limit your comments to a statement that can be read in one to two minutes. Please include your name and affiliation with your comment. Only comments submitted through the OBA Web site will be read.

OBA will read comments into the record during the public comment periods as stated on the agenda. It is not unusual for the meeting to run ahead or behind schedule due to changes in the time needed to review a protocol. It is advisable to monitor the webcast to determine when public comments will be read. Each public comment period follows a specific discussion item. OBA will

read comments that are related to the protocol under discussion at that time. General comments unrelated to the protocol or presentation under discussion at that time. General comments unrelated to a specific agenda item will be read at the end of the meeting, time permitting. Comments submitted by email through the OBA Web site will follow any comments by individuals attending the meeting. Comments will be read in the order received and your name and affiliation will be read with the comments. Please note OBA may not be able to read every comment received in the time allotted for public comment. Comments not read will become part of the public record.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit. Information is also available on the Institute's/Center's home page: *http://oba.od.nih.gov/rdna/rdna.html,* where an agenda and any additional information for the meeting will be posted when available.

OMB's ''Mandatory Information Requirements for Federal Assistance Program Announcements'' (45 FR 39592, June 11, 1980) requires a statement concerning the official government programs contained in the Catalog of Federal Domestic Assistance. Normally NIH lists in its announcements the number and title of affected individual programs for the guidance of the public. Because the guidance in this notice covers virtually every NIH and Federal research program in which DNA recombinant molecule techniques could be used, it has been determined not to be cost effective or in the public interest to attempt to list these programs. Such a list would likely require several additional pages. In addition, NIH could not be certain that every Federal program would be included as many Federal agencies, as well as private organizations, both national and international, have elected to follow the NIH Guidelines. In lieu of the individual program listing, NIH invites readers to direct questions to the information address above about whether individual programs listed in the Catalog of Federal Domestic Assistance are affected.
(Catalogue of Federal Domestic Assistance Program Nos. 93.14, Intramural Research Training Award; 93.22, Clinical Research Loan Repayment Program for Individuals from Disadvantaged Backgrounds; 93.232, Loan Repayment Program for Research Generally; 93.39, Academic Research Enhancement Award; 93.936, NIH Acquired Immunodeficiency Syndrome Research Loan Repayment Program; 93.187, Undergraduate Scholarship Program for Individuals from Disadvantaged Backgrounds, National Institutes of Health, HHS)

Dated: May 18, 2012.

**Jennifer S. Spaeth,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 2012–12864 Filed 5–25–12; 8:45 am]

**BILLING CODE 4140–01–P**

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Center For Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; Small Business: Clinical Neurophysiology, Devices, Neuroprosthetics, and Biosensors.
*Date:* June 21–22, 2012.
*Time:* 8:00 a.m. to 3:00 p.m.
*Agenda:* To review and evaluate grant applications.
*Place:* Radisson Salt Lake City Downtown, 215 West South Temple, Salt Lake City, UT 84101.
*Contact Person:* Keith Crutcher, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5207, MSC 7846, Bethesda, MD 20892, 301–435–1278, *crutcherka@csr.nih.gov.*

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; Small Business: Sensory Technologies.
*Date:* June 21–22, 2012.
*Time:* 8:00 a.m. to 5:00 p.m.
*Agenda:* To review and evaluate grant applications.
*Place:* Renaissance Washington, DC Dupont Circle Hotel, 1143 New Hampshire Avenue NW., Washington, DC 20037.
*Contact Person:* Paek-Gyu Lee, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4201, MSC 7812, Bethesda, MD 20892, (301) 613–2064, *leepg@csr.nih.gov.*

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; Fellowships: Biophysical, Physiological, Pharmacological and Bioengineering Neuroscience.
*Date:* June 21–22, 2012.
*Time:* 8:00 a.m. to 5:00 p.m.
*Agenda:* To review and evaluate grant applications.
*Place:* Marriott Bethesda Pooks Hill, 5151 Pooks Hill Road, Bethesda, MD 20814.
*Contact Person:* Joseph G. Rudolph, Ph.D., Chief and Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5186, MSC 7844, Bethesda, MD 20892, 301–408–9098, *josephru@csr.nih.gov.*

*Name of Committee:* Healthcare Delivery and Methodologies Integrated Review Group, Health Disparities and Equity Promotion Study Section.
*Date:* June 21–22, 2012.
*Time:* 9:00 a.m. to 5:00 p.m.
*Agenda:* To review and evaluate grant applications.
*Place:* Lorien Hotel and Spa, 1600 King Street, Alexandria, VA 22314.
*Contact Person:* Delia Olufokunbi Sam, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3158, MSC 7770, Bethesda, MD 20892, 301–435–0684, *olufokunbisamd@csr.nih.gov.*

*Name of Committee:* Biobehavioral and Behavioral Processes Integrated Review Group, Motor Function, Speech and Rehabilitation Study Section.
*Date:* June 22, 2012.
*Time:* 8:00 a.m. to 6:00 p.m.
*Agenda:* To review and evaluate grant applications.
*Place:* Washington Marriott, 1221 22nd Street NW., Washington, DC 20037.
*Contact Person:* Biao Tian, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3166, MSC 7848, Bethesda, MD 20892, 301–402–4411, *tianbi@csr.nih.gov.*

*Name of Committee:* Healthcare Delivery and Methodologies Integrated Review Group, Biostatistical Methods and Research Design Study Section.
*Date:* June 22, 2012.
*Time:* 9:00 a.m. to 9:00 p.m.
*Agenda:* To review and evaluate grant applications.
*Place:* Holiday Inn Inner Harbor, 301 W. Lombard St., Baltimore, MD 21201.
*Contact Person:* Tomas Drgon, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3152, MSC 7770, Bethesda, MD 20892, 301–435–1017, *tdrgon@csr.nih.gov.*

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; PAR09–221: Innovations in Biomedical Computational Science and Technology Initiative.
*Date:* June 22, 2012.
*Time:* 3:00 p.m. to 5:00 p.m.
*Agenda:* To review and evaluate grant applications.
*Place:* Radisson Salt Lake City Downtown, 215 West South Temple, Salt Lake City, UT 84101.
*Contact Person:* Keith Crutcher, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5207, MSC 7846, Bethesda, MD 20892, 301–435–1278, *crutcherka@csr.nih.gov.*

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; PAR12–054:

Advanced Neural Prosthetics Research and Development.

*Date:* June 22, 2012.

*Time:* 4:00 p.m. to 5:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Radisson Salt Lake City Downtown, 215 West South Temple, Salt Lake City, UT 84101.

*Contact Person:* Keith Crutcher, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5207, MSC 7846, Bethesda, MD 20892, 301–435–1278, *crutcherka@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: May 21, 2012.

**Jennifer S. Spaeth,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 2012–12862 Filed 5–25–12; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Center For Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* Cell Biology Integrated Review Group, Development—1 Study Section.

*Date:* June 13–14, 2012.

*Time:* 8:00 a.m. to 5:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road NW., Washington, DC 20015.

*Contact Person:* Jonathan Arias, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5170, MSC 7840, Bethesda, MD 20892, 301–435–2406, *ariasj@csr.nih.gov.*

*Name of Committee:* Center for Scientific Review Special Emphasis Panel, Program Project: RNA Folding.

*Date:* June 18–19, 2012.

*Time:* 8:00 a.m. to 6:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

*Contact Person:* Dominique Lorang-Leins, Ph.D., Scientific Review Officer, National Institutes of Health, Center for Scientific Review, 6701 Rockledge Drive, Room 5108, MSC 7766, Bethesda, MD 20872, 301–435–2204, *Lorand@mail.nih.gov.*

*Name of Committee:* Endocrinology, Metabolism, Nutrition and Reproductive Sciences, Integrated Review Group, Pregnancy and Neonatology Study Section.

*Date:* June 19, 2012.

*Time:* 8:00 a.m. to 6:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Residence Inn Bethesda, 7335 Wisconsin Avenue, Bethesda, MD 20814.

*Contact Person:* Michael Knecht, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6176, MSC 7892, Bethesda, MD 20892, (301) 435–1046, *knechtm@csr.nih.gov.*

*Name of Committee:* Center for Scientific Review Special Emphasis Panel, Basic Oncology AREA Review.

*Date:* June 19–20, 2012.

*Time:* 8:00 a.m. to 5:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

*Contact Person:* Cathleen L Cooper, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4208, MSC 7812, Bethesda, MD 20892, 301–443–4512, *cooperc@csr.nih.gov.*

*Name of Committee:* Center for Scientific Review Special Emphasis Panel Member Conflict: Substance Abuse.

*Date:* June 19, 2012.

*Time:* 9:00 a.m. to 9:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

*Contact Person:* Wei-Qin Zhao, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5181 MSC 7846, Bethesda, MD 20892–7846, 301–435–1236, *zhaow@csr.nih.gov.*

*Name of Committee:* Center for Scientific Review Special Emphasis Panel, Lung Development and Emphysema Member Conflicts.

*Date:* June 19–20, 2012.

*Time:* 9:00 a.m. to 6:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

*Contact Person:* George M Barnas, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4220, MSC 7818, Bethesda, MD 20892, 301–435–0696, *barnasg@csr.nih.gov.*

*Name of Committee:* Center for Scientific Review Special Emphasis Panel, PAR–11–045: Outcome Measures for Use in Treatment Trials for Individuals with Intellectual and Developmental Disabilities (R01).

*Date:* June 19, 2012.

*Time:* 11:00 a.m. to 11:30 a.m.

*Agenda:* To review and evaluate grant applications.

*Place:* The Fairmont Washington, DC, 2401 M Street NW., Washington, DC 20037.

*Contact Person:* Jane A Doussard-Roosevelt, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3184, MSC 7848, Bethesda, MD 20892, (301) 435–4445, *doussarj@csr.nih.gov.*

*Name of Committee:* Center for Scientific Review Special Emphasis Panel, AREA applications in Child Language, Cognition, and Psychopathology.

*Date:* June 19, 2012.

*Time:* 11:45 a.m. to 2:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* The Fairmont Washington, DC, 2401 M Street NW., Washington, DC 20037.

*Contact Person:* Jane A Doussard-Roosevelt, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3184, MSC 7848, Bethesda, MD 20892, (301) 435–4445, *doussarj@csr.nih.gov.*

*Name of Committee:* Center for Scientific Review Special Emphasis Panel, PAR–11–100: Alzheimer's Disease Pilot Clinical Trials.

*Date:* June 19, 2012.

*Time:* 1:00 p.m. to 4:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

*Contact Person:* Mark Lindner, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3182, MSC 7770, Bethesda, MD 20892, 301–435–0913, *mark.lindner@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: May 21, 2012.

**Jennifer S. Spaeth,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 2012–12861 Filed 5–25–12; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Office of the Director, National Institutes of Health; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of a meeting of the Advisory Committee to the Director, National Institutes of Health.

The meeting will be open to the public as indicated below, 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.

The meeting will be closed to the public in accordance with the provisions set forth in section 552b(c)(9)(B), Title 5 U.S.C., as amended because the premature disclosure of grant applications and the discussions would likely to significantly frustrate implementation of recommendations.

*Name of Committee:* Advisory Committee to the Director, National Institutes of Health.

*Date:* June 14–15, 2012.

*Open:* June 14, 2012, 9:00 a.m. to 5:00 p.m.

*Agenda:* NIH Director's Report, ACD Working Group report, NIH Updates and other business of the committee.

*Place:* National Institutes of Health, Building 31, C Wing, 6th Floor, Conference Room 6, 31 Center Drive, Bethesda, MD 20892.

*Closed:* June 15, 2012, 8:00 a.m. to 9:00 a.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Building 31, C Wing, 6th Floor, Conference Room 6, 31 Center Drive, Bethesda, MD 20892.

*Open:* June 15, 2012, 9:00 a.m. to 12:00 p.m.

*Agenda:* ACD Working Group reports, NIH updates, and other business of the committee.

*Place:* National Institutes of Health, Building 31, C Wing, 6th Floor, Conference Room 6, 31 Center Drive, Bethesda, MD 20892.

*Contact Person:* Gretchen Wood, Staff Assistant, National Institutes of Health, Office of the Director, One Center Drive, Building 1, Room 103, Bethesda, MD 20892, 301–496–4272, *woodgs@od.nih.gov.*

Information is also available on the Institute's/Center's home page: *http://acd.od.nih.gov,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.14, Intramural Research Training Award; 93.22, Clinical Research Loan Repayment Program for Individuals from Disadvantaged Backgrounds; 93.232, Loan Repayment Program for Research Generally; 93.39, Academic Research Enhancement Award; 93.936, NIH Acquired Immunodeficiency Syndrome Research Loan Repayment Program; 93.187, Undergraduate Scholarship Program for Individuals from Disadvantaged Backgrounds, National Institutes of Health, HHS)

Dated: May 21, 2012.

**Jennifer S. Spaeth,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 2012–12860 Filed 5–25–12; 8:45 am]

BILLING CODE 4140–01–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of General Medical Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute of General Medical Sciences Special Emphasis Panel COBRE (P20).

*Date:* June 19–20, 2012.

*Time:* 8:00 a.m. to 5:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Doubletree Hotel Bethesda (Formerly Holiday Inn Select), 8120 Wisconsin Avenue, Bethesda, MD 20814.

*Contact Person:* Lee Warren Slice, Ph.D., Scientific Review Officer, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, 1 Democracy Plaza, 6701 Democracy Boulevard, Room 1068, Bethesda, MD 20892, 301–435–0807, *slicelw@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821, CellBiology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives, National Institutes of Health, HHS)

Dated: May 21, 2012.

**Jennifer S. Spaeth,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 2012–12859 Filed 5–25–12; 8:45 am]

BILLING CODE 4140–01–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of a meeting of the Board of Scientific Counselors for Clinical Sciences and Epidemiology National Cancer Institute.

The meeting will be closed to the public as indicated below in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C., as amended for the review, discussion, and evaluation of individual intramural programs and projects conducted by the National Cancer Institute, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* Board of Scientific Counselors for Clinical Sciences and Epidemiology; National Cancer Institute.

*Date:* July 10, 2012.

*Time:* 9:00 a.m. to 3:30 p.m.

*Agenda:* To review and evaluate personal qualifications and performance, and competence of individual investigators.

*Place:* National Institutes of Health, Building 31, Conference Room 6, 31 Center Drive, Bethesda, MD 20892.

*Contact Person:* Brian E. Wojcik, Ph.D., Senior Review Administrator, Institute Review Office, Office of the Director, National Cancer Institute, 6116 Executive Boulevard, Room 2201, Bethesda, MD 20892, (301) 496–7628, *wojcikb@mail.nih.gov.*

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

Information is also available on the Institute's/Center's home page: *http://deainfo.nci.nih.gov/advisory/bsc/cse/cse.htm,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction;

93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: May 21, 2012.

**Jennifer S. Spaeth,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 2012–12858 Filed 5–25–12; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Cancer Institute; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications/contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Cancer Institute Special Emphasis Panel; SBIR Phase IIB: Bridge Awards to Accelerate the Development of Commercialization.

*Date:* June 25, 2012.

*Time:* 1:00 p.m. to 4:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6116 Executive Boulevard, Room 707, Rockville, MD 20892 (Telephone Conference Call).

*Contact Person:* Zhiqiang Zou, MD, Ph.D., Scientific Review Officer, Special Review and Logistics Branch, Division of Extramural Activities, National Cancer Institute, NIH 6116 Executive Blvd., Room 8055A, Bethesda, MD 20892, 301–402–9415, *zouzhiq@mail.nih.gov.*

*Name of Committee:* National Cancer Institute Special Emphasis Panel; Preclinical Efficacy and Intermediate Endpoint Biomarkers.

*Date:* June 27, 2012.

*Time:* 12:00 p.m. to 5:00 p.m.

*Agenda:* To review and evaluate contract proposals.

*Place:* National Institutes of Health, 6116 Executive Boulevard, Room 707, Rockville, MD 20852 (Telephone Conference Call).

*Contact Person:* Lalita D. Palekar, Ph.D., Scientific Review Officer, Special Review and Logistics Branch, Division of Extramural Activities, National Cancer Institute, NIH, 6116 Executive Boulevard, Room 7141, Bethesda, MD 20892, 301–496–7575, *palekarl@mail.nih.gov.*

Information is also available on the Institute's/Center's home page: *http://deainfo.nci.nih.gov/advisory/sep/sep.htm,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: May 21, 2012.

**Jennifer S. Spaeth,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 2012–12857 Filed 5–25–12; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of a meeting of the Board of Scientific Counselors for Basic Sciences National Cancer Institute.

The meeting will be closed to the public as indicated below in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C., as amended for the review, discussion, and evaluation of individual intramural programs and projects conducted by the National Cancer Institute, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* Board of Scientific Counselors for Basic Sciences National Cancer Institute.

*Date:* July 9, 2012.

*Time:* 8:30 a.m. to 3:30 p.m.

*Agenda:* To review and evaluate personal qualifications and performance, and competence of individual investigators.

*Place:* National Institutes of Health, Building 31, Conference Room 6, 31 Center Drive, Bethesda, MD 20892.

*Contact Person:* Florence E. Farber, Ph.D., Executive Secretary, Office of the Director, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard, Room 2205, Bethesda, MD 20892, 301–496–7628, *ff6p@nih.gov.*

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

Information is also available on the Institute's/Center's home page: *http://deainfo.nci.nih.gov/advisory/bsc/bs/bs.htm,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: May 21, 2012.

**Jennifer S. Spaeth,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 2012–12856 Filed 5–25–12; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* Allergy, Immunology, and Transplantation Research Committee, AITRC June 2012.

*Date:* June 19, 2012.

*Time:* 8:00 a.m. to 6:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Marriott Wardman Park Washington DC Hotel, 2660 Woodley Road NW., Washington, DC 20008.

*Contact Person:* Zhuqing Li, Ph.D., Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, DHHS/NIH/NIAID, 6700B Rockledge Drive, Room 3136, MSC 7616, Bethesda, MD 20892, 301–402–9523, *zhuqing.li@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: May 21, 2012.

**Jennifer S. Spaeth,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 2012–12846 Filed 5–25–12; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; Data Coordinating Centers.

*Date:* June 25, 2012.

*Time:* 3:00 p.m. to 4:30 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892, (Telephone Conference Call).

*Contact Person:* Lakshmanan Sankaran, Ph.D., Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 755, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–7799, *ls38z@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: May 21, 2012.

**Jennifer S. Spaeth,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 2012–12845 Filed 5–25–12; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as Amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; R01 for Islet Transplants.

*Date:* July 13, 2012.

*Time:* 2:00 p.m. to 4:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892 (Telephone Conference Call).

*Contact Person:* D.G. Patel, Ph.D., Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 756, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–7682, *pateldg@niddk.nih.gov.*

*Name of Committee:* National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; Interconnectivity Network Coordinating Unit.

*Date:* July 16, 2012.

*Time:* 11:30 a.m. to 1:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

*Contact Person:* Thomas A. Tatham, Ph.D., Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 760, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–3993, *tathamt@mail.nih.gov.*

*Name of Committee:* National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; R01 Applications.

*Date:* July 17, 2012.

*Time:* 2:00 p.m. to 5:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892 (Telephone Conference Call).

*Contact Person:* D.G. Patel, Ph.D., Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 756, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–7682, *pateldg@niddk.nih.gov.*

*Name of Committee:* National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; R13 Conference Applications.

*Date:* July 19, 2012.

*Time:* 2:00 p.m. to 4:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892, (Telephone Conference Call).

*Contact Person:* D.G. Patel, Ph.D., Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 756, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–7682, *pateldg@niddk.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: May 21, 2012.

**Jennifer S. Spaeth,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 2012–12844 Filed 5–25–12; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

**[USCG–2012–0149]**

### Collection of Information Under Review by Office of Management and Budget

**AGENCY:** Coast Guard, DHS.

**ACTION:** Thirty-day notice requesting comments.

**SUMMARY:** In compliance with the Paperwork Reduction Act of 1995 the U.S. Coast Guard is forwarding Information Collection Requests (ICRs), abstracted below, to the Office of Management and Budget (OMB), Office of Information and Regulatory Affairs (OIRA), requesting an extension of its approval to the following collection of information: 1625–0095, Oil and Hazardous Material Pollution

Prevention and Safety Records, Equivalents/Alternatives and Exemptions. Additionally, the U.S. Coast Guard requests approval of a revision to the following collections of information: 1625–0099, Requirements for the Use of Liquefied Petroleum Gas and Compressed Natural Gas as Cooking Fuel on Passenger Vessels and 1625–0103, Mandatory Ship Reporting System for the Northeast and Southeast Coasts of the United States. Our ICRs describe the information we seek to collect from the public. Review and comments by OIRA ensure we only impose paperwork burdens commensurate with our performance of duties.

**DATES:** Comments must reach the Coast Guard and OIRA on or before June 28, 2012.

**ADDRESSES:** You may submit comments identified by Coast Guard docket number [USCG–2012–0149] to the Docket Management Facility (DMF) at the U.S. Department of Transportation (DOT) and/or to OIRA. To avoid duplicate submissions, please use only one of the following means:

(1) *Online:* (a) To Coast Guard docket at *http://www.regulations.gov.* (b) To OIRA by email via: *OIRA-submission@omb.eop.gov.*

(2) *Mail:* (a) DMF (M–30), DOT, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590–0001. (b) To OIRA, 725 17th Street NW., Washington, DC 20503, attention Desk Officer for the Coast Guard.

(3) *Hand Delivery:* To DMF address above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

(4) *Fax:* (a) To DMF, 202–493–2251. (b) To OIRA at 202–395–6566. To ensure your comments are received in a timely manner, mark the fax, attention Desk Officer for the Coast Guard.

The DMF maintains the public docket for this Notice. Comments and material received from the public, as well as documents mentioned in this Notice as being available in the docket, will become part of the docket and will be available for inspection or copying at room W12–140 on the West Building Ground Floor, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find the docket on the Internet at *http://www.regulations.gov.*

Copies of the ICRs are available through the docket on the Internet at *http://www.regulations.gov.* Additionally, copies are available from: Commandant (CG–611), Attn: Paperwork Reduction Act Manager, U.S. Coast Guard, 2100 2nd St. SW., Stop 7101, Washington DC 20593–7101.

**FOR FURTHER INFORMATION CONTACT:** Ms. Kenlinishia Tyler, Office of Information Management, telephone 202–475–3652 or fax 202–475–3929, for questions on these documents. Contact Ms. Renee V. Wright, Program Manager, Docket Operations, 202–366–9826, for questions on the docket.

**SUPPLEMENTARY INFORMATION:**

## Public Participation and Request for Comments

This Notice relies on the authority of the Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended. An ICR is an application to OIRA seeking the approval, extension, or renewal of a Coast Guard collection of information (Collection). The ICR contains information describing the Collection's purpose, the Collection's likely burden on the affected public, an explanation of the necessity of the Collection, and other important information describing the Collections. There is one ICR for each Collection.

The Coast Guard invites comments on whether these ICRs should be granted based on the Collections being necessary for the proper performance of Departmental functions. In particular, the Coast Guard would appreciate comments addressing: (1) The practical utility of the Collections; (2) the accuracy of the estimated burden of the Collections; (3) ways to enhance the quality, utility, and clarity of information subject to the Collections; and (4) ways to minimize the burden of the Collections on respondents, including the use of automated collection techniques or other forms of information technology. These comments will help OIRA determine whether to approve the ICRs referred to in this Notice.

We encourage you to respond to this request by submitting comments and related materials. Comments to Coast Guard or OIRA must contain the OMB Control Number of the ICR. They must also contain the docket number of this request, [USCG 2012–0149], and must be received by June 28, 2012. We will post all comments received, without change, to *http://www.regulations.gov.* They will include any personal information you provide. We have an agreement with DOT to use their DMF. Please see the ''Privacy Act'' paragraph below.

### *Submitting Comments*

If you submit a comment, please include the docket number [USCG–2012–0149], indicate the specific section of the document to which each comment applies, providing a reason for each comment. You may submit your comments and material online (via *http://www.regulations.gov*), by fax, mail, or hand delivery, but please use only one of these means. If you submit a comment online via *www.regulations.gov,* it will be considered received by the Coast Guard when you successfully transmit the comment. If you fax, hand deliver, or mail your comment, it will be considered as having been received by the Coast Guard when it is received at the DMF. We recommend you include your name, mailing address, an email address, or other contact information in the body of your document so that we can contact you if we have questions regarding your submission.

You may submit comments and material by electronic means, mail, fax, or delivery to the DMF at the address under **ADDRESSES**, but please submit them by only one means. To submit your comment online, go to *http://www.regulations.gov,* and type ''USCG–2012–0149'' in the ''Keyword'' box. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and will address them accordingly.

### *Viewing Comments and Documents*

To view comments, as well as documents mentioned in this Notice as being available in the docket, go to *http://www.regulations.gov,* click on the ''read comments'' box, which will then become highlighted in blue. In the ''Keyword'' box insert ''USCG–2012–0149'' and click ''Search.'' Click the ''Open Docket Folder'' in the ''Actions'' column. You may also visit the DMF in Room W12–140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

OIRA posts its decisions on ICRs online at *http://www.reginfo.gov/public/do/PRAMain* after the comment period for each ICR. An OMB Notice of Action on each ICR will become available via a hyperlink in the OMB Control Numbers: 1625–0095, 1625–0099 and 1625–0103.

*Privacy Act*

Anyone can search the electronic form of comments received in dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review a Privacy Act statement regarding Coast Guard public dockets in the January 17, 2008, issue of the **Federal Register** (73 FR 3316).

**Previous Request for Comments**

This request provides a 30-day comment period required by OIRA. The Coast Guard published the 60-day notice (77 FR 16044, March 19, 2012) required by 44 U.S.C. 3506(c)(2). That Notice elicited no comments.

**Information Collection Requests**

1. *Title:* Oil and Hazardous Material Pollution Prevention and Safety Records, Equivalents/Alternatives and Exemptions.

*OMB Control Number:* 1625–0095.

*Type of Request:* Extension of a currently approved collection.

*Respondents:* Owners and operators of bulk oil and hazardous materials facilities and vessels.

*Abstract:* The information is used by the Coast Guard to ensure that an oil or hazardous material requirement alternative or exemption provides an equivalent level of safety and protection from pollution.

*Forms:* None.

*Burden Estimate:* The estimated burden remains 1,440 hours a year.

2. *Title:* Requirements for the Use of Liquefied Petroleum Gas and Compressed Natural Gas as Cooking Fuel on Passenger Vessels.

*OMB Control Number:* 1625–0099.

*Type of Request:* Revision of a currently approved collection.

*Respondents:* Owners and operators of passenger vessels.

*Abstract:* The collection of information requires passenger vessels to post two placards that contain safety and operating instructions on the use of cooking appliances that use liquefied gas or compressed natural gas.

*Forms:* None.

*Burden Estimate:* The estimated burden has increased from 5,288 hours to 5,948 hours a year.

3. *Title:* Mandatory Ship Reporting System for the Northeast and Southeast Coasts of the United States.

*OMB Control Number:* 1625–0103.

*Type of Request:* Revision of a currently approved collection.

*Respondents:* Operators of certain vessels.

*Abstract:* The information is needed to reduce the number of ship collisions with endangered northern right whales. Coast Guard rules at 33 CFR part 169 establish two mandatory ship-reporting systems off the northeast and southeast coasts of the United States.

*Forms:* None.

*Burden Estimate:* The estimated burden has decreased from 211 hours to 200 hours a year.

**Authority:** The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended.

Dated: May 21, 2012.

**R.E. Day,**

*Rear Admiral, U.S. Coast Guard, Assistant Commandant for Command, Control, Communications, Computers and Information Technology.*

[FR Doc. 2012–12872 Filed 5–25–12; 8:45 am]

BILLING CODE 9110–04–P

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

**[Docket No. USCG–2012–0458]**

### Towing Safety Advisory Committee; Vacancies

**AGENCY:** Coast Guard, DHS.

**ACTION:** Request for applications.

**SUMMARY:** The Coast Guard seeks applications for membership on the Towing Safety Advisory Committee (TSAC). This Committee advises the Secretary of Homeland Security on matters relating to shallow-draft inland and coastal waterway navigation and towing safety.

**DATES:** Applicants should submit a cover letter and resume in time to reach Patrick Mannion, the Alternate Designated Federal Officer (ADFO) on or before July 13, 2012.

**ADDRESSES:** If you wish to apply for membership, your resume should be submitted by one of the following methods:

- *E-mail: Patrick.J.Mannion@uscg.mil.*
- *Fax:* (202) 372–1926 ATTN: Mr. Patrick Mannion, TSAC ADFO.
- *Mail:* Mr. Patrick Mannion, TSAC ADFO, Commandant (CG–5222), U.S. Coast Guard, 2100 Second St. SW., STOP 7126, Washington, DC 20593–7126.

**FOR FURTHER INFORMATION CONTACT:** Commander Rob Smith, Designated Federal Officer (DFO) of the Towing Safety Advisory Committee (TSAC), 202–372–1410, *Robert.L.Smith@uscg.mil* or Patrick Mannion, Alternate Designated Federal Officer of Towing Safety Advisory Committee (TSAC); telephone 202–372–1439; fax 202–372–1926; or email at *Patrick.J.Mannion@uscg.mil.*

**SUPPLEMENTARY INFORMATION:** The TSAC is a Federal advisory committee established in accordance with the provisions of the *Federal Advisory Committee Act* (FACA) 5 U.S.C. (Pub. L. 92–463) and under the authority of Title 33, United States Code, section 1231a, as amended by section 621 of the *Coast Guard Authorization Act of 2010* (Pub. L. 111–281). The Committee advises the Secretary of Homeland Security on matters relating to shallow-draft inland and coastal waterway navigation and towing safety. *See* 33 U.S.C. 1321a.

Normally, the Committee is expected to meet at least twice a year either in the Washington DC area or in a city with large towing centers of commerce and populated by high concentrations of towing industry and related businesses. The Committee may also be called to meet for extraordinary purposes. Subcommittees and workgroups may conduct intercessional telephonic meetings when necessary for specific tasking.

As specified in 33 U.S.C. 1231a, the Committee is to consist of 18 members:

- Seven members representing the Barge and Towing industry (reflecting a regional geographical balance);
- One member representing the offshore mineral and oil supply vessel industry;
- One member representing holders of active licensed Masters or Pilots of towing vessels with experience on the Western Rivers and the Gulf Intracoastal Waterway.
- One member representing the holders of active licensed Masters of towing vessels in offshore service.
- One member representing Masters who are active ship-docking or harbor towing vessel.
- One member representing licensed or unlicensed towing vessel engineers with formal training and experience.
- Two members representing each of the following groups:
  - Port districts, authorities, or terminal operators;
  - Shippers (of whom at least one shall be engaged in the shipment of oil or hazardous materials by barge);
- Two members representing the General Public.

We will consider applicants for five positions that expire or become vacant on September 30, 2012:

- Two representatives from the Barge and Towing industry;
- One representative from the offshore mineral and oil supply vessel industry;
- One representative from shippers; and

• One member from the general public.

To be eligible, applicants should have expertise, knowledge, and experience relative to the position in the towing industry, marine transportation, or business operations associated with shallow-draft inland and coastal waterway navigation and towing safety. If you are selected as a non-representative member, or as a member who represents the general public, you will be appointed and serve as a Special Government Employee (SGE) as defined in section 202(a) of title 18, United States Code. As a candidate for appointment as a SGE, applicants are required to complete a Confidential Financial Disclosure Report (OGE Form 450). Coast Guard may not release the reports or the information in them to the public except under an order issued by a Federal court or as otherwise provided under the *Privacy Act* (5 U.S.C. 552a). Applicants can obtain this form by going to the Web site of the Office of Government Ethics (*www.oge.gov*), or by contacting the individual listed above. Applications which are not accompanied by a completed OGE Form 450 will not be considered.

Each member serves for a term of up to 3 years. Members may be considered to serve consecutive terms. All members serve at their own expense and receive no salary, or other compensation from the Federal Government. The exception to this policy is the possible reimbursement of travel and per diem expenses depending on fiscal budgetary constraints.

Registered lobbyists are not eligible to serve on Federal advisory committees. Registered lobbyists are lobbyists required to comply with provisions contained in the *Lobbying Disclosure Act* of 1995 (Pub. L. 104–65, as amended by Title II of Pub. L. 110–81.

The Department of Homeland Security (DHS) does not discriminate in employment on the basis of race, color, religion, sex, national origin, political affiliation, sexual orientation, gender identity, marital status, disability and genetic information, age, membership in an employee organization, or other non-merit factor. DHS strives to achieve a widely diverse candidate pool for all of its recruitment actions.

To visit our online docket, go to *http://www.regulations.gov,* enter the docket number for this notice (USCG–2012–0458) in the Search box, and press Enter.'' Please do not post your resume on this site. During the vetting process, applicants may be asked to provide date of birth and social security number.

Dated: May 21, 2012.

**F.J. Sturm,**

*Acting Director of Commercial Regulations and Standards.*

[FR Doc. 2012–12874 Filed 5–25–12; 8:45 am]

**BILLING CODE 9110–04–P**

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## DEPARTMENT OF HOMELAND SECURITY

### Transportation Security Administration

### Intent To Request Approval From OMB of One New Public Collection of Information: Highway Baseline Assessment for Security Enhancement (BASE) Program

**AGENCY:** Transportation Security Administration, DHS.

**ACTION:** 60-day notice.

**SUMMARY:** The Transportation Security Administration (TSA) invites public comment on a new Information Collection Request (ICR) abstracted below that we will submit to the Office of Management and Budget (OMB) for approval in compliance with the Paperwork Reduction Act (PRA). The ICR describes the nature of the information collection and its expected burden. The ICR will assess the current security practices in the highway and motor carrier industry by way of its Highway Baseline Assessment for Security Enhancement (BASE) program, which encompasses site visits and interviews, and is part of the larger domain awareness, prevention, and protection program supporting TSA's and the Department of Homeland Security's (DHS) missions. This voluntary collection allows TSA to conduct transportation security-related assessments during site visits with security and operating officials of surface transportation entities.

**DATES:** Send your comments by July 30, 2012.

**ADDRESSES:** Comments may be emailed to *TSAPRA@dhs.gov* or delivered to the TSA PRA Officer, Office of Information Technology (OIT), TSA–11, Transportation Security Administration, 601 South 12th Street, Arlington, VA 20598–6011.

**FOR FURTHER INFORMATION CONTACT:** Susan Perkins at the above address, or by telephone (571) 227–3398.

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid OMB control number. The ICR documentation is available at *www.reginfo.gov.* Therefore, in preparation for OMB review and approval of the following information collection, TSA is soliciting comments to—

(1) Evaluate whether the proposed information requirement 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;

(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 using appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

### Information Collection Requirement

*Purpose of Data Collection*

Under the Aviation and Transportation Security Act (ATSA) and delegated authority from the Secretary of Homeland Security, TSA has broad responsibility and authority for ''security in all modes of transportation including security responsibilities over modes of transportation that are exercised by the Department of Transportation.'' [1] TSA is also specifically empowered to develop policies, strategies, and plans for dealing with threats to transportation,[2] ensure the adequacy of security measures for the transportation of cargo,[3] oversee the implementation and ensure the adequacy of security measures at transportation facilities,[4] and carry out other appropriate duties relating to transportation security.[5]

In the past, TSA has conducted Corporate Security Reviews (CSRs) with organizations engaged in transportation

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[1] *See* Pub. L. 107–71, 115 Stat. 597 (Nov. 19, 2001), codified at 49 U.S.C. 114(d). The TSA Assistant Secretary's current authorities under ATSA have been delegated to him by the Secretary of Homeland Security. Section 403(2) of the Homeland Security Act (HSA) of 2002, Pub. L. 107–296, 116 Stat. 2315 (2002), transferred all functions of TSA, including those of the Secretary of Transportation and the Under Secretary of Transportation of Security related to TSA, to the Secretary of Homeland Security. Pursuant to DHS Delegation Number 7060.2, the Secretary delegated to the Assistant Secretary (now referred to as the Administrator of TSA), subject to the Secretary's guidance and control, the authority vested in the Secretary with respect to TSA, including that in sec. 403(2) of the HSA.

[2] 49 U.S.C. 114(f)(3).

[3] 49 U.S.C. 114(f)(10).

[4] 49 U.S.C. 114(f)(11).

[5] 49 U.S.C. 114(f)(15).

by motor vehicle and those that maintain or operate key physical assets within the highway transportation community. These CSRs have served to evaluate and collect physical and operational preparedness information, critical assets and key point-of-contact lists, review emergency procedures and domain awareness training, and provide an opportunity to share industry best practices.[6]

At this time, TSA is consolidating some assessment programs within surface modes of transportation. As part of this effort, the Highway CSR will become a Baseline Assessment for Security Enhancement (BASE). This will provide for greater consistency as TSA also has a BASE program to evaluate the status of security and emergency response programs on transit systems throughout the nation; this program operates similarly to the CSRs.

Highway BASE program will continue to be a voluntary, instructive, and interactive review used by TSA to assess the adequacy of security measures related to highway transportation—such as trucking, school bus, and motorcoach industries, privately-owned highway assets that may include bridges and tunnels, and other related systems and assets owned and operated by state departments of education and transportation. The Highway BASE program encompasses site visits and interviews, and is one piece of a much larger domain awareness, prevention, and protection program in support of the TSA and DHS missions. TSA is seeking to obtain OMB approval for this information collection so that TSA can ascertain minimum security standards and identify coverage gaps, activities critical to carrying out its transportation security mission.

*Description of Data Collection*

In carrying out BASE, Transportation Security Specialists (TSS) from TSA's Highway and Motor Carrier Division (HMC) and Transportation Security Inspectors-Surface (TSI–S) conduct site visits of trucking (excluding hazardous materials shippers and carriers as per agreement with U.S. Department of Transportation (DOT), Federal Motor Carrier Safety Administration (FMCSA), school bus, motorcoach companies, bridge and tunnel owners, State DOTs, and State Departments of Energy (DOEs) throughout the Nation. The TSA representatives analyze the owner's/operator's security plan, if the owner/operator has adopted one, and determines if the mitigation measures included in the plan are being properly implemented. In addition to examining the security plan document, TSA reviews one or more assets of the private and/or public owner/operator. During the site visits, TSA completes a BASE checklist form, which contains four (4) topic areas: Management and accountability, personnel security, facility security, and vehicle security. Within these four topics are twenty-three recommended measures, also referred to as Security Action Items (SAIs). TSA conducts this collection through voluntary face-to-face visits at the headquarters and site facilities of the surface transportation owners/operators. All BASE reviews are done on a voluntary basis.

Typically, TSA sends one to two employees to conduct a two to three hour discussion/interview with representatives from the owner/operator. TSA collects information from businesses of all sizes in the course of conducting these surface mode BASEs. TSA conducts these interviews to ascertain information on security measures and to identify security gaps. The interviews also provide TSA with a method to encourage the surface transportation owners/operators affected by the BASE to be diligent in effecting and maintaining security-related improvements. This program provides TSA with real-time information on current security practices within the infrastructure, trucking, school bus, and motorcoach modes of the surface transportation sector. This information allows TSA to adapt programs to the changing threat dynamically, while incorporating an understanding of the improvements owners/operators make in their security posture. Without this information, the ability of TSA to perform its security mission would be severely hindered. Additionally, the relationships these face-to-face contacts foster are critical to TSA's ability to reach out to the surface transportation stakeholders affected by the BASEs. TSA assures respondents the portion of their responses deemed Sensitive Security Information (SSI) will be handled consistent with 49 CFR parts 15 and 1520.

*Use of Results*

The Highway BASE process will align highway and motor carrier security efforts with other TSA risk reduction efforts and provide industry partners corrective action options to consider by identifying security smart practices to share with others.

A BASE review evaluates a highway modal entity's security program components using a two-phased approach: (1) Field collection of information and (2) analysis/evaluation of collected information. The information collected by TSA through BASE reviews strengthens the security of highway systems by supporting security program development (including grant programs) and the analysis/evaluation provides a consistent road map for highway systems to address security and emergency program vulnerabilities. In addition, each highway entity that undergoes a BASE assessment is provided with a report of results that is used in security enhancement activities.

Specifically, the information collected will be used:

1. To develop a baseline understanding of a highway entity's security and emergency management processes, procedures, policies, programs, and activities against security requirements and recommended security practices published by TSA.

2. To enhance a highway entity's overall security posture through collaborative review and discussion of existing security activities, identification of areas of potential weakness or vulnerability, and development of remedial recommendations and courses of action.

3. To identify programs and protocols implemented by a highway entity that represent an ''effective'' or ''smart'' security practice warranting sharing with the highway community as a whole to foster general enhancement of security in the highway surface mode.

4. To inform TSA's development of security strategies, priorities, and programs for the most effective application of available resources, including funds distributed under the Intercity Bus Security Grant Program (IBSGP) and Trucking Security Program (TSP), to enhance security in the Nation's highway modal system.

While TSA has not set a limit on the number of BASE reviews to conduct, TSA estimates approximately 750 visits per year. The annual hour burden for this information collection is estimated to be 3,000 hours. This estimate is based on TSA conducting 750 visits per year, each visit lasting two to three hours. TSA estimates no annual cost burden to respondents.

Issued in Arlington, Virginia, on May 22, 2012.

**Susan Perkins,**

*TSA Paperwork Reduction Act Officer, Office of Information Technology.*

[FR Doc. 2012–12957 Filed 5–25–12; 8:45 am]

BILLING CODE 9110–05–P

[6] *See* 74 FR 28264 (June 15, 2009) for the most recent reinstatement of the PRA for this program.

## DEPARTMENT OF HOMELAND SECURITY

### U.S. Customs and Border Protection

### Approval of Inspectorate America Corporation, as a Commercial Gauger

**AGENCY:** U.S. Customs and Border Protection, Department of Homeland Security.

**ACTION:** Notice of approval of Inspectorate America Corporation, as a commercial gauger.

**SUMMARY:** Notice is hereby given that, pursuant to 19 CFR 151.13, Inspectorate America Corporation, 125 North Post Oak Road, Sulfur, LA 70663, has been approved to gauge petroleum, petroleum products, organic chemicals and vegetable oils for customs purposes, in accordance with the provisions of 19 CFR 151.13. Anyone wishing to employ this entity to conduct gauger services should request and receive written assurances from the entity that it is approved by the U.S. Customs and Border Protection to conduct the specific gauger service requested. Alternatively, inquires regarding the specific gauger service this entity is approved to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344–1060. The inquiry may also be sent to *cbp.labhq@dhs.gov.* Please reference the Web site listed below for a complete listing of CBP approved gaugers and accredited laboratories.

*http://cbp.gov/linkhandler/cgov/trade/automated/labs_scientific_svcs/commercial_gaugers/gaulist.ctt/gaulist.pdf.*

**DATES:** The approval of Inspectorate America Corporation, as commercial gauger became effective on July 20, 2011. The next triennial inspection date will be scheduled for July 2014.

**FOR FURTHER INFORMATION CONTACT:** Jonathan McGrath, Laboratories and Scientific Services, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue NW., Suite 1500N, Washington, DC 20229, 202–344–1060.

Dated: May 15, 2012.

**Ira S. Reese,**

*Executive Director, Laboratories and Scientific Services.*

[FR Doc. 2012–12865 Filed 5–25–12; 8:45 am]

BILLING CODE 9111–14–P

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

**[Docket No. FR–5607–N–18]**

### Notice of Proposed Information Collection: Comment Request

### Home Mortgage Disclosure Act (HMDA) Loan/Application Register

**AGENCY:** Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

**ACTION:** Notice.

**SUMMARY:** The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

**DATES:** *Comments Due Date:* July 30, 2012.

**ADDRESSES:** Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Reports Liaison Officer, Departmental Reports Management Officer, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410; Room 9120 or number for the Federal Information Relay Service (1–800–877–8339).

**FOR FURTHER INFORMATION CONTACT:** Chuck Capone, Director, Office of Evaluation, Office of Finance and Budget, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410, telephone (202) 755–7500 (this is not a toll free number) for copies of the proposed forms and other available information.

**SUPPLEMENTARY INFORMATION:** The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This Notice also lists the following information:

*Title of Proposal:* Home Mortgage Disclosure Act (HMDA) Loan/Application Register.

*OMB Control Number, if applicable:* 2502–0539.

*Description of the need for the information and proposed use:* The HMDA Loan/Application Register collects information from mortgage lenders on application for, and originations and purchases of, mortgage and home improvement loans. Nondepository mortgage lending institutions are required to use the information generated as a running log throughout the calendar year, and send the information to HUD by March 1 of the following calendar year.

*Agency form numbers, if applicable:* FR HMDA–LAR.

*Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response:* The estimated total number of burden hours needed to prepare the information collection is 132,000; the number of respondents is 1,100 generating approximately 1,100 annual responses; the frequency of response is annually; and the estimated burden hours needed to prepare the response is an average of 120 hours.

*Status of the proposed information collection:* This is an extension of a currently approved collection.

**Authority:** The Paperwork Reduction Act of 1995, 44 U.S.C., Chapter 35, as amended.

Dated: May 22, 2012.

**Ronald Y. Spraker,**

*Acting General Deputy Assistant Secretary for Housing—Deputy Federal Housing Commissioner.*

[FR Doc. 2012–12940 Filed 5–25–12; 8:45 am]

BILLING CODE 4210–67–P

## DEPARTMENT OF THE INTERIOR

### Office of the Secretary

### Renewal of Information Collection: Claim for Relocation Payments—Residential, DI–381 and Claim for Relocation Payments—Nonresidential, DI–382

**AGENCY:** Office of Acquisition and Property Management, Office of the Secretary, Interior.

**ACTION:** Notice and request for comments.

**SUMMARY:** In compliance with section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of Acquisition and Property Management announces that it has submitted a request for renewal of approval of this information collection to the Office of Management and Budget (OMB), and requests public comments on this submission.

**DATES:** OMB has up to 60 days to approve or disapprove the information collection request, but may respond after 30 days; therefore, public comments should be submitted to OMB by June 28, 2012, in order to be assured of consideration.

**ADDRESSES:** Send your written comments by facsimile (202) 395–5806 or email (*OIRA_DOCKET@omb.eop.gov*) to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Department of the Interior Desk Officer (OMB Control Number 1084–0010). Also, please send a copy of your comments to Mary Heying, Office of Acquisition and Property Management, 1849 C Street NW., MS 2607 MIB, Washington, DC 20240. If you wish to submit comments by facsimile, the number is (202) 254–5591, or by email to *mary_heying@ios.doi.gov.* Individuals providing comments should reference Relocation Payments.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the information collection instruments should be directed to Mary Heying, Office of Acquisition and Property Management, 1849 C Street NW., MS 2607 MIB, Washington, DC 20240. You may also request additional information by telephone (202) 254–5503, facsimile at (202) 254–5591, or by email at *mary_heying@ios.doi.gov.*

**SUPPLEMENTARY INFORMATION:**

## Abstract

Office of Management and Budget (OMB) regulations at 5 CFR part 1320, which implement the Paperwork Reduction Act of 1995 (Pub. L. 104–13) require that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities (see 5 CFR 1320.8 (d)). This notice identifies an information collection activity that the Office of Acquisition and Property Management has submitted to OMB for renewal. Form DI–381, Claim For Relocation Payments—Residential, and DI–382, Claim For Relocation Payments—Nonresidential, provide the means for the applicant to present allowable moving expenses and certify to occupancy status, after having been displaced because of Federal acquisition of their real property.

## II. Method of Collection

Individuals or businesses displaced by Federal acquisition of their real property will submit either Form DI–381 or DI–382, respectively. These forms give the claimant the opportunity to provide the information needed to determine the amount of the financial claim which would remunerate the individual or business for costs incurred as a result of the loss of the property as well as certain moving costs and other associated costs. For example, the residential Form provides for itemization of downpayment and incidental expenses. The non-residential Form provides for itemization of the type of concern or business, moving and storage expenses, reasonable search expenses, direct loss of personal property, and reestablishment expenses, for example. Without such forms, it would not be possible to acquire the precise information associated with the permissible reimbursements permitted under the statute.

## III. Data

(1) *Title:* Claim for Relocation Payments—Residential, DI–381, and Claim For Relocation Payments—Nonresidential, DI–382.

*OMB Control Number:* 1084–0010.

*Type of Review:* Information Collection: Renewal.

*Affected Entities:* Individuals, Businesses.

*Estimated annual number of respondents:* DI–381: 50. DI–382: 35.

*Frequency of response:* Once per relocation.

(2) *Annual reporting and record keeping burden:*

*Estimated combined total number of responses annually:* 85.

*Estimated burden per response:* 49 minutes (0.82 hours per response).

*Total annual reporting:* 70 hours.

(3) *Description of the need and use of the information:* This information will provide the basis upon which required reimbursements to individuals or nonresidents displaced by Federal acquisition of real property should be made, in accordance with the Uniform Relocation Assistance and Real Property Acquisition Policies for Federal and Federally Assisted Programs Act of 1970, as amended, and the implementing Final Rule issued by the Department of Transportation, 49 CFR part 24.

As required under 5 CFR 1320.8(d), a **Federal Register** notice soliciting comments on the collection of information was published on March 1, 2012 (77 FR 12610). No comments were received. This notice provides the public with an additional 30 days in which to comment on the information collection activity.

## IV. Request for Comments

The Department of the Interior invites comments on:

(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 the burden of the collection and 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 through the use of appropriate automated, electronic, mechanical, or other collection techniques or other forms of information technology.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, disclose or provide information to or for a federal agency. This includes the time needed to review instructions; to develop, acquire, install and utilize technology and systems for the purpose of collecting, validating and verifying information, processing and maintaining information, and disclosing and providing information; to train personnel and to be able to respond to a collection of information, to search data sources, to complete and review the collection of information; and to transmit or otherwise disclose the information.

All written comments, with names and addresses, will be available for public inspection. If you wish us to withhold your personal information, you must prominently state at the beginning of your comment what personal information you want us to withhold. We will honor your request to the extent allowable by law. If you wish to view any comments received, you may do so by scheduling an appointment with the Office of Acquisition and Property management at the above address. A valid picture identification is required for entry into the Department of the Interior.

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

Office of Management and Budget control number.

Dated: May 17, 2012.

**Debra E. Sonderman,**

*Director, Office of Acquisition and Property Management.*

[FR Doc. 2012–12847 Filed 5–25–12; 8:45 am]

**BILLING CODE 4310–RK–P**

## DEPARTMENT OF THE INTERIOR

## Fish and Wildlife Service

**[FWS–R9–EA–2012–N133; FF09D00000–FXGO1664091HCC05D–123]**

## Wildlife and Hunting Heritage Conservation Council

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of meeting.

**SUMMARY:** We, the U.S. Fish and Wildlife Service, announce a public meeting of the Wildlife and Hunting Heritage Conservation Council (Council).

**DATES:** *Meeting:* Wednesday June 13, 2012, from 8:30 a.m. to 4:30 p.m., and Thursday June 14, 2012, from 8:30 a.m. to 4:30 p.m. (Mountain daylight time). For deadlines and directions on registering to attend, submitting written material, and giving an oral presentation, please see ''Public Input'' under **SUPPLEMENTARY INFORMATION**.

**ADDRESSES:** The meeting will be held in the Room B–20 at the U.S. Forest Service Southwestern Regional Office, 333 Broadway SE., Albuquerque, New Mexico 87102.

**FOR FURTHER INFORMATION CONTACT:** Joshua Winchell, Council Coordinator, 4401 North Fairfax Drive, Mailstop 3103–AEA, Arlington, VA 22203; telephone (703) 358–2639; fax (703) 358–2548; or email *joshua_winchell@fws.gov.*

**SUPPLEMENTARY INFORMATION:** In accordance with the requirements of the Federal Advisory Committee Act, 5 U.S.C. App., we announce that Wildlife and Hunting Heritage Conservation Council will hold a meeting.

### Background

Formed in February 2010, the Council provides advice about wildlife and habitat conservation endeavors that:

1. Benefit recreational hunting;
2. Benefit wildlife resources; and
3. Encourage partnership among the public, the sporting conservation community, the shooting and hunting sports industry, wildlife conservation organizations, the States, Native American tribes, and the Federal Government.

The Council advises the Secretary of the Interior and the Secretary of Agriculture, reporting through the Director, U.S. Fish and Wildlife Service (Service), in consultation with the Director, Bureau of Land Management (BLM); Chief, Forest Service (USFS); Chief, Natural Resources Service (NRCS); and Administrator, Farm Services Agency (FSA). The Council's duties are strictly advisory and consist of, but are not limited to, providing recommendations for:

1. Implementing the Recreational Hunting and Wildlife Resource Conservation Plan—A Ten-Year Plan for Implementation;
2. Increasing public awareness of and support for the Sport Wildlife Trust Fund;
3. Fostering wildlife and habitat conservation and ethics in hunting and shooting sports recreation;
4. Stimulating sportsmen and women's participation in conservation and management of wildlife and habitat resources through outreach and education;
5. Fostering communication and coordination among State, Tribal, and Federal Government; industry; hunting and shooting sportsmen and women; wildlife and habitat conservation and management organizations; and the public;
6. Providing appropriate access to Federal lands for recreational shooting and hunting;
7. Providing recommendation to improve implementation of Federal conservation programs that benefit wildlife, hunting, and outdoor recreation on private lands; and
8. When requested by the agencies' designated ex officio members or the Designated Federal Officer in consultation with the Council Chairman, performing a variety of assessments or reviews of policies, programs, and efforts through the Council's designated subcommittees or workgroups.

Background information on the Council is available at *http://www.fws.gov/whhcc.*

### Meeting Agenda

The Council will convene to consider:

1. The Recreational Hunting and Wildlife Resource Conservation Plan—A Ten-Year Plan for Implementation;
2. Fire management and recovery;
3. Programs of the Department of the Interior and Department of Agriculture, and their bureaus, that enhance hunting opportunities and support wildlife conservation;
4. America's Great Outdoors; and
5. Other Council business.

The final agenda will be posted on the Internet at *http://www.fws.gov/whhcc.*

PUBLIC INPUT

| If you wish to— | You must contact the Council Coordinator (see **FOR FURTHER INFORMATION CONTACT**) no later than— |
|---|---|
| Attend the meeting .... | June 5, 2012. |
| Submit written information or questions before the meeting for the council to consider during the meeting. | June 5, 2012. |
| Give an oral presentation during the meeting. | June 5, 2012. |

*Attendance*

Because entry to Federal buildings is restricted, all visitors are required to preregister to be admitted. In order to attend this meeting, you must register by close of business on the dates listed in ''Public Input'' under **SUPPLEMENTARY INFORMATION**. Please submit your name, time of arrival, email address, and phone number to the Council Coordinator (see **FOR FURTHER INFORMATION CONTACT**).

*Submitting Written Information or Questions*

Interested members of the public may submit relevant information or questions for the Council to consider during the public meeting. Written statements must be received by the date above, so that the information may be made available to the Council for their consideration prior to this meeting. Written statements must be supplied to the Council Coordinator in both of the following formats: One hard copy with original signature, and one electronic copy via email (acceptable file formats are Adobe Acrobat PDF, MS Word, MS PowerPoint, or rich text file).

*Giving an Oral Presentation*

Individuals or groups requesting to make an oral presentation at the meeting will be limited to 2 minutes per speaker, with no more than a total of 30 minutes for all speakers. Interested parties should contact the Council Coordinator, in writing (preferably via email; see **FOR FURTHER INFORMATION CONTACT**), to be placed on the public speaker list for this meeting. Nonregistered public speakers will not be considered during the meeting. Registered speakers who wish to expand upon their oral statements, or those who had wished to speak but

could not be accommodated on the agenda, may submit written statements to the Council Coordinator up to 30 days subsequent to the meeting.

**Meeting Minutes**

Summary minutes of the conference will be maintained by the Council Coordinator (see **FOR FURTHER INFORMATION CONTACT**) and will be available for public inspection within 90 days of the meeting and will be posted on the Council's Web site at *http://www.fws.gov/whhcc.*

**Gregory E. Seikaniec,**

*[Acting] Director.*

[FR Doc. 2012–12906 Filed 5–25–12; 8:45 am]

**BILLING CODE 4310–55–P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Indian Affairs

### Revision of Agency Information Collection for the American Indian and Alaska Native Population and Labor Force Report

**AGENCY:** Bureau of Indian Affairs, Interior.

**ACTION:** Notice of request for comments.

**SUMMARY:** In compliance with the Paperwork Reduction Act of 1995, the Assistant Secretary—Indian Affairs is seeking comments on the survey instrument for the collection of information for the American Indian and Alaska Native Population and Labor Force Report. The survey instrument that is currently authorized by Office of Management and Budget (OMB) Control Number 1076–0147 expires August 31, 2012.

**DATES:** Submit comments on or before July 30, 2012.

**ADDRESSES:** You may submit comments on the information collection to Steven Payson, U.S. Department of the Interior, Bureau of Indian Affairs, 1849 C Street NW., Washington, DC 20240; email: *Steven.Payson@bia.gov.*

**FOR FURTHER INFORMATION CONTACT:** Steven Payson, 202–513–7745.

**SUPPLEMENTARY INFORMATION:**

**I. Abstract**

The Assistant Secretary—Indian Affairs is seeking comments on a survey instrument to collect information for the American Indian Population and Labor Force Report, as required by the Paperwork Reduction Act of 1995. The Indian Employment, Training and Related Services Demonstration Act of 1992, as amended, requires the Secretary to develop, maintain and publish, not less than biennially, a report on the population by gender, age, availability for work, and employment. The survey instrument is being revised to include updated instructions and additional questions that are consistent with the definitions of standard measures of population and employment, as defined in the Federal Statistical System, to represent an accurate report. The proposed revisions will be published in a subsequent **Federal Register** notice.

**II. Request for Comments**

The BIA requests your comments on this collection concerning: (a) The necessity of this information collection 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 (hours and cost) of the collection of information, including the validity of the methodology and assumptions used; (c) Ways we could enhance the quality, utility, and clarity of the information to be collected; and (d) Ways we could minimize the burden of the collection of the information on the respondents.

Please note that an agency may not conduct or sponsor, and an individual need not respond to, a collection of information unless it has a valid OMB Control Number.

It is our policy to make all comments available to the public for review at the location listed in the **ADDRESSES** section. Before including your address, phone number, email address or other personally identifiable 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.

**III. Data**

*OMB Control Number:* 1076–0147.

*Title:* Department of the Interior, Office of the Assistant Secretary—Indian Affairs, American Indian Population and Labor Force Report.

*Brief Description of Collection:* Public Law 102–477, the Indian Employment, Training, and Related Services Demonstration Act of 1992, as amended, mandates the Secretary to publish, not less than biennially, a report on the American Indian and Alaska Native population eligible for services by gender, age, availability for work, and employment. Additional survey questions will be included to obtain more accurate and comprehensive information about the American Indian Population and Labor Force. Instructions for the existing questions will be revised to acquire information that is consistent with the definitions of standard measures of population and employment as defined in the Federal Statistical System. Response to this information collection is voluntary.

*Type of Review:* Revision of currently approved collection.

*Respondents:* American Indian Tribes and Alaska Natives.

*Frequency of Response:* Biennially.

*Estimated Time per Response:* 16 hours.

*Estimated Total Annual Hour Burden:* 4,680 hours (9,360 hours biennially).

Dated: May 21, 2012.

**Alvin Foster,**

*Assistant Director for Information Resources.*

[FR Doc. 2012–12905 Filed 5–25–12; 8:45 am]

**BILLING CODE 4310–4M–P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[NM–114438; AZA–35058; L51010000 ER0000 LVRWG09G0690 LLNM930000]**

### Notice of Availability of the Draft Environmental Impact Statement for the SunZia Southwest 500 kV Transmission Line Project in New Mexico and Arizona, and Prospective Draft Land Use Plan Amendments

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of availability.

**SUMMARY:** In accordance with the National Environmental Policy Act of 1969, as amended (NEPA), and the Federal Land Policy and Management Act of 1976, as amended (FLPMA), the Bureau of Land Management (BLM) has prepared a Draft Resource Management Plan (Draft RMP) Amendment and a Draft Environmental Impact Statement (Draft EIS) for the SunZia Southwest Transmission Line Project and by this notice is announcing the opening of the comment period.

**DATES:** To ensure that comments will be considered, the BLM must receive written comments on the Draft RMP Amendment and Draft EIS within 90 days following the date the Environmental Protection Agency publishes its Notice of Availability in the **Federal Register**. The BLM will announce future meetings or hearings and any other public involvement activities at least 15 days in advance through public notices, media releases, and/or mailings.

**ADDRESSES:** You may submit comments related to the SunZia Southwest Transmission Line Project by any of the following methods:

- *Web site: www.blm.gov/nm/sunzia.*
- *Email: NMSunZiaProject@blm.gov.*
- *Mail:* Bureau of Land Management, New Mexico State Office, Attention: SunZia Southwest Transmission Project, P.O. Box 27115, Santa Fe, NM 87502–0115.
- *Courier or hand delivery:* Bureau of Land Management, New Mexico State Office, 301 Dinosaur Trail, Santa Fe, NM 87508–1560.

**FOR FURTHER INFORMATION CONTACT:** Adrian Garcia, Project Manager, c/o Bureau of Land Management, New Mexico State Office, 301 Dinosaur Trail, Santa Fe, NM 87508–1560, or by telephone at 505–954–2000. Any persons wishing to be added to our mailing list of interested parties may write or call the BLM Project Manager, at the address or phone number above. Persons who use a telecommunications device for the deaf (TTD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above individuals during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question for the above individual. You will receive a reply during normal business hours.

**SUPPLEMENTARY INFORMATION:** In September 2008, SunZia Transmission LLC, submitted a right-of-way (ROW) application to the BLM requesting authorization to construct, operate, maintain, and commission two electric transmission lines on public lands. The Applicant's objective for the Project is to improve the reliability and efficiency of the western electrical grid and aid in delivering electrical energy throughout the region. The BLM's purpose and need for the EIS is to respond to the Applicant's ROW application.

On May 29, 2009, the BLM published in the **Federal Register** (74 FR 25764) a Notice of Intent (NOI) to Prepare an EIS pursuant to NEPA, as required by Federal regulations promulgated for FLPMA found at 43 CFR part 2800. The BLM is the lead Federal agency for the NEPA analysis process and preparation of the EIS. Cooperating agencies include: Arizona Department of Transportation, Arizona State Land Department, Arizona Game and Fish Department, National Park Service, New Mexico Space Authority, New Mexico State Land Office, Holloman Air Force Base, Ft. Bliss (U.S. Army), White Sands Missile Range (U.S. Army), Ft. Huachuca (U.S. Army), U.S. Fish and Wildlife Service (FWS), and the Department of Defense Siting Clearinghouse.

To allow the public an opportunity to review the proposal and Project information, the BLM held public scoping meetings in June 2009 in Eloy, Oracle, Safford, and Willcox, Arizona, and Lordsburg, New Mexico. In July 2009, public scoping meetings were held in Deming, Socorro, Carrizo, and Elephant Butte, New Mexico.

Based on the BLM's evaluation of comments received during the initial scoping period, the study area was expanded to include alternative routes east of the White Sands Missile Range in New Mexico. Three scoping meetings were held in October 2009, in Las Cruces, Chaparral, and Alamogordo, New Mexico.

The Draft EIS analyzes the consequences of granting a ROW to SunZia Transmission, LLC (SunZia or Applicant) for locating two parallel overhead 500 kilovolt (kV) electric transmission lines from the proposed SunZia East substation in Lincoln County, New Mexico, to the existing Pinal Central Substation in Pinal County, Arizona. The proposed SunZia Transmission Project (Project) would include two new, single circuit 500 kV transmission lines located adjacent to one another and would be located on Federal, State, and private lands. One of the 500 kV transmission lines would be constructed and operated as an alternating current (AC) facility transmission line, and SunZia may construct and operate one of the proposed transmission lines as either AC or direct current (DC). The requested ROW width would be about 400 feet, in order to accommodate a separation of 200 feet between the two lines, but could be up to 1,000 feet wide in areas where terrain poses engineering or construction constraints. Engineering studies would determine those requirements as part of the Project. In addition to the SunZia East Substation, three new substations would be constructed and operated at the following intermediate sites: the proposed Midpoint Substation near Deming, New Mexico, in Luna County; the proposed Lordsburg Substation near Lordsburg, New Mexico, in Hidalgo County; and the proposed Willow Substation, near Willcox, Arizona, in Graham County.

The lengths of the varying Project alternative routes considered and evaluated in the Draft EIS range between about 460 miles to 530 miles. The BLM has identified in the Draft EIS a preferred alternative route. The BLM seeks comments on all the alternatives considered in the Draft EIS.

The length of the BLM preferred route would be about 530 miles. It is estimated that approximately 191 miles, or 36 percent, of the ROW for the preferred route would be located on Federal lands in New Mexico and Arizona. Once constructed, the Project would be in operation year-round. In New Mexico, about 137 miles of the BLM preferred route would cross public lands administered by four BLM Field Offices: Las Cruces, Socorro, Rio Puerco, and Roswell. In Arizona, about 54 miles of the BLM preferred route would cross public lands administered by two Field Offices: the Safford and Tucson BLM Field Offices. The BLM's New Mexico State Office has been designated the lead office for this ROW application.

This Project includes prospective amendments of the BLM Socorro RMP, the Mimbres RMP, and possibly the Safford Field Office RMP. By this notice, and the NOI to Prepare an EIS published in May 2009, the BLM is complying with requirements in 43 CFR 1610.2(c). The BLM is integrating the land use planning process with the NEPA analysis process for this Project.

Alternative routes were added to the study area based on the BLM's evaluation of comments received during the second scoping period, which ended on November 27, 2009. These alternative routes were located within Lincoln, Torrance, Valencia, and Socorro Counties in New Mexico and within Pima, Cochise, and Pinal Counties in Arizona. A third set of public meetings was held in April 2010 in Socorro, New Mexico, and Tucson, Arizona.

Issues and potential impacts to specific resources were identified during scoping and in coordinating agency meetings. These issues and potential impacts include:

- Engineering and construction restraints;
- Corridor alignments and alternatives;
- Effects to sedimentation in rivers, soil erosion, and alteration of watersheds;
- Effects to wildlife habitats, migratory birds and waterfowl, other bird species impacts, bighorn sheep, deserts and grasslands, management of invasive plant species, and ensuring effective reclamation;
- Effects to cultural resources and archaeological sites;
- Effects to Native American traditional cultural properties and respected places;
- Effects to visual resources and existing view sheds;
- Conflicts with current land use plans;

• Impacts on wilderness areas, livestock grazing and ranching, property values, off-highway vehicle use, and military use;

• Effects to rural lifestyles, tourism, and socioeconomic conditions; and

• Avoidance of sensitive areas such as wilderness areas, wildlife refuges, national forests, and military airspace.

Alternative routes for the proposed transmission lines were divided into four route groups containing various alternative segments, or subroutes. The BLM has identified in the Draft EIS a preferred alternative route. The BLM seeks comments on the preferred route, all other routes, and the no action alternative, considered in the Draft EIS.

*Route Group 1: SunZia East Substation to Midpoint Substation*—Consists of Subroutes 1A1, 1A, 1B, 1B1, 1B2, 1B2a, and 1B3.

Subroute 1A1 (228.8 miles), the BLM preferred alternative, proceeds northwest from the proposed SunZia East substation then continues into Torrance County, about 4.3 miles north of the Gran Quivira Unit of the Salinas Pueblo Mission National Monument, and then enters Socorro County, east of the Sevilleta National Wildlife Refuge. Subroute 1A1 crosses the Rio Grande River north of Socorro, and then turns south along an existing transmission line path into Sierra County. The route continues south to the proposed Midpoint Substation, near Deming, New Mexico. The ROW for Subroute 1A1 would parallel about 130 miles of existing utility ROW and crosses about 110 miles of public land administered by the BLM.

Subroutes 1A, 1B, 1B1, 1B2, 1B2a and 1B3 were all considered and evaluated. For discussion of analysis on these routes, refer to the Draft EIS.

*Route Group 2: SunZia East Substation to Midpoint Substation*—Generally east of White Sands Missile Range and through Ft. Bliss Army Base (Ft. Bliss) within Lincoln, Otero, Doña Ana, and Luna Counties. This group of alternatives was considered during the expanded scoping period of 2010, and then eliminated from detailed study in the Draft EIS because routes under this group of alternatives would require traversing lands under the jurisdiction of Ft. Bliss. Ft. Bliss has indicated that overhead transmission lines through Ft. Bliss-administered lands would have substantial impacts to its military operations and would be incompatible with their military mission.

*Route Group 3: Midpoint Substation to Willow-500 kV Substation*—Consists of Subroutes 3A1, 3A, and 3B.

Subroute 3A1 (140.3 miles), the BLM preferred alternative, proceeds west from the Midpoint Substation to a point about 9 miles west of the proposed Lordsburg Substation in Hidalgo County, New Mexico. From that point the subroute crosses to the south and continues along a portion of an existing pipeline corridor into Cochise County, Arizona, then northwest to the proposed Willow-500kV substation in Graham County. The ROW for Subroute 3A1 would parallel about 33 miles of existing utility ROW and cross about 66 miles of Federal lands administered by the BLM.

Subroutes 3A and 3B were considered and evaluated. For discussion of analysis on these routes refer to the Draft EIS.

*Route Group 4: Willow-500kV Substation to Pinal Central Substation*—Consists of Subroutes 4A, 4B, 4C1, 4C2, 4C2a, 4C2b, 4C2c, and 4C3.

The amount of BLM land subject to ROW for the various alternatives in this group would be about 2 miles (Subroute 4C2a or 4C2b) to 15 miles (sub-route 4C2 or 4C2c). Subroute 4C2c (161.2 miles), the BLM preferred alternative, follows an existing 345 kV transmission line corridor from the Willow 500 kV Substation southwest, crossing the San Pedro River about 12 miles north of Benson, Arizona. The route then continues northwesterly, crossing the northeast corner of Pima County, then follows a westerly path through Pinal County, north of Oracle, Arizona toward the Tortolita Substation, approximately 25 miles northwest of Tucson. From that point, Subroute 4C2c would parallel approximately 90 miles of existing utilities (including about 72 miles of existing electrical transmission lines).

Subroutes 4A, 4B, 4C1, 4C2, 4C2a, 4C2b and 4C3 were considered and evaluated. For discussion of analysis on these routes, refer to the Draft EIS.

In addition to the sub-routes described above, various local alternatives and crossover segments within Route Group 4 were also included in detailed study in the Draft EIS. The BLM, SunZia, and cooperating agencies worked together to identify alternative routes that would conform to existing land use plans. However, in locations where conformance is not likely, the BLM identified draft plan amendments that would bring any of the alternatives routes into conformance with the respective land use plans, as described below. The BLM will identify those plan amendments it intends to implement (as proposed plan amendments) in the Final EIS.

The following land use plan amendments may be necessary to bring the SunZia Southwest Transmission Line Project into conformance with applicable BLM RMPs. Prospective plan amendments will comply with applicable Federal laws and regulations and apply only to Federal lands and mineral estate administered by the BLM. Plan amendment alternatives were considered, which included multiple-use corridors of varying widths. The BLM preferred alternative is to amend the RMPs' existing visual resource management (VRM) decisions as well as ROW avoidance areas as described in the Draft EIS. The affected RMPs include:

• Socorro RMP (2010), Socorro Field Office: Amendments may be needed for modifications to existing VRM decisions and/or to ROW avoidance area decisions (BLM preferred alternative and other alternatives in Route Group 1).

• Mimbres RMP (1993), Las Cruces District Office: Amendments may be needed for modifications to existing VRM decisions and/or to ROW avoidance area decisions (BLM preferred alternative in Route group 3).

• Safford District RMP (1991), Safford Field Office (Gila District): An amendment may be needed for modifications to existing VRM decisions and/or ROW avoidance area decisions (only alternative Subroute 4C1 in Route Group 4 would require a plan amendment, although this alternative is not the BLM preferred alternative).

The Draft EIS analyzes the environmental consequences of a no action alternative, the proposed action, segment and design alternatives, and land use plan amendments. For this EIS, the no action alternative means that the BLM would not grant SunZia a ROW for the construction and operation of the proposed Project and would not amend any land use plans. The Project facilities, including transmission lines and substations, would not be built and existing land uses and present activities in the Project study area would continue. This alternative does not consider the potential for additional actions that could occur depending on the denial of the proposed action or alternatives.

The BLM will use and coordinate the NEPA commenting process to satisfy the public involvement process for Section 106 of the National Historic Preservation Act (16 U.S.C. 470f) as provided for in 36 CFR 800.2(d)(3). Ongoing tribal consultations will continue to be conducted in accordance with policy and tribal concerns, and any impacts on Indian trust assets will be given due consideration. Federal, State, and local agencies, along with other stakeholders that may be interested or affected by the BLM's decision on this

Project, are invited to comment on the draft.

Copies of the Draft EIS have been sent to affected Federal, State, and local governments, public libraries in the Project area, and to interested parties that previously requested a copy. The Draft EIS and supporting documents will be available electronically on the following BLM Project Web site: *www.blm.gov/nm/sunzia*.

Copies of the Draft EIS are available for public inspection during normal business hours at the following locations:

- Bureau of Land Management, Las Cruces District Office, 1800 Marquess Street, Las Cruces, NM 88005–3370
- Bureau of Land Management, Roswell Field Office, 2909 West Second Street, Roswell, NM 88201–2019
- Bureau of Land Management, Socorro Field Office, 901 South Highway 85, Socorro, NM 87801–4168
- Bureau of Land Management, Rio Puerco Field Office, 435 Montano Road NE., Albuquerque, NM 87107–4935
- Bureau of Land Management, Tucson Field Office, 3201 East Universal Way, Tucson, AZ 85756
- Bureau of Land Management, Safford Field Office, 711 14th Avenue, Safford, AZ 85546–3337
- Bureau of Land Management, Gila District Office, 1763 Paseo San Luis, Sierra Vista, AZ 85635–4611
- Bureau of Land Management, New Mexico State Office, 301 Dinosaur Trail, Santa Fe, NM 87508–1560
- Bureau of Land Management, Arizona State Office, One North Central Avenue, Phoenix, AZ 85004–4427
- Arizona State Land Department (ASLD), 1616 West Adams, Phoenix, AZ 85007–2614
- Arizona Game & Fish Department (AZGFD), 5000 West Carefree Highway, Phoenix, AZ 85086–5000
- New Mexico State Land Office (NMSLO), 310 Old Santa Fe Trail, Santa Fe, NM 87504–1148
- U.S. Army Corps of Engineers (USACE), Regulatory Division, 4101 Jefferson Plaza NE., Albuquerque, NM 87109–3435
- U.S. Fish & Wildlife Service (USFWS), 500 Gold Avenue SW., Albuquerque, NM 87102–3118

A limited number of copies of the document will be available. To request a copy, contact Adrian Garcia, BLM Project Manager, BLM New Mexico State Office, 301 Dinosaur Trail, Santa Fe, NM 87508–1560.

Please note that public comments and information submitted including names, street addresses, and email addresses of persons who submit comments will be available for public review and disclosure at the above address during regular business hours (8 a.m. to 4 p.m.), Monday through Friday, except holidays.

Before including your address, phone number, email address, or any other personal identifying information in your comment, please be advised that your entire comment, including your personal identifying information, may be publically available at any time. While you may ask us to withhold this information from public review, we cannot guarantee that we will be able to do so.

**Felicia J. Probert,**

*Acting State Director, New Mexico.*

[FR Doc. 2012–12978 Filed 5–25–12; 8:45 am]

**BILLING CODE 4310–FB–P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[LLCAN01000.L18200000.XZ0000]**

### Notice of Public Meeting: Northwest California Resource Advisory Council

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of public meeting.

**SUMMARY:** In accordance with the Federal Land Policy and Management Act of 1976 (FLPMA), and the Federal Advisory Committee Act of 1972 (FACA), the U.S. Department of the Interior, Bureau of Land Management (BLM) Northwest California Resource Advisory Council will meet as indicated below.

**DATES:** The meeting will be held Thursday and Friday, July 26 and 27, 2012, at the Geyserville Inn, 21714 Geyserville Ave., Geyserville, California. On July 26, the council will convene at 10 a.m. and depart for a field tour of public lands. Members of the public are welcome. They must provide their own transportation, food and beverages. On July 27, the council meets from 8 a.m. to 2 p.m. in the conference room of the Geyserville Inn. Public comments will be accepted at 11 a.m.

**FOR FURTHER INFORMATION CONTACT:** Nancy Haug, BLM Northern California District manager, (530) 224–2160; or Joseph J. Fontana, public affairs officer, (530) 252–5332.

**SUPPLEMENTARY INFORMATION:** The 12-member council advises the Secretary of the Interior, through the BLM, on a variety of planning and management issues associated with public land management in Northwest California. At this meeting the RAC will discuss planning efforts for the Lost Coast Headlands and Lacks Creek areas of Humboldt County, hear a report on land use and natural resources shared by the BLM and neighboring national forests and plan for upcoming work with the BLM northwest California field offices. All meetings are open to the public. Members of the public may present written comments to the council. Each formal council meeting will have time allocated for public comments. Depending on the number of persons wishing to speak, and the time available, the time for individual comments may be limited. Members of the public are welcome on field tours, but they must provide their own transportation and meals. Individuals who plan to attend and need special assistance, such as sign language interpretation and other reasonable accommodations, should contact the BLM as provided above.

Dated: May 14, 2012.

**Joseph J. Fontana,**

*Public Affairs Officer.*

[FR Doc. 2012–12908 Filed 5–25–12; 8:45 am]

**BILLING CODE 4310–40–P**

## INTERNATIONAL TRADE COMMISSION

**[USITC SE–12–015]**

### Government in the Sunshine Act Meeting Notice

**AGENCY HOLDING THE MEETING:** United States International Trade Commission.

**TIME AND DATE:** May 30, 2012 at 11:30 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–480 and 731–TA–1188 (Final) (High Pressure Steel Cylinders from China). The Commission is currently scheduled to transmit its determinations and Commissioners' opinions to the Secretary of Commerce on or before June 11, 2012.
5. 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.

Issued: May 21, 2012.

By order of the Commission.

**James R. Holbein,**

*Secretary to the Commission.*

[FR Doc. 2012–13079 Filed 5–24–12; 4:15 pm]

**BILLING CODE 7020–02–P**

## DEPARTMENT OF JUSTICE

### Executive Office for Immigration Review

**[OMB Number 1125–0009]**

### Agency Information Collection Activities: Proposed Collection; Comments Requested: Revised Application for Suspension of Deportation (EOIR–40)

**ACTION:** 60-Day notice of information collection under review.

The Department of Justice (DOJ), Executive Office for Immigration Review (EOIR), 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 July 30, 2012. 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 Robin M. Stutman, General Counsel, Executive Office for Immigration Review, U.S. Department of Justice, Suite 2600, 5107 Leesburg Pike, Falls Church, Virginia 22041; telephone: (703) 305–0470.

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 agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Enhance the quality, utility, and clarity of the information to be collected; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

**Overview of This Information Collection**

(1) *Type of Information Collection:* Revision of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Application for Suspension of Deportation (EOIR–40).

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form EOIR–40, Executive Office for Immigration Review, United States Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individual aliens determined to be deportable from the United States. Other: None. Abstract: This information collection is necessary to determine the statutory eligibility of individual aliens, who have been determined to be deportable from the United States, for suspension of their deportation pursuant to former section 244 of the Immigration and Nationality Act and 8 CFR 1240.55 (2011), as well as to provide information relevant to a favorable exercise of discretion.

(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 178 respondents will complete the form annually with an average of 5 hours, 45 minutes per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 1,023.50 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., Room 2E–508, Washington, DC 20530.

**Jerri Murray,**

*Department Clearance Officer, PRA, United States Department of Justice.*

[FR Doc. 2012–12967 Filed 5–25–12; 8:45 am]

**BILLING CODE 4410–30–P**

## DEPARTMENT OF LABOR

### Employment and Training Administration

### Comment Request for Information Collection for Employment and Training Administration Financial Report Form ETA–9130, This is an Extension Without Revisions

**AGENCY:** Employment and Training Administration (ETA), Labor.

**ACTION:** Notice.

**SUMMARY:** The Department of Labor (Department), as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 [44 U.S.C. 3506(c)(2)(A)]. This program helps ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed.

Currently, the Employment and Training Administration is soliciting comments concerning the collection of data for quarterly financial reporting on federally funded programs, on Form ETA–9130 (due to expire November 30, 2012).

**DATES:** Written comments must be submitted to the office listed in the addresses section below on or before July 30, 2012.

**ADDRESSES:** Submit written comments to Shantay Logan, Office of Grants Management, N–4716, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210. Telephone number: 202–693–3319 (this is not a toll-free number). Individuals with hearing or speech impairments may access the telephone number above via TTY by calling the toll-free Federal Information Relay Service at 1–877–889–5627 (TTY/TDD). Fax: 202–693–3362, Email: *logan.shantay@dol.gov.* A copy of the proposed information collection request (ICR) can be obtained by contacting the office listed above.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

This proposed information collection notice requests an extension of form ETA–9130, OMB approval No. 1205–0461 which is currently being used by all ETA federally funded programs.

Financial reporting requirements for Federal programs are prescribed in OMB Circulars A–102 and A–110. U.S. DOL has codified these requirements at 29 CFR 95.52 and 29 CFR 97.41, which specify that forms approved by OMB are authorized for obtaining financial information from recipients. The U.S. DOL ETA Financial Report is consistent with OMB efforts to streamline Federal financial reporting pursuant to Public Law 106–107.

ETA programs have varied administrative cost limitation requirements as specified in program statutes, regulations, and/or individual grant agreements. These requirements are met with a line item for Total Administrative Expenditures, thus providing a mechanism for assessing compliance with these requirements.

ETA has utilized the data collected to assess the effectiveness of ETA programs and to monitor and analyze the financial activity of its grantees. Grantees are provided with software that reflects the requirements of ETA Form 9130 so that the required data will be reported electronically.

This data collection format permits ETA to evaluate program effectiveness and to monitor and analyze financial activity, while complying with OMB efforts to streamline Federal financial reporting.

**II. Review Focus**

The Department is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

**III. Current Actions**

*Type of Review:* Extension without changes.

*Title:* Employment and Training Administration Financial Report Form ETA–9130.

*OMB Number:* 1205–0461.

*Affected Public:* State workforce agencies, local governments, non-profit organizations, educational institutions, consortia of any and/or all of the above.

*Form(s):* ETA–9130.

*Total Annual Respondents:* 848.

*Annual Frequency:* Quarterly.

*Total Annual Responses:* 6784.

*Average Time per Response:* ½ hour.

*Estimated Total Annual Burden Hours:* 3392.

*Total Annual Burden Cost for Respondents:* $82,198.

| Data collection activity | Number of respondents | Frequency | Total responses | Average time per response | Burden hours |
|---|---|---|---|---|---|
| PY2011 | 848 | quarterly | 3392 | ½ hour | 3392 |
| PY2012 | 848 | quarterly | 3392 | ½ hour | 3392 |
| Total | 848 | | 6784 | 4 hours | 6784 |

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

Signed in Washington, DC, on this 21st day of May, 2012.

**Jane Oates,**

*Assistant Secretary for Employment and Training, Labor.*

[FR Doc. 2012–12916 Filed 5–25–12; 8:45 am]

**BILLING CODE P**

## DEPARTMENT OF LABOR

### Employment and Training Administration

**[TA–W–74,901]**

### Hawker Beech Craft Defense Company, LLC, Also Known As Hawker Beechcraft Corporation, Also Known As Hawker Beechcraft International SVC, Also Known As Rapid Surplus Parts, Also Known As Hawker Beechcraft Svcs, Also Known As Travel Air Insurance, Also Known As Hawker Beechcraft Regional, Wichita, KS; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended (''Act''), 19 U.S.C. 2273, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on February 14, 2011, applicable to workers of Hawker Beechcraft Corporation, also known as Hawker Beechcraft International SVC, Rapid Surplus Parts, Hawker Beechcraft Svcs, Travel Air Insurance, and Hawker Beechcraft Regional, Wichita, Kansas. The workers produce aviation aircraft.

At the request of the State Workforce Office, the Department reviewed the certification for workers of the subject firm. New information from the company shows that the correct name of the subject firm is Hawker Beechcraft Defense Company, LLC, also known as Hawker Beechcraft Corporation, also known as Hawker Beechcraft International SVC, also known as Rapid Surplus Parts, Hawker Beechcraft SVCS, also known as Travel Air Insurance, and also known as Hawker Beechcraft Regional.

Accordingly, the Department has amended this certification to correct the subject firm name. The intent of the Department's certification is to include all workers of the subject firm who were adversely affected by the shift in production to Mexico.

The amended notice applicable to TA–W–74,901 is hereby issued as follows:

All workers of Hawker Beechcraft Defense Company, LLC, also known as Hawker Beechcraft Corporation, also known as Hawker Beechcraft International SVC, also known as Rapid Surplus Parts, Hawker

Beechcraft SVCS, also known as Travel Air Insurance, and also known as Hawker Beechcraft Regional, Wichita, Kansas who became totally or partially separated from employment on or after November 11, 2009, through February 14, 2013, and all workers in the group threatened with total or partial separation from employment on date of certification through two years from the date of certification, are eligible to apply for adjustment assistance under Chapter 2 of Title II of the Trade Act of 1974, as amended.

Signed in Washington, DC, this 11th day of May, 2012.

**Del Min Amy Chen,**

*Certifying Officer, Office of Trade Adjustment Assistance.*

[FR Doc. 2012–12886 Filed 5–25–12; 8:45 am]

BILLING CODE 4510–FN–P

## DEPARTMENT OF LABOR

### Employment and Training Administration

**[TA–W–81,456]**

### Siltronic Corporation FAB1 Plant Including On-Site Leased Workers From Express Temporaries, Aerotek Commercial Staffing, G4S Secure Solutions USA, SBM Management Services, LP, ALSCO Portland Industrial, VWR International, Inc., TEK Systems, Solo W–2, Inc., Wickstrom Consulting Services, Inc., Xenium, Summit Staffing, and Brooks Staffing Portland, OR; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended (''Act''), 19 U.S.C. 2273, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on April 13, 2012, applicable to workers of Siltronic Corporation, Fab1 Plant, including on-site leased workers from Express Temporaries and Aerotek Commercial Staffing, Portland, Oregon. The Department's Notice of determination was published in the **Federal Register** on April 27, 2012 (77 FR 25201). The workers were engaged in the production of silicon wafers.

At the request of State Workforce Office, the Department reviewed the certification for workers of the subject firm.

The company reports that workers from G4S Secure Solutions USA, SBM Management Services, LP, Alsco Portland Industrial, VWR International, Inc., TEK Systems, Solo W–2, Inc., Wickstrom Consulting Services, Inc., Xenium, Summit Staffing, and Brooks Staffing were employed on-site at the subject firm.

The Department has determined that these workers were sufficiently under the control of the subject firm to be considered leased workers.

Based on these findings, the Department is amending this certification to include workers leased from the afore-mentioned agencies who work(ed) on-site at subject firm. The amended notice applicable to TA–W–81,456 is hereby issued as follows:

All workers of Siltronic Corporation, Fab1 Plant, including on-site leased workers from Express Temporaries, Aerotek Commercial Staffing, G4S Secure Solutions USA, SBM Management Services, LP, Alsco Portland Industrial, VWR International, Inc., TEK Systems, Solo W–2, Inc., Wickstrom Consulting Services, Inc., Xenium, Summit Staffing, and Brooks Staffing, Portland, Oregon, who became totally or partially separated from employment on or after March 28, 2011, through April 13, 2014, and all workers in the group threatened with total or partial separation from employment on April 13, 2012 through April 13, 2014, are eligible to apply for adjustment assistance under Chapter 2 of Title II of the Trade Act of 1974, as amended.

Signed in Washington, DC, this 11th day of May, 2012.

**Del Min Amy Chen,**

*Certifying Officer, Office of Trade Adjustment Assistance.*

[FR Doc. 2012–12888 Filed 5–25–12; 8:45 am]

BILLING CODE 4510–FN–P

## DEPARTMENT OF LABOR

### Employment and Training Administration

**[TA–W–80,515]**

### AI-Shreveport, LLC A Subsidiary of Android Industries Including On-Site Leased Workers From Career Adventures, Inc. Shreveport, Louisiana; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended (''Act''), 19 U.S.C. 2273, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on November 22, 2011, applicable to workers of AI-Shreveport, LLC, a subsidiary of Android Industries, Shreveport, Louisiana. The Notice of determination was published in the **Federal Register** on December 6, 2011 (76 FR 76186). The workers are engaged in the production of automotive subassemblies.

At the request of the State Workforce Office, the Department reviewed the certification for workers of the subject firm.

The company reports that workers from Career Adventures, Inc. were employed on-site at the subject firm. The Department has determined that these workers were sufficiently under the control of the subject firm to be considered leased workers.

Based on these findings, the Department is amending this certification to include workers leased from Career Adventures, Inc., working on-site at the Shreveport, Louisiana, location of AI-Shreveport, LLC, a subsidiary of Android Industries.

The amended notice applicable to TA–W–80,515 is hereby issued as follows:

All workers AI-Shreveport, LLC, a subsidiary of Android Industries, including on-site leased workers from Career Adventures, Inc., Shreveport, Louisiana, who became totally or partially separated from employment on or after October 28, 2010, through November 22, 2013, and all workers in the group threatened with total or partial separation from employment on November 22, 2011 through November 22, 2013, are eligible to apply for adjustment assistance under Chapter 2 of Title II of the Trade Act of 1974, as amended.

Signed in Washington, DC, this 11th day of May, 2012.

**Del Min Amy Chen,**

*Certifying Officer, Office of Trade Adjustment Assistance.*

[FR Doc. 2012–12887 Filed 5–25–12; 8:45 am]

BILLING CODE 4510–FN–P

## DEPARTMENT OF LABOR

### Employment and Training Administration

### Notice of Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers by (TA–W) number issued during the period of May 7, 2012 through May 11, 2012.

In order for an affirmative determination to be made for workers of a primary firm and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(a) of the Act must be met.

I. Under Section 222(a)(2)(A), the following must be satisfied:

(1) A significant number or proportion of the workers in such workers' firm have become totally or partially

separated, or are threatened to become totally or partially separated;

(2) The sales or production, or both, of such firm have decreased absolutely; and

(3) One of the following must be satisfied:

(A) Imports of articles or services like or directly competitive with articles produced or services supplied by such firm have increased;

(B) Imports of articles like or directly competitive with articles into which one or more component parts produced by such firm are directly incorporated, have increased;

(C) Imports of articles directly incorporating one or more component parts produced outside the United States that are like or directly competitive with imports of articles incorporating one or more component parts produced by such firm have increased;

(D) Imports of articles like or directly competitive with articles which are produced directly using services supplied by such firm, have increased; and

(4) The increase in imports contributed importantly to such workers' separation or threat of separation and to the decline in the sales or production of such firm; or

II. Section 222(a)(2)(B) all of the following must be satisfied:

(1) A significant number or proportion of the workers in such workers' firm have become totally or partially separated, or are threatened to become totally or partially separated;

(2) One of the following must be satisfied:

(A) There has been a shift by the workers' firm to a foreign country in the production of articles or supply of services like or directly competitive with those produced/supplied by the workers' firm;

(B) There has been an acquisition from a foreign country by the workers' firm of articles/services that are like or directly competitive with those produced/supplied by the workers' firm; and

(3) The shift/acquisition contributed importantly to the workers' separation or threat of separation.

In order for an affirmative determination to be made for adversely affected workers in public agencies and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(b) of the Act must be met.

(1) A significant number or proportion of the workers in the public agency have become totally or partially separated, or are threatened to become totally or partially separated;

(2) The public agency has acquired from a foreign country services like or directly competitive with services which are supplied by such agency; and

(3) The acquisition of services contributed importantly to such workers' separation or threat of separation.

In order for an affirmative determination to be made for adversely affected secondary workers of a firm and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(c) of the Act must be met.

(1) A significant number or proportion of the workers in the workers' firm have become totally or partially separated, or are threatened to become totally or partially separated;

(2) The workers' firm is a Supplier or Downstream Producer to a firm that employed a group of workers who received a certification of eligibility under Section 222(a) of the Act, and such supply or production is related to the article or service that was the basis for such certification; and

(3) Either—

(A) The workers' firm is a supplier and the component parts it supplied to the firm described in paragraph (2) accounted for at least 20 percent of the production or sales of the workers' firm; or

(B) A loss of business by the workers' firm with the firm described in paragraph (2) contributed importantly to the workers' separation or threat of separation.

In order for an affirmative determination to be made for adversely affected workers in firms identified by the International Trade Commission and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(f) of the Act must be met.

(1) The workers' firm is publicly identified by name by the International Trade Commission as a member of a domestic industry in an investigation resulting in—

(A) An affirmative determination of serious injury or threat thereof under section 202(b)(1);

(B) An affirmative determination of market disruption or threat thereof under section 421(b)(1); or

(C) An affirmative final determination of material injury or threat thereof under section 705(b)(1)(A) or 735(b)(1)(A) of the Tariff Act of 1930 (19 U.S.C. 1671d(b)(1)(A) and 1673d(b)(1)(A));

(2) The petition is filed during the 1-year period beginning on the date on which—

(A) A summary of the report submitted to the President by the International Trade Commission under section 202(f)(1) with respect to the affirmative determination described in paragraph (1)(A) is published in the **Federal Register** under section 202(f)(3); or

(B) Notice of an affirmative determination described in subparagraph (1) is published in the **Federal Register**; and

(3) The workers have become totally or partially separated from the workers' firm within—

(A) The 1-year period described in paragraph (2); or

(B) Notwithstanding section 223(b)(1), the 1- year period preceding the 1-year period described in paragraph (2).

**Affirmative Determinations for Worker Adjustment Assistance**

The following certifications have been issued. The date following the company name and location of each determination references the impact date for all workers of such determination.

The following certifications have been issued. The requirements of Section 222(a)(2)(A) (increased imports) of the Trade Act have been met.

| TA–W No. | Subject firm | Location | Impact date |
|---|---|---|---|
| 81,271 | CFV Plastics, LLC | Hermann, MO | January 24, 2011. |
| 81,325 | Sykes Enterprises, Incorporated, Chavies Kentucky Division | Chavies, KY | February 13, 2011. |
| 81,395 | Sykes Enterprises Incorporated, Client Support Account #0225001 | Spokane Valley, WA | March 2, 2011. |
| 81,491 | Lakeland Industries, Inc., Wovens/Fire Division | St. Joseph, MO | April 9, 2011. |

The following certifications have been issued. The requirements of Section 222(a)(2)(B) (shift in production or services) of the Trade Act have been met.

| TA–W No. | Subject firm | Location | Impact date |
|---|---|---|---|
| 81,365 | Avaya Inc., Audio/Video, Global Support Services, Avaya Client Services, etc. | Highlands Ranch, CO | September 12, 2011. |
| 81,365A | Avaya Inc., Audio/Video, Global Support Services, Avaya Client Services, etc. | Oklahoma City, OK | September 12, 2011. |
| 81,490 | Trumeter Company, Inc., Job Pro Temporary Services, UI Wages-Redington Counters, Inc. | Windsor, CT | March 16, 2011. |
| 81,507 | PricewaterhouseCoopers LLP (PwC), Internal Firm Services (IFS)—Finance Employees. | Tampa, FL | April 14, 2011. |
| 81,523 | Dameron Alloy Foundries, Inc | Compton, CA | April 19, 2011. |
| 81,534 | Yale Security, Inc., ASSA Abloy, ARG Financial Staffing, Accounting Principals, etc. | Lenoir City, TN | April 18, 2011. |

The following certifications have been issued. The requirements of Section 222(c) (supplier to a firm whose workers are certified eligible to apply for TAA) of the Trade Act have been met.

| TA–W No. | Subject firm | Location | Impact date |
|---|---|---|---|
| 81,434 | Kace International, LLC, Career Adventures Employment Services, 7170 General Motors Boulevard. | Shreveport, LA | March 19, 2011. |
| 81,434A | Kace International, LLC, Career Adventures Employment Services, 5153 Interstate Drive. | Shreveport, LA | March 19, 2011. |

**Negative Determinations for Worker Adjustment Assistance**

In the following cases, the investigation revealed that the eligibility criteria for worker adjustment assistance have not been met for the reasons specified.

The investigation revealed that the criteria under paragraphs(a)(2)(A) (increased imports) and (a)(2)(B) (shift in production or services to a foreign country) of section 222 have not been met.

| TA–W No. | Subject firm | Location | Impact date |
|---|---|---|---|
| 81,229 | American Express Travel Related Services, Inc., Greensboro Services Center. | Greensboro, NC. | |
| 81,390 | JDS Uniphase Corporation, Network Solutions Division (NSD), Spherion/Sourceright. | Fort Collins, CO. | |

**Determinations Terminating Investigations of Petitions for Worker Adjustment Assistance**

After notice of the petitions was published in the **Federal Register** and on the Department's Web site, as required by Section 221 of the Act (19 U.S.C. 2271), the Department initiated investigations of these petitions.

The following determinations terminating investigations were issued because the petitioner has requested that the petition be withdrawn.

| TA–W No. | Subject firm | Location | Impact date |
|---|---|---|---|
| 81,537 | BASF Corporation | Southfield, MI. | |

The following determinations terminating investigations were issued because the petitioning groups of workers are covered by active certifications. Consequently, further investigation in these cases would serve no purpose since the petitioning group of workers cannot be covered by more than one certification at a time.

| TA–W No. | Subject firm | Location | Impact date |
|---|---|---|---|
| 81,353 | UBS Services, LLC | Jersey City, NJ. | |
| 81,428 | Polymer Group, Inc., Chicopee, Inc., Broiler and Building Maintenance Division. | North Little Rock, AR. | |

I hereby certify that the aforementioned determinations were issued during the period of May 7, 2012 through May 11, 2012. These determinations are available on the Department's Web site *tradeact/taa/taa search form.cfm* under the searchable listing of determinations or by calling

the Office of Trade Adjustment Assistance toll free at 888–365–6822.

Dated: May 16, 2012.

**Elliott S. Kushner,**

*Certifying Officer, Office of Trade Adjustment Assistance.*

[FR Doc. 2012–12885 Filed 5–25–12; 8:45 am]

**BILLING CODE 4510–FN–P**

## DEPARTMENT OF LABOR

### Employment and Training Administration

### Investigations Regarding Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221 (a) of the Trade Act of 1974 (''the Act'') and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221 (a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than June 8, 2012.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than June 8, 2012.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, Room N–5428, 200 Constitution Avenue NW., Washington, DC 20210.

Signed at Washington, DC, this 17th day of May 2012.

**Elliott S. Kushner,**

*Certifying Officer, Office of Trade Adjustment Assistance.*

APPENDIX

[32 TAA petitions instituted between 5/7/12 and 5/11/12]

| TA–W | Subject firm (petitioners) | Location | Date of institution | Date of petition |
|---|---|---|---|---|
| 81575 | Wipro Technologies, Alliance Managers Across the United States (Workers). | East Brunswick, NJ | 05/07/12 | 05/06/12 |
| 81576 | State Street Corporation (Workers) | Quincy, MA | 05/07/12 | 04/26/12 |
| 81577 | Gorell Windows & Doors, LLC. (Workers) | Indiana, PA | 05/07/12 | 05/04/12 |
| 81578 | Diversified Machine (DMI, Edon LLC) (Company) | Edon, OH | 05/07/12 | 05/04/12 |
| 81579 | J.W. Tuomy's Nursery (Workers) | Watersmeet, MI | 05/07/12 | 05/03/12 |
| 81580 | Sanofi Pharmaceuticals (Company) | Kansas City, MO | 05/07/12 | 05/06/12 |
| 81581 | Dana Holding Corporation (State/One-Stop) | Shreveport, LA | 05/07/12 | 05/04/12 |
| 81582 | The Landing of GM (State/One-Stop) | Shreveport, LA | 05/07/12 | 05/04/12 |
| 81583 | Filtration Services Group, LLC. (State/One-Stop) | Sterling Heights, MI | 05/07/12 | 05/04/12 |
| 81584 | BASF (State/One-Stop) | Shreveport, LA | 05/07/12 | 05/04/12 |
| 81585 | Light Metals (State/One-Stop) | Wyoming, MI | 05/08/12 | 05/07/12 |
| 81586 | Michigan Extruded Aluminum (State/One-Stop) | Jackson, MI | 05/08/12 | 05/07/12 |
| 81587 | South Carolina Yutaka Tech, Inc. (SCYT) (Company) | Lugoff, SC | 05/08/12 | 05/07/12 |
| 81588 | Bowers Manufacturing (State/One-Stop) | Portage, MI | 05/08/12 | 05/07/12 |
| 81589 | Hydro Aluminum (State/One-Stop) | Kalamazoo, MI | 05/08/12 | 05/07/12 |
| 81590 | Superior Extrusion (State/One-Stop) | Gwinn, MI | 05/08/12 | 05/07/12 |
| 81591 | International Extrusions (State/One-Stop) | Garden City, MI | 05/08/12 | 05/07/12 |
| 81592 | Dixie Consumer Products LLC (G.P) (Union) | Parchment, MI | 05/08/12 | 04/30/12 |
| 81593 | Bank of America Merrill Lynch (State/One-Stop) | Jacksonville, FL | 05/09/12 | 05/08/12 |
| 81594 | Catalina Marketing Corporation, Customer Service and Support Departments (State/One-Stop). | Saint Petersburg, FL | 05/09/12 | 05/08/12 |
| 81595 | Catridge Source of America (Workers) | Merritt Island, FL | 05/09/12 | 05/08/12 |
| 81596 | World Warehouse & Distribution (State/One-Stop) | Champlain, NY | 05/09/12 | 05/08/12 |
| 81597 | Lifewatch Inc. (State/One-Stop) | Rosemont, IL | 05/09/12 | 05/08/12 |
| 81598 | AAR Precision Systems (Workers) | Lebanon, KY | 05/10/12 | 05/09/12 |
| 81599 | Bonnell Aluminum, a subsidiary of Tredegar Corporation (Company). | Kentland, IN | 05/10/12 | 05/08/12 |
| 81600 | Mannington Wood Floors (Company) | High Point, NC | 05/10/12 | 05/09/12 |
| 81601 | Celestica Dallas (Workers) | Dallas, TX | 05/11/12 | 05/10/12 |
| 81602 | Chartis Global Services, Inc. Dallas Service Center (State/One-Stop). | Dallas, TX | 05/11/12 | 05/10/12 |
| 81603 | Accellent (Company) | Englewood, CO | 05/11/12 | 05/10/12 |
| 81604 | Goodrich Turbo Machinery Products (State/One-Stop) | Chandler, AZ | 05/11/12 | 05/10/12 |
| 81605 | Rapco Horizon Company (Workers) | Jackson, MO | 05/11/12 | 05/10/12 |
| 81606 | Philips Lighting (Company) | Sparta, TN | 05/11/12 | 04/23/12 |

[FR Doc. 2012–12884 Filed 5–25–12; 8:45 am]
BILLING CODE 4510–FN–P

## DEPARTMENT OF LABOR

### Employment and Training Administration

### Request for Certification of Compliance—Rural Industrialization Loan and Grant Program

**AGENCY:** Employment and Training Administration, Labor.

**ACTION:** Notice.

**SUMMARY:** The Employment and Training Administration is issuing this notice to announce the receipt of a ''Certification of Non-Relocation and Market and Capacity Information Report'' (Form 4279–2) for the following:

*Applicant/Location:* Aquion Energy, Inc.

*Principal Product/Purpose:* The loan, guarantee, or grant application is to finance capital equipment purchases for the manufacturing lines, which includes the retrofit and build-out of the facility, which will be located in Mt. Pleasant, Pennsylvania. The NAICS industry code for this enterprise is: 335911 (storage battery manufacturing).

**DATES:** All interested parties may submit comments in writing no later than June 12, 2012. Copies of adverse comments received will be forwarded to the applicant noted above.

**ADDRESSES:** Address all comments concerning this notice to Anthony D. Dais, U.S. Department of Labor, Employment and Training Administration, 200 Constitution Avenue NW., Room S–4231, Washington, DC 20210; or email *Dais.Anthony@dol.gov;* or transmit via fax (202) 693–3015 (this is not a toll-free number).

**FOR FURTHER INFORMATION CONTACT:** Anthony D. Dais, at telephone number (202) 693–2784 (this is not a toll-free number).

**SUPPLEMENTARY INFORMATION:** Section 188 of the Consolidated Farm and Rural Development Act of 1972, as established under 29 CFR part 75, authorizes the United States Department of Agriculture to make or guarantee loans or grants to finance industrial and business activities in rural areas. The Secretary of Labor must review the application for financial assistance for the purpose of certifying to the Secretary of Agriculture that the assistance is not calculated, or likely, to result in: (a) A transfer of any employment or business activity from one area to another by the loan applicant's business operation; or, (b) An increase in the production of goods, materials, services, or facilities in an area where there is not sufficient demand to employ the efficient capacity of existing competitive enterprises unless the financial assistance will not have an adverse impact on existing competitive enterprises in the area. The Employment and Training Administration within the Department of Labor is responsible for the review and certification process. Comments should address the two bases for certification and, if possible, provide data to assist in the analysis of these issues.

Signed in Washington, DC, on this 21st day of May, 2012.

**Jane Oates,**

*Assistant Secretary for Employment and Training.*

[FR Doc. 2012–12917 Filed 5–25–12; 8:45 am]
BILLING CODE 4510–FN–P

## DEPARTMENT OF LABOR

### Occupational Safety and Health Administration

### Establishing Indicators to Determine Whether State Plan Operations are At Least as Effective as Federal OSHA: Stakeholder Meeting

**AGENCY:** Occupational Safety and Health Administration (OSHA), Labor.

**ACTION:** Notice of public meeting.

**SUMMARY:** The Occupational Safety and Health Administration (OSHA) invites interested parties to participate in an informal stakeholder meeting on establishing definitions and measures to determine whether OSHA-approved State Plans for occupational safety and health (State Plans) are at least as effective as the Federal OSHA program as required by the Occupational Safety and Health Act of 1970. The purpose of this meeting is to provide a forum to gather information and ideas on key outcome and activity based indicators and how OSHA can use such indicators to assess the effectiveness of State Plans.

**DATES:** The date for the stakeholder meeting is June 25, 2012, from 10 a.m. to 1 p.m. eastern standard time, in Washington, DC. The deadline for registration to attend or participate in the meeting and to submit written comments is June 11, 2012.

**ADDRESSES:** The meeting will be held in the Francis Perkins Building, U.S. Department of Labor, Room N3437, at 200 Constitution Ave. NW., Washington, DC 20210. The nearest Metro station is Judiciary Square (Red Line). Photo ID is required to enter the building.

*Registration to attend or participate in the meeting:* To participate in the June 25, 2012 stakeholder meeting, provide written comments or be a nonparticipating observer, you must register electronically, by phone, or by facsimile by close of business on June 11, 2012. Those interested may register with Angela DeCanio by email at: *DeCanio.Angela@dol.gov,* by phone at: (202) 693–2239, or by fax at: (202) 693–1671. Registrants should label their requests as: ''Stakeholder Meeting: Monitoring of OSHA-Approved State Plans.'' When registering please indicate the following: (1) Name, address, phone, fax, and email address; (2) Organization for which you work; and, (3) Organization you will represent (if different).

The meeting will last 3 hours, and be limited to approximately 20 participants. OSHA will do its best to accommodate all persons who wish to participate. OSHA encourages persons and groups having similar interests to consolidate their information and participate through a single representative. Members of the general public may observe, but not participate in, the meetings as space permits. OSHA staff will be present to take part in the discussions.

OSHA staff will manage registration of participants and observers and logistics for the meeting. A transcription of the meeting will be available for review at *www.osha.gov.* OSHA will confirm participants to ensure a fair representation of interests and a wide range of viewpoints. Nonparticipating observers who do not register for the meeting will be accommodated as space permits. Electronic copies of this **Federal Register** notice, as well as news releases and other relevant documents, are available on the OSHA Web page at: *www.osha.gov.* Registrants wanting to submit written comments must do so by June 11, 2012.

**FOR FURTHER INFORMATION CONTACT:** *For general and press inquiries contact:* Frank Meilinger, Director, OSHA Office of Communications, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210; telephone: (202) 693–1725; email: *meilinger.francis2@dol.gov. For technical information contact:* Doug Kalinowski, Director, OSHA Directorate of Cooperative and State Programs, Room N–3700, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210; telephone: (202) 693–2200; email: *kalinowski.doug@dol.gov.*

**SUPPLEMENTARY INFORMATION:**

## I. Background

The Occupational Safety and Health Act of 1970 (''the Act'') created OSHA ''to assure so far as possible every working man and woman in the Nation safe and healthful working conditions * * *.'' The Act also encourages states to develop and operate their own workplace safety and health plans. Once OSHA approves a State Plan under Section 18(b) of the Act, OSHA may fund up to 50 percent of the state program's operating costs. Absent an approved State Plan, states are preempted from enforcing occupational safety and health standards. As a condition of OSHA approval, State Plans must provide standards and enforcement programs that are ''at least as effective as'' the federal OSHA program, in addition to voluntary compliance activities, and cover public sector employees. OSHA is responsible for the approval and monitoring of State Plans.

Currently there are 27 OSHA-approved state occupational safety and health plans. Twenty-two states and territories operate comprehensive State Plans covering the private sector and state and local government employers and employees. Five states and territories operate State Plans which cover only public sector employees. Additional information about state programs may be found at: *http://www.osha.gov/dcsp/osp/index.html.*

The Occupational Safety and Health State Plan Association (OSHSPA), the organization of officials from each of the OSHA-approved state plans, serves as the link from the states to federal agencies that have occupational safety and health jurisdiction and to Congress. The group holds three meetings a year with federal OSHA, giving State Plans the opportunity to address common issues and share information. OSHSPA representatives have appeared before congressional committees and other bodies to report on job safety and health issues.

Following congressional hearings over the past several years concerning state plan effectiveness, and an audit by the Department of Labor's Office of the Inspector General in March 2011, OSHA increased the level of onsite monitoring of state plans and committed to further strengthening communication between federal OSHA and the State Plans. On October 29, 2009, Deputy Assistant Secretary Jordan Barab testified before the House Committee on Education and Labor about the Special Study that OSHA conducted of the Nevada State Plan and OSHA's plans for increasing oversight and conducting a baseline special evaluation in all other State Plans.

In accordance with the Occupational Safety and Health Act of 1970, OSHA conducts an evaluation of the 27 approved State Plan States each fiscal year. Before FY 2009, the Federal Annual Monitoring and Evaluation (FAME) reports primarily assessed the State Plans' progress toward achieving the performance goals established by their strategic and annual performance plans as well as certain mandated activity measures tied to the federal OSHA program or requirements of the Act. OSHA and the State Plans have outcome based measures that are part of their strategic plans, including reducing fatalities and injuries/illnesses. Additional information can be found at: *http://www.dol.gov/sec/stratplan/StrategicPlan.pdf* and *http://www.osha.gov/dcsp/osp/efame/index.html.*

In FY 2009 the FAME reports were enhanced to include baseline special evaluations for each State Plan. The Enhanced FAME reports assessed the State Plans' progress toward achieving the performance goals established by their FY 2009 Annual Performance Plans and reviewed the effectiveness of programmatic areas related to enforcement activities through onsite audits and case file reviews. Each State Plan formally responded to the Enhanced FAME report and, as appropriate, developed a Corrective Action Plan that was approved by OSHA. The 2009 interim monitoring guidance, intended to assist OSHA regions in monitoring state plans and preparing the FAME reports, focused on enforcement activities and the Corrective Action Plans in addition to performance goal. It was revised for the FY 2010 and FY 2011 evaluations in response to concerns and issues raised both within OSHA and from State Plans.

In response to the Office of the Inspector General (OIG) report entitled ''OSHA Has Not Determined If State OSH Programs Are At Least As Effective in Improving Workplace Safety and Health as Federal OSHA's Programs'' (*http://www.oig.dol.gov/public/reports/oa/2011/02-11-201-10-105.pdf*), OSHA is working with OSHSPA to examine the monitoring system and address the OIG's recommendation to OSHA ''to define effectiveness, design measures to quantify impact, establish a baseline for State Plan evaluations, and revise monitoring to include an assessment of effectiveness.'' The goal of the stakeholder meeting announced in this notice is to solicit ideas about how to define and measure effectiveness and to develop a revised monitoring system (in place of the interim guidance) to ensure consistency and effectiveness across the State Plans.

## II. Stakeholder Meeting

The stakeholder meeting announced in this notice will be conducted in a manner that encourages participants to express individual views about how to determine whether OSHA-approved State Plans are as effective as the Federal OSHA program. Formal presentations by stakeholders are discouraged. The stakeholder meeting discussions will center on key indicators of effectiveness for Federal OSHA and OSHA-approved State Plans. The specific issues to be discussed will include the following:

1. OSHA's mission is ''to assure safe and healthful working conditions for working men and women by setting and enforcing standards and by providing training, outreach, education and assistance.''

(a) How would you define or describe the components that constitute an OSHA-approved State Plan that was ''effective'' in achieving this mission (e.g., funding, staffing, standards setting, strong enforcement program, strong consultation program, frequency of inspection, strong training and outreach programs, level of penalties etc.)?

(b) What outcome based measures would you use to determine whether OSHA-approved State Plans were achieving this mission (e.g., reductions in injury and illness rates, reductions in fatality rates, etc.)?

(c) What activity based measures would you use to determine whether OSHA-approved State Plans were achieving this mission (e.g., number of inspections conducted, number of violations issued, etc.)?

2. Should there be a core set of effectiveness measures that both OSHA and State Plan programs must meet?

3. What activity and outcome based measures would you use to assess effectiveness as it relates to the reduction of health hazards?

4. What activity and outcome based measures would you use to assess the effectiveness of the whistleblower program under Section 11(c) of the Act?

5. What indicators would you use to determine and monitor whether OSHA-approved State Plans are ''at least as effective'' as federal OSHA as outlined in Section 18(b) of the Act?

Representatives from the State Plans and OSHA have been working to develop a number of draft measures. OSHA will make these draft measures available on its Web site no less than

two weeks before the stakeholder meeting.

*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.

Signed at Washington, DC, on May 23, 2012.

**David Michaels,**

*Assistant Secretary of Labor for Occupational Safety and Health.*

[FR Doc. 2012–12913 Filed 5–25–12; 8:45 am]

BILLING CODE 4510–29–P

## NUCLEAR REGULATORY COMMISSION

**[NRC–2012–0117; Docket Nos. 50–259, 50–260, and 50–296; License Nos. DPR–33, DPR–52, and DPR–68; EA–12–071]**

## Tennessee Valley Authority (Browns Ferry Units 1, 2, and 3); Confirmatory Order Modifying License (Effective Immediately)

**I**

The Tennessee Valley Authority (TVA, the licensee) is the holder of Renewed Facility Operating License Nos. DPR–33, DPR–52, and DPR–68 issued by the U.S. Nuclear Regulatory Commission (NRC or Commission) pursuant to Title 10 of the *Code of Federal Regulations* (10 CFR), part 50, ''Domestic Licensing of Production and Utilization,'' on May 4, 2006. The licenses authorize the operation of the Browns Ferry Nuclear Plant (BFN), Units 1, 2, and 3 (facility), in accordance with conditions specified therein. The facility is located on the licensee's site in Limestone County, Alabama.

**II**

On March 4, 2009, TVA notified the NRC of its intent to transition the BFN facility to the National Fire Protection Association (NFPA) Standard 805 fire protection program in accordance with 10 CFR 50.48(c). Under this initiative, the NRC has exercised enforcement discretion for most fire protection noncompliances that are identified during the licensee's transition to NFPA 805, and for certain existing identified noncompliances that reasonably may be resolved at the completion of transition. NFPA 805 was adopted in 10 CFR 50.48(c) as an alternative fire protection rule, which is one path to resolving longstanding fire protection issues. To receive enforcement discretion for these noncompliances, the licensee must meet the specific criteria as stated in Section 9.1, ''Enforcement Discretion for Certain Fire Protection Issues (10 CFR 50.48),'' of the ''NRC Enforcement Policy,'' dated July 12, 2011, and submit an acceptable license amendment application by the date as specified in the licensee's commitment letter.

**III**

In a public meeting held on December 8, 2011 between the NRC and TVA, the licensee described its strategy for transitioning BFN to NFPA 805, which is intended to address the corrective actions for previously-cited fire protection violations along with other noncompliances identified during the transition period. TVA also notified the NRC that the development of a high-quality application will require more time than originally anticipated.

In a letter dated January 13, 2012, TVA reiterated the current transition strategy for BFN, and notified the NRC that TVA will submit its license amendment request (LAR) no later than March 29, 2013. The newly proposed submittal date is beyond the 3-year timeframe and, thus, exceeds TVA's enforcement discretion (i.e., until March 4, 2012) that was granted to BFN for certain fire protection noncompliances. However, if provided with adequate justification, the NRC may revise the submittal date through the use of an order that would continue the enforcement discretion provided in Section 9.1 of the Enforcement Policy.

In a letter dated February 17, 2012, TVA provided a list of planned fire risk reduction modifications at BFN and the associated planned implementation schedules. The NRC held a public teleconference with TVA on February 29, 2012, to discuss the planned modifications and their associated fire risk reductions, and TVA's schedule for completing its LAR. During the teleconference, TVA expressed a desire to continue enforcement discretion, and a willingness to commit to the new submittal date.

By letter dated March 9, 2012, the NRC requested that TVA provide additional justification for the proposed submittal date. TVA provided the requested information in a letter dated March 20, 2012. Based on the licensee maintaining acceptable compensatory measures and the NRC's review of the licensee's transition status, planned key activities to complete its NFPA 805 LAR, and planned fire risk reduction modifications, the NRC staff has determined that the licensee has provided adequate justification for revising the LAR submittal date.

Therefore, the NRC has determined that the date for submitting an acceptable NFPA 805 LAR should be extended. This Order is being issued to revise the original TVA LAR submittal date of March 4, 2012, until March 29, 2013. The new submittal date supports TVA's continued progress in activities related to the transition to NFPA 805 and the correction of other previously-identified fire protection noncompliances consistent with regulatory commitments provided in letters dated January 13 and February 17, 2012, and the activities described in the letter dated March 20, 2012.

TVA may, at any time, cease its transition to NFPA 805 and comply with the regulations set forth in 10 CFR Part 50, Appendix R. As indicated in the Enforcement Policy, if TVA decides not to complete the transition to 10 CFR 50.48(c), it must submit a letter stating its intent to retain its existing licensing basis and withdrawing its letter of intent to comply with 10 CFR 50.48(c). If TVA fails to meet the new LAR submittal date and fails to comply with its existing licensing basis, the NRC will take appropriate enforcement action consistent with its Enforcement Policy.

On May 16, 2012, TVA consented to issuing this Order, as described in Section V below. TVA further agreed that this Order will be effective upon issuance and that it has waived its rights to a hearing.

**IV**

Based on the licensee maintaining acceptable compensatory measures, and a review of the licensee's status and planned key activities, including the intended NFPA 805 modifications, the NRC has determined that the licensee has provided adequate justification for its commitment given in Section V, and, thus, for the extension of enforcement discretion. Because the licensee will perform modifications, with associated procedure updates, to reduce current fire risk in parallel with the development of their NFPA 805 LAR, the staff finds this acceptable to ensure public health and safety. Based on the above and TVA's consent, this Order is immediately effective upon issuance.

**V**

Accordingly, pursuant to Sections 103, 161b, 161i, 161o, 182, and 186 of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations in 10 CFR 2.202, ''Orders,'' *it is hereby ordered, effective immediately, that license nos. DPR–33, DPR–52, and DPR–68 are modified as follows:*

A. TVA will submit an acceptable license amendment request for Browns Ferry Nuclear Plant, Units 1, 2, and 3, to adopt NFPA Standard 805 by no later

than March 29, 2013. TVA will continue to receive enforcement discretion until March 29, 2013. If the NRC finds that the LAR is not acceptable, the NRC will take steps consistent with the Enforcement Policy. The Director of the Office of Enforcement, in consultation with the Director of the Office of Nuclear Reactor Regulation, may, in writing, relax or rescind any of the above conditions upon demonstration by the licensee of good cause.

**VI**

In accordance with 10 CFR 2.202, the licensee must, and any other person adversely affected by this Order may, submit an answer to this Order within 20 days of its publication in the **Federal Register**. In addition, any other person adversely affected by this Order may request a hearing on this Order within 20 days of its publication in the **Federal Register**. Where good cause is shown, consideration will be given to extending the time to answer or request a hearing. A request for extension of time must be directed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, and include a statement of good cause for the extension.

If a hearing is requested by a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearings. If a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained.

All documents filed in the NRC adjudicatory proceedings, including a request for a hearing, a petition for leave to intervene, any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities participating under 10 CFR 2.315(c), must be filed in accordance with NRC E-Filing rule (72 FR 49139, August 28, 2007). The E-Filing process requires participants to submit and serve all adjudicatory documents over the internet, or in some cases to mail copies on electronic storage media. Participants may not submit paper copies of their filings unless they seek an exemption in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least 10 days prior to the filing deadline, the participant should contact the Office of the Secretary by email at *hearing.docket@nrc.gov,* or by telephone at 301–415–1677, to request (1) a digital identification (ID) certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E-Submittal server for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a request or petition for hearing (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital certificate). Based on this information, the Secretary will establish an electronic docket for the hearing in this proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals/apply-certificates.html.* System requirements for accessing the E-Submittal server are detailed in the NRC's ''Guidance for Electronic Submission,'' which is available on the agency's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.*Participants may attempt to use other software not listed on the Web site, but should note that the NRC's E-Filing system does not support unlisted software, and the NRC Meta System Help Desk will not be able to offer assistance in using unlisted software.

If a participant is electronically submitting a document to the NRC in accordance with the E-Filing rule, the participant must file the document using the NRC's online, web-based submission form. In order to serve documents through the Electronic Information Exchange System, users will be required to install a web browser plug-in from the NRC's Web site. Further information on the web-based submission form, including the installation of the web browser plug-in, is available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.*

Once a participant has obtained a digital ID certificate and a docket has been created, the participant can then submit a request for a hearing or petition for leave to intervene. Submissions should be in portable document format (PDF) in accordance with the NRC guidance available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* A filing is considered complete at the time the documents are submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an email notice confirming receipt of the document. The E-Filing system also distributes an email notice that provides access to the document to the NRC's Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the document on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing request/petition to intervene is filed so that they can obtain access to the document via the E-Filing system.

A person filing electronically using the agency's adjudicatory E-Filing system may seek assistance by contracting the NRC Meta System Help Desk thorough the ''Contact Us'' link located on the NRC's Web site at *http://www.nrc/gov/site-help/e-submittals.html,* by email at *MSHD.Resource@nrc.gov,* or by a toll free call at 1- 866–672–7640. The NRC Meta System Help Desk is available between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday, excluding government holidays.

Participants who believe that they have a good cause for not submitting documents electronically must file an extension request, in accordance with 10 CFR 2.302(g), with their initial paper filing requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852, Attention: Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service. A presiding officer, having granted an exemption request from using E-Filing, may require a participant or party using E-Filing if the presiding officer subsequently determines that the reason for granting the exemption from use of E-Filing no longer exists.

Documents submitted in adjudicatory proceedings will appear in the NRC's electronic hearing docket, which is available to the public at *http://*

*ehd1.nrc.gov/ehd,* unless excluded pursuant to an order of the Commission, or the presiding officer. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or home phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submissions.

If a person other than the licensee requests a hearing, that person shall set forth with particularity the manner in which his interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.309(d) and (f).

In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions specified in Section V above shall be final 20 days from the date of this Order without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in Section V shall be final when the extension expires if a hearing request has not been received.

*An answer or a request for hearing shall not stay the immediate effectiveness of this order.*

For the Nuclear Regulatory Commission.

Dated at Rockville, Maryland this 18th of May 2012.

**Roy P. Zimmerman,**

*Director, Office of Enforcement.*

[FR Doc. 2012–12990 Filed 5–25–12; 8:45 am]

BILLING CODE 7590–01–P

## NUCLEAR REGULATORY COMMISSION

**[NRC–2012–0118; Docket No.: 030–37780/030–37868; License No.: 42–29303–01; EA–10–102]**

## Texas Gamma Ray, LLC, Pasadena, TX; Confirmatory Order (Effective Immediately)

### I

Texas Gamma Ray, LLC (TGR or Licensee), is the former holder of License No. 42–29303–01 issued by the Nuclear Regulatory Commission (NRC or Commission) pursuant to Title 10 of the *Code of Federal Regulations* (10 CFR) part 34, on January 6, 2009. The license authorized industrial radiographic operations in accordance with conditions specified therein. On July 25, 2011, TGR terminated its NRC materials license. Texas Gamma Ray, LLC, holds an Agreement State license authorized by the state of Texas. Therefore, pursuant to 10 CFR 150.20(a)(1), TGR is granted a general license by the NRC to conduct the same activities authorized by its Texas license in areas where the NRC maintains regulatory jurisdiction for the use of radioactive material. Prior to obtaining its NRC materials license, TGR performed licensed activities in offshore Federal waters under its general NRC license at various times during calendar years 2007 and 2008.

This Confirmatory Order (Order) is the result of an agreement reached during an alternative dispute resolution (ADR) mediation session conducted on April 23, 2012, in Arlington, Texas.

### II

From June 4, 2009, through November 30, 2010, the NRC conducted a safety and security inspection of the use of byproduct material for industrial radiographic operations conducted under TGR's former NRC license. On July 20, 2009, the NRC's Office of Investigations (OI), Region IV, began an investigation (Case No. 04–2009–066) to determine if TGR willfully failed to provide complete and accurate information to the NRC by: (1) Not disclosing the locations of radioactive materials stored in excess of 180 days at temporary job site, and (2) not disclosing accurate information on the location of where radiography work was dispatched to the field. Also, the investigation was initiated to determine if TGR failed to comply with NRC security requirements, in violation of its license requirements. OI concluded the investigation on May 20, 2010. The NRC did not substantiate that willfulness was associated with the apparent violations.

By letter dated December 22, 2010 (ML103560822), the NRC transmitted the results of the inspection and investigation in NRC Inspection Report 030–37780/2009–001 and Investigation Report 4–2009–066 (ML103560822) to TGR. Enclosure 2 of the letter was not made publicly available because it contained Security-Related Information. Based on the results of the NRC inspection and the evidence developed during the investigation, three apparent violations of NRC requirements were identified. The apparent violations involved the storage of licensed material at a location in Rock Springs, Wyoming, that was not authorized on the license and failures to comply with NRC security requirements that are described in the Appendix to this Order (Appendix). The Appendix includes Security-Related Information; therefore, it is not publicly available.

On March 2, 2011, the NRC and TGR met in a predecisional enforcement conference (PEC) in Arlington, Texas. During the PEC, TGR provided supplemental information regarding two of the apparent violations. Because of the NRC's concern that willfulness may be associated with these two apparent violations, OI initiated a second investigation (Case No. 4–2011–034) on March 31, 2011. During the second investigation, concluded on November 18, 2011, OI did not identify additional apparent violations. However, based on the information developed during this second investigation, the NRC determined that a TGR radiographer deliberately failed to implement NRC security requirements and deliberately stored radioactive materials at a location not authorized by the license.

By letter dated February 23, 2012, the NRC informed TGR that the NRC was considering escalated enforcement action for the apparent violations. The NRC offered TGR the opportunity to respond in writing, request a PEC, or request alternative dispute resolution (ADR) with the NRC in an attempt to resolve issues associated with this matter. In response, on March 5, 2012, TGR requested ADR to resolve this matter with the NRC.

On April 23, 2012, the NRC and TGR representatives met in an ADR session with a professional mediator, arranged through the Cornell University Institute on Conflict Resolution. ADR is a process in which a neutral mediator with no decision-making authority assists the parties in reaching an agreement on resolving any differences regarding the dispute. This Confirmatory Order is issued pursuant to the agreement reached during the ADR process.

### III

In response to the NRC's offer, Texas Gamma Ray, LLC (TGR), requested use of the NRC ADR process to resolve differences it had with the NRC. During that ADR session, a preliminary settlement agreement was reached. The elements of that preliminary agreement are described below, except for those portions of the agreement that include Security-Related Information and, therefore, are not publicly available. The security-related elements of the agreement, as well as those portions of this Order that address those security-related elements, are described in the Appendix to this Order. The following description of the preliminary ADR agreement, and the required actions described in Section V of this Order

include references to the Appendix to allow for public release of this Order.

The NRC recognizes the corrective actions, associated with the apparent violations that TGR has already implemented, which include:

• Retrieving the licensed material from Wyoming and transferring it to a site in Texas authorized for storage by the State of Texas.

• Revising internal procedures to require:

• A security-related provision that is described in the Appendix to this Order;

• A security-related provision that is described in the Appendix to this Order; and

• The radiation safety officer's (RSO) written approval prior to storing licensed material at temporary job sites and other sites not listed on a specific materials license.

• Requiring the RSO's approval for storing licensed material and documenting it on a ''Storage Approval Form,'' which includes:

• A security-related item that is described in the Appendix to this Order;

• A security-related item that is described in the Appendix to this Order;

• A security-related item that is described in the Appendix to this Order;

• Verification that the vault is suitable for storage of licensed material;

• Letter from property owner;

• Approval of facility for storage by a regulatory agency;

• Verification that a calculation of public dose has been performed; and

• The RSO's signature.

• Training all radiographers on the new procedures.

Texas Gamma Ray, LLC, has also agreed to take the following corrective actions to address the apparent violations:

A. Texas Gamma Ray, LLC, will establish, implement, and maintain a comprehensive training program for employees conducting licensed activities (radiographic operations or radiography). The goal of this program is to conduct licensed operations safely and deter future willful violations by ensuring that its employees understand the importance that the NRC places on violations associated with deliberate misconduct as well as violations caused by careless disregard. The training program will consist of training for all current and newly hired employees performing licensed activities and will provide for annual refresher training. Texas Gamma Ray, LLC, will complete the following activities in support of the training program:

1. *Training Requirements for Current Employees.*

• Within 90 days of the date of the Confirmatory Order, TGR will conduct a safety stand-down (short-term training) to discuss the importance of safely conducting licensed activities, including the concept of a healthy safety culture, willfulness, security of licensed material, and ethics.

• Within 60 days of the date of the Confirmatory Order, TGR will contract with an external contractor to provide comprehensive training to all of its current employees who are engaged in licensed activities (up to and including the company president) on what is meant by willfulness (careless disregard and deliberate misconduct), the potential enforcement sanctions that the NRC may take against employees who engage in deliberate misconduct, and the NRC's policy statement on safety culture.

• Texas Gamma Ray, LLC, will submit for NRC review and approval, the resume of the contractor recommended to perform the training, at least 15 days prior to the time that TGR intends to execute a contract with the external training contractor.

• At least 15 days prior to the start of the training, but no later than 30 days after executing the contract with the external training contractor, TGR will submit for NRC review and approval an outline of the topics to be covered during this training session and a copy of a typical examination and the correct answers. The topics in section A.2 of this order will be included in this training.

• Texas Gamma Ray, LLC, must complete the comprehensive training of TGR management within 150 days of the NRC's approval of the outline of course topics.

• Texas Gamma Ray, LLC, must complete the comprehensive training of employees within 360 days of the NRC's approval of the outline of course topics.

• Texas Gamma Ray, LLC, will assess the effectiveness of the comprehensive training through written testing. Any employee not passing the test will receive remedial training and will be re-tested.

• Within 30 days of the completion of the comprehensive training, TGR will provide to the NRC: (1) A letter stating that the training as specified above has been completed and (2) the results of the employee testing process.

2. *Training Program Requirements.* Training for the current employees, new employees and annual refresher training will include the following elements:

• A discussion of the NRC's policy statement on safety culture (76 FR 34773) and TGR management's support of the policy. As part of this training, employees must be provided a copy of NUREG/BR–0500, ''Safety Culture Policy Statement.'' TGR will provide a letter from the company president to each employee regarding company expectations concerning 10 CFR 30.9 and 10 CFR 30.10, and safety and security issues; or issue a company policy statement on these topics;

• A security-related topic that is described in the Appendix;

• A security-related topic that is described in the Appendix;

• A security-related topic that is described in the Appendix;

• A discussion on the importance of understanding and following TGR's internal procedures and regulatory requirements applicable to radiographic operations;

• A discussion on when to suspend work activities and verify whether specific circumstances allow for implementing corrective actions and resuming work activities or stopping work activities in order to protect the health and safety of workers and members of the public;

• A discussion of the elements of willfulness discussed in Chapter 6 of the NRC Enforcement Manual, and examples of enforcement actions that the NRC has taken against individuals. These actions are publicly available on the NRC's Web site;

• The requirements contained in 10 CFR 30.9, *Completeness and Accuracy of Information;* 10 CFR 30.10, *Deliberate Misconduct;* and 10 CFR 30.7, *Employee Protection;* and

• A discussion of past radiography events that have resulted in overexposures to individuals, including the health effects of such overexposures.

3. *Recordkeeping Requirements.* Texas Gamma Ray, LLC, will maintain training records, including attendees and test results for 5 years. The records will be made available to the NRC, if requested.

B. Within 120 days of the date of the Confirmatory Order, TGR will develop and submit for NRC review and approval the following procedures:

1. A procedure that provides details on how TGR management and the corporate radiation safety officer (RSO) will provide oversight of assistant and site RSOs.

2. A procedure for conducting field audits of security-related requirements at TGR field offices and as being implemented by radiography crews.

• The audits must be unannounced to the field offices and radiography crews.

• The audits must include a review to establish that radioactive sources and devices are properly stored and secured at authorized locations and at temporary job sites.

• A security-related provision that is described in the Appendix to this Order.

• The procedure must contain the elements reviewed during the audit.

• Records of audits and audit findings shall be maintained for 5 years and made available to the NRC, if requested. Audit records will contain the following information:

• Date of audit;

• Names of people who conducted the audit;

• Names of people contacted by the auditor;

• Audit findings and corrective actions; and

• Follow-up, if any.

C. Texas Gamma Ray, LLC, shall pay a civil penalty in the amount of $7,000. This civil penalty shall be made in equal quarterly payments of $1,750 each. The first payment shall be made within 30 days of the date of the Confirmatory Order. The remaining three payments shall be made in equal payments each quarter, thereafter.

On May 14, 2012, TGR consented to issuing this Order with the commitments, as described in Section V below. TGR further agreed that this Order is to be effective upon issuance and that it has waived its right to a hearing.

**IV**

Since Texas Gamma Ray, LLC (TGR), has agreed to take additional actions to address NRC concerns, as set forth in Item III above, the NRC has concluded that its concerns can be resolved through issuance of this Confirmatory Order.

I find that TGR's commitments as set forth in Section V are acceptable and necessary and conclude that with these commitments the public health and safety are reasonably assured. In view of the foregoing, I have determined that public health and safety require that the Licensee's commitments be confirmed by this Order. Based on the above and TGR's consent, this Confirmatory Order is immediately effective upon issuance.

**V**

Accordingly, pursuant to Sections 81, 161b, 161i, 161o, 182, and 186 of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations in 10 CFR 2.202 and 10 CFR parts 20, 30, 34, and 150 *it is hereby ordered, effective immediately, that:*

A. Texas Gamma Ray, LLC, will establish, implement, and maintain a comprehensive training program for employees conducting licensed activities (radiographic operations or radiography). The goal of this program is to conduct licensed operations safely and deter future willful violations by ensuring that its employees understand the importance that the NRC places on violations associated with deliberate misconduct as well as violations caused by careless disregard. The training program will consist of training for all current and newly hired employees performing licensed activities and will provide for annual refresher training. Texas Gamma Ray, LLC, will complete the following activities in support of the training program:

1. *Training Requirements for Current Employees:*

a. Within 90 days of the date of the Confirmatory Order, TGR will conduct a safety stand-down (short-term training) to discuss the importance of safely conducting licensed activities including the concept of a healthy safety culture, willfulness, security of licensed material, and ethics.

b. Within 60 days of the date of the Confirmatory Order, TGR will contract with an external contractor to provide comprehensive training to all of its current employees who are engaged in licensed activities (up to and including the company president) on what is meant by willfulness (careless disregard and deliberate misconduct), the potential enforcement sanctions that the NRC may take against employees who engage in deliberate misconduct, and the NRC's policy statement on safety culture.

c. Texas Gamma Ray, LLC, will submit for NRC review and approval, the resume of the contractor recommended to perform the training, at least 15 days prior to the time that TGR intends to execute a contract with the external training contractor.

d. At least 15 days prior to the start of the training, but no later than 30 days after executing the contract with the external training contractor, TGR will submit for NRC review and approval an outline of the topics to be covered during this training session and a copy of a typical examination and the correct answers. The topics in section A.2 of this order will be included in this training.

e. Texas Gamma Ray, LLC, must complete the comprehensive training of TGR management within 150 days of the NRC's approval of the outline of course topics.

f. Texas Gamma Ray, LLC, must complete the comprehensive training of employees within 360 days of the NRC's approval of the outline of course topics.

g. Texas Gamma Ray, LLC, will assess the effectiveness of the training through written testing. Any employee not passing the test will receive remedial training and will be re-tested.

h. Within 30 days of the completion of the comprehensive training, TGR will provide to the NRC: (1) a letter stating that the training as specified above has been completed and (2) the results of the employee testing process.

2. *Training Program Requirements.* Training for current employees, new employees and annual refresher training will include the following elements:

a. A discussion of the NRC's policy statement on safety culture (79 FR 34773) and TGR management's support of the policy. As part of this training, employees must be provided a copy of NUREG/BR–0500, ''Safety Culture Policy Statement.'' Texas Gamma Ray, LLC, will provide a letter from the company president to each employee regarding company expectations concerning 10 CFR 30.9 and 10 CFR 30.10, and safety and security issues; or issue a company policy statement on these topics;

b. A security-related topic that is described in the Appendix;

c. A security-related topic that is described in the Appendix;

d. A security-related topic that is described in the Appendix;

e. A discussion on the importance of understanding and following TGR's internal procedures and regulatory requirements applicable to radiographic operations;

f. A discussion on when to suspend work activities and verify whether specific circumstances allow for implementing corrective actions and resuming work activities or stopping work activities in order to protect the health and safety of workers and members of the public;

g. A discussion of the elements of willfulness discussed in Chapter 6 of the NRC Enforcement Manual, and examples of enforcement actions that the NRC has taken against individuals. These actions are publicly available on the NRC's Web site;

h. The requirements contained in 10 CFR 30.9, *Completeness and Accuracy of Information;* 10 CFR 30.10, *Deliberate Misconduct;* and 10 CFR 30.7, *Employee Protection;* and

i. A discussion of past radiography events that have resulted in overexposures to individuals, including the health effects of such overexposures.

3. *Recordkeeping Requirements.* Texas Gamma Ray, LLC, will maintain training records, including attendees and test results for 5 years. The records will be made available to the NRC, if requested.

B. Within 120 days of the date of the Confirmatory Order, TGR will develop and submit for NRC review and approval the following procedures:

1. A procedure that provides details on how TGR management and the corporate radiation safety officer (RSO) will provide oversight of assistant and site RSOs.

2. A procedure for conducting field audits of security-related requirements at TGR field offices and as being implemented by radiography crews.

a. The audits must be unannounced to the field offices and radiography crews.

b. The audits must include a review to establish that radioactive sources and devices are properly stored and secured at authorized locations and at temporary job sites.

c. A security-related provision that is described in the Appendix to this Order.

d. The procedure must contain the elements reviewed during the audit.

e. Records of audits and audit findings shall be maintained for 5 years and made available to the NRC, if requested. Audit records will contain the following information:

- Date of audit;
- Name of person(s) who conducted the audit;
- Names of persons contacted by the auditor(s);
- Audit findings and corrective actions; and
- Follow-up, if any.

C. Texas Gamma Ray, LLC, shall pay a civil penalty in the amount of $7,000. This civil penalty shall be made in equal quarterly payments of $1,750 each. The first payment shall be made within 30 days of the date of the Confirmatory Order. The remaining three payments shall be made in equal payments each quarter, thereafter.

The Director, Office of Enforcement, may, in writing, relax or rescind any of the above conditions upon demonstration by TGR of good cause.

**VI**

Any person adversely affected by this Confirmatory Order, other than TGR, may request a hearing within 20 days of its publication in the **Federal Register**. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time must be made in writing to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and include a statement of good cause for the extension.

All documents filed in the NRC adjudicatory proceedings, including a request for a hearing, a petition for leave to intervene, any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities participating under 10 CFR 2.315(c), must be filed in accordance with NRC E-Filing rule (72 FR 49139, August 28, 2007). The E-Filing process requires participants to submit and serve all adjudicatory documents over the Internet, or in some cases to mail copies on electronic storage media. Participants may not submit paper copies of their filings unless they seek an exemption in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least 10 days prior to the filing deadline, the participant should contact the Office of the Secretary by email at *hearing.docket@nrc.gov*, or by telephone at 301–415–1677, to request (1) a digital identification (ID) certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E-Submittal server for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a request or petition for hearing (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital certificate). Based on this information, the Secretary will establish an electronic docket for the hearing in this proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals/apply-certificates.html*. System requirements for accessing the E-Submittal server are detailed in the NRC's ''Guidance for Electronic Submission,'' which is available on the agency's public Web site at *http://www.nrc.gov/site-help/e-submittals.html*. Participants may attempt to use other software not listed on the Web site, but should note that the NRC's E-Filing system does not support unlisted software, and the NRC Meta System Help Desk will not be able to offer assistance in using unlisted software.

If a participant is electronically submitting a document to the NRC in accordance with the E-Filing rule, the participant must file the document using the NRC's online, web-based submission form. In order to serve documents through the Electronic Information Exchange System, users will be required to install a web browser plug-in from the NRC's Web site. Further information on the web-based submission form, including the installation of the web browser plug-in, is available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html*.

Once a participant has obtained a digital ID certificate and a docket has been created, the participant can then submit a request for a hearing or petition for leave to intervene. Submissions should be in portable document format (PDF) in accordance with the NRC guidance available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html*. A filing is considered complete at the time the documents are submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an email notice confirming receipt of the document. The E-Filing system also distributes an email notice that provides access to the document to the NRC's Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the document on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing request/petition to intervene is filed so that they can obtain access to the document via the E-Filing system.

A person filing electronically using the agency's adjudicatory E-Filing system may seek assistance by contracting the NRC Meta System Help Desk thorough the ''Contact Us'' link located on the NRC's Web site at *http://www.nrc/gov/site-help/e-submittals.html*, by email at *MSHD.Resource@nrc.gov,* or by a toll free call at 1–866–672–7640. The NRC Meta System Help Desk is available between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday, excluding government holidays.

Participants who believe that they have a good cause for not submitting documents electronically must file an extension request, in accordance with 10 CFR 2.302(g), with their initial paper filing requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary,

Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852, Attention: Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service. A presiding officer, having granted an exemption request from using E-Filing, may require a participant or party using E-Filing if the presiding officer subsequently determines that the reason for granting the exemption from use of E-Filing no longer exists.

Documents submitted in adjudicatory proceedings will appear in the NRC's electronic hearing docket, which is available to the public at *http://ehd1.nrc.gov/ehd*, unless excluded pursuant to an order of the Commission, or the presiding officer. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or home phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submissions.

If a person (other than TGR) requests a hearing, that person shall set forth with particularity the manner in which his interest is adversely affected by this Confirmatory Order and shall address the criteria set forth in 10 CFR 2.309(d) and (f).

If a hearing is requested by a person whose interest is adversely affected, the Commission will issue an order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Confirmatory Order should be sustained.

In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions specified in Section V above shall be final 30 days from the date this Confirmatory Order is published in the **Federal Register** without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in Section V shall be final when the extension expires if a hearing request has not been received.

*A request for hearing shall not stay the immediate effectiveness of this order.*

Dated this 15th day of May 2012.

For the Nuclear Regulatory Commission.

**Elmo E. Collins,**

*Regional Administrator.*

[FR Doc. 2012–12989 Filed 5–25–12; 8:45 am]

**BILLING CODE 7590–01–P**

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## NUCLEAR REGULATORY COMMISSION

**[NRC–2012–0116]**

## Biweekly Notice; Applications and Amendments to Facility Operating Licenses and Combined Licenses Involving No Significant Hazards Considerations

### Background

Pursuant to Section 189a.(2) of the Atomic Energy Act of 1954, as amended (the Act), the U.S. Nuclear Regulatory Commission (the Commission or NRC) is publishing this regular biweekly notice. The Act requires the Commission publish notice of any amendments issued, or proposed to be issued and grants the Commission the authority to issue and make immediately effective any amendment to an operating license or combined license, as applicable, upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from May 16 to May 29, 2012. The last biweekly notice was published on May 15, 2012 (77 FR 28626).

**ADDRESSES:** You may access information and comment submissions related to this document, which the NRC possesses and are publicly available, by searching on *http://www.regulations.gov* under Docket ID NRC–2012–0116. You may submit comments by the following methods:

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2012–0116. Address questions about NRC dockets to Carol Gallagher; telephone: 301–492–3668; email: *Carol.Gallagher@nrc.gov.*
- *Mail comments to:* Cindy Bladey, Chief, Rules, Announcements, and Directives Branch (RADB), Office of Administration, Mail Stop: TWB–05–B01M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.
- *Fax comments to:* RADB at 301–492–3446.

For additional direction on accessing information and submitting comments, see ''Accessing Information and Submitting Comments'' in the **SUPPLEMENTARY INFORMATION** section of this document.

**SUPPLEMENTARY INFORMATION:**

### I. Accessing Information and Submitting Comments

*A. Accessing Information*

Please refer to Docket ID NRC–2012–0116 when contacting the NRC about the availability of information regarding this document. You may access information related to this document, which the NRC possesses and is publicly available, by the following methods:

- *Federal Rulemaking Web Site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2012–0116.
- *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*. Documents may be viewed in ADAMS by performing a search on the document date and docket number.
- *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.

*B. Submitting Comments*

Please include Docket ID NRC–2012–0116 in the subject line of your comment submission, in order to ensure that the NRC is able to make your comment submission available to the public in this docket.

The NRC cautions you not to include identifying or contact information in comment submissions that you do not want to be publicly disclosed. The NRC posts all comment submissions at *http://www.regulations.gov* as well as entering the comment submissions into ADAMS, and the NRC does not edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information in

their comment submissions that they do not want to be publicly disclosed. Your request should state that the NRC will not edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment submissions into ADAMS.

**Notice of Consideration of Issuance of Amendments to Facility Operating Licenses and Combined Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing**

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in Title 10 of the *Code of Federal Regulations* (10 CFR) 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of 60 days after the date of publication of this notice. The Commission may issue the license amendment before expiration of the 60-day period provided that its final determination is that the amendment involves no significant hazards consideration. In addition, the Commission may issue the amendment prior to the expiration of the 30-day comment period should circumstances change during the 30-day comment period such that failure to act in a timely way would result, for example in derating or shutdown of the facility. Should the Commission take action prior to the expiration of either the comment period or the notice period, it will publish in the **Federal Register** a notice of issuance. Should the Commission make a final No Significant Hazards Consideration Determination; any hearing will take place after issuance. The Commission expects that the need to take this action will occur very infrequently.

Within 60 days after the date of publication of this notice, any person(s) whose interest may be affected by this action may file a request for a hearing and a petition to intervene with respect to issuance of the amendment to the subject facility operating license or combined license. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR part 2. Interested person(s) should consult a current copy of 10 CFR 2.309, which is available at the NRC's PDR, located at One White Flint North, Room O1–F21, 11555 Rockville Pike (first floor), Rockville, Maryland 20852. The NRC regulations are accessible electronically from the NRC Library on the NRC's Web site at *http://www.nrc.gov/reading-rm/doc-collections/cfr/*. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or a presiding officer designated by the Commission or by the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the Chief Administrative Judge of the Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.309, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements: (1) The name, address, and telephone number of the requestor or petitioner; (2) the nature of the requestor's/petitioner's right under the Act to be made a party to the proceeding; (3) the nature and extent of the requestor's/petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the requestor's/petitioner's interest. The petition must also identify the specific contentions which the requestor/petitioner seeks to have litigated at the proceeding.

Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the requestor/petitioner shall provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the requestor/petitioner intends to rely in proving the contention at the hearing. The requestor/petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the requestor/petitioner intends to rely to establish those facts or expert opinion. The petition must include sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the requestor/petitioner to relief. A requestor/petitioner who fails to satisfy these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held. If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment. If the final determination is that the amendment request involves a significant hazards consideration, then any hearing held would take place before the issuance of any amendment.

All documents filed in the NRC adjudicatory proceedings, including a request for hearing, a petition for leave to intervene, any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities participating under 10 CFR 2.315(c), must be filed in accordance with the NRC's E-Filing rule (72 FR 49139, August 28, 2007). The E-Filing process requires participants to submit and serve all adjudicatory documents over the internet, or in some cases to mail copies on electronic storage media. Participants may not submit paper copies of their filings unless they seek an exemption in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least 10

days prior to the filing deadline, the participant should contact the Office of the Secretary by email at *hearing.docket@nrc.gov,* or by telephone at 301–415–1677, to request (1) a digital identification (ID) certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E-Submittal server for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a request or petition for hearing (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the hearing in this proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals/apply-certificates.html.* System requirements for accessing the E-Submittal server are detailed in the NRC's ''Guidance for Electronic Submission,'' which is available on the agency's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* Participants may attempt to use other software not listed on the Web site, but should note that the NRC's E-Filing system does not support unlisted software, and the NRC Meta System Help Desk will not be able to offer assistance in using unlisted software.

If a participant is electronically submitting a document to the NRC in accordance with the E-Filing rule, the participant must file the document using the NRC's online, Web-based submission form. In order to serve documents through the Electronic Information Exchange System, users will be required to install a Web browser plug-in from the NRC's Web site. Further information on the Web-based submission form, including the installation of the Web browser plug-in, is available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.*

Once a participant has obtained a digital ID certificate and a docket has been created, the participant can then submit a request for hearing or petition for leave to intervene. Submissions should be in Portable Document Format (PDF) in accordance with the NRC guidance available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* A filing is considered complete at the time the documents are submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an email notice confirming receipt of the document. The E-Filing system also distributes an email notice that provides access to the document to the NRC's Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the documents on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing request/petition to intervene is filed so that they can obtain access to the document via the E-Filing system.

A person filing electronically using the agency's adjudicatory E-Filing system may seek assistance by contacting the NRC Meta System Help Desk through the ''Contact Us'' link located on the NRC Web site at *http://www.nrc.gov/site-help/e-submittals.html*, by email at *MSHD.Resource@nrc.gov*, or by a toll-free call at 1–866–672–7640. The NRC Meta System Help Desk is available between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday, excluding government holidays.

Participants who believe that they have a good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland, 20852, Attention: Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service. A presiding officer, having granted an exemption request from using E-Filing, may require a participant or party to use E-Filing if the presiding officer subsequently determines that the reason for granting the exemption from use of E-Filing no longer exists.

Documents submitted in adjudicatory proceedings will appear in the NRC's electronic hearing docket which is available to the public at *http://ehd1.nrc.gov/ehd/*, unless excluded pursuant to an order of the Commission, or the presiding officer. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or home phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

Petitions for leave to intervene must be filed no later than 60 days from the date of publication of this notice. Non-timely filings will not be entertained absent a determination by the presiding officer that the petition or request should be granted or the contentions should be admitted, based on a balancing of the factors specified in 10 CFR 2.309(c)(1)(i)–(viii).

For further details with respect to this license amendment application, see the application for amendment which is available for public inspection at the NRC's PDR, located at One White Flint North, Room O1–F21, 11555 Rockville Pike (first floor), Rockville, Maryland 20852. Publicly available documents created or received at the NRC are accessible electronically through ADAMS in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html.* Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC's PDR Reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.*

*Dominion Nuclear Connecticut, Inc., Docket No. 50–423, Millstone Power Station, Unit 3, New London County, Connecticut*

*Date of amendment request:* April 2, 2012.

*Description of amendment request:* The proposed amendment would revise the Millstone Power Station, Unit 3 (MPS3) Technical Specification (TS) Surveillance Requirements (SRs) for snubbers to conform to the MPS3

Snubber Examination, Testing, and Service Life Monitoring Program Plan.

*Basis for proposed no significant hazards consideration determination:* As required by Title 10 of the Code of Federal Regulations (10 CFR) 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Criterion 1

Will operation of the facility in accordance with the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed changes revise TS SR 4.7.10 to conform the TSs to the revised snubber program. Snubber examination, testing and service life monitoring will continue to meet the requirements of 10 CFR 50.55a(g) except where the NRC has granted specific written relief, pursuant to 10 CFR 50.55a(g)(6)(i), or authorized alternatives pursuant to 10 CFR 50.55a(a)(3).

Snubber examination, testing and service life monitoring is not an initiator of any accident previously evaluated. Therefore, the probability of an accident previously evaluated is not significantly increased.

Snubbers will continue to be demonstrated operable by performance of a program for examination, testing and service life monitoring in compliance with 10 CFR 50.55a or authorized alternatives. The proposed change to TS ACTION 3.7.10 for inoperable snubbers is administrative in nature and is required for consistency with the proposed change to TS SR 4.7.10. Therefore, the proposed changes do not adversely affect plant operations, design functions or analyses that verify the capability of systems, structures, and components to perform their design functions. The consequences of accidents previously evaluated are not significantly increased.

Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

Criterion 2

Will operation of the facility in accordance with this proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed changes do not involve any physical alteration of plant equipment. The proposed changes do not change the method by which any safety-related system performs its function. As such, no new or different types of equipment will be installed, and the basic operation of installed equipment is unchanged. The methods governing plant operation and testing remain consistent with current safety analysis assumptions.

Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated.

Criterion 3

Will operation of the facility in accordance with this proposed change involve a significant reduction in the margin of safety?

Response: No.

The proposed changes ensure snubber examination, testing and service life monitoring will continue to meet the requirements of 10 CFR 50.55a(g) except where the NRC has granted specific written relief, pursuant to 10 CFR 50.55a(g)(6)(i), or authorized alternatives pursuant to 10 CFR 50.55a(a)(3). Snubbers will continue to be demonstrated operable by performance of a program for examination, testing and service life monitoring in compliance with 10 CFR 50.55a or authorized alternatives. The proposed change to TS ACTION 3.7.10 for inoperable snubbers is administrative in nature and is required for consistency with the proposed change to TS SR 4.7.10.

Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Attorney for licensee:* Lillian M. Cuoco, Senior Counsel, Dominion Resources Services, Inc., 120 Tredegar Street, RS–2, Richmond, VA 23219.

*NRC Branch Chief:* George A. Wilson.

*Dominion Nuclear Connecticut, Inc., Docket No. 50–423, Millstone Power Station, Unit 3, New London County, Connecticut*

*Date of amendment request:* April 12, 2012.

*Description of amendment request:* The proposed amendment would permanently revise Technical Specification (TS) 6.8.4.g, ''Steam Generator (SG) Program,'' to exclude a portion of the steam generator tubes below the top of the steam generator tubesheet from periodic inspections. Inclusion of the permanent alternate repair criteria (PARC) in TS 6.8.4.g permits deletion of the previous temporary alternate repair criteria (TARC) for Cycle 15. In addition, this amendment request also proposes to revise the reporting criteria in TS 6.9.1.7, ''Steam Generator Tube Inspection Report,'' to remove reference to the previous Cycle 15 TARC, and add reporting requirements specific to the PARC.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The previously analyzed accidents are initiated by the failure of plant structures, systems, or components. The proposed change that alters the steam generator inspection criteria and the steam generator inspection reporting criteria does not have a detrimental impact on the integrity of any plant structure, system, or component that initiates an analyzed event. The proposed change will not alter the operation of, or otherwise increase the failure probability of any plant equipment that initiates an analyzed accident.

Of the applicable accidents previously evaluated, the limiting transients with consideration to the proposed change to the steam generator tube inspection and repair criteria are the steam generator tube rupture (SGTR) event and the feedline break (FLB) postulated accidents.

During the SGTR event, the required structural integrity margins of the steam generator tubes and the tube-to-tubesheet joint over the H* distance will be maintained. Tube rupture in tubes with cracks within the tubesheet is precluded by the constraint provided by the tube-to-tubesheet joint. This constraint results from the hydraulic expansion process, thermal expansion mismatch between the tube and tubesheet, and from the differential pressure between the primary and secondary side. Based on this design, the structural margins against burst, as discussed in Regulatory Guide (RG) 1.121, ''Bases for Plugging Degraded PWR [Pressurized-Water Reactor] Steam Generator Tubes,'' (Reference 25) are maintained for both normal and postulated accident conditions.

The proposed change has no impact on the structural or leakage integrity of the portion of the tube outside of the tubesheet. The proposed change maintains structural integrity of the steam generator tubes and does not affect other systems, structures, components, or operational features. Therefore, the proposed change results in no significant increase in the probability of the occurrence of a[n] SGTR accident.

At normal operating pressures, leakage from primary water stress corrosion cracking below the proposed limited inspection depth is limited by both the tube-to-tubesheet crevice and the limited crack opening permitted by the tubesheet constraint. Consequently, negligible normal operating leakage is expected from cracks within the tubesheet region. The consequences of an SGTR event are affected by the primary-to-secondary leakage flow during the event. However, primary-to-secondary leakage flow through a postulated broken tube is not affected by the proposed changes since the tubesheet enhances the tube integrity in the region of the hydraulic expansion by precluding tube deformation beyond its initial hydraulically expanded outside diameter. Therefore, the proposed changes do not result in a significant increase in the consequences of a[n] SGTR.

The consequences of a steam line break (SLB) are also not significantly affected by

the proposed changes. During a[n] SLB accident, the reduction in pressure above the tubesheet on the shell side of the steam generator creates an axially uniformly distributed load on the tubesheet due to the reactor coolant system pressure on the underside of the tubesheet. The resulting bending action constrains the tubes in the tubesheet thereby restricting primary-to-secondary leakage below the mid-plane.

Primary-to-secondary leakage from tube degradation in the tubesheet area during the limiting accident (i.e., a[n] SLB) is limited by flow restrictions. These restrictions result from the crack and tube-to-tubesheet contact pressures that provide a restricted leakage path above the indications and also limit the degree of potential crack face opening as compared to free span indications.

The leakage factor of 2.49 for Millstone Power Station Unit 3 (MPS3), for a postulated SLB/FLB, has been calculated as shown in Table RA124–2 (Revised Table 9–7) of Reference 19. Specifically, for the condition monitoring (CM) assessment, the component of leakage from the prior cycle from below the H* distance will be multiplied by a factor of 2.49 and added to the total leakage from any other source and compared to the allowable accident induced leakage limit. For the operational assessment (OA), the difference in the leakage between the allowable leakage and the accident induced leakage from sources other than the tubesheet expansion region will be divided by 2.49 and compared to the observed operational leakage.

The probability of a[n] SLB is unaffected by the potential failure of a steam generator tube as the failure of the tube is not an initiator for a[n] SLB event. SLB leakage is limited by leakage flow restrictions resulting from the leakage path above potential cracks through the tube-to-tubesheet crevice. The leak rate during postulated accident conditions (including locked rotor) has been shown to remain within the accident analysis assumptions for all axial and or circumferentially orientated cracks occurring 15.2 inches below the top of the tubesheet. The accident induced leak rate limit is 1.0 gpm. The TS operational leak rate is 150 gpd (0.1 gpm) through any one steam generator. Consequently, there is significant margin between accident leakage and allowable operational leakage. The SLB/FLB leak rate ratio is only 2.49 resulting in significant margin between the conservatively estimated accident leakage and the allowable accident leakage (1.0 gpm).

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change that alters the steam generator inspection criteria and the steam generator inspection reporting criteria does not introduce any new equipment, create new failure modes for existing equipment, or create any new limiting single failures. Plant operation will not be altered, and all safety functions will continue to perform as previously assumed in accident analyses.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the change involve a significant reduction in a margin of safety?

Response: No.

The proposed change that alters the steam generator inspection criteria and the steam generator inspection reporting criteria maintains the required structural margins of the steam generator tubes for both normal and accident conditions. NEI [Nuclear Energy Institute] 97–06, Revision 3, ''Steam Generator Program Guidelines'' (Reference 1) and RG 1.121, ''Bases for Plugging Degraded PWR Steam Generator Tubes'' (Reference 25), are used as the bases in the development of the limited tubesheet inspection depth methodology for determining that steam generator tube integrity considerations are maintained within acceptable limits. RG 1.121 describes a method acceptable to the Nuclear Regulatory Commission for meeting GDC 14, ''Reactor Coolant Pressure Boundary,'' GDC 15, ''Reactor Coolant System Design,'' GDC 31, ''Fracture Prevention of Reactor Coolant Pressure Boundary,'' and GDC 32, ''Inspection of Reactor Coolant Pressure Boundary,'' by reducing the probability and consequences of a[n] SGTR. RG 1.121 concludes that by determining the limiting safe conditions for tube wall degradation the probability and consequences of a[n] SGTR are reduced. This RG uses safety factors on loads for tube burst that are consistent with the requirements of Section III of the American Society of Mechanical Engineers (ASME) Code.

For axially oriented cracking located within the tubesheet, tube burst is precluded due to the presence of the tubesheet. For circumferentially oriented cracking, the H* analysis, documented in Section 4.0 of this enclosure, defines a length of degradation free expanded tubing that provides the necessary resistance to tube pullout due to the pressure induced forces, with applicable safety factors applied. Application of the limited hot and cold leg tubesheet inspection criteria will preclude unacceptable primary-to-secondary leakage during all plant conditions. The methodology for determining leakage provides for large margins between calculated and actual leakage values in the proposed limited tubesheet inspection depth criteria.

Therefore, the proposed change does not involve a significant reduction in any margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Attorney for licensee:* Lillian M. Cuoco, Senior Counsel, Dominion Resources Services, Inc., 120 Tredegar Street, RS–2, Richmond, VA 23219.

*NRC Branch Chief:* George A. Wilson.

*Duke Energy Carolinas, LLC, Docket Nos. 50–369 and 50–370, McGuire Nuclear Station, Units 1 and 2, Mecklenburg County, North Carolina*

*Date of amendment request:* September 26, 2011.

*Description of amendment request:* The proposed amendments would change the Technical Specifications (TSs) to adopt NUREG–1431, ''Standard Technical Specifications [STSs]—Westinghouse [Electric Company] Plants,'' STS 3.8.3, ''Diesel Fuel Oil, Lube Oil, and Starting Air,'' Condition E, regarding Diesel Generator [DG] starting air receiver pressure limits.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

A. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

Implementation of the proposed amendment does not significantly increase the probability or the consequences of an accident previously evaluated. The DGs and their associated emergency buses function as accident mitigators. The proposed changes do not involve a change in the operational limits or the design of the electrical power systems (particularly the emergency power systems) or change the function or operation of plant equipment or affect the response of that equipment when called upon to operate.

The proposed changes to TS 3.8.3 Condition D are consistent with STS 3.8.3 Condition E, and they still ensure the DGs' ability to fulfill their safety-related function.

Thus, based on the above, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

B. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed changes do not involve a change in the operational limits or the design capabilities of the emergency electrical power systems. The proposed changes do not change the function or operation of plant equipment or introduce any new failure mechanisms. The technical evaluation that supports this License Amendment Request included a review of the DG starting air system capability to which these changes are bounded. The proposed changes do not introduce any new or different types of failure mechanisms; plant equipment will continue to respond as designed and analyzed.

C. Does the proposed amendment involve a significant reduction in the margin of safety?

Response: No.

Margin of safety is related to the confidence in the ability of the fission product barriers to perform their design functions during and following an accident situation. These barriers include the fuel cladding, the reactor coolant system, and the containment system. The performance of the fuel cladding, the reactor coolant system and the containment system will not be adversely impacted by the proposed changes since the ability of the DGs to mitigate an analyzed accident has not been adversely impacted by the proposed changes.

Thus, it is concluded that the proposed changes do not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Attorney for licensee:* Lara S. Nichols, Associate General Counsel, Duke Energy Corporation, 526 South Church Street—EC07H, Charlotte, NC 28202.

*NRC Branch Chief:* Nancy L. Salgado.

*Exelon Generation Company, LLC, Docket Nos. STN 50–456 and STN 50–457, Braidwood Station, Units 1 and 2, Will County, Illinois; Docket Nos. STN 50–454 and STN 50–455, Byron Station, Units 1 and 2, Ogle County, Illinois*

*Date of amendment request:* January 31, 2012.

*Description of amendment request:* The proposed change would revise the Updated Final Safety Analysis Report (UFSAR) to describe the use of an Auxiliary Feedwater (AF) cross-tie. Specifically, this change adds information to the UFSAR describing the design and shared operation of cross-tie piping between the discharges of the Unit 1 and Unit 2 Train A motor-driven AF pumps.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The AF system is normally in standby and a failure of the AF system during normal operations or emergency operations cannot initiate any of the accidents previously evaluated. The use of the AF Train A unit cross-tie does not interface with the reactor coolant system, containment, or engineered safeguards features in such a way as to be a precursor or initiator for an accident previously evaluated. The AF system is capable of performing the safety-related functions required to mitigate the effects of design basis accidents. Conditions which impose safety-related performance requirements on the design of the AF system include the following: loss of main feedwater transient, secondary system pipe breaks, loss of all a-c power, loss-of-coolant accident (LOCA), and cooldown (after expected transients, accidents, and other scenarios). For the non-accident unit, controls ensure compliance with existing TS conditions that ensure one train remains operable and the condition exists for a limited time. The AF system will continue to be used in compliance with the existing conditions in the TS. Since the AF system is assured of performing its intended design function in mitigating the effects of design basis accidents, the consequences of accidents previously evaluated in the UFSAR will not be increased.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

Failures of the AF system cannot initiate an accident. The proposed use of an AF Train A unit cross-tie will not interface with the reactor coolant system, containment, or engineered safeguards features. Failure modes and effects described in the UFSAR are not impacted. The electrical power supplies and AF system pumps will be maintained in design basis train alignments. Use of an AF Train A unit cross-tie will have no impact on the range of initiating events previously assessed. Thus, the accident analysis presented in the UFSAR is not impacted. The change is consistent with the safety analysis assumptions.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The margin of safety is not reduced. Results of the existing UFSAR accident analysis are not impacted, and therefore the safety margins are not impacted. The proposed change will not reduce a margin of safety because the non-accident unit will be operated within existing TS conditions. For the non-accident unit, controls ensure compliance with existing TS conditions that ensure one train remains operable and the condition exists for a limited time. The AF Train A unit cross-tie is not a credited flow path in design basis or needed to meet a safety function. The AF Train A unit cross-tie is an additional strategy made available if a total loss of secondary heat sink should occur. The AF Train A unit cross-tie would be initiated if the feed flow to at least one SG cannot be verified during the event, and an appropriate SG level cannot be maintained to regain secondary heat sink. As such, the AF Train A unit cross-tie is an improvement in emergency procedures for a total loss of heat sink, and this improves probabilistic risk assessment. The proposed change, therefore, does not involve a reduction in a margin of safety.

Based on the above, EGC concludes that the proposed change presents no significant hazards consideration under the standards set forth in 10 CFR 50.92(c), and, accordingly, a finding of ''no significant hazards consideration'' is justified.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the requested amendments involve no significant hazards consideration.

*Attorney for licensee:* Mr. Bradley J. Fewell, Associate General Counsel, Exelon Nuclear, 4300 Winfield Road, Warrenville, IL 60555.

*NRC Branch Chief:* Jacob I. Zimmerman.

*Exelon Generation Company, LLC, Docket Nos. STN 50–456 and STN 50–457, Braidwood Station, Units 1 and 2, Will County, Illinois; Docket Nos. STN 50–454 and STN 50–455, Byron Station, Units 1 and 2, Ogle County, Illinois*

*Date of amendment request:* March 22, 2012.

*Description of amendment request:* The proposed amendment would modify technical specification requirements regarding steam generator tube inspections and reporting as described in TSTF–510, Revision 2, ''Revision to Steam Generator Program Inspection Frequencies and Tube Sample Selection;'' however, Exelon Generating Company (EGC) is proposing certain variations and deviations from TSTF–510.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated.

Response: No.

The proposed change revises the Steam Generator (SG) Program to modify the frequency of verification of SG tube integrity and SG tube sample selection. A steam generator tube rupture (SGTR) event is one of the design basis accidents that are analyzed as part of a plant's licensing basis. The proposed SG tube inspection frequency and sample selection criteria will continue to ensure that the SG tubes are inspected such that the probability of a SGTR is not increased. The consequences of a SGTR are bounded by the conservative assumptions in the design basis accident analysis. The

proposed change will not cause the consequences of a SGTR to exceed those assumptions.

Therefore, it is concluded that this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed changes to the Steam Generator Program will not introduce any adverse changes to the plant design basis or postulated accidents resulting from potential tube degradation. The proposed change does not affect the design of the SGs or their method of operation. In addition, the proposed change does not impact any other plant system or component.

Therefore, it is concluded that this change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The SG tubes in pressurized water reactors are an integral part of the reactor coolant pressure boundary and, as such, are relied upon to maintain the primary system's pressure and inventory. As part of the reactor coolant pressure boundary, the SG tubes are unique in that they are also relied upon as a heat transfer surface between the primary and secondary systems such that residual heat can be removed from the primary system. In addition, the SG tubes also isolate the radioactive fission products in the primary coolant from the secondary system. In summary, the safety function of a SG is maintained by ensuring the integrity of its tubes.

Steam generator tube integrity is a function of the design, environment, and the physical condition of the tube. The proposed change does not affect tube design or operating environment. The proposed change will continue to require monitoring of the physical condition of the SG tubes such that there will not be a reduction in the margin of safety compared to the current requirements.

The proposed amendment deletes the current TS 5.5.9.c.2 and TS 5.5.9.f.2 allowance to use ABB Combustion Engineering Inc. TIG welded sleeves as a steam generator tube repair method. There are no ABB Combustion Engineering Inc. (Westinghouse) TIG-welded sleeves currently installed in the Braidwood Station, Unit 2, and Byron Station, Unit 2, SGs. EGC has been informed by the sleeve vendor that TIG welded sleeves are no longer commercially available. As a result of this change, there are no available SG tube repair methods for Braidwood Station or Byron Station. The proposed amendment deletes TS 5.5.9.f, TS 5.5.9.c.2, TS 5.5.9.c.3, and references to tube repair and sleeves in various TS. Removing the ability for tube repair methods is conservative; therefore, the proposed change does not involve a significant reduction in a margin of safety.

Therefore, it is concluded that the proposed change does not involve a significant reduction in a margin of safety.

Based on the above, EGC concludes that the proposed change presents no significant hazards consideration under the standards set forth in 10 CFR 50.92(c), and, accordingly, a finding of ''no significant hazards consideration'' is justified.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the requested amendments involve no significant hazards consideration.

*Attorney for licensee:* Mr. Bradley J. Fewell, Associate General Counsel, Exelon Nuclear, 4300 Winfield Road, Warrenville, IL 60555.

*NRC Branch Chief:* Jacob I. Zimmerman.

*NextEra Energy Seabrook, LLC Docket No. 50–443, Seabrook Station, Unit 1, Rockingham County, New Hampshire*

*Date of amendment request:* April 30, 2012.

*Description of amendment request:* The proposed changes to the Seabrook Emergency Plan are associated with the initiating conditions involving a loss of safety system annunciation or indication in the control room. The proposed changes revise the emergency action levels (EALs) to include radiation monitoring indications within the aggregate of safety system indications that are considered when evaluating a loss of safety system indications rather than separate EALs.

*Basis for proposed NSHC determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of NSHC, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes to the Seabrook Station emergency plan do not impact the physical function of plant structures, systems, or components (SSCs) or the manner in which SSCs perform their design function. The proposed changes neither adversely affect accident initiators or precursors, nor alter design assumptions. The proposed changes do not alter or prevent the ability of operable SSCs to perform their intended function to mitigate the consequences of an initiating event within assumed acceptance limits. No operating procedures or administrative controls that function to prevent or mitigate accidents are affected by the proposed changes.

Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

The proposed changes will not impact the accident analysis. The changes do not involve a physical alteration of the plant (i.e., no new or different type of equipment will be installed), a change in the method of plant operation, or new operator actions. The proposed changes will not introduce failure modes that could result in a new accident, and the change does not alter assumptions made in the safety analysis. The proposed changes revise emergency action levels (EAL), which establish the thresholds for placing the plant in an emergency classification. EALs are not initiators of any accidents.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed change does not involve a significant reduction in the margin of safety.

Margin of safety is associated with confidence in the ability of the fission product barriers (i.e., fuel cladding, reactor coolant system pressure boundary, and containment structure) to limit the level of radiation dose to the public. The proposed changes are associated with the EALs and do not impact operation of the plant or its response to transients or accidents. The changes do not affect the Technical Specifications or the operating license. The proposed changes do not involve a change in the method of plant operation, and no accident analyses will be affected by the proposed changes. Additionally, the proposed changes will not relax any criteria used to establish safety limits and will not relax any safety system settings. The safety analysis acceptance criteria are not affected by these changes. The proposed changes will not result in plant operation in a configuration outside the design basis. The proposed changes do not adversely affect systems that respond to safely shutdown the plant and to maintain the plant in a safe shutdown condition.

The revised EALs provide more appropriate and accurate criteria for determining protective measures that should be considered within and outside the site boundary to protect health and safety. The emergency plan will continue to activate an emergency response commensurate with the extent of degradation of plant safety.

Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves NSHC.

*Attorney for licensee:* M.S. Ross, Florida Power & Light Company, P.O. Box 14000, Juno Beach, FL 33408–0420.

*NRC Branch Chief:* Meena Khanna.

*Southern Nuclear Operating Company, Inc., Docket Nos. 52–025 and 52–026, Vogtle Electric Generating Plant (VEGP) Units 3 and 4, Burke County, Georgia*

*Date of amendment request:* February 24, 2012.

*Description of amendment request:* The proposed changes would amend Combined License Nos. NPF–91 and NPF–92, for VEGP Units 3 and 4, respectively, in regard to the Technical Specifications (TS). The proposed amendment updates the TS for operator usability that more closely aligns with the form and content of other improved Standard Technical Specifications NUREGs. Specifically, the changes would result in closer alignment with the guidance of the Technical Specifications Task Force (TSTF) Writer's Guide for Plant-Specific Improved Technical Specifications, TSTF–GG–05–01, Revision 1, and with NUREG–1431, Standard Technical Specifications-Westinghouse Plants as updated by the U.S. Nuclear Regulatory Commission (NRC) approved generic changes.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

In accordance with the provisions of 10 CFR 50.90, Southern Nuclear Operating Company (SNC) proposes to amend the VEGP TS. Evaluations pursuant to 10 CFR 50.92 showing that the proposed changes do not involve significant hazards considerations are provided for each change.

However, due to the significant number of changes associated with the upgrade effort, SNC has grouped similar changes into categories to facilitate the significant hazards evaluations required by 10 CFR 50.92. Generic significant hazards evaluations are provided for the Administrative, More Restrictive, Relocation, and Detail Removed categories. Each individual Less Restrictive change is addressed by a specific significant hazards evaluation. Due to the large volume of changes, obvious editorial or administrative changes (e.g., formatting, page rolls, punctuation, etc.) have not always received an explicit discussion, but are considered to be addressed by the applicable generic significant hazards evaluation for Administrative changes.

Each significant change to the TS is marked-up on the appropriate page in Enclosure 2 of its submittal and assigned a reference number reflective of the significant hazards evaluation type. The reference number assigned to a change is used in the Discussion of Change (DOC) in Enclosure 1 of its submittal which provides a detailed description (basis) for each change supporting the applicable significant hazards evaluation in Enclosure 6 of its submittal.

10 CFR 50.92 Evaluation for Administrative Changes

SNC proposes to amend the VEGP Units 3 and 4, Technical Specifications. SNC has evaluated each of the proposed TS changes identified as Administrative in accordance with the criteria set forth in 10 CFR 50.92, ''Issuance of amendment,'' and has determined that the proposed changes do not involve a significant hazards consideration. This significant hazards consideration is applicable to each Administrative change identified in Enclosure 1 and Enclosure 2 of its submittal.

The basis for the determination that the proposed changes do not involve a significant hazards consideration is an evaluation of these changes against each of the criteria in 10 CFR 50.92(c). The criteria and conclusions of the evaluation are presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed changes involve reformatting, renumbering, and rewording the TS. The reformatting, renumbering, and rewording process involves no technical changes to the TS. As such, these changes are administrative in nature and do not affect initiators of analyzed events or assumed mitigation of accident or transient events.

Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed changes do not involve a physical alteration of the plant (no new or different type of equipment will be installed) or changes in methods governing normal plant operation. The proposed changes will not impose any new or different requirements, or eliminate any existing requirements.

Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The proposed changes will not reduce a margin of safety because the changes have no effect on any safety analyses assumptions. These changes are administrative in nature. Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

10 CFR 50.92 Evaluation for More Restrictive Changes

This generic category include changes that impose additional requirements, decrease allowed outage times, increase the Frequency of Surveillances, impose additional Surveillances, increase the scope of Specifications to include additional plant equipment, broaden the Applicability of Specifications, or provide additional actions. These changes have been evaluated to not be detrimental to plant safety.

Changes to the TS requirements categorized as More Restrictive are annotated with an ''M'' in the Enclosure 1 DOC and Enclosure 2 markup of its submittal.

SNC proposes to amend the VEGP Units 3 and 4 TS. SNC has evaluated each of the proposed TS changes identified as More Restrictive in accordance with the criteria set forth in 10 CFR 50.92, ''Issuance of amendment,'' and has determined that the proposed changes do not involve a significant hazards consideration. This significant hazards consideration is applicable to each More Restrictive change identified in Enclosure 1 and Enclosure 2 of its submittal.

The basis for the determination that the proposed changes do not involve a significant hazards consideration is an evaluation of these changes against each of the criteria in 10 CFR 50.92(c). The criteria and conclusions of the evaluation are presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed changes provide more stringent TS requirements. These more stringent requirements do not result in operations that significantly increase the probability of initiating an analyzed event, and do not alter assumptions relative to mitigation of an accident or transient event. The more restrictive requirements continue to ensure process variables, structures, systems, and components are maintained consistent with the safety analyses and licensing basis.

Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed changes do not involve a physical alteration of the plant (no new or different type of equipment will be installed) or changes in methods governing normal plant operation. The proposed changes do impose different Technical Specification requirements. However, these changes are consistent with the assumptions in the safety analyses and licensing basis.

Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The imposition of more restrictive requirements either has no effect on or increases a margin of plant safety. As provided in the discussion of change, each change in this category is, by definition, providing additional restrictions to enhance plant safety. The changes maintain

requirements within the safety analyses and licensing basis.

Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

10 CFR 50.92 Evaluation for Relocated Specifications

This generic category applies to changes that relocate entire TS Limiting Conditions for Operations (LCOs). A specific DOC for each TS identified for relocation is provided in Enclosure 1. This evaluation will be applicable to each of the changes identified with an ''R'' in the Enclosure 1 DOC and the associated Enclosure 2 markup of its submittal.

SNC has evaluated each of the proposed TS changes identified as Relocated Specifications in accordance with the criteria set forth in 10 CFR 50.92, ''Issuance of Amendment,'' and has determined that the proposed changes do not involve a significant hazards consideration. This significant hazards consideration is applicable to each Relocated Specification identified in Enclosure 1 and Enclosure 2 of its submittal.

The basis for the determination that the proposed changes do not involve a significant hazards consideration is an evaluation of these changes against each of the criteria in 10 CFR 50.92(c). The criteria and conclusions of the evaluation are presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed changes relocate LCOs for structures, systems, components, or variables that do not meet the criteria of 10 CFR 50.36(c)(2)(ii) for inclusion in TS. The affected structures, systems, components, or variables are not assumed to be initiators of analyzed events and are not assumed to mitigate accident or transient events. The requirements and Surveillances for these affected structures, systems, components, or variables are proposed to be relocated from the TS to a licensee controlled document that is controlled by the provisions of 10 CFR 50.59. The proposed changes only reduce the level of regulatory control on these requirements. The level of regulatory control has no impact on the probability or consequences of an accident previously evaluated.

Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed changes do not involve a physical alteration of the plant (no new or different type of equipment will be installed) or change in the methods governing normal plant operation. The proposed changes will not impose or eliminate any requirements, and adequate control of existing requirements will be maintained.

Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The proposed changes will not reduce a margin of safety because they have no significant effect on any safety analyses assumptions, as indicated by the fact that the requirements do not meet the 10 CFR 50.36 criteria for retention. In addition, the relocated requirements are moved without change, and any future changes to these requirements will be evaluated per 10 CFR 50.59.

NRC prior review and approval of changes to these relocated requirements, in accordance with 10 CFR 50.92, will no longer be required. There is no margin of safety attributed to NRC prior review and approval. However, the proposed changes are consistent with 10 CFR 50.36, which allows revising the TS to relocate these requirements and Surveillances to a licensee controlled document.

Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

10 CFR 50.92 Evaluation for Detail Removed Changes

This generic category applies to changes that involve removing details out of the TS. These details are either supported by existing content in the TS Bases or the Final Safety Analysis Report (FSAR) or a commitment is made to add them to the TS Bases or FSAR. The removal of this information is considered to be less restrictive because it is no longer controlled by the TS change process. Typically, the information removed is descriptive in nature and its removal conforms to NUREG–1431 for format and content.

A specific DOC for each detail identified for removal is provided in Enclosure 1 of its submittal. This evaluation will be applicable to each of the changes identified with a ''D'' in the Enclosure 1 DOC and the associated Enclosure 2 markup of its submittal.

SNC proposes to amend the VEGP Units 3 and 4, Technical Specifications. SNC has evaluated each of the proposed TS changes identified as Detail Removed in accordance with the criteria set forth in 10 CFR 50.92, ''Issuance of amendment,'' and has determined that the proposed changes do not involve a significant hazards consideration. This significant hazards consideration is applicable to each Detail Removed change identified in Enclosure 1 and Enclosure 2 of its submittal.

The basis for the determination that the proposed changes do not involve a significant hazards consideration is an evaluation of these changes against each of the criteria in 10 CFR 50.92(c). The criteria and conclusions of the evaluation are presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed changes relocate certain details from the TS to other documents under regulatory control. The FSAR will be maintained in accordance with 10 CFR 50.59 and 10 CFR part 52, Appendix D, Section VIII. The TS Bases are subject to the change control provisions in the Administrative Controls Chapter of the TS. Since any changes to these documents will be evaluated, no significant increase in the probability or consequences of an accident previously evaluated will be allowed.

Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed changes do not involve a physical alteration of the plant (no new or different type of equipment will be installed) or a change in the methods governing normal plant operations. The proposed changes will not impose or eliminate any requirements, and adequate control of the information will be maintained.

Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The proposed changes will not reduce a margin of safety because they have no effect on any assumption of the safety analyses. In addition, the details to be moved from the TS to other documents are not being changed. Since any future changes to these details will be evaluated under the applicable regulatory change control mechanism, no significant reduction in a margin of safety will be allowed. A significant reduction in a margin of safety is not associated with the elimination of the 10 CFR 50.90 requirement for NRC review and approval of future changes to the relocated details. Not including these details in the TS is consistent with NUREG–1431, issued by the NRC, which allows revising the TS to relocate these requirements to a licensee controlled document controlled by 10 CFR 50.59 and 10 CFR part 52, Appendix D, Section VIII, or other TS controlled or regulation controlled documents.

Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

10 CFR 50.92 Evaluation for Less Restrictive Changes

This category consists of technical changes which revise existing requirements such that more restoration time is provided, fewer compensatory measures are needed, surveillance requirements are deleted, or less restrictive surveillance requirements are required. This would also include requirements which are deleted from the TS (not relocated to other documents) and other technical changes that do not fit a generic category. These changes are evaluated individually.

Technical changes to the TS requirements categorized as ''Less Restrictive'' are identified with an ''L'' and an individual number in the Enclosure 1 DOC and Enclosure 2 markup of its submittal.

SNC proposes to amend the VEGP Units 3 and 4, Technical Specifications. SNC has evaluated each of the proposed technical changes identified as ''Less Restrictive'' individually in accordance with the criteria set forth in 10 CFR 50.92 and has determined that the proposed changes do not involve a significant hazards consideration.

The basis for the determination that the proposed changes do not involve a significant hazards consideration is an evaluation of these changes against each of the criteria in 10 CFR 50.92(c). The criteria and conclusions of the evaluation are presented below.

L01 SNC proposes to amend TS 1.0, ''Definitions,'' by deleting the definition for Actuation Device Test. Reference to ''overlap with the ACTUATION DEVICE TEST'' that is cited in the definition of Actuation Logic Test is replaced with ''overlap with the actuated device.''

Current Surveillance Requirement (SR) 3.3.2.7 (''Perform ACTUATION DEVICE TEST'') and SR 3.3.2.8 (''Perform ACTUATION DEVICE TEST for squib valves'') are deleted from current TS 3.3.2 and Table 3.3.2–1, Function 26, Engineered Safety Feature (ESF) Actuation. The equivalent requirement (using phrasing generally consistent with NUREG–1431) is included in individual Specifications for the actuated devices with the same 24 month Frequency as the deleted SRs. The impact of this reformatting is such that more appropriate, albeit less restrictive, actions would be applied when the associated device fails to meet the surveillance requirement. Also, current SR 3.3.2.9 is revised to eliminate the use of the Actuation Device Test defined term and replaced it with verification of actuation on an actual or simulated actuation signal.

SNC has evaluated whether or not a significant hazards consideration is involved with the proposed amendment by focusing on the three standards set forth in 10 CFR 50.92, ''Issuance of amendment,'' as discussed below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change does not involve a physical alteration of the plant or a change in the methods governing normal plant operations. The change involves reformatting and revising the presentation of existing surveillance requirements (with no change in required system or device function), such that more appropriate, albeit less restrictive, actions would be applied when the device fails to meet the surveillance requirement. Revised surveillance requirement presentation and compliance with TS actions are not an initiator to any accident previously evaluated. As a result, the probability of an accident previously evaluated is not affected.

The consequences of an accident as a result of the revised surveillance requirements and actions are no different than the consequences of the same accident during the existing ones. As a result, the consequences of an accident previously evaluated are not affected by this change.

The proposed change does not alter or prevent the ability of structures, systems, and components from performing their intended function to mitigate the consequences of an initiating event within the assumed acceptance limits. The proposed change does not affect the source term, containment isolation, or radiological release assumptions used in evaluating the radiological consequences of an accident previously evaluated.

Therefore, this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change reformats TS requirements such that more appropriate, albeit less restrictive, actions would be applied when the device fails to meet the surveillance requirement. However, the proposed change does not involve a physical alteration of the plant as described in the FSAR. No new equipment is being introduced, and equipment is not being operated in a new or different manner. There are no setpoints, at which protective or mitigative actions are initiated, affected by this change. This change will not alter the manner in which equipment operation is initiated, nor will the function demands on credited equipment be changed. No change is being made to the procedures relied upon to respond to an off-normal event as described in the FSAR as a result of this change. As such, no new failure modes are being introduced. The change does not alter assumptions made in the safety analysis and licensing basis.

Therefore, this change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The proposed change will not reduce a margin of safety because it has no effect on any assumption of the safety analyses. While certain actions for inoperability of actuated devices are made less restrictive by eliminating entry into Engineered Safety Feature Actuation System (ESFAS) Actuation and Instrumentation inoperability actions, no action is made less restrictive than currently approved for any associated actuated device inoperability. As such, there is no significant reduction in a margin of safety.

L02 SNC proposes to amend current TS 5.6, ''Reporting Requirements,'' to delete TS 5.6.1, ''Occupational Radiation Exposure Report,'' and TS 5.6.4, ''Monthly Operating Reports.'' This change results in the renumbering of TS 5.6 sections, but does not revise technical or administrative requirements. SNC stated that the change is consistent with NRC approved Industry/TSTF Standard Technical Specification Change Traveler, TSTF–369, ''Removal of Monthly Operating Report and Occupational Radiation Exposure Report,'' Revision 1.

SNC has reviewed the proposed no significant hazards consideration determination published on June 23, 2004 (69 FR 35067) as part of the Consolidated Line Item Improvement Process (CLIIP) for TSTF–369, Revision 1. SNC has concluded that the proposed determination presented in the notice is applicable to VEGP Units 3 and 4 and the determination is hereby incorporated by reference to satisfy the requirements of 10 CFR 50.91(a).

L03 SNC proposes to amend TS to eliminate the use of the defined term ''CORE ALTERATIONS'' and incorporate changes reflected in TSTF–471–A.

SNC has evaluated whether or not a significant hazards consideration is involved with the proposed amendment by focusing on the three standards set forth in 10 CFR 50.92, ''Issuance of amendment,'' as discussed below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change eliminates the use of the term ''CORE ALTERATIONS,'' all Required Actions requiring suspension of core alterations, and reference to core alterations in a surveillance requirement. With the exception of a fuel handling accident, core alterations are not an initiator of any accident previously evaluated. Those revised Specifications which protect the initial conditions of a fuel handling accident also require the suspension of movement of irradiated fuel assemblies. This Required Action protects the initial conditions of a fuel handling accident and, therefore, suspension of all other core alterations is not required. Suspension of core alterations, except fuel handling, does not provide mitigation of any accident previously evaluated. Therefore, eliminating the TS presentation of core alterations does not affect the initiators of the accidents previously evaluated and suspension of core alterations does not affect the mitigation of the accidents previously evaluated.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change does not involve a physical alteration of the plant as described in the FSAR. No new equipment is being introduced, and equipment is not being operated in a new or different manner. There are no setpoints, at which protective or mitigative actions are initiated, affected by this change. This change will not alter the manner in which equipment operation is initiated, nor will the function demands on credited equipment be changed. No change is being made to the procedures relied upon to respond to an off-normal event as described

in the FSAR as a result of this change. As such, no new failure modes are being introduced. The change does not alter assumptions made in the safety analysis and licensing basis. Therefore, this change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

Two events are postulated to occur in the plant conditions in which core alterations may be made: a fuel handling accident and a boron dilution incident. Suspending movement of irradiated fuel assemblies to prevent a fuel handling accident is retained as appropriate. As such, requiring the suspension of core alterations is an overly broad, redundant requirement that does not increase a margin of safety. Core alterations have no effect on a boron dilution incident. Core components are not involved in the creation or mitigation of a boron dilution incident and the shutdown margin (Mode 5) and boron concentration (Mode 6) limits are based on assuming the worst-case configuration of the core components.

Therefore, core alterations have no effect on a margin of safety related to a boron dilution incident. Therefore, there is no significant reduction in a margin of safety.

L04 SNC proposes to amend TS, Section 1.3, ''Completion Times,'' Example 1.3–3 to eliminate the Required Action A.1 and Required Action B.1 second Completion Times, and to replace the discussion regarding second Completion Times with a new discussion. SNC also proposes to delete the second Completion Times associated with current TS 3.8.5, ''Distribution Systems—Operating,'' Required Actions A.1, B.1, C.1, and D.1.

SNC has evaluated whether or not a significant hazards consideration is involved with the proposed amendment by focusing on the three standards set forth in 10 CFR 50.92, ''Issuance of amendment,'' as discussed below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change eliminates certain Completion Times from the Technical Specifications. Completion Times are not an initiator to any accident previously evaluated. As a result, the probability of an accident previously evaluated is not affected. The consequences of an accident during the revised Completion Time are no different than the consequences of the same accident during the existing Completion Times. As a result, the consequences of an accident previously evaluated are not affected by this change. The proposed change does not alter or prevent the ability of structures, systems, and components (SSCs) from performing their intended function to mitigate the consequences of an initiating event within the assumed acceptance limits. The proposed change does not affect the source term, containment isolation, or radiological release assumptions used in evaluating the radiological consequences of an accident previously evaluated. Further, the proposed change does not increase the types or amounts of radioactive effluent that may be released offsite, nor significantly increase individual or cumulative occupational/public radiation exposures. The proposed change is consistent with the safety analysis assumptions and resultant consequences.

Therefore, this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change does not involve a physical alteration of the plant as described in the FSAR. No new equipment is being introduced, and equipment is not being operated in a new or different manner. There are no setpoints, at which protective or mitigative actions are initiated, affected by this change. This change will not alter the manner in which equipment operation is initiated, nor will the function demands on credited equipment be changed. No change is being made to the procedures relied upon to respond to an off-normal event as described in the FSAR as a result of this change. As such, no new failure modes are being introduced. The change does not alter assumptions made in the safety analysis and licensing basis.

Therefore, this change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The proposed change to delete the second Completion Time does not alter the manner in which safety limits, limiting safety system settings or limiting conditions for operation are determined. The safety analysis acceptance criteria are not affected by this change. The proposed change will not result in plant operation in a configuration outside of the design basis.

Therefore, there is no significant reduction in a margin of safety.

L05 SNC proposes to amend TS to eliminate LCO 3.0.8.

SNC has evaluated whether or not a significant hazards consideration is involved with the proposed amendment by focusing on the three standards set forth in 10 CFR 50.92, ''Issuance of amendment,'' as discussed below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

Technical Specification actions to restore equipment to Operable and to monitor plant parameters are not initiators to any analyzed accident sequence. Operation in accordance with the proposed TS continues to ensure that plant equipment is capable of performing mitigative functions assumed by the accident analysis.

The proposed TS change does not involve any changes to SSCs and does not alter the method of operation or control of SSCs as described in the FSAR. The current assumptions in the safety analysis regarding accident initiators and mitigation of accidents are unaffected by this change. No additional failure modes or mechanisms are being introduced and the likelihood of previously analyzed failures remains unchanged.

The integrity of fission product barriers, plant configuration, and operating procedures as described in the FSAR will not be affected by this change. Therefore, the consequences of previously analyzed accidents will not increase because of this change.

Therefore, this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change does not involve a physical alteration of the plant as described in the FSAR. No new equipment is being introduced, and equipment is not being operated in a new or different manner. There are no setpoints, at which protective or mitigative actions are initiated, affected by this change. This change will not alter the manner in which equipment operation is initiated, nor will the function demands on credited equipment be changed. Any alteration in procedures will continue to ensure that the plant remains within analyzed limits, and no change is being made to the procedures relied upon to respond to an off-normal event as described in the FSAR. As such, no new failure modes are being introduced. The change does not alter assumptions made in the safety analysis and licensing basis.

Therefore, this change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

Margin of safety is established through equipment design, operating parameters, and the setpoints at which automatic actions are initiated. The proposed change does not alter the requirement to restore compliance with TS and to monitor plant parameter status for appropriate manual actions. Operation in accordance with the proposed TS ensures that the plant response to analyzed events will continue to provide the margins of safety assumed by the analysis. Appropriate monitoring and maintenance, consistent with industry standards, will continue to be performed.

As such, there is no functional change to the requirements and therefore, there is no significant reduction in a margin of safety.

L06 SNC proposes to amend TS 3.2.5 to eliminate the increased frequency of verifying core power distribution parameters when the On-line Power Distribution Monitoring System (OPDMS) alarms are inoperable. This change retains the normal 24-hour Frequency and eliminates the 12-

hour Frequency when OPDMS alarms are inoperable.

SNC has evaluated whether or not a significant hazards consideration is involved with the proposed amendment by focusing on the three standards set forth in 10 CFR 50.92, ''Issuance of amendment,'' as discussed below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

A TS frequency for monitoring plant parameters is not an initiator to any accident sequence analyzed in the FSAR. Operation in accordance with the proposed TS continues to ensure that initial conditions assumed in the accident analysis are maintained.

The proposed change does not involve a physical alteration of the plant as described in the FSAR and does not alter the method of operation or control of equipment as described in the FSAR. The current assumptions in the safety analysis regarding accident initiators and mitigation of accidents are unaffected by this change. Plant equipment remains capable of performing mitigative functions assumed by the accident analysis. No additional failure modes or mechanisms are being introduced and the likelihood of previously analyzed failures remains unchanged. The integrity of fission product barriers, plant configuration, and operating procedures as described in the FSAR will not be affected by this change. Therefore, the consequences of previously analyzed accidents will not increase because of this change.

Therefore, this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change does not involve a physical alteration of the plant as described in the FSAR. No new equipment is being introduced, and equipment is not being operated in a new or different manner. There are no setpoints, at which protective or mitigative actions are initiated, affected by this change. This change will not alter the manner in which equipment operation is initiated, nor will the function demands on credited equipment be changed. Any alteration in procedures will continue to ensure that the plant remains within analyzed limits, and no change is being made to the procedures relied upon to respond to an off-normal event as described in the FSAR. As such, no new failure modes are being introduced. The change does not alter assumptions made in the safety analysis and licensing basis.

Therefore, this change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

Margin of safety is established through equipment design, operating parameters, and the setpoints at which automatic actions are initiated. The proposed change is acceptable because the OPDMS alarms do not impact a margin of safety. Operation in accordance with the proposed TS ensures that the plant response to analyzed events will continue to provide the margins of safety assumed by the analysis. Appropriate monitoring and maintenance, consistent with industry standards, will continue to be performed.

As such, there is no functional change to the requirements and therefore, there is no significant reduction in a margin of safety.

L07 SNC proposes to amend the TS 3.3.1, 3.3.4, and 3.4.5 by replacing the TS Required Actions requiring the reactor trip breakers (RTBs) to be opened with two Required Actions: one Required Action states ''Initiate action to fully insert all rods,'' and the other Required Action states ''Place the Plant Control System in a condition incapable of rod withdrawal.'' For consistency, TS Applicabilities associated with RTB position are also being revised. Applicabilities including ''RTBs closed'' are revised to state ''Plant Control System capable of rod withdrawal or one or more rods not fully inserted.'' Conversely, Applicabilities including ''RTBs open'' are revised to state ''With Plant Control System incapable of rod withdrawal and all rods fully inserted.''

SNC has evaluated whether or not a significant hazards consideration is involved with the proposed amendment by focusing on the three standards set forth in 10 CFR 50.92, ''Issuance of amendment,'' as discussed below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change does not involve a physical alteration of the plant as described in the FSAR and does not alter the method of operation or control of equipment as described in the FSAR. The current assumptions in the safety analysis regarding accident initiators and mitigation of accidents are unaffected by this change. Plant equipment remains capable of performing mitigative functions assumed by the accident analysis. However, the change involves allowing methods of compliance other than establishing or verifying RTB open or closed status to determine the condition of the capability of the Plant Control System to allow or inhibit rod withdrawal and the status of all rods inserted or not. The method of establishing this status is not an accident initiator nor involved with mitigation of the consequences of an accident.

Therefore, this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change does allow methods of compliance other than establishing or verifying RTB open or closed status; however, RTB open or closed status will continue to be one appropriate and viable method of establishing and verifying applicable plant conditions. The proposed change does not involve a physical alteration of the plant as described in the FSAR. No new equipment is being introduced, and equipment is not being operated in a new or different manner. There are no setpoints, at which protective or mitigative actions are initiated, affected by this change. This change will not alter the manner in which equipment operation is initiated, nor will the function demands on credited equipment be changed. No change is being made to the procedures relied upon to respond to an off-normal event as described in the FSAR as a result of this change. As such, no new failure modes are being introduced. The change does not alter assumptions made in the safety analysis and licensing basis.

Therefore, this change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The proposed change will not reduce a margin of safety because it has no effect on any assumption of the safety analyses. While certain interlocks depend on RTB open or close status, these interlocks and the association with RTB is not revised. When those interlocks are required, the position of RTBs will continue to dictate the appropriate protection system response. Allowing alternate methods of establishing or verifying the condition of the capability of the Plant Control System to allow or inhibit rod withdrawal and the status of all rods inserted or not, does not impact any safety analysis assumption or plant response to an analyzed event.

As such, there is no functional change to the required plant conditions, and therefore, there is no significant reduction in a margin of safety.

L08 SNC proposes to amend the TS by deleting current TS 3.3.1, Reactor Trip System (RTS) Instrumentation, Required Actions D.1.1, D.2.1, and D.2.2 applicable to inoperable Power Range Neutron Flux channels.

SNC has evaluated whether or not a significant hazards consideration is involved with the proposed amendment by focusing on the three standards set forth in 10 CFR 50.92, ''Issuance of amendment,'' as discussed below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change does not involve a physical alteration of the plant or a change in the methods governing normal plant operations. Overly restrictive and inappropriate Required Actions are being deleted since adequate compensatory measures already address the potential impact on radial power monitoring and the appropriate compensatory and mitigative actions in the event the RTS function is degraded for the Power Range Neutron Flux function. Additionally, the Surveillances for TS 3.2.4, Quadrant Power Tilt Ratio (QPTR),

address the requirements unique to loss of Power Range Neutron Flux monitoring for QPTR. Eliminating overly restrictive and inappropriate Required Actions does not impact an accident initiator or impact mitigation of the consequences of any accident.

Therefore, this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change eliminates overly restrictive and inappropriate Required Actions. However, the proposed change does not involve a physical alteration of the plant as described in the FSAR. No new equipment is being introduced, and equipment is not being operated in a new or different manner. There are no setpoints, at which protective or mitigative actions are initiated, affected by this change. This change will not alter the manner in which equipment operation is initiated, nor will the function demands on credited equipment be changed. No change is being made to the procedures relied upon to respond to an off-normal event as described in the FSAR as a result of this change. As such, no new failure modes are being introduced. The change does not alter assumptions made in the safety analysis and licensing basis.

Therefore, this change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

Margin of safety is established through equipment design, operating parameters, and the setpoints at which automatic actions are initiated. The proposed change will not reduce a margin of safety because it has no such effect on any assumption of the safety analyses. While certain actions for inoperability of actuated devices are made less restrictive by eliminating a potentially unnecessary power reduction, and actions that could not be performed, no action is made less restrictive than currently approved for similar channel inoperability.

Therefore, there is no significant reduction in a margin of safety.

L09 SNC proposes to amend current TS 3.3.1, ''Reactor Trip System (RTS) Instrumentation,'' Source Range Neutron Flux Actions in Mode 2 for one and two inoperable channels. The change allows for placing inoperable channels in bypass and/or trip thereby allowing continued operation.

SNC has evaluated whether or not a significant hazards consideration is involved with the proposed amendment by focusing on the three standards set forth in 10 CFR 50.92, ''Issuance of amendment,'' as discussed below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change does not involve a physical alteration of the plant or a change in the methods governing normal plant operations. However, the change involves providing actions allowing bypassing and/or tripping one or two inoperable Source Range Neutron Flux channels. Required Actions are not an accident initiator nor credited with mitigation of the consequences of an accident. The actions continue to assure operation consistent with the design provisions and within the assumptions of the safety analysis.

Therefore, this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change involves certain less restrictive actions; however, these actions are consistent with the design provisions and with currently approved actions for other inoperable automatic RTS actuation functions. The proposed change does not involve a physical alteration of the plant as described in the FSAR. No new equipment is being introduced, and equipment is not being operated in a new or different manner. There are no setpoints, at which protective or mitigative actions are initiated, affected by this change. This change will not alter the manner in which equipment operation is initiated, nor will the function demands on credited equipment be changed. No change is being made to the procedures relied upon to respond to an off-normal event as described in the FSAR as a result of this change. As such, no new failure modes are being introduced. The change does not alter assumptions made in the safety analysis and licensing basis.

Therefore, this change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

Margin of safety is established through equipment design, operating parameters, and the setpoints at which automatic actions are initiated. The proposed change will not reduce a margin of safety because it has no such effect on any assumption of the safety analyses. While the change involves less restrictive actions, these actions are consistent with the design provisions and with currently approved actions for other inoperable automatic RTS actuation Functions. These actions do not result in any conflict with the assumptions in the safety analyses and licensing basis.

As such, there is no significant reduction in a margin of safety.

L10 SNC proposes to amend the TS, as follows:

- TS 3.1.8 ''PHYSICS TESTS Exceptions—MODE 2,'' is revised to delete the listing of current Function 16.b for TS 3.3.1, ''Reactor Trip System (RTS) Instrumentation'';
- Current TS 3.3.1, ''Reactor Trip System (RTS) Instrumentation,'' Table 3.3.1–1, Function 16, Reactor Trip System Interlocks requirements are removed;
- Current TS 3.3.1 Action M is deleted;
- Current TS 3.3.2, ''Engineered Safety Feature Actuation System (ESFAS) Instrumentation,'' Table 3.3.2–1, Function 18, ESFAS Interlocks (with the exception of Table 3.3.2–1, Function 18.b, Reactor Trip, P–4) requirements are removed; and
- Current TS 3.3.2 Action J is deleted.

SNC has evaluated whether or not a significant hazards consideration is involved with the proposed amendment by focusing on the three standards set forth in 10 CFR 50.92, ''Issuance of amendment,'' as discussed below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change does not involve a physical alteration of the plant or a change in the methods governing normal plant operations. The TS RTS and ESFAS actuation functions explicitly retained in TS are those assumed to actuate in the safety analysis. The associated interlocks are necessary support functions for Operability of these TS required RTS and ESFAS functions. The removal of explicit interlock functions does not impact the design-required actuation function. Plant equipment remains capable of performing preventative and mitigative functions assumed by the accident analysis. However, the change involves removing explicit requirements, including actions that lead to reestablishing operability of the assumed actuation functions; implicitly these requirements are maintained and the actions remain viable for reestablishing operability. Since the requirements for the safety function Operability remains unchanged, removing the explicit presentation of detail is not an accident initiator nor involved with mitigation of the consequences of an accident.

Therefore, this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change does not involve a physical alteration of the plant as described in the FSAR. No new equipment is being introduced, and equipment is not being operated in a new or different manner. There are no setpoints, at which protective or mitigative actions are initiated, affected by this change. This change will not alter the manner in which equipment operation is initiated, nor will the function demands on credited equipment be changed. No change is being made to the procedures relied upon to respond to an off-normal event as described in the FSAR as a result of this change. As such, no new failure modes are being introduced. The change does not alter assumptions made in the safety analysis and licensing basis.

Therefore, this change does not create the possibility of a new or different kind of

accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The proposed change will not reduce a margin of safety because it has no effect on any assumption of the safety analyses. While the presentation of TS RTS and ESFAS actuation functions moves the associated interlocks from explicit treatment to becoming an implicit support system feature, the function continues to be required as necessary to support associated TS actuation functions. In doing so, certain actions for inoperability of interlocks are made more restrictive by now entering actions specific to the supported function's inoperability which have shorter Completion Times. However those actions are consistent with those currently approved for inoperability of that function.

As such, there is no significant reduction in a margin of safety.

L11 SNC proposes to amend TS 3.3.1, ''Reactor Trip System (RTS) Instrumentation,'' to delete:

- Current Table 3.3.1–1, Function 5, Source Range Neutron Flux High Setpoint, third row for that function including Applicability set ''3[(e)],4[(e)],5[(e)]'' and associated references to Required Channel, Condition, and Surveillance Requirements;
- Current Table 3.3.1–1, Footnote (e); and
- Current Action R.

SNC has evaluated whether or not a significant hazards consideration is involved with the proposed amendment by focusing on the three standards set forth in 10 CFR 50.92, ''Issuance of amendment,'' as discussed below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change does not involve a physical alteration of the plant or a change in the methods governing normal plant operations. The change involves removing certain actions that apply during inoperability of all four source range channels to provide indication. However, requirements and associated Required Actions continue to apply to source range channels in separate TS. The Required Actions removed are not accident initiators nor involved with mitigation of the consequences of an accident. The remaining requirements and actions continue to assure operation within the assumptions of the safety analysis.

Therefore, this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change involves removing certain actions for inoperability of all four source range channels; however, this change does not result in any conflict with the assumptions in the safety analyses and licensing basis. The proposed change does not involve a physical alteration of the plant as described in the FSAR. No new equipment is being introduced, and equipment is not being operated in a new or different manner. There are no setpoints, at which protective or mitigative actions are initiated, affected by this change. This change will not alter the manner in which equipment operation is initiated, nor will the function demands on credited equipment be changed. No change is being made to the procedures relied upon to respond to an off-normal event as described in the FSAR as a result of this change. As such, no new failure modes are being introduced.

Therefore, this change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

Margin of safety is established through equipment design, operating parameters, and the setpoints at which automatic actions are initiated. The proposed change will not reduce a margin of safety because it has no such effect on any assumption of the safety analyses. While certain actions for inoperability of all four source range channels to indicate are removed, requirements and associated Required Actions continue to apply to source range channels in a separate TS. When all source range monitoring channels are inoperable, the remaining actions continue to assure operation within safety analysis assumptions. These actions are consistent with the actions presented in the NUREG–1431.

As such, there is no significant reduction in a margin of safety.

L12 SNC proposes to amend current TS 3.3.2, ''Engineered Safety Feature Actuation System (ESFAS) Instrumentation,'' Actions related to functions that result in valve isolation actuations. Current TS 3.3.2 Actions P, Q, R, S, T, and Z, are revised to ''Declare affected isolation valve(s) inoperable.'' Additionally, the following current Table 3.3.2–1 Applicability Footnotes are deleted:

- (e) Not applicable for valve isolation functions whose associated flow path is isolated;
- (h) Not applicable if all main steam isolation valves (MSIVs) are closed; and
- (i) Not applicable when the startup feedwater flow paths are isolated.

SNC has evaluated whether or not a significant hazards consideration is involved with the proposed amendment by focusing on the three standards set forth in 10 CFR 50.92, ''Issuance of amendment,'' as discussed below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change does not involve a physical alteration of the plant or a change in the methods governing normal plant operations. The less restrictive Required Actions are acceptable based on the fact that the new actions are the appropriate actions for the actuated equipment. Required Actions are not an accident initiator nor credited with mitigation of the consequences of an accident. The actions continue to assure operation within the assumptions of the safety analysis and are consistent with approved actions for the actuated equipment.

Therefore, this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change involves certain less restrictive actions; however, the actions continue to assure operation within the assumptions of the safety analysis and are consistent with approved actions for the actuated equipment. The proposed change does not involve a physical alteration of the plant as described in the FSAR. No new equipment is being introduced, and equipment is not being operated in a new or different manner. There are no setpoints, at which protective or mitigative actions are initiated, affected by this change. This change will not alter the manner in which equipment operation is initiated, nor will the function demands on credited equipment be changed. No change is being made to the procedures relied upon to respond to an off-normal event as described in the FSAR as a result of this change. As such, no new failure modes are being introduced. The change does not alter assumptions made in the safety analysis and licensing basis.

Therefore, this change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The proposed change will not reduce a margin of safety because it has no effect on any assumption of the safety analyses. While the change involves less restrictive actions, the actions are consistent with approved actions for the actuated equipment. These actions do not result in any conflict with the assumptions in the safety analyses and licensing basis.

As such, there is no significant reduction in a margin of safety.

L13 SNC proposes to amend current TS 3.3.3, ''Post Accident Monitoring (PAM) Instrumentation,'' as follows:

- Function 12 is revised from ''Passive Residual Heat Removal (PRHR) Flow and PRHR Outlet Temperature,'' to ''Passive Residual Heat Removal (PRHR) Heat Removal.'' In addition, the Required Channels/Divisions column is revised from ''2 flow & 1 temperature,'' to ''2.''
- Function 17 is revised from ''Passive Containment Cooling System (PCS) Storage Tank Level and PCS Flow,'' to ''Passive Containment Cooling System (PCS) Heat Removal.'' In addition, the Required Channels/Divisions column is revised from ''2 level & 1 flow,'' to ''2.''

SNC has evaluated whether or not a significant hazards consideration is involved with the proposed amendment by focusing

on the three standards set forth in 10 CFR 50.92, ''Issuance of amendment,'' as discussed below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change reduces the number of required Function 12 and Function 17 channels from three to two. Requiring the minimum of two redundant channels is consistent with NUREG–1431 requirements for meeting Regulatory Guide (RG) 1.97 PAM redundancy requirements. The change also relocates the details of the specific channels designed to satisfy the PAM requirements to the associated Bases. The proposed change does not involve a physical alteration of the plant or a change in the methods governing normal plant operations. PAM functions are not initiators of analyzed events and therefore the revised requirements do not result in operations that significantly increase the probability of initiating an analyzed event. The PAM function affected by this change is designed to accommodate single failure to support post-accident monitoring. The change reduces TS requirements on excess required channels; however, single failure redundancy continues to be required. Thus, the proposed change does not alter assumptions relative to mitigation of an accident or transient event. The less restrictive requirements continue to ensure process variables, structures, systems, and components are maintained consistent with the safety analyses and licensing basis.

The TS Bases will be maintained in accordance with the change control provisions of the TS Bases Control Program described in TS 5.5.6. Because any change to the TS Bases will be evaluated, no significant increase in the probability or consequences of an accident previously evaluated will be allowed.

Therefore, this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change does not involve a physical alteration of the plant as described in the FSAR. No new equipment is being introduced, and equipment is not being operated in a new or different manner. There are no setpoints, at which protective or mitigative actions are initiated, affected by this change. This change will not alter the manner in which equipment operation is initiated, nor will the function demands on credited equipment be changed. No change is being made to the procedures relied upon to respond to an off-normal event as described in the FSAR as a result of this change. As such, no new failure modes are being introduced. The change does not alter assumptions made in the safety analysis and licensing basis.

Therefore, this change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The proposed change will not reduce a margin of safety because it has no effect on any assumption of the safety analyses. In addition, the details being moved from the current TS to the TS Bases are not being changed. NRC prior review and approval of changes to these relocated requirements, in accordance with 10 CFR 50.92, will no longer be required. Future change to these details will be evaluated under the applicable regulatory change control mechanism. There is no margin of safety attributed to NRC prior review and approval; therefore, there is no significant reduction in a margin of safety.

L14 SNC proposes to amend current TS 3.3.5, ''Diverse Actuation System (DAS) Manual Controls,'' Table 3.3.5–1, ''DAS Manual Controls,'' footnote b; current TS 3.6.7, ''Passive Containment Cooling System (PCS)—Shutdown,'' Applicability; and current TS 3.7.9, ''Fuel Storage Pool Makeup Water Sources,'' LCO Notes 1, 2, and 3; Applicability, Surveillance Requirement (SR) 3.7.9.1 Note, SR 3.7.9.2 Note, SR 3.7.9.3 Note, and SR 3.7.9.4 Note by deleting ''calculated'' with respect to decay heat.

SNC has evaluated whether or not a significant hazards consideration is involved with the proposed amendment by focusing on the three standards set forth in 10 CFR 50.92, ''Issuance of amendment,'' as discussed below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change does not involve a physical alteration of the plant or a change in the methods governing normal plant operations. The proposed change provides less stringent TS requirements for the facility by not expressly specifying the method of determining the decay heat value. These less stringent requirements do not result in operations that significantly increase the probability of initiating an analyzed event, and do not alter assumptions relative to mitigation of an accident or transient event. The less restrictive requirements continue to ensure process variables, structures, systems, and components are maintained consistent with the safety analyses and licensing basis.

Therefore, this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change does not involve a physical alteration of the plant as described in the FSAR. No new equipment is being introduced, and equipment is not being operated in a new or different manner. There are no setpoints, at which protective or mitigative actions are initiated, affected by this change. This change will not alter the manner in which equipment operation is initiated, nor will the function demands on credited equipment be changed. No change is being made to the procedures relied upon to respond to an off-normal event as described in the FSAR as a result of this change. As such, no new failure modes are being introduced. The change does not alter assumptions made in the safety analysis and licensing basis.

Therefore, this change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The proposed change will not reduce a margin of safety because it has no effect on any assumption of the safety analyses. Eliminating the imposition of single method of determining the decay heat value has no effect on or a margin of plant safety. ''Calculating'' the decay heat value remains a viable option. The change maintains requirements within the safety analyses and licensing basis. As such, there is no technical change to the requirements and therefore, there is no significant reduction in a margin of safety.

L15 SNC proposes to amend TS 3.4.8, ''Minimum [Reactor Coolant System] RCS Flow,'' SR 3.4.8.1 from ''Verify that at least one [Reactor Coolant Pump] RCP is in operation at ≥ 10% rated speed or equivalent,'' to ''Verify that at least one RCP is in operation with total flow through the core ≥ 3,000 gpm.''

SNC has evaluated whether or not a significant hazards consideration is involved with the proposed amendment by focusing on the three standards set forth in 10 CFR 50.92, ''Issuance of amendment,'' as discussed below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change does not involve a physical alteration of the plant or a change in the methods governing normal plant operations. The change involves revising the acceptance criteria of an existing surveillance requirement with no change in required system or device function. Surveillance acceptance criteria are not accident initiators nor involved with mitigation of the consequences of any accident. The proposed acceptance criteria ensure that the applicable analysis input assumptions are preserved. Therefore, this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change revises the acceptance criteria of an existing surveillance requirement. However, the proposed change does not involve a physical alteration of the plant as described in the FSAR. No new equipment is being introduced, and equipment is not being operated in a new or different manner. There are no setpoints, at which protective or mitigative actions are

initiated, affected by this change. This change will not alter the manner in which equipment operation is initiated, nor will the function demands on credited equipment be changed. No change is being made to the procedures relied upon to respond to an off-normal event as described in the FSAR as a result of this change. As such, no new failure modes are being introduced. The change does not alter assumptions made in the safety analysis and licensing basis.

Therefore, this change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The proposed change will not reduce a margin of safety because it has no effect on any assumption of the safety analyses. While the surveillance requirement acceptance criteria is made less restrictive by removal of design margin that accounts for minimizing stress and wear, and increasing equipment life, and the expected operating limit on minimum RCP speed, this margin is more appropriately maintained in the design and in operating and surveillance procedures.

Therefore, there is no significant reduction in a margin of safety.

L16 SNC proposes to amend current TS 3.4.10, ''RCS Specific Activity,'' Actions by deleting Required Action B.1, which requires ''Perform SR 3.4.10.2,'' within 4 hours.

SNC has evaluated whether or not a significant hazards consideration is involved with the proposed amendment by focusing on the three standards set forth in 10 CFR 50.92, ''Issuance of amendment,'' as discussed below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change does not involve a physical alteration of the plant or a change in the methods governing normal plant operations. The proposed change provides less stringent TS actions for the facility. However, the less restrictive requirements continue to ensure process variables, structures, systems, and components are maintained consistent with the safety analyses and licensing basis. The performance of SR 3.4.10.2 is not related to an accident initiator nor credited with mitigation of the consequences of an accident.

Therefore, this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change does not involve a physical alteration of the plant as described in the FSAR. No new equipment is being introduced, and equipment is not being operated in a new or different manner. There are no setpoints, at which protective or mitigative actions are initiated, affected by this change. This change will not alter the manner in which equipment operation is initiated, nor will the function demands on credited equipment be changed. No change is being made to the procedures relied upon to respond to an off-normal event as described in the FSAR as a result of this change. As such, no new failure modes are being introduced. The change does not alter assumptions made in the safety analysis and licensing basis.

Therefore, this change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The proposed change will not reduce a margin of safety because it has no effect on any assumption of the safety analyses. The change maintains requirements within the safety analyses and licensing basis. The result of performing the additional surveillance does not provide any additional margin of safety; as such, eliminating the Required Action for performing the additional surveillance does not result in a significant reduction in a margin of safety.

L17 SNC proposes to amend TS as follows:

1. Current TS 3.5.2, ''Core Makeup Tanks (CMTs)—Operating,'' Condition D is revised from ''One CMT inoperable due to presence of noncondensible gases in one high point vent,'' to ''One CMT inlet line with noncondensible gas volume not within limit.''

2. Current TS 3.5.2, Required Action D.1 is revised from ''Vent noncondensible gases,'' to ''Restore CMT inlet line noncondensible gas volume to within limit.''

3. Current TS 3.5.2, SR 3.5.2.4 is revised from ''Verify the volume of noncondensible gases in each CMT inlet line has not caused the high point water level to drop below the sensor,'' to ''Verify the volume of noncondensible gases in each CMT inlet line is within limit.''

4. Current TS 3.5.4, ''Passive Residual Heat Removal Heat Exchanger (PRHR HX)—Operating,'' Condition C is revised from ''Presence of noncondensible gases in the high point vent,'' to ''PRHR HX inlet line noncondensible gas volume not within limit.''

5. Current TS 3.5.4, Required Action C.1 is revised from ''Vent noncondensible gases,'' to ''Restore PRHR HX inlet line noncondensible gas volume to within limit.''

6. Current TS 3.5.4, SR 3.5.4.3 is revised from ''Verify the volume of noncondensible gases in the PRHR HX inlet line has not caused the high point water level to drop below the sensor,'' to ''Verify the volume of noncondensible gases in the PRHR HX inlet line is within limit.''

7. Current TS 3.5.5, ''Passive Residual Heat Removal Heat Exchanger (PRHR HX)—Shutdown, Reactor Coolant System (RCS) Intact,'' Condition C is revised from ''Presence of noncondensible gases in the high point vent,'' to ''PRHR HX inlet line noncondensible gas volume not within limit.''

8. Current TS 3.5.5, Required Action C.1 is revised from ''Vent noncondensible gases,'' to ''Restore PRHR HX inlet line noncondensible gas volume to within limit.''

9. Current TS 3.5.6, ''In-containment Refueling Water Storage Tank (IRWST)—Operating,'' Condition B is revised from ''One IRWST injection line inoperable due to presence of noncondensible gases in one high point vent,'' to ''One IRWST injection flow path with noncondensible gas volume in one squib valve outlet line pipe stub not within limit.''

10. Current TS 3.5.6, Required Action B.1 is revised from ''Vent noncondensible gases,'' to ''Restore noncondensible gas volume in squib valve outlet line pipe stub to within limit.''

11. Current TS 3.5.6, Condition C is revised from ''One IRWST injection line inoperable due to presence of noncondensible gases in both high point vents,'' to ''One IRWST injection flow path with noncondensible gas volume in both squib valve outlet line pipe stubs not within limit.''

12. Current TS 3.5.6, Required Action C.1 is revised from ''Vent noncondensible gases from one high point vent,'' to ''Restore one squib valve outlet line pipe stub noncondensible gas volume to within limit.''

13. Current TS 3.5.6, SR 3.5.6.3 is revised from ''Verify the volume of noncondensible gases in each of the four IRWST injection squib valve outlet line pipe stubs has not caused the high-point water level to drop below the sensor,'' to ''Verify the volume of noncondensible gases in each of the four IRWST injection squib valve outlet line pipe stubs is within limit.''

14. Current TS 3.5.7, ''In-containment Refueling Water Storage Tank (IRWST)—Shutdown, MODE 5,'' Condition B is revised from ''Required IRWST injection line inoperable due to presence of noncondensible gases in one high point vent,'' to ''Required IRWST injection flow path with noncondensible gas volume in one squib valve outlet line pipe stub not within limit.''

15. Current TS 3.5.7, Required Action B.1 is revised from ''Vent noncondensible gases,'' to ''Restore noncondensible gas volume in squib valve outlet line pipe stub to within limit.''

16. Current TS 3.5.7, Condition C is revised from ''Required IRWST injection line inoperable due to presence of noncondensible gases in both high point vents,'' to ''Required IRWST injection flow path with noncondensible gas volume in both squib valve outlet line pipe stubs not within limit.''

17. Current TS 3.5.7, Required Action C.1 is revised from ''Vent noncondensible gases from one high point vent,'' to ''Restore one squib valve outlet line pipe stub noncondensible gas volume to within limit.''

18. TS 3.5.8, ''In-containment Refueling Water Storage Tank (IRWST)—Shutdown, MODE 6,'' Condition B is revised from ''Required IRWST injection line inoperable due to presence of noncondensible gases in one high point vent,'' to ''Required IRWST injection flow path with noncondensible gas volume in one squib valve outlet line pipe stub not within limit.''

19. Current TS 3.5.8, Required Action B.1 is revised from ''Vent noncondensible gases,''

to ''Restore noncondensible gas volume in squib valve outlet line pipe stub to within limit.''

20. Current TS 3.5.8, Condition C is revised from ''Required IRWST injection line inoperable due to presence of noncondensible gases in both high point vents,'' to ''Required IRWST injection flow path with noncondensible gas volume in both squib valve outlet line pipe stubs not within limit.''

21. Current TS 3.5.8, Required Action C.1 is revised from ''Vent noncondensible gases from one high point vent,'' to ''Restore one squib valve outlet line pipe stub noncondensible gas volume to within limit.''

SNC has evaluated whether or not a significant hazards consideration is involved with the proposed amendment by focusing on the three standards set forth in 10 CFR 50.92, ''Issuance of amendment,'' as discussed below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change does not involve a physical alteration of the plant or a change in the methods governing normal plant operations. The proposed change provides less stringent TS requirements by not expressly specifying the method of determining or restoring the noncondensible gas volume that can adversely affect the associated flow path; however, the requirement that noncondensible gas volume be within limit is not changed. These less stringent requirements do not result in operations that significantly increase the probability of initiating an analyzed event, and do not alter assumptions relative to mitigation of an accident or transient event. The less restrictive requirements continue to ensure process variables, structures, systems, and components are maintained consistent with the safety analyses and licensing basis.

Therefore, this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change does not involve a physical alteration of the plant as described in the FSAR. No new equipment is being introduced, and equipment is not being operated in a new or different manner. There are no setpoints, at which protective or mitigative actions are initiated, affected by this change. This change will not alter the manner in which equipment operation is initiated, nor will the function demands on credited equipment be changed. No change is being made to the procedures relied upon to respond to an off-normal event as described in the FSAR as a result of this change. As such, no new failure modes are being introduced. The change does not alter assumptions made in the safety analysis and licensing basis.

Therefore, this change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The proposed change will not reduce a margin of safety because it has no effect on any assumption of the safety analyses. The amended actions and surveillances continue to assure that noncondensible gas volumes are maintained and restored to within acceptable limits. The change maintains requirements within the safety analyses and licensing basis.

As such, there is no technical change to the requirements and therefore, there is no significant reduction in a margin of safety.

L18 SNC proposes to amend current TS 3.6.8, ''Containment Penetrations,'' LCO 3.6.8.d.2 to allow the penetration flow path to be open provided it can be closed prior to steaming into the containment. In conjunction, current SR 3.6.8.3 as well as the corresponding containment Isolation function required in current TS 3.3.2, ''Engineered Safety Feature Actuation System (ESFAS) Instrumentation,'' Table 3.3.2–1 Function 3.a for Modes 5 and 6, are removed. This removes requirements for Operable containment isolation signals in Modes 5 and 6, allowing manual operator actions to affect any required isolation prior to steaming into the containment.

SNC has evaluated whether or not a significant hazards consideration is involved with the proposed amendment by focusing on the three standards set forth in 10 CFR 50.92, ''Issuance of amendment,'' as discussed below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change would remove requirements for Operable containment isolation signals in Modes 5 and 6, allowing manual operator action to effect any required isolation. The design provisions for instrumented closure signals are unaffected. The isolation status of the penetration flow path is not an initiator to any accident previously evaluated. As a result, the probability of an accident previously evaluated is not affected. The consequences of an accident with the valves open and capable of being closed prior to steaming into the containment are no different than the consequences of the same accident with the current requirements. The valves are currently allowed to be open, provided they can be isolated. The accident analysis assumes cooling water inventory is not lost in the event of an accident. Thus, closing the valves prior to steaming into the containment will ensure this assumption is met. As a result, the consequences of an accident previously evaluated are not affected by this change. The proposed change does not alter or prevent the ability of structures, systems, and components (SSCs) from performing their intended function to mitigate the consequences of an initiating event within the assumed acceptance limits. The proposed change does not affect the source term, containment isolation, or radiological release assumptions used in evaluating the radiological consequences of an accident previously evaluated. Further, the proposed change does not increase the types or amounts of radioactive effluent that may be released offsite, nor significantly increase individual or cumulative occupational/public radiation exposures.

The proposed change is consistent with the safety analysis assumptions and resultant consequences.

Therefore, this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change does not involve a physical alteration of the plant as described in the FSAR. No new equipment is being introduced, and equipment is not being operated in a new or different manner. There are no setpoints, at which protective or mitigative actions are initiated, affected by this change. This change will not alter the manner in which equipment operation is initiated, nor will the function demands on credited equipment be changed. No change is being made to the procedures relied upon to respond to an off-normal event as described in the FSAR as a result of this change. As such, no new failure modes are being introduced. The change does not alter assumptions made in the safety analysis and licensing basis.

Therefore, this change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The proposed change to remove requirements for Operable containment isolation signals in Modes 5 and 6, and allowing manual operator action to isolate the purge valve penetration flow path prior to steaming into the containment, does not alter the manner in which safety limits, limiting safety system settings or limiting conditions for operation are determined. The safety analysis acceptance criteria are not affected by this change. The proposed change will not result in plant operation in a configuration outside of the design basis.

As such, there is no technical change to the requirements and therefore, there is no significant reduction in a margin of safety.

L19 SNC proposes to amend current TS 3.9.6 ''pH Adjustment,'' LCO and current SR 3.9.6.1 trisodium phosphate (TSP) requirement from the volume requirement of 560 $ft^3$ to a weight requirement of 26,460 lbs. In addition, due to this change, Condition A and Required Action A.1 is changed to refer to ''weight'' in lieu of ''volume.''

SNC has evaluated whether or not a significant hazards consideration is involved with the proposed amendment by focusing on the three standards set forth in 10 CFR 50.92, ''Issuance of amendment,'' as discussed below:

1. Does the proposed change involve a significant increase in the probability or

consequences of an accident previously evaluated?

Response: No.

The proposed change allows for a lesser volume over time consistent with expected compaction and agglomeration. While the total weight will remain constant and sufficient to assure safety analysis assumptions are met, the unintended requirement to maintain volume > 560 $ft^3$, even after compaction and agglomeration is made less restrictive. The TSP is not an initiator to any accident previously evaluated. As a result, the probability of an accident previously evaluated is not affected. The consequences of an accident with the changed TSP weight limit are no different than the consequences of the same accident with the current TSP limit. The accident analysis assumes a minimum of 26,460 lbs of TSP, and this value is being maintained in the TS. The assumed pH of 7.0 will be maintained using the proposed weight of TSP. This pH will continue to augment the retention of elemental iodine in the containment water, and thus reduce the iodine available to leak to the environment. As a result, the consequences of an accident previously evaluated are not affected by this change. The proposed change does not alter or prevent the ability of SSCs from performing their intended function to mitigate the consequences of an initiating event within the assumed acceptance limits. The proposed change does not affect the source term, containment isolation, or radiological release assumptions used in evaluating the radiological consequences of an accident previously evaluated. Further, the proposed change does not increase the types or amounts of radioactive effluent that may be released offsite, nor significantly increase individual or cumulative occupational/public radiation exposures. The proposed change is consistent with the safety analysis assumptions and resultant consequences.

Therefore, this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change does not involve a physical alteration of the plant as described in the FSAR. No new equipment is being introduced, and equipment is not being operated in a new or different manner. There are no setpoints, at which protective or mitigative actions are initiated, affected by this change. This change will not alter the manner in which equipment operation is initiated, nor will the function demands on credited equipment be changed. No change is being made to the procedures relied upon to respond to an off-normal event as described in the FSAR as a result of this change. As such, no new failure modes are being introduced. The change does not alter assumptions made in the safety analysis and licensing basis.

Therefore, this change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The proposed change to allow for a lesser volume over time consistent with expected compaction and agglomeration, while maintaining the total weight to assure safety analysis assumptions are met, does not alter the manner in which safety limits, limiting safety system settings or limiting conditions for operation are determined. The safety analysis acceptance criteria are not affected by this change. The proposed change will not result in plant operation in a configuration outside of the design basis.

As such, there is no technical change to the requirements and therefore, there is no significant reduction in a margin of safety.

L20 SNC proposes to amend current TS 3.7.2, ''Main Steam Isolation Valves (MSIVs),'' Condition D Note to allow separate Condition entry due to any inoperable valve covered by the LCO, not just the MSIVs.

SNC has evaluated whether or not a significant hazards consideration is involved with the proposed amendment by focusing on the three standards set forth in 10 CFR 50.92, ''Issuance of amendment,'' as discussed below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change allows a separate Condition entry for each affected flow path. The failure of the main steam line flow path covered by the LCO to close is not an initiator to any accident previously evaluated. As a result, the probability of an accident previously evaluated is not affected. The consequences of an accident are not affected since the inoperability in the flow path is addressed to assure affected flow paths are isolated as assumed in the accident analysis. As a result, the consequences of an accident previously evaluated are not affected by this change. The proposed change does not alter or prevent the ability of structures, systems, and components from performing their intended function to mitigate the consequences of an initiating event within the assumed acceptance limits. The proposed change does not affect the source term, containment isolation, or radiological release assumptions used in evaluating the radiological consequences of an accident previously evaluated. Further, the proposed change does not increase the types or amounts of radioactive effluent that may be released offsite, nor significantly increase individual or cumulative occupational/public radiation exposures. The proposed change is consistent with the safety analysis assumptions and resultant consequences.

Therefore, this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change does not involve a physical alteration of the plant as described in the FSAR. No new equipment is being introduced, and equipment is not being operated in a new or different manner. There are no setpoints, at which protective or mitigative actions are initiated, affected by this change. This change will not alter the manner in which equipment operation is initiated, nor will the function demands on credited equipment be changed. No change is being made to the procedures relied upon to respond to an off-normal event as described in the FSAR as a result of this change. As such, no new failure modes are being introduced. The change does not alter assumptions made in the safety analysis and licensing basis.

Therefore, this change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The proposed change to allow a separate Condition entry for each affected flow path does not alter the manner in which safety limits, limiting safety system settings or limiting conditions for operation are determined. The safety analysis acceptance criteria are not affected by this change. The proposed change will not result in plant operation in a configuration outside of the design basis.

As such, there is no technical change to the requirements and therefore, there is no significant reduction in a margin of safety.

L21 SNC proposes to amend TS 3.8.1, ''[Direct Current] DC Sources—Operating,'' by deleting SR 3.8.1.3 Note 2.

SNC has evaluated whether or not a significant hazards consideration is involved with the proposed amendment by focusing on the three standards set forth in 10 CFR 50.92, ''Issuance of amendment,'' as discussed below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The Class 1E DC electrical power system, including associated battery chargers, is not an initiator to any accident sequence analyzed in the FSAR. Operation in accordance with the proposed TS ensures that the Class 1E DC electrical power system is capable of performing its function as described in the FSAR, therefore the mitigative functions supported by the Class 1E DC electrical power system will continue to provide the protection assumed by the accident analysis.

The proposed TS change does not involve any changes to SSCs and does not alter the method of operation or control of SSCs as described in the FSAR. The current assumptions in the safety analysis regarding accident initiators and mitigation of accidents are unaffected by this change. No additional failure modes or mechanisms are being introduced and the likelihood of previously analyzed failures remains unchanged. The integrity of fission product

barriers, plant configuration, and operating procedures as described in the FSAR will not be affected by this change. Therefore, the consequences of previously analyzed accidents will not increase because of this change.

Therefore, this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change does not involve a physical alteration of the plant as described in the FSAR. No new equipment is being introduced, and equipment is not being operated in a new or different manner. There are no setpoints, at which protective or mitigative actions are initiated, affected by this change. This change will not alter the manner in which equipment operation is initiated, nor will the function demands on credited equipment be changed. Any alteration in procedures will continue to ensure that the plant remains within analyzed limits, and no change is being made to the procedures relied upon to respond to an off-normal event as described in the FSAR. As such, no new failure modes are being introduced. The change does not alter assumptions made in the safety analysis and licensing basis.

Therefore, this change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

Margin of safety is established through equipment design, operating parameters, and the setpoints at which automatic actions are initiated. The proposed change is acceptable because the operability of the Class 1E DC electrical power system is unaffected, there is no detrimental impact on any equipment design parameter, and the plant will still be required to operate within assumed conditions. Operation in accordance with the proposed TS ensures that the Class 1E DC electrical power system is capable of performing its function as described in the FSAR; therefore, the support of the Class 1E DC electrical power system to the plant response to analyzed events will continue to provide the margins of safety assumed by the analysis. Appropriate monitoring and maintenance, consistent with industry standards, will continue to be performed.

As such, there is no technical change to the requirements and therefore, there is no significant reduction in a margin of safety.

L22 SNC proposes to amend current TS 3.8.2, ''DC Sources—Shutdown,'' by adding a new Condition A to address inoperable battery chargers.

SNC has evaluated whether or not a significant hazards consideration is involved with the proposed amendment by focusing on the three standards set forth in 10 CFR 50.92, ''Issuance of amendment,'' as discussed below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The Class 1E DC electrical power system, including associated battery chargers, is not an initiator to any accident sequence analyzed in the FSAR. Operation in accordance with the proposed TS ensures that the Class 1E DC electrical power system is capable of performing its function as described in the FSAR, therefore the mitigative functions supported by the Class 1E DC electrical power system will continue to provide the protection assumed by the accident analysis.

The proposed change does not involve any changes to SSCs and does not alter the method of operation or control of SSCs as described in the FSAR. The current assumptions in the safety analysis regarding accident initiators and mitigation of accidents are unaffected by this change. No additional failure modes or mechanisms are being introduced and the likelihood of previously analyzed failures remains unchanged.

The integrity of fission product barriers, plant configuration, and operating procedures as described in the FSAR will not be affected by this change. Therefore, the consequences of previously analyzed accidents will not increase because of this change.

Therefore, this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change does not involve a physical alteration of the plant as described in the FSAR. No new equipment is being introduced, and equipment is not being operated in a new or different manner. There are no setpoints, at which protective or mitigative actions are initiated, affected by this change. This change will not alter the manner in which equipment operation is initiated, nor will the function demands on credited equipment be changed. Any alteration in procedures will continue to ensure that the plant remains within analyzed limits, and no change is being made to the procedures relied upon to respond to an off-normal event as described in the FSAR. As such, no new failure modes are being introduced. The change does not alter assumptions made in the safety analysis and licensing basis.

Therefore, this change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

Margin of safety is established through equipment design, operating parameters, and the setpoints at which automatic actions are initiated. The proposed change is acceptable because the Operability of the Class 1E DC electrical power system is unaffected, there is no detrimental impact on any equipment design parameter, and the plant will still be required to operate within assumed conditions. Operation in accordance with the proposed TS ensures that the Class 1E DC electrical power system is capable of performing its function as described in the FSAR; therefore, the support of the Class 1E DC electrical power system to the plant response to analyzed events will continue to provide the margins of safety assumed by the analysis. Appropriate monitoring and maintenance, consistent with industry standards, will continue to be performed.

As such, there is no technical change to the requirements and therefore, there is no significant reduction in a margin of safety.

L23 SNC proposes to amend current TS 5.5.2, ''Radioactive Effluent Control Program,'' to state that the provisions of SR 3.0.2 and SR 3.0.3 are applicable to the Radioactive Effluents Control Program surveillance frequency.

SNC has evaluated whether or not a significant hazards consideration is involved with the proposed amendment by focusing on the three standards set forth in 10 CFR 50.92, ''Issuance of amendment,'' as discussed below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

A TS frequency for the determination of cumulative and projected dose contributions from radioactive effluents is not an initiator to any accident sequence analyzed in the FSAR. Operation in accordance with the proposed TS continues to ensure that initial conditions assumed in the accident analysis are maintained. The proposed change does not involve a modification to the physical configuration of the plant or change in the methods governing normal plant operation. The proposed change will not impose any new or different requirements or introduce a new accident initiator, accident precursor, or malfunction mechanism.

Therefore, this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change does not involve a physical alteration of the plant as described in the FSAR. No new equipment is being introduced, and equipment is not being operated in a new or different manner. There are no setpoints, at which protective or mitigative actions are initiated, affected by this change. This change will not alter the manner in which equipment operation is initiated, nor will the function demands on credited equipment be changed. Any alteration in procedures will continue to ensure that the plant remains within analyzed limits, and no change is being made to the procedures relied upon to respond to an off-normal event as described in the FSAR. As such, no new failure modes are being introduced. The change does not alter assumptions made in the safety analysis and licensing basis.

Therefore, this change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

Margin of safety is established through equipment design, operating parameters, and the setpoints at which automatic actions are initiated. The proposed change, applying the 25% extension to the frequency of performing the monthly cumulative dose and projected dose calculations, will have no effect on the plant response to analyzed events and with therefore not impact a margin of safety. Operation in accordance with the proposed TS ensures that the plant response to analyzed events will continue to provide the margins of safety assumed by the analysis. Appropriate monitoring and maintenance, consistent with industry standards, will continue to be performed.

As such, there is no functional change to the requirements and therefore, there is no significant reduction in a margin of safety.

L24 SNC proposes to amend current TS 5.5.3, ''Inservice Testing Program,'' paragraph b from ''The provisions of SR 3.0.2 are applicable to the above required Frequencies for performing inservice testing activities,'' to ''The provisions of SR 3.0.2 are applicable to the above required Frequencies and other normal and accelerated Frequencies specified as 2 years or less in the Inservice Testing Program for performing inservice testing activities.''

SNC has evaluated whether or not a significant hazards consideration is involved with the proposed amendment by focusing on the three standards set forth in 10 CFR 50.92, ''Issuance of amendment,'' as discussed below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The frequency for inservice testing is not an initiator to any accident sequence analyzed in the FSAR, nor is it associated with any mitigative actions to reduce consequences. Operation in accordance with the proposed TS continues to ensure that initial conditions accident mitigative features assumed in the accident analysis are maintained. The proposed change does not involve a modification to the physical configuration of the plant or change in the methods governing normal plant operation. The proposed change will not impose any new or different requirements or introduce a new accident initiator, accident precursor, or malfunction mechanism.

Therefore, this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change does not involve a physical alteration of the plant as described in the FSAR. No new equipment is being introduced, and equipment is not being operated in a new or different manner. There are no setpoints, at which protective or mitigative actions are initiated, affected by this change. This change will not alter the manner in which equipment operation is initiated, nor will the function demands on credited equipment be changed. Any alteration in procedures will continue to ensure that the plant remains within analyzed limits, and no change is being made to the procedures relied upon to respond to an off-normal event as described in the FSAR. As such, no new failure modes are being introduced. The change does not alter assumptions made in the safety analysis and licensing basis.

Therefore, this change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The proposed change, applying the 25% extension to certain frequencies for performing inservice testing, does not significantly degrade the reliability that results from performing the Surveillance at its specified Frequency. This is based on the recognition that the most probable result of any particular surveillance being performed is the verification of conformance with the SRs. As such, there is no technical change to the requirements and therefore, there is no significant reduction in a margin of safety. Margin of safety is established through equipment design, operating parameters, and the setpoints at which automatic actions are initiated. Operation in accordance with the proposed TS ensures that the plant response to analyzed events will continue to provide the margins of safety assumed by the analysis. Appropriate monitoring and maintenance, consistent with industry standards, will continue to be performed. As such, there is no functional change to the requirements and therefore, there is no significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied.

Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Attorney for licensee:* Mr. M. Stanford Blanton, Balch & Bingham LLP, 1710 Sixth Avenue North, Birmingham, AL 35203–2015.

*NRC Branch Chief:* Mark E. Tonacci.

## Notice of Issuance of Amendments to Facility Operating Licenses and Combined Licenses

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

A notice of consideration of issuance of amendment to facility operating license or combined license, as applicable, proposed no significant hazards consideration determination, and opportunity for a hearing in connection with these actions, was published in the **Federal Register** as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.22(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) The applications for amendment, (2) the amendment, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment as indicated. All of these items are available for public inspection at the Commission's Public Document Room (PDR), located at One White Flint North, Room O1–F21, 11555 Rockville Pike (first floor), Rockville, Maryland 20852. Publicly available documents created or received at the NRC are accessible electronically through the Agencywide Documents Access and Management System (ADAMS) in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html.* If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the PDR's Reference staff at 1–800–397–4209, 301–415–4737 or by email to *pdr.resource@nrc.gov.*

*Entergy Operations, Inc., System Energy Resources, Inc., South Mississippi Electric Power Association, and Entergy Mississippi, Inc., Docket No. 50–416, Grand Gulf Nuclear Station, Unit 1, Claiborne County, Mississippi*

*Date of application for amendment:* January 23, 2012, as supplemented by letter dated March 21, 2012.

*Brief description of amendment:* The amendment revised Technical Specification (TS) 3.1.7, ''Standby Liquid Control (SLC) System.'' The license amendment request (LAR)

reflects the enrichment of the Boron-10 (B–10) isotope in the sodium pentaborate (SPB) solution, which is the credited neutron absorber. Increasing the enrichment of the B–10 isotope in the SPB solution effectively increases the available negative reactivity inserted by the SLC system without having to increase the system's storage capacity. In addition, changes to the SLC system increase the operating temperature range and decrease the solution volume. TS 3.1.7 has been reformatted so that Figures 3.1.7–1 and 3.1.7–2 can be deleted and replaced with various new action conditions and surveillance requirements. These changes to TS 3.1.7 were originally included as part of the GGNS Extended Power Uprate (EPU) LAR dated September 8, 2010. Due to delays in obtaining approval of the EPU LAR and the need for the SLC system changes to support operation with the Cycle 19 core design, Entergy Operations, Inc. (the licensee), submitted this request separately. The change is needed to ensure appropriate shutdown margin can be maintained during reload design for future cycles beginning with Cycle 19.

*Date of issuance:* May 11, 2012.

*Effective date:* As of the date of issuance and shall be implemented prior to startup from the spring 2012 refueling outage.

*Amendment No:* 190.

*Facility Operating License No. NPF–29:* The amendment revised the Facility Operating License and Technical Specifications.

*Date of initial notice in* **Federal Register**: February 7, 2012 (77 FR 6148). The supplemental letter dated March 21, 2012, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination as published in the **Federal Register**.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 11, 2012.

*No significant hazards consideration comments received:* No.

*Exelon Generation Company, LLC, Docket Nos. STN 50–456 and STN 50–457, Braidwood Station, Units 1 and 2, Will County, Illinois; Docket Nos. STN 50–454 and STN 50–455, Byron Station, Units 1 and 2, Ogle County, Illinois*

*Date of application for amendment:* March 14, 2011, as supplemented by letters dated September 2, 2011, and November 18, 2011.

*Brief description of amendment:* The license amendment request changes the facility operating licenses and the Technical Specifications (TSs) 3.4.12–1, for the Braidwood Station, Units 1 and 2 and Byron Station, Unit Nos. 1 and 2. The proposed change will reflect standard wording incorporated in NUREG–1431, Revision 3, ''Standard Technical Specifications-Westinghouse Plants,'' for plants with installed bypass test capability. The proposed change is needed to support utilization of bypass test capability that is planned to be installed, which will reduce the potential for unnecessary reactor trips or safeguards actuation due to a failure or transient in a redundant channel.

*Date of issuance:* March 30, 2012.

*Effective date:* As of the date of issuance and shall be implemented within 60 days.

*Amendment Nos.:* Braidwood Unit 1—169; Braidwood Unit 2—169; Byron Unit 1—176 and Byron Unit 2–176.

*Facility Operating License Nos. NPF–72. NPF–77, NPF–37, and NPF–66:* The amendments revised the Technical Specifications and License.

*Date of initial notice in* **Federal Register**: August 16, 2011 (76 FR 50759). The September 2, 2011, and November 18, 2011, supplements contained clarifying information and did not change the staff's initial proposed finding of no significant hazards consideration.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated March 30, 2012.

*No significant hazards consideration comments received:* No.

*Exelon Generation Company, LLC, Docket No. 50–461, Clinton Power Station, Unit 1, DeWitt County, Illinois*

*Date of application for amendment:* June 13, 2011.

*Brief description of amendment:* The amendment modifies Clinton Power Station, Unit 1 (CPS), Technical Specification (TS) Limiting Condition for Operation (LCO) 3.1.2, ''Reactivity Anomalies,'' through a revision to the method for calculating core reactivity for the purpose of performing an anomaly check. The reactivity anomaly verification is currently determined by comparison of predicted vs. monitored control rod density. The proposed method would compare predicted vs. monitored $k_{effective}$ ($k_{eff}$).

*Date of issuance:* March 1, 2012.

*Effective date:* As of the date of issuance and shall be implemented within 60 days.

*Amendment No.:* 198.

*Facility Operating License No. NPF–62:* The amendment revised the Technical Specifications and License.

*Date of initial notice in* **Federal Register**: October 4, 2011.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 1, 2012.

*No significant hazards consideration comments received:* No.

*Exelon Generation Company, LLC, Docket No. 50–289, Three Mile Island Nuclear Station, Unit 1 (TMI–1), Dauphin County, Pennsylvania*

*Date of application for amendment:* October 18, 2011, supplemented by letters dated January 20, 2012, and April 11, 2012.

*Brief description of amendment:* The amendment involves administrative changes. The changes include correcting typographical errors, making format changes, clarifying symbols and pages, reformatting of previously deleted pages, incorporating a consistent abbreviation of average reactor coolant temperature, deleting notes that are no longer applicable, and replacing certain drawing figures with versions that have a corrected title block.

*Date of issuance:* May 7, 2012.

*Effective date:* Immediately, and shall be implemented within 60 days.

*Amendment No.:* 278.

*Facility Operating License No. DPR–50:* Amendment revised the license and the technical specifications.

*Date of initial notice in* **Federal Register**: December 13, 2011 (76 FR 77567).

The supplements dated January 20, 2012, and April 11, 2012, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the NRC staff's original proposed no significant hazards determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 7, 2012.

*No significant hazards consideration comments received:* No.

*PPL Susquehanna, LLC, Docket No. 50–388, Susquehanna Steam Electric Station, Unit 2, Luzerne County, Pennsylvania*

*Date of application for amendment:* March 8, 2012, as supplemented by letters dated March 23, March 29, and April 2, 2012.

*Brief description of amendment:* On April 19, 2012, the U.S. Nuclear Regulatory Commission issued Amendment No. 258 to Renewed Facility Operating License No. NPF–22 for the Susquehanna Steam Electric Station, Unit 2 (SSES Unit 2). Due to a typographical error, the amendment was incorrectly numbered. The correct

Amendment No. is 238. This amendment was originally noticed in the **Federal Register** on May 15, 2012 (77 FR 28636). All references to Amendment No. 258 in the U.S. Nuclear Regulatory Commission's letter dated April 19, 2012, have been corrected by letter dated April 27, 2012. The amendment allows an extension of 24 hours to the Completion Time for Condition C in the SSES Unit 2 Technical Specification (TS) 3.8.7, ''Distribution Systems-Operating,'' to allow a Unit 1 4160 V subsystem to be de-energized and removed from service for 96 hours to perform modifications on the bus. It also allows an extension of 24 hours to the Completion Time for Condition A in SSES Unit 2 TS 3.7.1, ''Plant Systems-RHRSW [residual heat removal service water system] and UHS [ultimate heat sink],'' to allow the UHS spray array and spray array bypass valves associated with applicable division RHRSW, and in Condition B, the applicable division Unit 2 RHRSW subsystem, to be inoperable for 96 hours during the Unit 1 4160 V bus breaker control logic modifications.

*Date of issuance:* April 19, 2012.

*Effective date:* As of the date of issuance and shall be implemented within 30 days from the date of issuance.

*Corrected Amendment No.:* 238.

*Facility Operating License No. NPF–22:* This amendment revised the License and Technical Specifications.

*Date of initial notice in* **Federal Register**: March 16, 2012 (77 FR 15814).

The supplements dated March 23, March 29, and April 2, 2012, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination as published in the **Federal Register**.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 19, 2012, which also contains its final no significant hazards consideration determination.

*No significant hazards consideration comments received:* No.

Dated at Rockville, Maryland, this 17th day of May 2012.

For the Nuclear Regulatory Commission.

**Michele G. Evans,**

*Director, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.*

[FR Doc. 2012–12687 Filed 5–25–12; 8:45 am]

**BILLING CODE 7590–01–P**

## NUCLEAR REGULATORY COMMISSION

### Advisory Committee on Reactor Safeguards (ACRS); Meeting of the ACRS Subcommittee on Fukushima; Notice of Meeting

The ACRS Subcommittee on Fukushima will hold a meeting on June 20, 2012, Room T–2B1, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

**Wednesday, June 20, 2012–8:30 a.m. Until 5:00 p.m.**

The Subcommittee will review and discuss the staff's proposed Interim Staff Guidances (ISGs) on acceptable approaches for complying with Orders EA–12–049, EA–12–050, and EA–12–051. The Subcommittee will hear presentations by and hold discussions with the NRC staff and other interested persons regarding this matter. The Subcommittee will gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the Full Committee.

Members of the public desiring to provide oral statements and/or written comments should notify the Designated Federal Official (DFO), Antonio Dias (Telephone 301–415–6805 or Email: *Antonio.Dias@nrc.gov*) five days prior to the meeting, if possible, so that appropriate arrangements can be made. Thirty-five hard copies of each presentation or handout should be provided to the DFO thirty minutes before the meeting. In addition, one electronic copy of each presentation should be emailed to the DFO one day before the meeting. If an electronic copy cannot be provided within this timeframe, presenters should provide the DFO with a CD containing each presentation at least thirty minutes before the meeting. Electronic recordings will be permitted only during those portions of the meeting that are open to the public. Detailed procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on October 17, 2011, (76 FR 64126–64127).

Detailed meeting agendas and meeting transcripts are available on the NRC Web site at *http://www.nrc.gov/reading-rm/doc-collections/acrs.* Information regarding topics to be discussed, changes to the agenda, whether the meeting has been canceled or rescheduled, and the time allotted to present oral statements can be obtained from the Web site cited above or by contacting the identified DFO. Moreover, in view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with these references if such rescheduling would result in a major inconvenience.

If attending this meeting, please enter through the One White Flint North building, 11555 Rockville Pike, Rockville, MD. After registering with security, please contact Mr. Theron Brown (Telephone 240–888–9835) to be escorted to the meeting room.

Dated: May 22, 2012.

**Cayetano Santos,**

*Chief, Technical Support Branch, Advisory Committee on Reactor Safeguards.*

[FR Doc. 2012–12986 Filed 5–25–12; 8:45 am]

**BILLING CODE 7590–01–P**

## OVERSEAS PRIVATE INVESTMENT CORPORATION

### Sunshine Act Meeting Notice—June 14, 2012 Board of Directors Meeting

**TIME AND DATE:** Thursday, June 14, 2012, 10 a.m. (OPEN Portion) 10:15 a.m. (CLOSED Portion).

**PLACE:** Offices of the Corporation, Twelfth Floor Board Room, 1100 New York Avenue NW., Washington, DC.

**STATUS:** Meeting OPEN to the Public from 10 a.m. to 10:15 a.m. Closed portion will commence at 10:15 a.m. (approx.).

**MATTERS TO BE CONSIDERED:**

1. President's Report.
2. Confirmation. Dennis Lauer as Vice President for Administrative Services and Chief Information Officer.
3. Minutes of the Open Session of the March 29, 2012 Board of Directors Meeting.

**FURTHER MATTERS TO BE CONSIDERED (CLOSED TO THE PUBLIC 10:15 A.M.):**

1. Finance Project—Kenya, Tanzania and East Africa.
2. Finance Project—Peru.
3. Finance Project—Jordan.
4. Finance Project—Botswana.
5. Finance Project—South Africa.
6. Finance Project—Central/Eastern Europe.
7. Finance Project—Brazil.
8. Finance Project—Sub-Saharan Africa.
9. Finance Project—Global.
10. Finance Project—South and Sub-Saharan Africa.
11. Minutes of the Closed Session of the March 29, 2012 Board of Directors Meeting.

12. Reports.
13. Pending Major Projects.

Written summaries of the projects to be presented will be posted on OPIC's Web site on or about May 25, 2012.

**CONTACT PERSON FOR INFORMATION:** Information on the meeting may be obtained from Connie M. Downs at (202) 336–8438.

May 24, 2012.

**Connie M. Downs,**

*Corporate Secretary, Overseas Private Investment Corporation.*

[FR Doc. 2012–13058 Filed 5–24–12; 4:15 pm]

**BILLING CODE 3210–01–P**

## OFFICE OF SCIENCE AND TECHNOLOGY POLICY

### Request for Public Comment on Interagency Arctic Research Policy Committee (IARPC) Arctic Research Plan: FY2013–2017

May 22, 2012.

**ACTION:** Request for public comment.

**SUMMARY:** The Arctic Research and Policy Act of 1984 (ARPA), Public Law 98–373, established the Interagency Arctic Research Policy Committee (IARPC) to develop national Arctic research policy five-year Federal research plans to implement ARPA. Chaired by the Director of the National Science Foundation (NSF), IARPC is composed of representatives from ten agencies. More information on IARPC can be found at: *http://www.nsf.gov/od/opp/arctic/iarpc/start.jsp.*

The IARPC's Arctic Research Plan: FY2013–2017 (Five-Year Plan) describes research priorities for the next five years that are expected to benefit from interagency collaboration; not all research conducted by Federal agencies is included in the Five-Year Plan. The Five-Year Plan focuses on seven priority areas designed to enhance the goals and objectives of Federal agencies in Arctic research:

(1) Sea ice and marine ecosystem studies.
(2) Terrestrial ecosystem studies.
(3) Atmospheric studies effecting energy flux.
(4) Observing systems.
(5) Regional climate models.
(6) Adaptation tools for sustaining communities.
(7) Human health.

**DATES:** This request will be active through June 22, 2012, 11:59 EST.

**ADDRESSES:** The Five-Year Plan and additional information, including any updates to this **Federal Register** notice, will be available at *http://www.nsf.gov/od/opp/arctic/iarpc/arc_res_plan_index.jsp.* Comments may be submitted by any of the following methods:

*Email: agraefe@arctic.gov.* Include ''IARPC FIVE-YEAR PLAN COMMENT'' in the subject line of the message.

*Mail:* IARPC, c/o Arctic Sciences Division, National Science Foundation, Suite 755S, 4201 Wilson Blvd., Arlington, VA 22230. Attention: ''Linda Izzard, IARPC FIVE-YEAR PLAN COMMENT.''

*Fax:* 703–292–9082 Attention: ''Linda Izzard, IARPC FIVE-YEAR PLAN COMMENT.''

All submissions must be in English and must include your name, return address and email address, if applicable. Please clearly label submissions as ''IARPC FIVE-YEAR PLAN COMMENT.''

Please do not include classified, personally identifying information (such as social security numbers), copyrighted material, or business confidential information. Please note that your submission may be subject to public release ''as is'' under applicable law.

**FOR FURTHER INFORMATION CONTACT:** Any questions about the content of this notice should be sent to A. Graefe, *agraefe@arctic.gov.* Include ''IARPC FIVE-YEAR PLAN COMMENT'' in the subject line of the message. Questions may also be sent by mail (please allow additional time for processing) to: IARPC, c/o Arctic Sciences Division, National Science Foundation, Suite 755S, 4201 Wilson Blvd., Arlington, VA 22230. Attention: ''Lind Izzard, IARPC FIVE-YEAR PLAN COMMENT.''

**SUPPLEMENTARY INFORMATION:** For the purposes of research planning, we follow Section 112 of the ARPA in defining the Arctic as ''all United States and foreign territory north of the Arctic Circle and all United States territory north and west of the boundary formed by the Porcupine, Yukon, and Kuskokwim Rivers [in Alaska]; all contiguous seas, including the Arctic Ocean and the Beaufort, Bering, and Chukchi Seas; and the Aleutian chain.''

**Ted Wackler,**

*Deputy Chief of Staff and Assistant Director.*

[FR Doc. 2012–12790 Filed 5–25–12; 8:45 am]

**BILLING CODE P**

## SECURITIES AND EXCHANGE COMMISSION

### Sunshine Act Meeting

**FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT:** [77 FR 30338, May 22, 2012].

**STATUS:** Closed Meeting.

**PLACE:** 100 F Street NE., Washington, DC.

**DATE AND TIME OF PREVIOUSLY ANNOUNCED MEETING:** May 24, 2012 at 2:00 p.m.

**CHANGE IN THE MEETING:** Additional Item.

The following matter will also be considered during the 2:00 p.m. Closed Meeting scheduled for Thursday, May 24, 2012:

A personnel matter.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions as set forth in 5 U.S.C. 552b(c)(2) and (6) and 17 CFR 200.402(a)(2) and (6), permit consideration of the scheduled matter at the Closed Meeting.

Commissioner Walter, as duty officer, voted to consider the item listed for the Closed Meeting in closed session, and determined that no earlier notice thereof was possible.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact the Office of the Secretary at (202) 551–5400.

Dated: May 24, 2012.

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2012–13069 Filed 5–24–12; 4:15 pm]

**BILLING CODE 8011–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–67040; File No. SR–FINRA–2012–011]**

### Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Order Approving a Proposed Rule Change Amending FINRA Rule 14107 of the Code of Mediation Procedure To Provide the Director of Mediation With Discretion to Determine Whether Parties to a FINRA Mediation May Select a Mediator Who Is Not on FINRA's Mediator Roster

May 22, 2012.

### I. Introduction

On February 9, 2012, 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'' or ''Act'') [1] and

[1] 15 U.S.C. 78s(b)(1).

Rule 19b–4 thereunder,[2] a proposed rule change to amend FINRA Rule 14107 of the Code of Mediation Procedure (''Mediation Code'') to provide the Director of Mediation (''Mediation Director'') with discretion to determine whether parties to a FINRA mediation may select a mediator who is not on FINRA's mediator roster, subject to certain conditions. The proposed rule change was published for comment in the **Federal Register** on February 28, 2011.[3] The Commission received five comment letters on the proposed rule change,[4] and a response to comments from FINRA.[5] This order approves the proposed rule change.

## II. Description of the Proposal

As stated in the Notice, FINRA's Mediation Code currently permits parties to mediation to select a mediator either from a list of FINRA mediators supplied by the Mediation Director, or from a list or other source of their own choosing. Although parties usually select a FINRA mediator, parties may select a mediator who is not on FINRA's roster.

FINRA has administered its mediation program for over 15 years. FINRA stated in the Notice that during this time it has developed a deep roster of seasoned securities mediators. Specifically, FINRA represented that its staff carefully screens every mediator applicant, and that the National Arbitration and Mediation Committee (''NAMC'')[6] (through its Mediation Subcommittee) reviews and approves each application. FINRA stated that its staff then conducts a background check of approved applicants before placing them on the mediator roster. FINRA also stated that its staff engages in ongoing evaluation of the mediators on its roster by eliciting evaluations of its mediators from parties and counsel who have participated in mediation and conducting periodic quality control reviews of their mediators.

Non-FINRA mediators are not subject to FINRA's screening process, background check, and periodic evaluation. Accordingly, FINRA stated that the selection of a non-FINRA mediator raises concerns for the forum. FINRA stated, however, that if a mediator expresses an interest in applying to be a FINRA mediator, and FINRA's program would benefit by adding the mediator, FINRA staff believes it would be prudent to permit a non-FINRA mediator chosen by the parties to serve on a case. But FINRA stated that if a mediator does not apply for FINRA's roster or FINRA believes the mediator is not appropriate for its forum, the Mediation Director should have the discretion to deny the parties' mediator selection.

For these reasons, in part, FINRA proposed to amend Rule 14107(a) to state that a mediator may be selected, with the Mediation Director's approval upon receipt of the parties' joint request, from a list or other source the parties choose. Under the proposed rule, if the Mediation Director rejects the mediator selected, the parties would still be able to select a FINRA approved mediator or a different non-FINRA mediator subject to the same conditions as the rejected mediator, or to mediate their dispute elsewhere.

FINRA Rule 14107(c) provides that a mediator selected or assigned to mediate a matter must comply with FINRA rules relating to disclosures required of arbitrators unless, with respect to a mediator selected from a source other than a list provided by FINRA, the parties elect to waive such disclosure. The proposed rule change would amend Rule 14107(c) to state that the paragraph would apply to a non-FINRA mediator who is approved to serve on a FINRA mediation.[7]

The proposed rule change also would make two technical amendments to Rule 14107. It would amend Rule 14107(a) to change the bullet points to numbers to facilitate citation to particular provisions of Rule 14107(a). It would also amend Rule 14107(c) to replace the citation to Rule 12408 of the Customer Code of Arbitration Procedure to Rule 12405 to reflect that former Rule 12408 was re-numbered as part of a prior FINRA rule change.[8]

In the Notice, FINRA represented that giving the Mediation Director discretion to determine whether parties may select a mediator who is not on FINRA's mediator roster would protect the quality and integrity of the process for users of FINRA's mediation program.

## III. Discussion of Comment Letters

The Commission received five comment letters on the proposed rule change in response to the Notice.[9] Two commenters supported the proposal,[10] one supported the proposal with a suggested modification,[11] and two opposed the proposal.[12]

The PIABA Letter stated that the proposed rule change would assist forum participants in resolving their disputes. The St. John's Letter stated that giving the Mediation Director discretion in approving mediators not on FINRA's roster would help to ensure quality and efficiency in mediation.

The Cornell Letter stated that it supported the proposed rule change because FINRA should be able to control the quality of its mediation program. The letter also noted that, in the Notice, FINRA stated that if the Mediation Director rejects the parties' selected mediator, the parties would still be able to select a FINRA approved mediator or a different non-FINRA mediator subject to the same conditions as the rejected mediator, or to mediate their dispute elsewhere. The letter recommended that FINRA include this language in the proposed rule text or, alternatively, that the Commission acknowledge the language in an order approving the proposed rule change. In

[2] 17 CFR 240.19b–4.

[3] *See* Exchange Act Release No. 66441 (Feb. 22, 2012), 77 FR 12098 (Feb. 28, 2012) (''Notice''). The comment period closed on March 20, 2012.

[4] *See* Letter from Ryan K. Bakhtiari, President, Public Investors Arbitration Bar Association, dated February 28, 2012 (''PIABA Letter''); letter from William A. Jacobson, Associate Clinical Professor of Law, Cornell Law School, and Director, Cornell Securities Law Clinic, and Patricia Peralta, Cornell Law School '13, dated March 15, 2012 (''Cornell Letter''); letter from Lisa Catalano, Director, Christine Lazaro, Supervising Attorney, and Ben Kralstein, Andrew Mundo, and Daniel Porco, Legal Interns, St. John's University School of Law Securities Arbitration Clinic, dated March 20, 2012 (''St. John's Letter''); letter from Jill I. Gross, Director; Edward Pekarek, Assistant Director, and Genavieve Shingle, Student Intern, Investor Rights Clinic at Pace Law School, dated March 20, 2012 (''PIRC Letter''); and letter from Thomas K. Potter, III, Burr & Forman LLP, dated March 23, 2012 (''Potter Letter''). Comment letters are available at *http://www.sec.gov.*

[5] *See* Letter from Margo A. Hassan, Assistant Chief Counsel, FINRA Dispute Resolution, to Elizabeth M. Murphy, Secretary, Commission, dated April 30, 2012 (''Response Letter''). The text of the proposed rule change and FINRA's Response Letter are available on FINRA's Web site at *http://www.finra.org,* at the principal office of FINRA, and at the Commission's Public Reference Room. The text of the Response Letter is also available on the Commission's Web site at *http://www.sec.gov.*

[6] The NAMC makes recommendations to FINRA staff regarding recruitment, qualification, training, and evaluation of arbitrators and mediators. The NAMC also makes recommendations on rules, regulations, and procedures that govern the conduct of arbitration, mediation, and other dispute resolution matters before FINRA.

[7] FINRA mediators pay an annual $200 fee to remain active on the roster. Additionally, FINRA deducts $150 from the mediator's compensation for each meditation in which the mediator participates (FINRA stated that mediators typically receive $250 to $500 per hour). The Notice stated that under the proposed rule FINRA would require the non-FINRA mediator to complete the application process for inclusion on the mediator roster. The Notice also stated that, if the Commission approves the proposed rule change, FINRA would require any non-FINRA mediator who serves on a case to pay the $200 annual fee charged to FINRA mediators who are active on the roster prior to serving on the case, as well as the $150 mediation case fee.

[8] *See* Exchange Act Release No. 63799 (Jan. 31, 2011), 76 FR 6500 (Feb. 4, 2011).

[9] *Supra* note 4.

[10] *See* PIABA Letter and St. John's Letter.

[11] *See* Cornell Letter.

[12] *See* PIRC Letter and Potter Letter.

its Response Letter, FINRA stated that it included the language in the Notice to call attention to the alternatives that would be available to forum users if the Mediation Director rejects the parties' chosen mediator. FINRA stated that it was unnecessary to include the suggested language in the rule text, and declined to amend the proposal. FINRA also represented that, if the Commission approves the proposed rule change, FINRA would include the suggested language in a Regulatory Notice announcing approval of the proposed rule change to ensure that parties are cognizant of their options under FINRA's program. In addition, FINRA stated that if the Mediation Director rejects the parties' chosen mediator, FINRA would notify the parties of the alternatives available to them.

The PIRC Letter opposed the proposed rule change on the basis that it might inhibit investor choice and control over the mediation process. The letter stated that, under the current rule, an investor has the ability to select a mediator best suited to represent him or her in his or her specific claim. The letter further stated that this level of choice provides an investor a level of control over the process and increases the perception of its fairness. In particular, the letter stated that under the current rule, an investor could choose lower-cost options that suit the investor's financial status, such as a non-FINRA pro bono mediator, or a mediator who is willing to accept a reduced fee. The letter expressed concern that the proposed rule would increase the overall cost of mediation to investors because it would inhibit their ability to choose affordable non-FINRA mediators. In its Response Letter, FINRA stated that it has a duty to ensure the quality of its program and believes that maintaining control of its mediator roster is necessary to meet this duty. Moreover, the letter reiterated that parties would still have options for mediating their dispute if the Mediation Director rejected their selected mediator: The parties would be able to select a mediator on FINRA's roster, select a different non-FINRA mediator subject to the same conditions as the rejected mediator, or choose to mediate their dispute in another forum.

In its Response Letter, FINRA also stated that it believes its mediation program is cost-effective for investors of all means. FINRA stated it believes that its filing fees (of up to $300) are modest and that the Mediation Director has discretion to waive them. FINRA also stated that it offers many opportunities for parties using its mediators to reduce the cost of mediation, including: (1) When FINRA adds mediators to its roster, it asks them to reduce their rates for smaller claims; (2) FINRA's Mediation Administrators provide, upon request, parties with a list of mediators who have agreed to conduct mediations for $50 per hour in appropriate cases; (3) some mediators on FINRA's roster have agreed to conduct mediations on a pro bono basis for parties of limited means; and (4) every October, FINRA hosts Mediation Settlement Month during which both FINRA and the mediators on its roster lower their fees in order to encourage participation.[13]

The Potter Letter stated, among other things, that FINRA has not established a need for the proposed rule change. The letter also stated that the proposed rule change would prevent parties from selecting a mediator of their choice and would restrict their freedom to contract. Moreover, the letter stated that the commenter believes the proposed rule would be difficult to enforce because FINRA would be unable to monitor a prohibition against private parties entering into private contracts.

In its Response Letter, FINRA stated that it does not believe the proposed rule change was unnecessary and reiterated that FINRA has a duty to ensure the quality of its mediation program, and that maintaining control of its mediator roster is a necessary to meet this duty. With respect to the letter's other objections, FINRA stated that it believes the commenter misinterpreted the proposal. Specifically, FINRA stated that mediation is voluntary, and that the proposed rule change would not prohibit parties from choosing their own mediators, or from choosing their own forum for mediation. In addition, FINRA reiterated that if the Mediation Director rejects a mediator selected by the parties, they would still be free to mediate their dispute elsewhere. Moreover, FINRA stated that it does not intend to police mediation between parties that occurs outside of FINRA's mediation forum.

For the aforementioned reasons, FINRA declined to amend the proposed rule change as suggested by commenters.

## IV. Commission's Findings

The Commission has carefully reviewed the proposed rule change, the comments received, and FINRA's Response Letter. Based on its review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association. In particular, the Commission finds that the proposed rule change is consistent with Section 15A(b)(6) of the Act,[14] which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest.

More specifically, the Commission finds that the proposed rule change to provide the Mediation Director with discretion to determine whether parties to a FINRA mediation may select a mediator who is not on FINRA's mediator roster would benefit investors and other participants in the forum by helping to protect the quality and integrity of FINRA's mediation program for parties using FINRA's forum. While the Commission appreciates the commenters' concerns, particularly regarding whether parties using the forum would understand the options available to them if the Mediation Director rejects a mediator selected by the parties, we believe that FINRA has responded adequately to the commenters' concerns and note that FINRA has stated that it will include in a Regulatory Notice announcing approval of the proposed rule change language designed to ensure that parties are cognizant of their options under FINRA's program, and that if the Mediation Director rejects the parties' chosen mediator, FINRA will notify the parties of the alternatives available to them.

The Commission has reviewed the record for the proposed rule change and believes that the record does not contain any information to indicate that the proposed rule would have a significant effect on efficiency, competition, or capital formation. In light of the record, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation and has concluded that the proposed rule is unlikely to have any significant effect.[15]

For the reasons stated above, the Commission finds that the proposed rule change is consistent with the Act and the rules and regulations thereunder.

[13] FINRA lowers its filing fees by 50 percent and its mediators (who typically charge between $250 and $500 per hour for services rendered) reduce their rates to $200 per hour for a four-hour mediation session for claims up to $25,000, and $400 per hour for claims up to $100,000.

[14] 15 U.S.C. 78*o*–3(b)(6).

[15] *See* 15 U.S.C. 78c(f).

## V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[16] that the proposed rule change (SR–FINRA–2012–011) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[17]

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2012–12850 Filed 5–25–12; 8:45 am]

**BILLING CODE 8011–01–P**

[16] 15 U.S.C. 78s(b)(2).

[17] 17 CFR 200.30–3(a)(12).

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–67039; File No. SR–ISE–2012–39]**

## Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Qualification Standards for Market Makers To Receive a Rebate

May 22, 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 May 15, 2012, the International Securities Exchange, LLC (the ''Exchange'' or the ''ISE'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The ISE is proposing to amend the qualification standards for market makers to receive a rebate under the Exchange's modified maker/taker pricing structure. The text of the proposed rule change is available on the Exchange's Web site (*http://www.ise.com*), at the principal office of the Exchange, and at the Commission's Public Reference Room.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The purpose of this proposed rule change is to amend the qualification standards for market makers to receive a rebate under the Exchange's maker/taker pricing structure. The Exchange currently assesses per contract transaction fees and provides rebates to market participants that add or remove liquidity from the Exchange (''maker/taker fees and rebates'') in a number of options classes (the ''Select Symbols'').[3] The maker/taker fees and rebates apply to the following categories of market participants: (i) Market Maker;[4] (ii) Market Maker Plus; (iii) Non-ISE Market Maker;[5] (iv) Firm Proprietary; (v) Customer (Professional);[6] (vi) Priority Customer,[7] 100 or more contracts; and (vii) Priority Customer, less than 100 contracts.

In order to promote and encourage liquidity in the Select Symbols, the Exchange currently offers a $0.10 per contract rebate to Market Makers if the quotes they sent to the Exchange qualify the Market Maker to become a Market Maker Plus.[8] A Market Maker Plus is a Market Maker who is on the National Best Bid or National Best Offer (NBBO) 80% of the time for series trading between $0.03 and $5.00 (for options whose underlying stock's previous trading day's last sale price was less than or equal to $100) and between $0.10 and $5.00 (for options whose underlying stock's previous trading day's last sale price was greater than $100) in premium in each of the front two expiration months and 80% of the time for series trading between $0.03 and $5.00 (for options whose underlying stock's previous trading day's last sale price was less than or equal to $100) and between $0.10 and $5.00 (for options whose underlying stock's previous trading day's last sale price was greater than $100) in premium for all expiration months in that symbol during the current trading month.[9]

The Exchange now proposes to amend the Market Maker Plus qualification standards in order for a Market Maker to qualify for the $0.10 per contract rebate when providing liquidity (making) in the Select Symbols. Specifically, ISE proposes to exclude from the NBBO calculation a Market Maker's single best and single worst overall quoting days in a symbol if doing so qualifies the Market Maker for the rebate. In effect, this variation to the current qualification standards will give a Market Maker the better of the NBBO average of all days in a month or the NBBO average of the month excluding the best and worst days, on a per symbol basis. The Exchange believes this proposed change will further encourage Market Makers to continue to quote aggressively in a class throughout the entire month despite an individual poor-performing day.

The Exchange currently determines whether a Market Maker qualifies as a Market Maker Plus at the end of each month by looking back at each Market Maker's quoting statistics per symbol during that month. If at the end of the month, a Market Maker meets the Exchange's stated criteria, the Exchange rebates $0.10 per contract for transactions in that symbol executed by

[3] Options classes subject to maker/taker fees are identified by their ticker symbol on the Exchange's Schedule of Fees.

[4] The term ''Market Makers'' refers to ''Competitive Market Makers'' and ''Primary Market Makers'' collectively. *See* ISE Rule 100(a)(25).

[5] A Non-ISE Market Maker, or Far Away Market Maker (''FARMM''), is a market maker as defined in Section 3(a)(38) of the Securities Exchange Act of 1934, as amended (''Exchange Act''), registered in the same options class on another options exchange.

[6] A Customer (Professional) is a person who is not a broker/dealer and is not a Priority Customer.

[7] A Priority Customer is defined in ISE Rule 100(a)(37A) as a person or entity that is not a broker/dealer in securities, and does not place more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s).

[8] The concept of incenting market makers with a rebate is not novel. In 2008, the CBOE established a program for its Hybrid Agency Liaison whereby it provides a $0.20 per contact rebate to its market makers provided that at least 80% of the market maker's quotes in a class during a month are on one side of the national best bid or offer. Market makers not meeting CBOE's criteria are not eligible to receive a rebate. *See* Securities Exchange Act Release No. 57231 (January 30, 2008), 73 FR 6752 (February 5, 2008). The CBOE has since lowered the criteria from 80% to 60%. *See* Securities Exchange Act Release No. 57470 (March 11, 2008), 73 FR 14514 (March 18, 2008).

[9] *See* Securities Exchange Act Release No. 62507 (July 15, 2010), 75 FR 42802 (July 22, 2010) (SR–ISE–2010–68).

that Market Maker as a maker during that month. The Exchange will continue to monitor each Market Maker's quoting statistics to determine whether a Market Maker qualifies for a rebate under the standards proposed herein.

The Exchange also currently provides Market Makers a report on a daily basis with quoting statistics so that Market Makers can determine whether or not they are meeting the Exchange's current stated criteria. Again, the Exchange will continue to provide Market Makers a daily report so that Market Makers can track their quoting activity to determine whether or not they qualify for the Market Maker Plus rebate.

The Exchange believes the proposed rule change will also encourage Market Makers to post tighter markets in the Select Symbols and thereby increase liquidity and attract additional order flow to the Exchange.

The Exchange has designated this proposal to be operative on June 1, 2012.

2. Statutory Basis

The Exchange believes that its proposal to amend its Schedule of Fees is consistent with Section 6(b) of the Exchange Act [10] in general, and furthers the objectives of Section 6(b)(4) of the Exchange Act [11] in particular, in that it is an equitable allocation of reasonable dues, fees and other charges among Exchange members and other persons using its facilities. The impact of the proposal upon the net fees paid by a particular market participant will depend on a number of variables, most important of which will be its propensity to add or remove liquidity in the Select Symbols.

The Exchange believes that it is reasonable and equitable to provide rebates to Market Makers because paying a rebate would continue to attract additional order flow to the Exchange and create liquidity in the symbols that are subject to the rebate which the Exchange believes ultimately will benefit all market participants who trade on ISE. The Exchange already provides a rebate to Market Makers who meet the Exchange's stated quoting criteria, and is now merely proposing to broaden the qualification standards (not quoting requirements) that Market Makers have to meet in order to qualify for the rebate.

The Exchange believes that amending the qualification standards for Market Makers to qualify for a rebate will encourage these market participants to continue to post tighter markets in the Select Symbols and thereby increase liquidity and attract additional order flow to the Exchange. The Market Maker Plus rebate employed by the Exchange has proven to be an effective incentive for Market Makers to provide liquidity in the Select Symbols. The Exchange further believes that the Exchange's Market Maker Plus rebate is not unfairly discriminatory because this rebate program is consistent with rebates that exist today at other options exchanges. The Exchange believes that the Market Maker Plus rebate is a competitive rebate and equivalent to incentives provided by other exchanges and is therefore reasonable and equitably allocated to those members that direct orders to the Exchange rather than to a competing exchange. The Exchange operates in a highly competitive market in which market participants can readily direct order flow to another exchange if they deem rebate levels at a particular exchange to be low.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Exchange Act.[12] At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Exchange Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the 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–ISE–2012–39 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–ISE–2012–39. 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 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–ISE–2012–39 and should be submitted on or before June 19, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(4).

[12] 15 U.S.C. 78s(b)(3)(A)(ii).

[13] 17 CFR 200.30–3(a)(12).

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2012–12927 Filed 5–25–12; 8:45 am]

**BILLING CODE 8011–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[File No. 500–1]**

### In the Matter of Quintek Technologies, Inc., The Saint James Co., Urigen Pharmaceuticals, Inc., Valor Energy Corp., Wherify Wireless, Inc., and WinWin Gaming, Inc.; Order of Suspension of Trading

May 24, 2012.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Quintek Technologies, Inc. because it has not filed any periodic reports since the period ended September 30, 2007.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of The Saint James Co. because it has not filed any periodic reports since the period ended September 30, 2009.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Urigen Pharmaceuticals, Inc. because it has not filed any periodic reports since the period ended March 31, 2010.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Valor Energy Corp. because it has not filed any periodic reports since the period ended February 28, 2009.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Wherify Wireless, Inc. because it has not filed any periodic reports since the period ended June 30, 2008.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of WinWin Gaming, Inc. because it has not filed any periodic reports since the period ended June 30, 2006.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above-listed companies.

Therefore, it is ordered, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in the securities of the above-listed companies is suspended for the period from 9:30 a.m. EDT on May 24, 2012, through 11:59 p.m. EDT on June 7, 2012.

By the Commission.

**Jill M. Peterson,**

*Assistant Secretary.*

[FR Doc. 2012–13015 Filed 5–24–12; 4:15 pm]

**BILLING CODE 8011–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[File No. 500–1]**

### In the Matter of Indocan Resources, Inc.; Order of Suspension of Trading

May 24, 2012.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Indocan Resources, Inc. (''IDCN'') because of questions concerning the adequacy of publicly available information about the company.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above-listed company.

Therefore, it is ordered, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in the securities of the above-listed company is suspended for the period from 9:30 a.m. EDT, on May 24, 2012 through 11:59 p.m. EDT, on June 7, 2012.

By the Commission.

**Elizabeth M. Murphy,**

*Secretary.*

[FR Doc. 2012–13012 Filed 5–24–12; 4:15 pm]

**BILLING CODE 8011–01–P**

## DEPARTMENT OF STATE

**[Public Notice 7897]**

### Renewal of Cultural Property Advisory Committee Charter

**SUMMARY:** The Charter of the Department of State's Cultural Property Advisory Committee (CPAC) has been renewed for an additional two years.

The Charter of the Cultural Property Advisory Committee is being renewed for a two-year period. The Committee was established by the Convention on Cultural Property Implementation Act of 1983, 19 U.S.C. 2601 *et seq.* It reviews requests from other countries seeking U.S. import restrictions on archaeological or ethnological material the pillage of which places a country's cultural heritage in jeopardy. The Committee makes findings and recommendations to the President's designee who, on behalf of the President, determines whether to impose the import restrictions. The membership of the Committee consists of private sector experts in archaeology, anthropology, or ethnology; experts in the international sale of cultural property; and representatives of museums and of the general public.

**FOR FURTHER INFORMATION CONTACT:** Cultural Heritage Center, U.S. Department of State, Bureau of Educational and Cultural Affairs, 2200 C Street NW., Washington, DC 20522. Telephone: (202) 632–6301; Fax: (202) 632–6300.

Dated: April 27, 2012.

**Maria P. Kouroupas,**

*Executive Director, Cultural Property Advisory, Committee Department of State.*

[FR Doc. 2012–12937 Filed 5–25–12; 8:45 am]

**BILLING CODE 4710–11–P**

## DEPARTMENT OF STATE

**[Public Notice 7896]**

### U.S. Department of State Advisory Committee on Private International Law (ACPIL)—Online Dispute Resolution (ODR) Study Group

The Office of Private International Law, Office of the Legal Adviser, Department of State hereby gives notice that the ACPIL Online Dispute Resolution (ODR) Study Group will hold a public meeting on Friday June 15, 2012, from 10:00 a.m. to 2:00 p.m. The public meeting will take place at the State Department Harry S Truman Building. The ACPIL ODR Study Group will meet to discuss the recent session of the UNCITRAL ODR Working Group, held May 21 through May 25, 2012, and will specifically address security issues relating to use of the ODR rules, including measures to address the risk of fraud involving consumers who participate.

The UNCITRAL ODR Working Group is charged with the development of legal instruments for resolving both business to business and business to consumer cross-border electronic commerce disputes. The Working Group is in the process of developing generic ODR procedural rules for resolution of cross-border electronic commerce disputes, along with separate instruments that may take the form of annexes on guidelines and minimum requirements for online dispute resolution providers and arbitrators, substantive legal principles for resolving disputes, and a

cross-border enforcement mechanism. Among the key issues that the Working Group are security issues relating to use of the ODR Rules, including measures to address the risk of fraud involving consumers who participate.

For the reports of the first three sessions of the UNCITRAL ODR Working Group—December 13–17, 2010, in Vienna (A/CN.9/716); May 23–27, 2011, in New York ((A/CN.9/721); and Nov. 14–18, 2011, in Vienna (A/CN.9/739)—please follow the following link: *http://www.uncitral.org/uncitral/commission/working_groups/3Online_Dispute_Resolution.html.* The report of the May 21–25, 2012 session in New York should be available on the same link in advance of the public meeting.

*Time and Place:* The public meeting will take place in Room 6323 in the Harry S Truman Building, 2201 C Street NW., Washington, DC 20520. Participants should arrive by 9:30 a.m. at the C Street entrance for visitor screening. If you are unable to attend the public meeting and would like to participate from a remote location, teleconferencing will be available.

*Public Participation:* This Study Group meeting is open to the public, subject to the capacity of the meeting room. Access to the building is controlled; persons wishing to attend should contact Tricia Smeltzer (*SmeltzerTK@state.gov*) or Niesha Toms (*TomsNN@state.gov*) of the Office of Private International Law and provide their name, address, email address, affiliation, date of birth, citizenship, and driver's license or passport number for admission into the meeting. Data from the public is requested pursuant to Public Law 99–399 (Omnibus Diplomatic Security and Antiterrorism Act of 1986), as amended; Public Law 107–56 (USA PATRIOT Act); and Executive Order 13356. The purpose of the collection is to validate the identity of individuals who enter Department facilities. The data will be entered into the Visitor Access Control System (VACS–D) database. Please see the Privacy Impact Assessment for VACS–D at *http://www.state.gov/documents/organization/100305.pdf* for additional information. A member of the public needing reasonable accommodation should advise those same contacts not later than June 10. Requests made after that date will be considered, but might not be able to be fulfilled. If you are unable to attend the public meeting and you would like to participate by teleconferencing, please contact Tricia Smeltzer or Niesha Toms to receive the conference call-in number and the relevant information. Persons who cannot attend but who wish to comment are welcome to do so by email to Michael Dennis at *DennisMJ@state.gov.*

Dated: May 21, 2012.

**Michael Coffee,**

*Attorney-Adviser, Office of Private International Law, Office of the Legal Adviser, Department of State.*

[FR Doc. 2012–12938 Filed 5–25–12; 8:45 am]

**BILLING CODE 4710–08–P**

## OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

### Notice of Effective Date of Modifications to a Rule of Origin of the United States-Australia Free Trade Agreement

**AGENCY:** Office of the United States Trade Representative.

**ACTION:** Notice of effective date for goods of Australia of certain modifications to a product-specific rule of origin under the United States-Australia Free Trade Agreement (USAFTA).

**SUMMARY:** In Proclamation 8334 of December 31, 2008, the President modified the rules of origin for certain goods of Australia under the USAFTA. While these modifications were incorporated in the Harmonized Tariff Schedule of the United States (the ''HTS'') at that time, the proclamation stated that the modifications would be effective on a date that the United States Trade Representative (USTR) announced in the **Federal Register**. This notice announces that the effective date for the modifications is June 1, 2012. This notice also makes a technical correction to the rule of origin as set out in proclamation 8334.

**FOR FURTHER INFORMATION CONTACT:** For further information, please contact Caroyl Miller, Deputy Textile Negotiator, Office of the United States Trade Representative, 600 17th Street NW., Washington, DC 20508, email address: *caroyl_miller@ustr.eop.gov.*

**SUPPLEMENTARY INFORMATION:** Presidential Proclamation 7857 of December 20, 2004, implemented the USAFTA with respect to the United States and, pursuant to the United States-Australia Free Trade Agreement Implementation Act (the ''USAFTA Act''), incorporated in the HTS the tariff modifications and rules of origin necessary or appropriate to carry out the USAFTA. Section 203 of the USAFTA Implementation Act provides rules for determining whether goods imported into the United States originate in the territory of Australia and, thus, are eligible for the tariff and other treatment contemplated under the USAFTA. Section 203(o) of the USAFTA Act authorizes the President to proclaim, as a part of the HTS, the rules of origin set out in the USAFTA and to proclaim modifications to such previously proclaimed rules of origin, subject to the consultation and layover requirements of section 104 of the USAFTA Act.

The President determined pursuant to sections 201 and 203 of the USAFTA Act that the modifications to the HTS contained in Proclamation 8334 were appropriate and proclaimed such changes with respect to goods of Australia and modified general note 28 to the HTS. The proclamation further provides that the modifications are effective with respect to goods of Australia entered or withdrawn from warehouse for consumption on the date that USTR announces in a notice published in the **Federal Register**.

On March 15, 2012, the Government of Australia notified the Government of the United States that it had completed its applicable domestic procedures to give effect to the agreement to change the USAFTA rules of origin for certain yarns of viscose rayon fiber with respect to goods of the United States. Subsequently, officials of the Government of Australia and the Government of the United States agreed to implement these changes with respect to each other's eligible goods, effective June 1, 2012.

In Proclamation 6969 of January 27, 1997, the President authorized the USTR to exercise the authority provided to the President under section 604 of the Trade Act of 1974 to embody rectifications, technical or conforming changes, or similar modifications in the HTS. The United States and Australia have identified a technical correction to the modification to the rule of origin set out in Proclamation 8334. Accordingly, general note 28 to the HTS of the United States, subdivision (n), paragraph 1, is corrected to refer to subheadings 5501.10 through 5501.30, rather than 5501.00 through 5501.30.

**Ambassador Ron Kirk,**

*United States Trade Representative.*

[FR Doc. 2012–12935 Filed 5–25–12; 8:45 am]

**BILLING CODE 3190–W2–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### Withdrawal of Notice of Intent To Prepare an Environmental Impact Statement for the George Bush Intercontinental Airport, Houston, TX

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

**ACTION:** Notice.

**SUMMARY:** The FAA is issuing this notice to advise federal, state, and local government agencies and the public that the FAA is withdrawing its Notice of Intent to prepare an Environmental Impact Statement (EIS) for proposed capacity improvements at the George Bush Intercontinental Airport (IAH). The Houston Airport System (HAS), the sponsor of the proposed improvements, has requested that the EIS be terminated because the need for the proposed capacity improvements no longer exists. The HAS noted that arrival and departure delays at IAH have been decreasing and stated that IAH is currently one of the least delayed large hub airports in the United States.

**FOR FURTHER INFORMATION CONTACT:** Paul Blackford, by mail at Federal Aviation Administration, Airports Division, Attn: Paul Blackford, ASW–650, 2601 Meacham Boulevard, Fort Worth, Texas 76137, email at *paul.blackford@faa.gov,* or by telephone (817) 222–5607.

**SUPPLEMENTARY INFORMATION:** On April 9, 2009, the FAA issued a Notice of Intent in the **Federal Register** [74 FR 16255–16256] to prepare an EIS for proposed airfield improvements at IAH. The Airport Master Plan (AMP) prepared by the HAS documented that improvements were needed to increase airfield capacity and reduce projected delays. The FAA proceeded with preparing the EIS in accordance with the National Environmental Policy Act of 1969, as amended.

On July 30, 2010, the FAA received a letter from the HAS requesting that the preparation of the EIS be delayed. The HAS indicated that additional planning work was necessary to ensure that the assumptions used to develop the AMP remained valid. The HAS cited several reasons that contributed to their decision to conduct additional planning including the potential merger of United and Continental Airlines, the economic downturn, potential changes to aircraft fleet mix due to the airline merger, and the need to update the existing terminal concept. Therefore, the FAA suspended the preparation of the EIS and published a notice in the **Federal Register** stating such on September 16, 2010 [75 FR 56653].

On January 3, 2012, the HAS sent a letter to the FAA requesting that the EIS be terminated. The HAS cited statistics that show delays at IAH have been decreasing, stated that they do not expect significant increases in the number of aircraft operations at IAH, and did not wish to pursue a new runway at this time. In response to the HAS letter, the FAA is terminating the EIS.

Issued in Fort Worth, Texas, on May 16, 2012.

**Kelvin L. Solco,**

*Manager, Airports Division.*

[FR Doc. 2012–12947 Filed 5–25–12; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Motor Carrier Safety Administration

**[Docket No. FMCSA–2010–0027]**

### Hours of Service of Drivers: RockTenn, Exemption Application

**AGENCY:** Federal Motor Carrier Safety Administration (FMCSA), DOT.

**ACTION:** Notice of final disposition; grant of application for exemption.

**SUMMARY:** FMCSA announces its decision to grant RockTenn an exemption from the driver hours-of-service (HOS) provisions of the Federal Motor Carrier Safety Regulations (FMCSRs). This limited exemption is for RockTenn's shipping department employees and occasional substitute commercial driver's license (CDL) holders who transport paper mill products short distances between its shipping and receiving locations on a public road. The exemption is restricted to a specific route. RockTenn requested an exemption from the HOS regulation that prohibits drivers from operating property-carrying commercial motor vehicles (CMVs) after the 14th hour of coming on duty. This exemption will allow these individuals to occasionally work up to 16 consecutive hours and be allowed to return to work with less than the mandatory 10 consecutive hours off duty.

**DATES:** This exemption is effective from April 17, 2012 (12:01 a.m.), through April 16, 2014 (11:59 p.m.).

**FOR FURTHER INFORMATION CONTACT:** Mr. Richard Clemente, FMCSA Driver and Carrier Operations Division, Office of Bus and Truck Standards and Operations, Telephone: 202–366–4325. Email: *MCPSD@dot.gov.*

**SUPPLEMENTARY INFORMATION:**

#### Background

Under 49 U.S.C. 31315 and 31136(e), FMCSA may grant an exemption from many of the safety regulations, including the HOS requirements in 49 CFR part 395, for a two-year period if it finds ''such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level of safety that would be achieved absent such exemption'' (49 CFR 381.305(a)).

#### Request for Exemption

Under 49 CFR 395.3(a)(2), a property-carrying CMV driver is prohibited from operating a CMV on a public road after the end of the 14th hour after coming on duty following 10 or more consecutive hours off duty.

RockTenn operates a paper mill located in Chattanooga, Tennessee, its principal place of business. Its shipping and receiving departments are on opposite sides of the paper mill, requiring driver-employees to travel on a public road to shuttle trailers as needed. These drivers utilize a public road—Compress Street—an average of forty times per day to travel between its manufacturing facility, and shipping and receiving docks. These drivers do not transport any material farther than the paper mill lots and/or Compress Street. The distance traveled on Compress Street is approximately 275 feet in one direction, and one tractor is used to perform this work.

RockTenn requires all shipping department CMV drivers to have the required 10 hours off duty prior to returning to work and only allows them to work a maximum of 14 consecutive hours in any given duty period. It has three 8-hour shifts up to 7 days a week, and there are two shipping employees on each shift. One employee drives a fork-lift truck loading trailers with finished goods, and the other operates the tractor shuttling trailers. These employees do not drive the CMV continuously during their shift(s).

According to RockTenn, the problem arises because they use a backward-rotating shift schedule, and also on occasion when a shipping department driver does not report for work as scheduled. On a Monday, for example, if an individual worked the weekend, his or her shift would normally have to ''hurry back'' within 8 hours. As a result of the mandatory 10 hours off-duty requirement, RockTenn schedules these drivers' shifts to start later than other employees. This creates at least 2 hours when the company cannot load or transport trailers with finished goods due to the absence of the drivers.

Furthermore, as a result of the maximum 14 consecutive-hour duty period rule, they may ''work short,'' creating on-time delivery issues for other employees in the department, as they are not allowed to work an entire ''double shift'' (16 hours) when necessary.

RockTenn requested a limited exemption from 49 CFR part 395 for its shipping department CMV drivers, as well as others with a valid CDL who on occasion must substitute, allowing all such drivers to work up to 16 hours in a day and return to work with a minimum of at least 8 hours off duty. If exempt from the normal HOS requirements, these employees can follow the same work schedule as other RockTenn employees on their shift, and will be able to work for the full 16 hours of a ''double shift.'' RockTenn can therefore minimize the chances of delayed shipments that may occur when their drivers are not allowed to work the same schedule as other employees.

RockTenn acknowledged in its application that these drivers would still be subject to all of the other Federal Motor Carrier Safety Regulations (FMCSRs), including possessing a CDL, random drug testing, medical certification, and other driver-qualification requirements.

A copy of RockTenn's application for exemption is available for review in the docket for this notice.

**Comments**

On June 14, 2010, FMCSA published notice of this application, and asked for public comment (75 FR 33664). One set of comments was received to the public docket. The Advocates for Highway and Auto Safety (Advocates) claimed that there is nothing in RockTenn's application demonstrating that directing workers to work 16 hours in a shift with 8 hours off duty would produce a safety outcome that is equivalent to or greater than the safety secured by adhering to the 14-hour rule. Advocates further indicated that approval of their request would be for the convenience of the applicant, with no assurance of safety benefit or equivalency.

**FMCSA Decision**

The FMCSA has evaluated RockTenn's application for exemption and the public comments. The Agency believes that RockTenn's overall safety performance as reflected in its ''satisfactory'' safety rating, as well as a number of other factors discussed below, will likely enable it to achieve a level of safety that is equivalent to, or greater than, the level of safety achieved without the exemption (49 CFR 381.305(a)).

This exemption is being granted under extremely narrow conditions. The exemption is restricted to CDL holders employed by RockTenn who are exclusively assigned to a specific route. This specific route is entirely on one street (Compress Street), between their shipping and receiving departments—approximately 275 feet in one direction. The CMVs operated by RockTenn's shipping department shuttle drivers will only be exposed to travel on a public road for very brief periods of time.

The exemption enables RockTenn's shipping department employees and occasional substitute CDL holders who transport paper mill products between their shipping and receiving locations to work up to 16 consecutive hours in a duty period and return to work with a minimum of at least 8 hours off duty when necessary. This is comparable to current HOS regulations that allow certain ''short-haul'' drivers a 16-hour driving ''window'' once a week and other non-CDL short-haul drivers two 16-hour duty periods per week, provided specified conditions are met. Furthermore, 49 CFR 381.305(a) specifies that motor carriers ''* * * may apply for an exemption if one or more FMCSR prevents you from implementing more efficient or effective operations that would maintain a level of safety equivalent to, or greater than, the level achieved without the exemption.''

**Terms of the Exemption**

*Period of the Exemption*

The exemption from the requirements of 49 CFR 395.3(a)(2) (the ''14-hour rule'') is granted for the period from 12:01 a.m. on April 17, 2012, through 11:59 p.m. on April 16, 2014, for drivers employed by RockTenn operating CMVs on Compress Street between the company's shipping and receiving departments.

*Extent of the Exemption*

The exemption is restricted to drivers employed by RockTenn operating CMVs on the route specified above. This exemption is limited strictly to the provisions of 49 CFR 395.3(a)(2) (Maximum driving time for property-carrying vehicles), commonly referred to as the ''14-hour rule''. In addition, on each trip, the CMV must only travel on Compress Street—approximately 275 feet in one direction—between RockTenn's shipping and receiving departments. These drivers must comply will all other applicable provisions of the FMCSRs.

*Preemption*

In accordance with 49 U.S.C. 31315(d), during the period this exemption is in effect, no State shall enforce any law or regulation that conflicts with or is inconsistent with this exemption with respect to a firm or person operating under the exemption.

*Notification to FMCSA*

RockTenn must notify FMCSA within 5 business days of any accident (as defined in 49 CFR 390.5), involving any of the motor carrier's CMVs operating under the terms of this exemption. The notification must include the following information:

a. Date of the accident,

b. City or town, and State, in which the accident occurred, or closest to the accident scene,

c. Driver's name and license number,

d. Vehicle number and state license number,

e. Number of individuals suffering physical injury,

f. Number of fatalities,

g. The police-reported cause of the accident,

h. Whether the driver was cited for violation of any traffic laws, motor carrier safety regulations, and

i. The total driving time and total on-duty time period prior to the accident.

Reports filed under this provision shall be emailed to *MCPSD@DOT.GOV.*

*Termination*

FMCSA does not believe the drivers covered by this exemption will experience any deterioration of their safety record. However, should this occur, FMCSA will take all steps necessary to protect the public interest, including revocation of the exemption. The FMCSA will immediately revoke the exemption for failure to comply with its terms and conditions. RockTenn and each driver may be subject to periodic monitoring by FMCSA during the period of the exemption.

Issued on: May 21, 2012.

**Anne S. Ferro,**

*Administrator.*

[FR Doc. 2012–12819 Filed 5–25–12; 8:45 am]

BILLING CODE 4910–EX–P

## DEPARTMENT OF TRANSPORTATION

### Saint Lawrence Seaway Development Corporation

### Advisory Board; Notice of Meeting

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. I), notice is

hereby given of a meeting of the Advisory Board of the Saint Lawrence Seaway Development Corporation (SLSDC), to be held from 1:00 p.m. to 2:30 p.m. (EDT) on Tuesday, June 12, 2012 at the Corporation's Administration Headquarters, 55 M Street SE., Suite 930, Washington, DC 20003. The agenda for this meeting will be as follows: Opening Remarks; Consideration of Minutes of Past Meeting; Quarterly Report; Old and New Business; Closing Discussion; Adjournment.

Attendance at the meeting is open to the interested public but limited to the space available. With the approval of the Acting Administrator, members of the public may present oral statements at the meeting. Persons wishing further information should contact, not later than Friday, June 8, 2012, Anita K. Blackman, Chief of Staff, Saint Lawrence Seaway Development Corporation, Suite W32–300, 1200 New Jersey Avenue SE., Washington, DC 20590; 202–366–0091.

Any member of the public may present a written statement to the Advisory Board at any time.

Issued at Washington, DC, on May 21, 2012.

**Craig H. Middlebrook,**

*Acting Administrator.*

[FR Doc. 2012–12932 Filed 5–25–12; 8:45 am]

**BILLING CODE 4910–61–P**

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### Proposed Collection; Comment Request for Regulation Project

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning statutory options.

**DATES:** Written comments should be received on or before July 30, 2012 to be assured of consideration.

**ADDRESSES:** Direct all written comments to Yvette Lawrence, Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the regulations should be directed to Allan Hopkins, at (202) 622–6665, or at Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224, or through the Internet, at *Allan.M.Hopkins@irs.gov.*

**SUPPLEMENTARY INFORMATION:**

*Title:* Statutory Options.

*OMB Number:* 1545–0820.

*Regulation Project Number:* REG–122917–02.

*Abstract:* The affected public includes corporations that transfer stock to employees after 1979 pursuant to the exercise of a statutory stock option. The corporation must furnish the employee receiving the stock with a written statement describing the transfer. The statement will assist the employee in filing their tax return.

*Current Actions:* There is no change to this existing regulation.

*Type of Review:* Extension of a currently approved collection.

*Affected Public:* Business or other for-profit institutions.

*Estimated Number of Respondents:* 50,000.

*Estimated Time per Respondent:* 25 minutes.

*Estimated Total Burden Hours:* 16,650.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

*Request for Comments:* Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record.

*Comments are invited on:* (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: May 22, 2012.

**Allan Hopkins,**

*Tax Analyst.*

[FR Doc. 2012–12854 Filed 5–25–12; 8:45 am]

**BILLING CODE 4830–01–P**

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### Proposed Collection; Comment Request for Regulation Project

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments tax treatment of salvage and reinsurance.

**DATES:** Written comments should be received on or before July 30, 2012 to be assured of consideration.

**ADDRESSES:** Direct all written comments to Yvette Lawrence, Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the regulations should be directed to Allan Hopkins at Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224, or at (202) 622–6665, or through the Internet at *Allan.M.Hopkins@irs.gov.*

**SUPPLEMENTARY INFORMATION:**

*Title:* Tax Treatment of Salvage and Reinsurance.

*OMB Number:* 1545–1227.

*Regulation Project Number:* FI–104–90.

*Abstract:* Section 1.832–4(d) of this regulation allows a nonlife insurance company to increase unpaid losses on a yearly basis by the amount of estimated salvage recoverable if the company

discloses this to the state insurance regulatory authority.

*Current Actions:* There is no change to this existing regulation.

*Type of Review:* Extension of a currently approved collection.

*Affected Public:* Business or other for-profit organizations.

*Estimated Number of Respondents:* 2,500.

*Estimated Time per Respondent:* 2 hours.

*Estimated Total Annual Burden Hours:* 5,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: May 22, 2012.

**Allan Hopkins,**

*Tax Analyst.*

[FR Doc. 2012–12853 Filed 5–25–12; 8:45 am]

**BILLING CODE 4830–01–P**

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### Proposed Collection; Comment Request for Revenue Procedure 2003–11

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning offshore voluntary compliance initiative.

**DATES:** Written comments should be received on or before July 30, 2012 to be assured of consideration.

**ADDRESSES:** Direct all written comments to Yvette Lawrence, Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the regulations should be directed to Allan Hopkins at Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224, or at (202) 622–6665, or through the Internet at *Allan.M. Hopkins@irs.gov.*

**SUPPLEMENTARY INFORMATION:**

*Title:* Offshore Voluntary Compliance Initiative.

*OMB Number:* 1545–1822.

*Revenue Procedure Number:* Revenue Procedure 2003–11.

*Abstract:* Revenue Procedure 2003–11 describes the Offshore Voluntary Compliance Initiative, which is directed at taxpayers that have under-reported their tax liability through financial arrangements outside the United States that rely on the use of credit, debit, or charge cards (offshore credit cards) or foreign banks, financial institutions, corporations, partnerships, trusts, or other entities (offshore financial arrangements). Taxpayers that participate in the initiative and provide the information and material that their participation requires can avoid certain penalties.

*Current Actions:* There are no changes being made to the revenue procedure at this time.

*Type of Review:* Extension of a currently approved collection.

*Affected Public:* Business or other for-profit organizations, individuals, and not-for-profits institutions.

*Estimated Number of Respondents:* 2,000.

*Estimated Time per Respondent:* 50 hours.

*Estimated Total Annual Burden Hours:* 100,000.

The following paragraph applies to all the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

*Request for Comments:* Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: May 22, 2012.

**Allan Hopkins,**

*Tax Analyst.*

[FR Doc. 2012–12848 Filed 5–25–12; 8:45 am]

**BILLING CODE 4830–01–P**

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### Proposed Collection; Comment Request for Regulation Project

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning application of section 382 in short taxable years and with respect to controlled groups.

**DATES:** Written comments should be received on or before July 30, 2012 to be assured of consideration.

**ADDRESSES:** Direct all written comments to Yvette Lawrence, Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the regulation should be directed to Allan Hopkins, (202) 622–6665, Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224, or through the Internet at *Allan.M.Hopkins@irs.gov.*

**SUPPLEMENTARY INFORMATION:**

*Title:* Regulations under Section 382 of the Internal Revenue Code of 1986; Application of Section 382 in Short Taxable Years and With Respect to Controlled Groups.

*OMB Number:* 1545–1434.

*Regulation Project Number:* CO–26–96.

*Abstract:* Internal Revenue Code section 382 limits the amount of income that can be offset by loss carryovers after an ownership change in a loss corporation. These regulations provide rules for applying section 382 in the case of short taxable years and with respect to controlled groups of corporations.

*Current Actions:* There is no change to this existing regulation.

*Type of Review:* Extension of a currently approved collection.

*Affected Public:* Business or other for-profit organizations.

*Estimated Number of Respondents:* 3,500.

*Estimated Time per Respondent:* 15 minutes.

*Estimated Total Annual Burden Hours:* 875.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

*Request For Comments:* Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: May 22, 2012.

**Allan Hopkins,**

*Tax Analyst.*

[FR Doc. 2012–12851 Filed 5–25–12; 8:45 am]

**BILLING CODE 4830–01–P**

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## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### Proposed Collection; Comment Request for Form 8908

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8908, Energy Efficient Home Credit.

**DATES:** Written comments should be received on or before July 30, 2012 to be assured of consideration.

**ADDRESSES:** Direct all written comments to Yvette Lawrence, Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the form and instructions should be directed to Allan Hopkins, (202) 622–6665, at Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224, or through the Internet at *Allan.M.Hopkins@irs.gov.*

**SUPPLEMENTARY INFORMATION:**

*Title:* Energy Efficient Home Credit.

*OMB Number:* 1545–1979.

*Form Number:* 8908.

*Abstract:* Congress passed Public Law 109–58, the Energy Policy Act of 2005, on August 8, 2005, enacting legislation providing a tax credit for contractors producing new energy efficient homes.

We created Form 8908 to reflect new code section 45L which allows qualified contractors to claim a credit for each qualified energy-efficient home sold in tax years ending after December 31, 2005. The new credit ($2,000 or $1,000) is based on the energy saving requirements of the home. To qualify for the credit, the home must be acquired after 2005 but before January 2008.

*Current Actions:* There is no change in the paperwork burden previously approved by OMB.

*Type of Review:* Extension of a currently approved collection.

*Affected Public:* Businesses and other for-profit organizations.

*Estimated Number of Respondents:* 198,000.

*Estimated Time per Respondent:* 2 hours, 35 minutes.

*Estimated Total Annual Burden Hours:* 512,820.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

*Request for Comments:* Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the

agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: May 22, 2012.

**Allan Hopkins,**

*Tax Anlayst.*

[FR Doc. 2012–12852 Filed 5–25–12; 8:45 am]

BILLING CODE P

## DEPARTMENT OF THE TREASURY

### Bureau of the Public Debt

### Proposed Information Collection; Comment Request

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A). Currently the Bureau of the Public Debt within the Department of the Treasury is soliciting comments concerning the Special Form of Request For Payment of United States Savings and Retirement Securities Where Use of a Detached Request is Authorized.

**DATES:** Written comments should be received on or before July 30, 2012 to be assured of consideration.

**ADDRESSES:** Direct all written comments to Bureau of the Public Debt, Bruce A. Sharp, 200 Third Street A4–A, Parkersburg, WV 26106–1328, or *bruce.sharp@bpd.treas.gov.* The opportunity to make comments online is also available at *www.pracomment.gov.*

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies should be directed to Bruce A. Sharp, Bureau of the Public Debt, 200 Third Street A4–A, Parkersburg, WV 26106–1328, (304) 480–8150.

**SUPPLEMENTARY INFORMATION:**

*Title:* Special Form of Request For Payment of United States Savings and Retirement Securities Where Use of a Detached Request is Authorized.

*OMB Number:* 1535–0004.

*Form Number:* PD F 1522.

*Abstract:* The information is requested to establish ownership and request for payment of United States Savings Bonds, Savings Notes, Retirement Plan Bonds, and Individual Retirement Bonds.

*Current Actions:* None.

*Type of Review:* Extension.

*Affected Public:* Individuals or Households.

*Estimated Number of Respondents:* 56,000.

*Estimated Time per Respondent:* 15 minutes.

*Estimated Total Annual Burden Hours:* 14,000.

*Request for Comments:* Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: May 22, 2012.

**Bruce A. Sharp,**

*Bureau Clearance Officer.*

[FR Doc. 2012–12840 Filed 5–25–12; 8:45 am]

BILLING CODE 4810–39–P

## DEPARTMENT OF VETERANS AFFAIRS

**[OMB Control No. 2900–0730]**

### Proposed Information Collection (Deployment Risk and Resilience Inventory (DRRI)) Activities Under OMB Review

**AGENCY:** Veterans Health Administration, Department of Veterans Affairs.

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521), this notice announces that the Veterans Health Administration, Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

**DATES:** Comments must be submitted on or before June 28, 2012.

**ADDRESSES:** Submit written comments on the collection of information through *www.Regulations.gov;* or to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503, (202) 395–7316. Please refer to ''OMB Control No. 2900–0730'' in any correspondence.

**FOR FURTHER INFORMATION CONTACT:** Denise McLamb, Enterprise Records Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 632–7479, Fax (202) 632–7583 or email *denise.mclamb@va.gov.* Please refer to ''OMB Control No. 2900–0730.''

**SUPPLEMENTARY INFORMATION:**

*Title:* Deployment Risk and Resilience Inventory (DRRI), VA Form 10–21087.

*OMB Control Number:* 2900–0730.

*Type of Review:* Extension of a currently approved collection.

*Abstract:* The primary goal of the DRRI project is to provide a suite of scales that will be useful to researchers and clinicians to study factors that increase or reduce risk for Post Traumatic Stress Disorder (PTSD) and other health problems that Operation Enduring Freedom/Operation Iraqi Freedom veterans experienced before, during, and after deployment.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on March 14, 2012, at pages 15187–15188.

*Estimated Annual Burden:* 1,378 hours.

*Estimated Average Burden per Respondent:* 49 minutes.

*Frequency of Response:* On occasion.

*Estimated Number of Respondents:* 1,680.

Dated: May 23, 2012.

By direction of the Secretary.

**Denise McLamb,**

*Program Analyst, Enterprise Records Service.*

[FR Doc. 2012–12896 Filed 5–25–12; 8:45 am]

BILLING CODE 8320–01–P

## DEPARTMENT OF VETERANS AFFAIRS

**[OMB Control No. 2900–0092]**

## Proposed Information Collection (Rehabilitation Needs Inventory) Activity: Comment Request

**AGENCY:** Veterans Benefits Administration, Department of Veterans Affairs.

**ACTION:** Notice.

**SUMMARY:** The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed revision of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments on information needed to determine a claimant's entitlement to vocational rehabilitation services.

**DATES:** Written comments and recommendations on the proposed collection of information should be received on or before July 30, 2012.

**ADDRESSES:** Submit written comments on the collection of information through Federal Docket Management System (FDMS) at *www.Regulations.gov* or to Nancy J. Kessinger, Veterans Benefits Administration (20M33), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420 or email to *nancy.kessinger@va.gov.* Please refer to ''OMB Control No. 2900–0092'' in any correspondence. During the comment period, comments may be viewed online through the FDMS.

**FOR FURTHER INFORMATION CONTACT:** Nancy J. Kessinger at (202) 461–9769 or Fax (202) 275–5947.

**SUPPLEMENTARY INFORMATION:** Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–21), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

*Title:* Rehabilitation Needs Inventory (RNI), VA Form 28–1902w.

*OMB Control Number:* 2900–0092.

*Type of Review:* Revision of a currently approved collection.

*Abstract:* VA Form 28–1902w is mailed to service-connected disabled veterans who submitted an application for vocational rehabilitation benefits. VA will use data collected to determine the types of rehabilitation program the veteran will need.

*Affected Public:* Individuals or households.

*Estimated Annual Burden:* 45,000 hours.

*Estimated Average Burden per Respondent:* 45 minutes.

*Frequency of Response:* On occasion.

*Estimated Number of Respondents:* 60,000.

Dated: May 23, 2012.

By direction of the Secretary.

**Denise McLamb,**

*Program Analyst, Enterprise Records Service.*

[FR Doc. 2012–12897 Filed 5–25–12; 8:45 am]

BILLING CODE 8320–01–P

# FEDERAL REGISTER

Vol. 77 Tuesday,

No. 103 May 29, 2012


Part II

## Environmental Protection Agency

40 CFR Part 52

Approval and Promulgation of Implementation Plans; State of Hawaii; Regional Haze Federal Implementation Plan; Proposed Rule

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

**[EPA–R09–OAR–2012–0345, FRL–9675–3]**

## Approval and Promulgation of Implementation Plans; State of Hawaii; Regional Haze Federal Implementation Plan

**AGENCY:** Environmental Protection Agency.

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing to promulgate a Federal Implementation Plan (FIP) to address regional haze in the State of Hawaii. EPA proposes to determine that the FIP meets the requirements of the Clean Air Act (CAA or ''the Act'') and EPA's rules concerning reasonable progress towards the national goal of preventing any future and remedying any existing man-made impairment of visibility in mandatory Class I areas. We are taking comments on this proposal and plan to follow with a final action.

**DATES:** Written comments must be received at the address below on or before July 2, 2012.

**ADDRESSES:** See Supplementary Information section for further instructions on where and how to learn more about this proposal, attend a public hearing or submit comments.

**FOR FURTHER INFORMATION CONTACT:** Gregory Nudd, Air Planning Office (AIR–2), U.S. Environmental Protection Agency Region 9, 415–947–4107, *nudd.gregory@epa.gov.*

**SUPPLEMENTARY INFORMATION:**

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## I. General Information

### *A. Definitions*

For the purpose of this document, we are giving meaning to certain words or initials as follows:

i. The words or initials *Act* or *CAA* mean or refer to the Clean Air Act, unless the context indicates otherwise.

ii. The initials $b_{ext}$ mean or refer to total light extinction.

iii. The initials *CBI* mean or refer to Confidential Business Information.

iv. The initials *DOH* refer to the Hawaii Department of Health.

v. The initials *dv* mean or refer to deciview(s).

vi. The initials *EGU* mean or refer to Electric Generating Units.

vii. The words *EPA, we, us* or *our* mean or refer to the United States Environmental Protection Agency.

viii. The initials *FIP* mean or refer to Federal Implementation Plan.

ix. The initials *FLMs* mean or refer to Federal Land Managers.

x. The words *Hawaii* and *State* mean or refer to the State of Hawaii.

xi. The initials *HECO* mean or refer to the Hawaiian Electric Company.

xii. The initials *HELCO* mean or refer to the Hawaii Electric Light Company.

xiii. The initials *IMPROVE* mean or refer to Interagency Monitoring of Protected Visual Environments monitoring network.

xiv. The initials *IPM* mean or refer to Integrated Planning Model.

xv. The initials *LTS* mean or refer to Long-Term Strategy.

xvi. The initials *MECO* mean or refer to Maui Electric Company.

xvii. The initials *MW* mean or refer to megawatt(s).

xviii. The initials *NEI* mean or refer to National Emissions Inventory.

xix. The initials $NH_3$ mean or refer to ammonia.

xx. The initials $NO_X$ mean or refer to nitrogen oxides.

xxi. The initials *NP* mean or refer to National Park.

xxii. The initials *OC* mean or refer to organic carbon.

xxiii. The initials *PM* mean or refer to particulate matter.

xxiv. The initials $PM_{2.5}$ mean or refer to particulate matter with an aerodynamic diameter of less than 2.5 micrometers (fine particulate matter).

xxv. The initials $PM_{10}$ mean or refer to particulate matter with an aerodynamic diameter of less than 10 micrometers (coarse particulate matter).

xxvi. The initials *ppm* mean or refer to parts per million.

xxvii. The initials *PSD* mean or refer to Prevention of Significant Deterioration.

xxviii. The initials *RAVI* mean or refer to Reasonably Attributable Visibility Impairment.

xxix. The initials *RP* mean or refer to Reasonable Progress.

xxx. The initials *RPG* or *RPGs* mean or refer to Reasonable Progress Goal(s).

xxxi. The initials *RPOs* mean or refer to regional planning organizations.

xxxii. The initials *SIP* mean or refer to State Implementation Plan.

xxxiii. The initials $SO_2$ mean or refer to sulfur dioxide.

x. The initials *tpy* mean or refer to tons per year.

xi. The initials *TSD* mean or refer to Technical Support Document.

xii. The initials *URP* mean or refer to Uniform Rate of Progress.

xiii. The initials *VOC* mean or refer to volatile organic compounds.

xiv. The initials *WEP* mean or refer to Weighted Emissions Potential.

xv. The initials *WRAP* mean or refer to the Western Regional Air Partnership.

*B. Docket*

Data, information, and documents on which this proposed FIP relies have been placed in the docket for this action (docket number EPA–R09–OAR–2012–0345). All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available (e.g., Confidential Business Information (CBI)). Certain other material, such as copyrighted material, will be publicly available only in hard copy form. Publicly available docket materials are available either electronically at *http://www.regulations.gov* or in hard copy at the Planning Office of the Air Division, Air–2, EPA Region 9, 75 Hawthorne Street, San Francisco, CA 94105. EPA requests you contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section to view the hard copy of the docket. You may view the hard copy of the docket Monday through Friday, 9:00–5:30 PST, excluding Federal holidays.

*C. Instructions for Submitting Comments to EPA*

Submit your comments, identified by Docket ID No. EPA–R09–OAR–2012–0345 by one of the following methods:

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

2. *Email: nudd.gregory@epa.gov.*

3. *Fax:* 415–947–3579 (Attention: Gregory Nudd).

4. *Mail, Hand Delivery or Courier:* Gregory Nudd, EPA Region 9, Air Planning Office (AIR–2), Air Division, 75 Hawthorne Street, San Francisco, California 94105. Hand and courier deliveries are only accepted Monday through Friday, 8:30 a.m.–4:30 p.m., excluding Federal holidays. Special arrangements should be made for deliveries of boxed information.

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 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.

*D. Submitting CBI*

Do not submit CBI to EPA through *http://www.regulations.gov* or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD ROM that you mail to EPA, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

*E. Tips for Preparing Your Comments*

When submitting comments, remember to:

- Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).
- Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.
- Describe any assumptions and provide any technical information and/or data that you used.
- If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
- Provide specific examples to illustrate your concerns, and suggest alternatives.
- Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
- Make sure to submit your comments by the comment period deadline identified.

*F. Public Hearings*

As announced on May 11, 2012, 77 FR 27671, EPA will hold two public hearings at the following dates, times and locations to accept oral and written comments into the record:

*Date:* May 31, 2012.

*Time:* Open House: 5:30–6:30 p.m.

Public Hearing 6:30–8:30 p.m.

*Location:* The University of Hawaii, Maui College in the Pilina Multipurpose Room, 310 W. Kaahumanu Avenue, Kahului, Hawaii 96732.

*Date:* June 1, 2012.

*Time:* Open House: 4:30–5:30 p.m.

Public Hearing: 5:30–7:30 p.m.

*Location:* Waiakea High School Cafeteria, 155 W. Kawili Street, Hilo, Hawaii 96720.

To provide opportunities for questions and discussion, EPA will hold open houses prior to the public hearings. During these open houses, EPA staff will be available to informally answer questions on our proposed action. Any comments made to EPA staff during the open houses must still be provided formally in writing or orally during a public hearing in order to be considered in the record.

The public hearings will provide the public with an opportunity to present data, views, or arguments concerning the proposed Regional Haze FIP for Hawaii. EPA may ask clarifying questions during the oral presentations, but will not respond to the presentations 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. Please consult sections I.C, I.D. and I.E of this preamble for guidance on how to submit written comments to EPA.

At the public hearing, the hearing officer may limit the time available for each commenter to address the proposal to five minutes or less if the hearing officer determines it is appropriate. Any person may provide written or oral comments and data pertaining to our proposal at the public hearing. We will include verbatim transcripts, in English, of the hearing and written statements in the rulemaking docket.

## II. Background

### *A. General Description of Regional Haze*

Regional haze is visibility impairment produced by a multitude of sources and activities that are located across a broad geographic area and emit fine particulates ($PM_{2.5}$) (e.g., sulfates, nitrates, organic carbon (OC), elemental carbon (EC), and soil dust), and their precursors (e.g., sulfur dioxide ($SO_2$), nitrogen oxides ($NO_X$), and in some cases, ammonia ($NH_3$) and volatile organic compounds (VOC)). Fine particle precursors react in the atmosphere to form $PM_{2.5}$, which impairs visibility by scattering and absorbing light. Visibility impairment reduces the clarity, color, and visible distance that one can see. $PM_{2.5}$ can also cause serious health effects and mortality in humans and contributes to environmental effects such as acid deposition and eutrophication.

Data from the existing visibility monitoring network, the ''Interagency Monitoring of Protected Visual Environments'' (IMPROVE) monitoring network, show that visibility impairment caused by air pollution occurs virtually all the time at most National Parks (NPs) and wilderness areas (WAs). The average visual range [1] in many Class I areas (*i.e.,* NPs and memorial parks, WAs, and international parks meeting certain size criteria) in the western United States is 100–150 kilometers, or about one-half to two-thirds of the visual range that would exist without anthropogenic air pollution. In most of the eastern Class I areas of the United States, the average visual range is less than 30 kilometers, or about one-fifth of the visual range that would exist under estimated natural conditions. 64 FR 35715 (July 1, 1999).

### *B. Visibility Protection Requirements of the CAA and EPA's Regulations*

In section 169A of the 1977 Amendments to the CAA, Congress created a program for protecting visibility in the nation's NPs and wilderness areas. This section of the CAA establishes as a national goal the ''prevention of any future, and the remedying of any existing, impairment of visibility in mandatory Class I Federal areas [2] which impairment results from man-made air pollution.'' On December 2, 1980, EPA promulgated regulations to address visibility impairment in Class I areas that is ''reasonably attributable'' to a single source or small group of sources, *i.e.,* ''reasonably attributable visibility impairment.'' 45 FR 80084 (December 2, 1980). These regulations represented the first phase in addressing visibility impairment. EPA deferred action on regional haze that emanates from a variety of sources until monitoring, modeling and scientific knowledge about the relationships between pollutants and visibility impairment were improved.

As part of the 1990 Amendments to the CAA, Congress added section 169B to focus attention on regional haze issues. EPA promulgated a rule to address regional haze on July 1, 1999. 64 FR 35714 (July 1, 1999), codified at 40 CFR part 51, subpart P (Regional Haze Rule). The primary regulatory requirements that address regional haze are found at 40 CFR 51.308 and 51.309 and are summarized below. Under 40 CFR 51.308(b), all states, the District of Columbia and the Virgin Islands are required to submit an initial state implementation plan (SIP) addressing regional haze visibility impairment no later than December 17, 2007.[3]

### *C. Requirements for Regional Haze Implementation Plans*

The Regional Haze Rule (RHR) sets out specific requirements for states' initial regional haze implementation plans. In particular, each state's plan must establish a long-term strategy that ensures reasonable progress (RP) toward achieving natural visibility conditions in each Class I area affected by the emissions from sources within the state. In addition, for each Class I area within the state's boundaries, the plan must establish a reasonable progress goal (RPG) for the first planning period that ends on July 31, 2018. The long-term strategy must include enforceable emission limits and other measures as necessary to achieve the RPG. Regional haze plans must also give specific attention to certain stationary sources that were in existence on August 7, 1977, but were not in operation before August 7, 1962. These sources, where appropriate, are required to install Best Available Retrofit Technology (BART) controls to eliminate or reduce visibility impairment. The specific regional haze plan requirements are summarized below.

#### 1. Determination of Baseline, Natural and Current Visibility Conditions

The RHR establishes the deciview (dv) as the principal metric for measuring visibility. This visibility metric expresses uniform changes in haziness in terms of common increments across the entire range of visibility conditions, from pristine to extremely hazy conditions. Visibility expressed in deciviews is determined by using air quality measurements to estimate light extinction and then

[1] Visual range is the greatest distance, in kilometers or miles, at which a dark object can be viewed against the sky.

[2] Areas designated as mandatory Class I Federal areas consist of NPs exceeding 6000 acres, wilderness areas and national memorial parks exceeding 5000 acres, and all international parks that were in existence on August 7, 1977. 42 U.S.C. 7472(a). In accordance with section 169A of the CAA, EPA, in consultation with the Department of Interior, promulgated a list of 156 areas where visibility is identified as an important value. 44 FR 69122 (November 30, 1979). The extent of a mandatory Class I area includes subsequent changes in boundaries, such as park expansions. 42 U.S.C. 7472(a). Although states and tribes may designate as Class I additional areas which they consider to have visibility as an important value, the requirements of the visibility program set forth in section 169A of the CAA apply only to ''mandatory Class I Federal areas.'' Each mandatory Class I Federal area is the responsibility of a ''Federal Land Manager.'' 42 U.S.C. 7602(i). When we use the term ''Class I area'' in this action, we mean a ''mandatory Class I Federal area.''

[3] EPA's regional haze regulations require subsequent updates to the regional haze SIPs. 40 CFR 51.308(g)–(i).

transforming the value of light extinction to deciviews using a logarithmic function. The deciview is a more useful measure for tracking progress in improving visibility than light extinction because each deciview change is an equal incremental change in visibility as perceived by the human eye.[4]

The deciview is used to express reasonable progress goals, define visibility conditions and track changes in visibility. To track changes in visibility at each of the 156 Class I areas covered by the visibility program (40 CFR 81.401–437), and as part of the process for determining reasonable progress, states must calculate the degree of existing visibility impairment at each Class I area and periodically review progress midway through each ten-year implementation period. To do this, the RHR requires states to determine the degree of impairment (in deciviews) for the average of the 20 percent least impaired (''best'') and 20 percent most impaired (''worst'') visibility days over a specified time period at each of their Class I areas. In addition, states must develop an estimate of natural visibility conditions for the purpose of comparing progress toward the national goal. Natural visibility is determined by estimating the natural concentrations of pollutants that cause visibility impairment and then calculating total light extinction based on those estimates.[5]

For the first regional haze SIPs that were due by December 17, 2007, ''baseline visibility conditions'' are the starting points for assessing ''current'' visibility impairment. Baseline visibility conditions represent the degree of visibility impairment for the 20 percent least impaired days and 20 percent most impaired days for each calendar year from 2000 to 2004. Using monitoring data for 2000 through 2004, states are required to calculate the average degree of visibility impairment for each Class I area, based on the average of annual values over the five-year period. The comparison of initial baseline visibility conditions to natural visibility conditions indicates the amount of improvement necessary to attain natural visibility, while the future comparison of baseline conditions to the then current conditions will indicate the amount of progress. In general, the 2000–2004 baseline period is considered the time from which improvement in visibility is measured.

2. Determination of Reasonable Progress Goals

The vehicle for ensuring continuing progress towards achieving the natural visibility goal is the submission of a series of regional haze SIPs that establish two RPGs (*i.e.,* two distinct goals, one for the ''best'' and one for the ''worst'' days) for every Class I area for each (approximately) ten-year implementation period. The RHR does not mandate specific milestones or rates of progress, but instead calls for states to establish goals that provide for ''reasonable progress'' toward achieving natural (*i.e.,* ''background'') visibility conditions. In setting RPGs, states must provide for an improvement in visibility for the most impaired days over the (approximately) ten-year period of the SIP, and ensure no degradation in visibility for the least impaired days over the same period.

States have significant discretion in establishing RPGs, but are required to consider the following factors established in section 169A of the CAA and in EPA's RHR at 40 CFR 51.308(d)(1)(i)(A): (1) The costs of compliance; (2) the time necessary for compliance; (3) the energy and non-air quality environmental impacts of compliance; and (4) the remaining useful life of any potentially affected sources. States must demonstrate in their SIPs how these factors are considered when selecting the RPGs for the best and worst days for each applicable Class I area. States have considerable flexibility in how they take these factors into consideration, as noted in EPA's Guidance for Setting Reasonable Progress Goals under the Regional Haze Program (June 1, 2007) (pp. 4–2, 5–1) (''EPA's Reasonable Progress Guidance''). In setting the RPGs, states must also consider the rate of progress needed to reach natural visibility conditions by 2064 (referred to as the ''uniform rate of progress'' (URP) or the ''glide path'') and the emission reduction measures needed to achieve that rate of progress over the ten-year period of the SIP. Uniform progress towards achievement of natural conditions by the year 2064 represents a rate of progress that states are to use for analytical comparison to the amount of progress they expect to achieve. In setting RPGs, each state with one or more Class I areas (''Class I state'') must also consult with potentially ''contributing states,'' i.e., other nearby states with emission sources that may be affecting visibility impairment at the Class I state's areas. 40 CFR 51.308(d)(1)(iv).

3. Best Available Retrofit Technology

Section 169A of the CAA directs states to evaluate the use of retrofit controls at certain larger, often uncontrolled, older stationary sources in order to address visibility impacts from these sources. Specifically, section 169A(b)(2)(A) of the CAA requires states to revise their SIPs to contain such measures as may be necessary to make reasonable progress towards the natural visibility goal, including a requirement that certain categories of existing major stationary sources[6] built between 1962 and 1977 procure, install, and operate the ''Best Available Retrofit Technology'' as determined by the state. Under the RHR, states are directed to conduct BART determinations for such ''BART-eligible'' sources that may be anticipated to cause or contribute to any visibility impairment in a Class I area. Rather than requiring source-specific BART controls, states also have the flexibility to adopt an emissions trading program or other alternative program as long as the alternative provides greater reasonable progress towards improving visibility than BART.

On July 6, 2005, EPA published the Guidelines for BART Determinations under the Regional Haze Rule at Appendix Y to 40 CFR part 51 (hereinafter referred to as the ''BART Guidelines'') to assist states in determining which of their sources should be subject to the BART requirements and in determining appropriate emission limits for each such ''subject-to-BART'' source. States are required to use the approach set forth in the BART Guidelines in making a BART determination for fossil fuel-fired electric generating plants with a total generating capacity in excess of 750 megawatts. States are encouraged, but not required, to follow the BART Guidelines in making BART determinations for other types of sources.

States must address all visibility-impairing pollutants emitted by a source in the BART determination process. The most significant visibility impairing pollutants are $SO_2$, $NO_X$ and PM. EPA has indicated that states should use their best judgment in determining whether VOC or $NH_3$ compounds impair visibility in Class I areas.

In their SIPs, states must identify potential BART sources, described in the RHR as ''BART-eligible sources.'' 40 CFR 51.308(e)(1)(i). A BART-eligible

[4] The preamble to the RHR provides additional details about the deciview. 64 FR 35714, 35725 (July 1, 1999).

[5] See ''Guidance for Estimating Natural Visibility Conditions Under the Regional Haze Rule (September 2003) and ''Guidance for Tracking Progress Under the Regional Haze Rule (September 2003) for further information.

[6] The set of ''major stationary sources'' potentially subject to BART is listed in CAA section 169A(g)(7).

source is an existing stationary source in any of 26 listed categories which meets criteria for startup dates and potential emissions. See 40 CFR 51.301 and 40 CFR part 51, Appendix Y, § II. Each BART-eligible source that ''emits any air pollutant which may reasonably be anticipated to cause or contribute to any impairment of visibility in any mandatory Class I Federal area'' is subject to BART. 40 CFR 51.308(e)(1)(ii).

The BART Guidelines allow states to select an exemption threshold value for their BART modeling, below which a BART-eligible source would not be expected to cause or contribute to visibility impairment in any Class I area. The Guidelines provide that:

> A single source that is responsible for a 1.0 deciview change or more should be considered to ''cause'' visibility impairment; a source that causes less than a 1.0 deciview change may still contribute to visibility impairment and thus be subject to BART. Because of varying circumstances affecting different Class I areas, the appropriate threshold for determining whether a source ''contributes to any visibility impairment'' for the purposes of BART may reasonably differ across States. As a general matter, any threshold that you use for determining whether a source ''contributes'' to visibility impairment should not be higher than 0.5 deciviews.

40 CFR part 51, Appendix Y, § III.A.1. The state must document its exemption threshold value in the SIP and must state the basis for its selection of that value. Any source with emissions that model above the threshold value is subject to BART and must therefore undergo a BART control analysis.

In making BART determinations, section 169A(g)(2) of the CAA requires that states consider the following factors: (1) The costs of compliance; (2) the energy and non-air quality environmental impacts of compliance; (3) any existing pollution control technology in use at the source; (4) the remaining useful life of the source; and (5) the degree of improvement in visibility which may reasonably be anticipated to result from the use of such technology. States are free to determine the weight and significance assigned to each factor, but all five factors must be considered. The BART Guidelines provide further detail about how to analyze these factors.

Once a state has made its BART determination, the BART controls must be installed and operated as expeditiously as practicable, but no later than five years after the date EPA approves the regional haze SIP. CAA section 169(g)(4), 40 CFR 51.308(e)(1)(iv). In addition to what is required by the RHR, general SIP requirements mandate that the SIP must also include all regulatory requirements related to monitoring, recordkeeping and reporting for the BART controls on the source.

4. Long-Term Strategy

Consistent with the requirement in section 169A(b) of the CAA that states include in their regional haze SIP a ten- to fifteen-year strategy for making reasonable progress, section 51.308(d)(3) of the RHR requires that states include a long-term strategy (LTS) in their regional haze SIPs. The LTS is the compilation of all control measures a state will use during the implementation period of the specific SIP submittal to meet applicable RPGs. The LTS must include ''enforceable emissions limitations, compliance schedules, and other measures needed to achieve the reasonable progress goals'' for all Class I areas within and affected by emissions from the state. 40 CFR 51.308(d)(3).

When a state's emissions are reasonably anticipated to cause or contribute to visibility impairment in a Class I area located in another state, the RHR requires the downwind state to coordinate with contributing states to develop coordinated emissions management strategies. 40 CFR 51.308(d)(3)(i). In such cases, the contributing state must demonstrate that it has included in its SIP, all measures necessary to obtain its share of the emission reductions needed to meet the RPGs for the Class I area.

States should consider all types of anthropogenic sources of visibility impairment in developing their LTS, including stationary, minor, mobile, and area sources. At a minimum, states must describe how each of the following seven factors listed below are taken into account in developing their LTS: (1) Emission reductions due to ongoing air pollution control programs, including measures to address RAVI; (2) measures to mitigate the impacts of construction activities; (3) emissions limitations and schedules for compliance to achieve the RPG; (4) source retirement and replacement schedules; (5) smoke management techniques for agricultural and forestry management purposes including plans as currently exist within the state for these purposes; (6) enforceability of emissions limitations and control measures; and, (7) the anticipated net effect on visibility due to projected changes in point, area, and mobile source emissions over the period addressed by the LTS. 40 CFR 51.308(d)(3)(v).

5. Coordination of the Regional Haze SIP and Reasonably Attributable Visibility Impairment

As part of the RHR, EPA revised 40 CFR 51.306(c) regarding the long-term strategy for RAVI to require that the RAVI plan must provide for a periodic review and SIP revision not less frequently than every three years until the date of submission of the state's first plan addressing regional haze visibility impairment, which was due December 17, 2007, in accordance with 40 CFR 51.308(b) and (c). On or before this date, the state must revise its plan to provide for review and revision of a coordinated LTS for addressing RAVI and regional haze, and the state must submit the first such coordinated LTS with its first regional haze SIP. Future coordinated LTSs, and periodic progress reports evaluating progress towards RPGs, must be submitted consistent with the schedule for SIP submission and periodic progress reports set forth in 40 CFR 51.308(f) and 51.308(g), respectively. The periodic review of a state's LTS must report on both regional haze and RAVI impairment and must be submitted to EPA as a SIP revision.

6. Monitoring Strategy

Section 51.308(d)(4) of the RHR requires a monitoring strategy for measuring, characterizing, and reporting on regional haze visibility impairment that is representative of all mandatory Class I areas within the state. The strategy must be coordinated with the monitoring strategy required in 40 CFR 51.305 for RAVI. Compliance with this requirement may be met through ''participation'' in the Interagency Monitoring of Protected Visual Environments (IMPROVE) network, *i.e.,* review and use of monitoring data from the network. The monitoring strategy is due with the first regional haze SIP, and it must be reviewed every five years. The monitoring strategy must also provide for additional monitoring sites if the IMPROVE network is not sufficient to determine whether RPGs will be met. The SIP must also provide for the following:

- Procedures for using monitoring data and other information in a state with mandatory Class I areas to determine the contribution of emissions from within the state to regional haze visibility impairment at Class I areas both within and outside the state;
- Procedures for using monitoring data and other information in a state with no mandatory Class I areas to determine the contribution of emissions from within the state to regional haze

visibility impairment at Class I areas in other states;

- Reporting of all visibility monitoring data to the Administrator at least annually for each Class I area in the state, and where possible, in electronic format;
- Developing a statewide inventory of emissions of pollutants that are reasonably anticipated to cause or contribute to visibility impairment in any Class I area. The inventory must include emissions for a baseline year, emissions for the most recent year for which data are available, and estimates of future projected emissions. A state must also make a commitment to update the inventory periodically; and,
- Other elements, including reporting, recordkeeping, and other measures necessary to assess and report on visibility.

7. SIP Revisions and Progress Reports

The RHR requires control strategies to cover an initial implementation period through 2018, with a comprehensive reassessment and revision of those strategies, as appropriate, every ten years thereafter. Periodic SIP revisions must meet the core requirements of section 51.308(d) with the exception of BART. The requirement to evaluate sources for BART applies only to the first regional haze SIP. Facilities subject to BART must continue to comply with the BART provisions of section 51.308(e), as noted above. Periodic SIP revisions will assure that the statutory requirement of reasonable progress will continue to be met.

Each state also is required to submit a report to EPA every five years that evaluates progress toward achieving the RPG for each Class I area within the state and outside the state if affected by emissions from within the state. 40 CFR 51.308(g). The first progress report is due five years from submittal of the initial regional haze SIP revision. At the same time a five-year progress report is submitted, a state must determine the adequacy of its existing SIP to achieve the established goals for visibility improvement. 40 CFR 51.308(h). The RHR contains more detailed requirements associated with these parts of the Rule.

8. Coordination With Federal Land Managers

The RHR requires that states consult with Federal Land Managers (FLMs) before adopting and submitting their SIPs. 40 CFR 51.308(i). States must provide FLMs an opportunity for consultation, in person and at least sixty days prior to holding any public hearing on the SIP. This consultation must include the opportunity for the FLMs to discuss their assessment of impairment of visibility in any Class I area and to offer recommendations on the development of the RPGs and on the development and implementation of strategies to address visibility impairment. Furthermore, a state must include in its SIP a description of how it addressed any comments provided by the FLMs. Finally, a SIP must provide procedures for continuing consultation between the state and FLMs regarding the state's visibility protection program, including development and review of SIP revisions, five-year progress reports, and the implementation of other programs having the potential to contribute to impairment of visibility in Class I areas.

*D. Roles of Agencies in Addressing Regional Haze*

Successful implementation of the regional haze program will require long-term regional coordination among states, tribal governments and various federal agencies. As noted above, pollution affecting the air quality in Class I areas can be transported over long distances, even hundreds of kilometers. Therefore, to effectively address the problem of visibility impairment in Class I areas, states need to develop strategies in coordination with one another, taking into account the effect of emissions from one jurisdiction on the air quality in another.

Because the pollutants that lead to regional haze can originate from sources located across broad geographic areas, EPA has encouraged the states and tribes across the United States to address visibility impairment from a regional perspective. Five regional planning organizations (RPOs) were developed to address regional haze and related issues. The RPOs first evaluated technical information to better understand how their states and tribes impact Class I areas across the country, and then pursued the development of regional strategies to reduce emissions of particulate matter (PM) and other pollutants leading to regional haze.

The Western Regional Air Partnership (WRAP) RPO is a collaborative effort of state governments, tribal governments, and various federal agencies established to initiate and coordinate activities associated with the management of regional haze, visibility and other air quality issues in the western United States. WRAP member State governments include: Alaska, Arizona, California, Colorado, Hawaii, Idaho, Montana, New Mexico, North Dakota, Oregon, South Dakota, Utah, Washington, and Wyoming. Tribal members include Campo Band of Kumeyaay Indians, Confederated Salish and Kootenai Tribes, Cortina Indian Rancheria, Hopi Tribe, Hualapai Nation of the Grand Canyon, Native Village of Shungnak, Nez Perce Tribe, Northern Cheyenne Tribe, Pueblo of Acoma, Pueblo of San Felipe, and Shoshone-Bannock Tribes of Fort Hall.

*E. EPA's Authority To Promulgate a FIP*

EPA made a finding of failure to submit on January 15, 2009 (74 FR 2392), determining that Hawaii failed to submit a SIP that addressed any of the required regional haze SIP elements of 40 CFR 51.308. Under section 110(c) of the Act, whenever we find that a State has failed to make a required submission we are required to promulgate a FIP. Specifically, section 110(c) provides:

> (1) The Administrator shall promulgate a Federal implementation plan at any time within 2 years after the Administrator—
>
> (A) finds that a State has failed to make a required submission or finds that the plan or plan revision submitted by the State does not satisfy the minimum criteria established under [section 110(k)(1)(A)], or
>
> (B) disapproves a State implementation plan submission in whole or in part, unless the State corrects the deficiency, and the Administrator approves the plan or plan revision, before the Administrator promulgates such Federal implementation plan.

Section 302(y) defines the term ''Federal implementation plan'' in pertinent part, as:

> [A] plan (or portion thereof) promulgated by the Administrator to fill all or a portion of a gap or otherwise correct all or a portion of an inadequacy in a State implementation plan, and which includes enforceable emission limitations or other control measures, means or techniques (including economic incentives, such as marketable permits or auctions or emissions allowances) * * *.

Thus, because we determined that Hawaii failed to submit a Regional Haze SIP, we are required to promulgate a Regional Haze FIP.

## III. Proposed Implementation Plan To Address Regional Haze in Hawaii

*A. Affected Class I Areas*

In accordance with 40 CFR 51.308(d), we have identified two Class I areas within Hawaii: Hawaii Volcanoes NP on the Island of Hawaii, and Haleakala NP on the Island of Maui. EPA is responsible for developing RPGs for these two Class I areas. EPA has also determined that emissions from sources in Hawaii are not reasonably expected to have impacts at Class I areas in other states. See section III.G.1 below.

*B. Baseline Visibility, Natural Visibility, and Uniform Rate of Progress*

As required by section 51.308(d)(2)(i) of the Regional Haze Rule and in accordance with our 2003 Natural Visibility Guidance, EPA calculated baseline/current and natural visibility conditions for the two Hawaii Class I areas, Hawaii Volcanoes NP and Haleakala NP, on the most impaired and least impaired days, as summarized below.[7] The natural visibility conditions, baseline visibility conditions, and visibility impact reductions needed to achieve the Uniform Rate of Progress (URP) in 2018 for each of the two Hawaii Class I areas are presented in Table 1 and further explained in this section.

TABLE 1—VISIBILITY IMPACT REDUCTIONS NEEDED BASED ON BEST AND WORST DAYS BASELINES, NATURAL CONDITIONS, AND UNIFORM RATE OF PROGRESS FOR HAWAII CLASS I AREAS

| Hawaii class I area | 20% Worst days | | | | | 20% Best days |
|---|---|---|---|---|---|---|
| | 2001–2004 baseline (dv) | 2018 URP (dv) | 2018 Reduction needed (delta dv)[8] | 2064 Natural conditions (dv) | 2000–2004 Baseline (dv) | 2064 Natural conditions (dv) |
| Hawaii Volcanoes NP | 18.9 | 16.2 | 2.7 | 7.2 | 4.1 | 2.2 |
| Haleakala NP | 13.3 | 11.9 | 1.4 | 7.4 | 4.6 | 2.7 |

1. Estimating Natural Visibility Conditions

Natural background visibility, as defined in our 2003 Natural Visibility Guidance, is estimated by calculating the expected light extinction using default estimates of natural concentrations of fine particle components adjusted by site-specific estimates of humidity. This calculation uses the IMPROVE equation, which is a formula for estimating light extinction from the estimated natural concentrations of fine particle components (or from components measured by the IMPROVE monitors). As documented in our 2003 Natural Visibility Guidance,[9] EPA allows the use of ''refined'' or alternative approaches to this guidance to estimate the values that characterize the natural visibility conditions of Class I areas. One alternative approach is to develop and justify the use of alternative estimates of natural concentrations of fine particle components. Another alternative is to use the ''new IMPROVE equation'' that was adopted for use by the IMPROVE Steering Committee in December 2005 and the Natural Conditions II algorithm that was finalized in May 2007.[10] The purpose of this refinement to the ''old IMPROVE equation'' is to provide more accurate estimates of the various factors that affect the calculation of light extinction.

For the two Class I Areas in Hawaii, EPA opted to use WRAP calculations in which the default estimates for the natural conditions (see Table 2) were combined with the ''new IMPROVE equation'' and the Natural Conditions II algorithm (see Table 3). This is an acceptable approach under our 2003 Natural Visibility Guidance. Table 2 shows the default natural visibility values for the 20% worst days and 20% best days.

TABLE 2—DEFAULT NATURAL VISIBILITY VALUES FOR THE 20% BEST DAYS AND 20% WORST DAYS

| Class I area | 20% Worst days (dv) | 20% Best days (dv) |
|---|---|---|
| Hawaii Volcanoes NP | 7.47 | 2.35 |
| Haleakala NP | 7.27 | 2.15 |

EPA also referred to WRAP calculations using the new IMPROVE equation. Table 3 shows the natural visibility values for each Class I Area for the 20% worst days and 20% best days using the new IMPROVE Equation and Natural Conditions II algorithm.

TABLE 3—NATURAL VISIBILITY VALUES FOR THE 20% BEST DAYS AND 20% WORST DAYS USING THE NEW IMPROVE EQUATION[11]

| Class I area | 20% Worst days (dv) | 20% Best days (dv) |
|---|---|---|
| Hawaii Volcanoes NP | 7.2 | 2.2 |
| Haleakala NP | 7.4 | 2.7 |

[7] Information presented here is based on the IMPROVE data presented at the WRAP Technical Support System (TSS) (*http://vista.cira.colostate.edu/tss/*). This information is available in the docket in the document titled ''Technical Support Document for the Proposed Action on the Federal Implementation Plan for the Regional Haze Program in the State of Hawaii,'' Air Division, EPA Region 9, May 14, 2012 [hereinafter ''FIP TSD''].

[8] Since visibility conditions are expressed in terms of deciviews (dv), changes in visibility conditions are typically expressed in terms of ''delta deciviews'' or ''delta dv.''

[9] Guidance for Estimating Natural Visibility Conditions Under the Regional Haze Rule, September 2003 EPA–454/B–03–005, Appendix B Default Natural $b_{ext}$, dv, and 10th and 90th Percentile dv Values at All Mandatory Federal Class I Areas.

[10] The IMPROVE program is a cooperative measurement effort governed by a steering committee composed of representatives from Federal agencies (including representatives from EPA and the FLMs) and RPOs. The IMPROVE monitoring program was established in 1985 to aid the creation of Federal and State implementation plans for the protection of visibility in Class I areas. One of the objectives of IMPROVE is to identify chemical species and emission sources responsible for existing anthropogenic visibility impairment. The IMPROVE program has also been a key instrument in visibility-related research, including the advancement of monitoring instrumentation, analysis techniques, visibility modeling, policy formulation and source attribution field studies.

The new IMPROVE equation takes into account the most recent review of the science [12] and accounts for the effect of particle size distribution on light extinction efficiency of sulfate, nitrate, and organic carbon (OC). It also adjusts the mass multiplier for OC (particulate organic matter) by increasing it from 1.4 to 1.8. New terms were added to the equation to account for light extinction by sea salt and light absorption by gaseous nitrogen dioxide. Site-specific values are used for Rayleigh scattering (scattering of light due to atmospheric gases) to account for the site-specific effects of elevation and temperature. Separate relative humidity enhancement factors are used for small and large size distributions of ammonium sulfate and ammonium nitrate and for sea salt. The terms for the remaining contributors, EC (light-absorbing carbon), fine soil, and coarse mass terms, do not change between the original and new IMPROVE equations.

The natural visibility value estimations for 2064 do not include an estimate of the visibility impairment from the emissions from the Kilauea volcano, which is located in the Hawaii Volcanoes NP. The emissions from the volcano vary from year to year, and it is not possible to estimate the emissions from the volcano or the effect they will have on Class I area visibility in the year 2064. Therefore, in estimating natural conditions for purposes of this first planning period, we have assumed that there will be no visibility impact from the volcano.

2. Estimating Baseline Conditions

As required by section 51.308(d)(2)(i) of the Regional Haze Rule and in accordance with our 2003 Natural Visibility Guidance, EPA calculated baseline visibility conditions for Hawaii Volcanoes NP and Haleakala NP. The baseline condition calculation begins with the calculation of light extinction, using the IMPROVE equation. The IMPROVE equation sums the light extinction [13] resulting from individual pollutants, such as sulfates and nitrates. As with the natural visibility conditions calculation, EPA chose to use the new IMPROVE equation.

The period for establishing baseline visibility conditions is 2000 through 2004, and baseline conditions must be calculated using available monitoring data. 40 CFR 51.308(d)(2). This FIP proposes to use visibility monitoring data collected by IMPROVE monitors located in the two Hawaii Class I areas for the years 2001 through 2004 and the resulting baseline conditions represent an average for 2001 through 2004. A complete year of monitoring data was not available for 2000; therefore, data from 2000 were not included in the baseline calculations. Table 4 shows the baseline conditions for the two Class I areas.

TABLE 4—BASELINE CONDITIONS ON 20% WORST DAYS AND 20% BEST DAYS

| Class I area | 20% Worst days (deciview) | 20% Best days (deciview) |
|---|---|---|
| Hawaii Volcanoes NP | 18.9 | 4.1 |
| Haleakala NP | 13.3 | 4.6 |

3. Summary of Baseline and Natural Conditions

To address the requirements of 40 CFR 51.308(d)(2)(iv)(A), EPA also calculated the number of deciviews by which baseline conditions exceed natural visibility conditions at each Class I area. Table 5 shows the number of deciviews by which baseline conditions exceed natural visibility conditions at each Class I area.

TABLE 5—NUMBER OF DECIVIEWS BY WHICH BASELINE CONDITIONS EXCEED NATURAL VISIBILITY CONDITIONS

| Class I area | 20% Worst days | 20% Best days |
|---|---|---|
| Hawaii Volcanoes NP | 11.7 | 1.9 |
| Haleakala NP | 5.8 | 1.9 |

4. Uniform Rate of Progress

In setting the RPGs, EPA reviewed the IMPROVE data to analyze and determine the URP needed to reach natural visibility conditions by the year 2064. In so doing, the analysis compared the baseline visibility conditions in each Class I area to the natural visibility conditions in each Class I area (as described above) and determined the URP needed in order to attain natural visibility conditions by 2064 in the two Class I areas. The analysis constructed the URP consistent with the requirements of the Regional Haze Rule and consistent with our 2003 Tracking Progress Guidance by plotting a straight line from the baseline level of visibility impairment for 2000 through 2004 to the level of visibility conditions representing no anthropogenic impairment in 2064 for each Class I area. The URPs are summarized in Table 6. The degree of improvement to meet the URP at these sites is 1.4 deciviews at Haleakala NP and 2.7 deciviews at Hawaii Volcanoes NP.

[11] S. Copeland, M. Pitchford, R. Ames, ''Regional Haze Rule Natural Level Estimates Using the Revised IMPROVE Aerosol Reconstruction Light Extinction Algorithm''; *http://vista.cira.colostate.edu/improve/publications/graylit/032_NaturalCondIIpaper/Copeland_etal_NaturalConditionsII_Description.pdf.*

[12] The science behind the revised IMPROVE equation is summarized in our FIP TSD, in the TSD for Technical Products Prepared by the WRAP in Support of Western Regional Haze Plans (''WRAP TSD''), February 28, 2011, and in numerous published papers. See for example: Hand, J.L., and Malm, W.C., 2006, *Review of the IMPROVE Equation for Estimating Ambient Light Extinction Coefficients—Final Report.* March 2006. Prepared for IMPROVE, Colorado State University, Cooperative Institute for Research in the Atmosphere, Fort Collins, Colorado, and Pitchford, Marc., 2006, *Natural Haze Levels II: Application of the New IMPROVE Algorithm to Natural Species Concentrations Estimates.* Final Report of the Natural Haze Levels II Committee to the RPO Monitoring/Data Analysis Workgroup. September 2006.

[13] The amount of light lost as it travels over one million meters. The haze index, in units of deciviews, is calculated directly from the total light extinction, $b_{ext}$ expressed in inverse megameters ($Mm^{-1}$), as follows: $HI = 10 \ln(b_{ext}/10)$.

TABLE 6—SUMMARY OF UNIFORM RATE OF PROGRESS FOR 20% WORST DAYS

| Class I area | Baseline condition (dv) | Natural visibility (dv) | Total improvement by 2064 (dv) | URP (dv/year) | 2018 URP visibility level (dv) | Improvement by 2018 (dv) |
|---|---|---|---|---|---|---|
| Hawaii Volcanoes NP | 18.9 | 7.2 | 11.7 | 0.19 | 16.2 | 2.7 |
| Haleakala NP | 13.3 | 7.5 | 5.8 | 0.09 | 11.9 | 1.4 |

5. Contribution Assessment According to IMPROVE Monitoring Data

The visibility and pollutant contributions on the 20% worst visibility days for the baseline period (2000–2004) show variation across the two Class I areas in Hawaii. Table 7 shows average data from the IMPROVE monitors for 2001 through 2004.[14] The table shows light extinction from specific pollutants as well as total extinction, as determined by the monitoring data. As stated above, these data provide further detail regarding the variation across the two Class I areas in Hawaii.

TABLE 7—SPECIES-SPECIFIC LIGHT EXTINCTION FOR THE 20% WORST DAYS, DETERMINED FROM 2001–2004 MONITORING DATA

| Class I area | Sulfate % | Nitrate % | Organic carbon % | Elemental carbon % | Soil % | Sea salt % | Coarse mass % |
|---|---|---|---|---|---|---|---|
| Hawaii Volcanoes NP (18.9 deciviews) | 90 | 1 | 4 | 1 | 1 | 1 | 1 |
| Haleakala NP[15] (13.3 deciviews) | 61 | 9 | 10 | 5 | 1 | 4 | 9 |

The visibility on the 20% worst days was 18.9 deciviews at Hawaii Volcanoes NP. Sulfate is the largest contributor to visibility impairment at the park, with the volcano contributing substantially to the impact. The visibility on the 20% worst days at Haleakala NP was 13.3 deciviews. Sulfate is the largest contributor to visibility impairment at Haleakala NP, with the volcano contributing to the impact, although to a lesser extent than at the Hawaii Volcanoes NP. Nitrate from anthropogenic and natural sources contributes to 9% of the visibility degradation at the park. Coarse mass also contributes to about 9% of the visibility degradation at the park.

Organic carbon contributes to 10% and elemental carbon contributes to 5% of the visibility impairment at the current monitoring site (HALE1), which is located outside the park. However, more recent data measured at the Haleakala Crater site (HACR1) site at the Haleakala National Park Border shows lower concentrations of organic and elemental carbon than the HALE1 monitoring site.[16] [17]

*C. Hawaii Emissions Inventories*

1. Statewide Emissions Inventories

40 CFR 51.308(d)(4)(v) requires that EPA maintain a statewide inventory of emissions of pollutants that are reasonably anticipated to cause or contribute to visibility impairment in any mandatory Class I Federal area. The inventory must include emissions for a baseline year, emissions for the most recent year for which data are available, and estimates of future projected emissions. The Regional Haze Rule does not specify the baseline year for the inventory, but EPA has recommended that 2002 be used as the inventory base year.[18] 2002 is generally appropriate as the baseline year for Regional Haze SIPs because it corresponds with the 2000–2004 period for establishing baseline visibility conditions, based on available ambient monitoring data, pursuant to 40 CFR 51.308(d)(2)(i).

For this first Hawaii Regional Haze implementation plan, Hawaii DOH initially selected 2005 as their base year because it was the most recent year with a full inventory when they began their technical work.[19] Since 2005 is not within the baseline period of 2000–2004, EPA has performed a comparison of the aerosol composition of the 2005 data and 2001–2004 data for each Class I Area. This analysis showed overall level and speciation of pollutants measured at the Class I area monitors in 2005 was consistent with the overall level and speciation of pollutants during the 2001–2004 baseline period. Since the measured visibility-impairing pollution in 2005 was consistent with the baseline years, it is reasonable to assume that the 2005 emissions were sufficiently consistent with the exmissions in 2000–2004 for this year to be used as the baseline for the Regional Haze Plan.[20] Therefore, we propose to use 2005 as the base year inventory.

The majority of the 2005, 2008, and 2018 inventories were derived from a 2010 study conducted by Environ on behalf of the Hawaii DOH.[21] The numbers developed by Environ were then refined and improved by HI DOH.[22] Between the time when the Environ Study was conducted and the development of this proposed FIP, EPA finalized a new model for the estimation of emissions from on-road vehicles. This

[14] Additional data and information can be found at: *http://views.cira.colostate.edu/web/DataFiles/SummaryDataFiles.aspx.*

[15] Data from the Haleakala Monitor (HALE1), located outside Haleakala NP.

[16] Comparison of Haleakala National Park HALE1 and HACR1 IMPROVE Monitoring Site 2007–2008 Data Sets, March 30, 2012, State of Hawaii, Department of Health, Clean Air Branch.

[17] Review of VIEWS2.0 2009–2010 Haleakala National Park Organic and Elemental Carbon Data, March 30, 2012, State of Hawaii, Department of Health, Clean Air Branch.

[18] Memorandum from Lydia N. Wegman, ''2002 Base Year Emission Inventory SIP Planning: 8-Hour Ozone, $PM_{2.5}$ and Regional Haze Programs'' (November 18, 2002).

[19] Email from Priscilla Ligh, Hawaii DOH, to Gregg Nudd, EPA, May 3, 2012.

[20] Sections II.A.4 and II.B.4 of the FIP TSD.

[21] ''Final Emission Inventory Report: Data Population for Air System for Hawaii Emissions Data (AirSHED),'' Environ International Corporation, April 12, 2010.

[22] See email from Priscilla Ligh, HI DOH to Greg Nudd, USEPA, on November 18, 2011 and associated document: ''RevA Emissions inventory response to EPA 11–17–11 for EPA.doc'' The document also explains any differences between the Hawaii DOH numbers and the emissions inventory in the National Emission Inventory for Hawaii.

new model, MOVES, provides for a more accurate estimation of emissions from these sources. EPA worked with the University of North Carolina (UNC) and ICF International to develop a new emissions inventory for on-road vehicles for Hawaii for the years 2005, 2008 and 2018.[23] Tables 8 through 10 reflect these revised emissions numbers.

EPA also worked with UNC and ICF to improve the 2018 emissions estimates for marine sources. Environ used the best data available at the time, but did not account for the impact of the economic recession on marine vessel activity, and cruise ships in particular. In addition, Environ did not take into account the impact of the North American Emissions Control Area (NAECA). The United States Government, together with Canada and France, established the NA ECA under the auspices of Annex VI of the International Convention for the Prevention of Pollution from Ships (MARPOL Annex VI), a treaty developed by the International Maritime Organization. This ECA will require use of lower sulfur fuels in ships operating within 200 nautical miles of the majority of the U.S. and Canadian coastline, including the U.S. Gulf Coast and Hawaii, beginning in August 2012. The ECA will result in lower $NO_X$ and $SO_2$ emissions from marine sources in Hawaii. Therefore, UNC and ICF have updated the 2018 inventory to include the benefits of the ECA. The 2018 marine emissions estimates in Table 8 are based on this more recent work by UNC and ICF.[24]

TABLE 8—STATEWIDE EMISSIONS INVENTORY FOR 2005

[Tons per year]

| Source category | $NO_X$ | $SO_2$ | VOC | PM | $NH_3$ |
|---|---|---|---|---|---|
| Point Sources | 22,745 | 27,072 | 2,695 | 3,536 | 12 |
| Area Sources | 1,509 | 3,716 | 16,920 | 33,408 | 11,136 |
| Windblown Dust | | | | 46,808 | |
| Wildfire | 2,156 | 591 | 4,729 | 9,771 | 540 |
| Agricultural Burning | 406 | 178 | 535 | 1,567 | 60 |
| Other fire | 1 | | 7 | 7 | |
| On-Road Mobile Sources | 20,642 | 321 | 12,066 | 638 | 1,085 |
| Non-Road Mobile Sources | 4,750 | 534 | 6,121 | 484 | 5 |
| Aircraft | 1,541 | 135 | 262 | 165 | |
| In and Near Port Marine | 2,572 | 2,201 | 92 | 183 | |
| Underway Marine (<30 nm[25]) | 3,052 | 1,418 | 117 | 215 | |
| Trains | 5 | | | | |
| Volcano | | 961,366 | | | |
| Sea Spray | | | | 382,637 | |
| Biogenic | 4,617 | | 130,153 | | |
| Total | 63,996 | 997,532 | 173,697 | 479,419 | 12,838 |
| Anthropogenic Total | 59,379 | 36,166 | 43,544 | 96,782 | 12,838 |

TABLE 9—STATEWIDE INVENTORY FOR EMISSIONS 2008

[Tons per year]

| Source category | $NO_X$ | $SO_2$ | VOC | PM | $NH_3$ |
|---|---|---|---|---|---|
| Point Sources | 20,246 | 25,849 | 2,544 | 3,389 | 12 |
| Area Sources | 1,166 | 15,767 | 18,025 | 34,917 | 11,275 |
| Windblown Dust | | | | 46,808 | |
| Wildfire | 2,156 | 591 | 4,729 | 9,771 | 540 |
| Agricultural Burning | 406 | 178 | 535 | 1,567 | 60 |
| Other fire | 1 | | 8 | 7 | |
| On Road Mobile Sources | 14,239 | 97 | 8,526 | 547 | 1,124 |
| Non Road Mobile Sources | 4,573 | 78 | 4,912 | 422 | 5 |
| Aircraft | 2,568 | 260 | 628 | 123 | |
| In and Near Port Marine | 12,432 | 2,638 | 308 | 605 | |
| Underway Marine (<30 nm) | 562 | 282 | 18 | 42 | |
| Trains | 5 | | | | |
| Volcano | | 1,195,314 | | | |
| Sea Spray | | | | 382,637 | |
| Biogenic | 4,617 | | 130,153 | | |
| Total | 62,971 | 1,241,054 | 170,386 | 480,835 | 13,017 |
| Anthropogenic Total | 58,354 | 45,740 | 40,233 | 98,198 | 13,017 |

TABLE 10—STATEWIDE EMISSIONS INVENTORY FOR 2018

| Source category | $NO_X$ | $SO_2$ | VOC | PM | $NH_3$ |
|---|---|---|---|---|---|
| Point Sources | 28,594 | 36,212 | 4,157 | 5,052 | 13 |

[23] Technical Analysis for Hawaii's Regional Haze FIP Report—Task 16: On-Road Mobile Emissions Inventory, ICF International, March 23, 2012.

[24] ''Technical Analysis for Hawaii's Regional Haze FIP Report—Task 16: Commercial Marine Inventory,'' ICF International, April 2, 2012.

[25] Nautical miles.

TABLE 10—STATEWIDE EMISSIONS INVENTORY FOR 2018—Continued

| Source category | $NO_X$ | $SO_2$ | VOC | PM | $NH_3$ |
|---|---|---|---|---|---|
| Area Sources | 1,723 | 3,524 | 20,054 | 43,506 | 12,530 |
| Windblown Dust | ..... | ..... | ..... | 46,808 | ..... |
| Wildfire | 2,156 | 591 | 4,729 | 9,771 | 540 |
| Agricultural Burning | 406 | 178 | 535 | 1,567 | 60 |
| Other fire | 1 | ..... | 8 | 7 | ..... |
| On Road Mobile Sources | 5,058 | 72 | 3,883 | 400 | 1,478 |
| Non Road Mobile Sources | 3,090 | 7 | 4,579 | 297 | 7 |
| Aircraft | 1,920 | 167 | 466 | 194 | ..... |
| In and Near Port Marine | 2,097 | 117 | 92 | 50 | ..... |
| Underway Marine (<30nm) | 1,867 | 68 | 78 | 33 | ..... |
| Trains | 5 | ..... | ..... | ..... | ..... |
| Volcano | ..... | 683,746 | ..... | ..... | ..... |
| Sea Spray | ..... | ..... | ..... | 421,222 | ..... |
| Biogenic | 4,617 | ..... | 130,153 | ..... | ..... |
| Total | 51,533 | 724,681 | 168,734 | 528,908 | 14,628 |
| Anthropogenic Total | 46,916 | 40,935 | 38,581 | 107,686 | 14,628 |

2. Review of the Emissions Inventory for Completeness and Accuracy

EPA has reviewed the methods used by Environ, the Hawaii Department of Health and ICF in developing this inventory. We propose to find that the best available emissions factors and activity data were used in developing the emissions estimates. We also propose to find that the inventory captures all of the emissions sources relevant to the development of a Regional Haze Plan.

3. Assessment of the Emissions Inventory

There are a few important conclusions to draw from the 2005, 2008, and 2018 statewide emissions inventories in Tables 8 through 10. First, nonanthropogenic emissions are significant for $SO_2$, VOC and PM. As one can see from the tables above, the volcano dominates statewide $SO_2$ emissions. Emissions from the volcano comprise over 96% of the $SO_2$ emissions in 2005 and 2008. On days when the volcano is erupting and the winds are carrying those emissions over the Class I area monitors, these natural emissions will dominate the measurements. Nonanthropogenic sources also comprise the majority of VOC and PM emissions. Second, total statewide anthropogenic emissions of $NO_X$ and VOC are decreasing. Human-made $NO_X$ pollution is projected to be 21% lower in 2018 than in 2005. Human-made VOC pollution is projected to decrease by 11%. These reductions are primarily due to EPA regulations for on-road vehicles. Emissions from cars and trucks are decreasing dramatically, even accounting for economic and population growth. This is due to older, higher emitting vehicles being replaced by ones with more modern air pollution controls. $NO_X$ emissions in this category are projected to decrease by over 15,000 tpy and VOC emissions by over 8,000 tpy between 2005 and 2018.

However, anthropogenic $SO_2$ emissions are expected to increase between 2005 and 2018, largely due to increased emissions from point sources. The lower sulfur marine fuels required by the ECA are expected to result in a 95% reduction in emissions from shipping, but those reductions are overwhelmed by the increases from point source emissions. The growth rate of point source emissions is very sensitive to assumptions about future economic growth. The Environ report, from which this data is derived, assumes robust economic growth between 2005 and 2018. Given the economic recession that began in late 2008 this level of emission growth will likely over-predict future anthropogenic emissions. Nevertheless, this is the best data available.

Our analysis of the monitoring data indicates that $SO_2$ is the principal pollutant of concern for this planning period. *See* section III.D below. The visibility impacts of $NO_X$ and VOC emissions are of secondary importance. *Id.* The increase in anthropogenic $SO_2$ emissions indicates that additional pollution reductions are needed to ensure reasonable progress toward the goal of eliminating anthropogenic visibility impairment in Hawaii's mandatory class I areas. Our proposal to achieve these reductions is explained in section III.F of this notice.

*D. Sources of Visibility Impairment in Hawaii Class I Areas*

In order to determine the significant sources contributing to haze in Hawaii's Class I areas, EPA relied upon the monitoring data from the IMPROVE network and the emission inventory for the State of Hawaii. EPA also reviewed the source apportionment analysis developed by Hawaii DOH [26] as well as the source apportionment analysis by the National Oceanic and Atmospheric Administration (NOAA).[27]

Table 11, below, shows the percentage contribution of different pollutant species to light extinction at the two Class I Areas in Hawaii on the 20% Worst Days in 2001 to 2004.

[26] Haleakala NP Visibility Assessment, Hawai'i Volcanoes NP Visibility Assessment, and IMPROVE PMF Factor Identification notes Positive Matrix Factorization Analysis of HALE1 & HAVO1 IMPROVE data sets April 20, 2012, State of Hawaii, Department of Health, Clean Air Branch.

[27] M. Pitchford, ''Causes of Haze for Hawaii's Two Class I Areas'', presented at United States Department of Agriculture, Agricultural Air Quality Task Force Meeting, Wailea, Hawaii, November 13 and 15, 2005.

TABLE 11—SPECIES-SPECIFIC LIGHT EXTINCTION DETERMINED FROM 2001–2004 IMPROVE MONITORING DATA—20% WORST DAYS

| Class I area | Sulfate % | Nitrate % | Organic carbon % | Elemental carbon % | Soil % | Sea salt % | Coarse mass % |
|---|---|---|---|---|---|---|---|
| Hawaii Volcanoes NP .. | 90 | 1 | 4 | 1 | 1 | 1 | 1 |
| Haleakala NP[28] ..... | 61 | 9 | 10 | 5 | 1 | 4 | 9 |

Sulfate is the largest cause of visibility degradation on the 20% worst days at both Haleakala NP and Hawaii Volcanoes NP. Natural causes of sulfate include the emissions from the Kilauea volcano, located in the Hawaii Volcanoes NP, and natural marine sulfates. The emissions and impact of the volcano varies substantially from year to year. Source apportionment assessments have estimated that the volcano causes approximately 90% of the visibility impairment at Hawaii Volcanoes NP and approximately 60% of the visibility impairment at Haleakala NP on the 20% worst days. The natural marine sulfate impact is expected to be much smaller.[29] International transport may also contribute to sulfur visibility impairment. Anthropogenic sources of sulfur include oil combustion, and shipping.

Nitrate contributes 9% to the visibility degradation on the 20% worst days at Haleakala. The major anthropogenic sources of nitrate on Maui are point sources, on-road and non-road mobile sources, and shipping. Nitrate contributes 1% to the visibility degradation on the 20% worst days at Hawaii Volcanoes NP.

Organic Carbon contributes to 10% of the visibility degradation at the Haleakala (HALE1) monitor, which is located outside of the park. A comparison of monitoring data at the Haleakala Crater (HACR1) IMPROVE monitoring site at the Haleakala Site boundary shows approximately half the level of organic carbon of the HALE1 site.[30] Sources of organic carbon include agricultural burning, oil combustion, and international transport. Organic Carbon contributes 4% of the visibility degradation at the Hawaii Volcanoes NP during the 2001–2004 time period, although more recent data from 2005–2009 indicate that organic carbon contributes to 1% of the visibility impairment for the 20% worst days.

Elemental Carbon contributes to 5% of the visibility degradation at the Haleakala (HALE1) monitor, which is located outside of the park. A comparison of recent monitoring at the Haleakala Crater monitoring site at Haleakala NP (HACR1) shows a lower level of elemental carbon of the HALE1 site.

Coarse mass contributes to 9% of the visibility degradation at the Haleakala (HALE1) monitor. The sources of coarse mass include fugitive dust, international transport, and shipping. Soil contributes to 1% of the visibility degradation at each of the Class I Areas. The soil impact varies seasonally, with the highest levels in the springtime, and appears to be associated with international transport.

EPA has evaluated the six particulate pollutants (ammonium sulfate, ammonium nitrate, organic carbon (OC), elemental carbon (EC), fine soil and coarse mass (CM)) that contribute to visibility impairment at Hawaii's two mandatory Class I federal areas, and determined that the first Regional Haze Plan RP evaluation should focus primarily on significant sources of $SO_2$ (sulfate precursor). $NO_X$ (nitrate precursor) is a secondary concern.

The sources of coarse mass (CM) are uncertain because of emission inventory limitations associated with natural sources (predominantly wildfires) and uncertainty of fugitive (windblown) emissions. Because of the difficulty in attributing the sources of visibility impairment for this pollutant, EPA has determined that it is not reasonable in this planning period to recommend emission control measures for coarse mass. Coarse mass contribution to visibility impairment, emissions sources, and potential control measures should be addressed in future Regional Haze plan updates.

Because fine soil appears to be primarily attributable to international transport, EPA has determined that it is not reasonable in this planning period to recommend emission control measures for fine soil. Although organic and elemental carbon contribute to base year visibility impairment, recent monitoring at the Haleakala Crater (HACR1) monitoring site and the Hawaii Volcanoes (HAVO1) show low contributions to visibility impairment from organic and elemental carbon.

*E. Best Available Retrofit Technology Evaluation*

1. Identification of BART-Eligible Sources

The first step of a BART evaluation is to identify all the BART-eligible sources within the state's boundaries. In 2008, the Hawaii DOH conducted a survey of the major sources in the state to identify which sources were BART eligible. This survey was completed and certified by the responsible official at each major source. Through that process, the following facilities were identified as BART-eligible: Hawaiian Commercial & Sugar Company (HC&S) Puunene facility, Chevron Refinery, Tesoro Refinery, Hu Honua Bioenergy—Pepeekeo facility, Maui Electric Company (MECO)—Kahului facility, Hawaii Electric Light Company (HELCO) Kanoelehua Hill, Hawaiian Electric Company (HECO)—Waiau facility, HECO—Kahe facility. We propose to determine that each of these facilities is BART-eligible.

2. Identification of Sources Subject to BART

The second step of the BART evaluation is to identify those BART-eligible sources that may reasonably be anticipated to cause or contribute to any visibility impairment at any Class I area, *i.e.,* those sources that are subject to BART. The BART Guidelines allow us to consider exempting some BART-eligible sources from further BART review because they may not reasonably be anticipated to cause or contribute to any visibility impairment in a Class I area. We propose to use the dispersion modeling that the Hawaii DOH's consultant performed.[31] This modeling assessed the extent of each BART-eligible source's contribution to visibility impairment at the Class I

[28] Data from the HALE Monitor, located outside Haleakala NP.

[29] Yvon and Saltzman 1996, Atmospheric Sulfur Cycling in the Tropical Marine Boundary Layer. J. Geophys. Res. 101, 6911–6918.

[30] Review of VIEWS2.0 2009–2010 Haleakala NP Organic and Elemental Carbon Data, March 30, 2012, State of Hawaii, Department of Health, Clean Air Branch, and Comparison of Haleakala NP HALE1 and HACR1 IMPROVE Monitoring Site 2007–2008 Data Sets, March 30, 2012, State of Hawaii, Department of Health, Clean Air Branch.

[31] Subject-to-Best Available Retrofit Technology (BART) Modeling for the State of Hawaii, Application of the CALPUFF Modeling System, March 3, 2010, Alpine Geophysics, LLC.

areas, consistent with the BART Guidelines.

a. Modeling Methodology

The BART Guidelines provide that we may use the CALPUFF[32] modeling system or another appropriate model to predict the visibility impacts from a single source on a Class I area and to, therefore, determine whether an individual source is anticipated to cause or contribute to impairment of visibility in Class I areas, *i.e.,* ''is subject to BART.'' The Guidelines state that we find CALPUFF is the best regulatory modeling application currently available for predicting a single source's contribution to visibility impairment (70 FR 39162 (July 6, 2005)).

The BART Guidelines indicate that a modeling protocol be developed for determining individual source attributions. The State of Hawaii's contractor, Alpine Geophysics, developed a protocol, which was reviewed by the State of Hawaii and EPA.[33] Although the BART Guidelines recommend use of a minimum of three years of mesoscale meteorological model output for conducting this type of analysis, only one year (2005) of mesoscale meteorological data was available at the time this protocol was developed.[34] Therefore, emissions were modeled over a one-year period using the 2005 mesoscale meteorological data.[35] Consistent with the BART Guidelines, this modeling was based on maximum actual 24-hour emissions for each source. EPA believes that this modeling provides a reasonable estimate of daily visibility impacts above estimated natural conditions at each Class I area. Therefore, we propose to use the results of this CALPUFF modeling to determine whether each BART-eligible source has a significant impact on visibility.

b. Contribution Threshold

For the modeling to determine the applicability of BART to single sources, the BART Guidelines note that the first step is to set a contribution threshold to assess whether the impact of a single source is sufficient to cause or contribute to visibility impairment at a Class I area. The BART Guidelines state that, ''[a] single source that is responsible for a 1.0 deciview change or more should be considered to 'cause' visibility impairment.'' 70 FR 39161, July 5, 2005. The BART Guidelines also state that ''the appropriate threshold for determining whether a source contributes to visibility impairment may reasonably differ across states,'' but, ''[a]s a general matter, any threshold that you use for determining whether a source 'contributes' to visibility impairment should not be higher than 0.5 deciviews.'' *Id.* Further, in setting a contribution threshold, states or EPA should ''consider the number of emissions sources affecting the Class I areas at issue and the magnitude of the individual sources' impacts.'' The Guidelines affirm that states and EPA are free to use a lower threshold if they conclude that the location of a large number of BART-eligible sources in proximity to a Class I area justifies this approach.

For its analysis, Hawaii chose to use the recommended 0.5 deciview threshold for subject-to-BART determination and RP prioritization. EPA believes this threshold is appropriate, based on the number of sources affecting the Class I areas and the magnitude of the individual sources impacts. Therefore, we propose to use a contribution threshold of 0.5 deciviews for determining which sources are subject to BART.

c. Sources Identified by EPA as Subject to BART

The CALPUFF modeling analysis was performed to determine which BART-eligible sources in Hawaii are subject to BART.[36] The modeling assessment looked at the HC&S Puunene facility, the Chevron Refinery, the Tesoro Refinery, the Hu Honua Bioenergy—Pepeekeo facility, the MECO—Kahului facility, the HELCO Kanoelehua Hill facility, the HECO—Waiau facility, and the HECO—Kahe facility. The only facilities that showed a 98th percentile (8th high) 24-hour average visibility impact over the 0.5 delta deciview impact threshold were the Hu Honua Bioenergy—Pepeekeo and the HELCO—Kanoelehua Hill facilities. Thus, the Hu Honua Bioenergy—Pepeekeo and the HELCO—Kanoelehua Hill facilities are subject to BART. The remaining facilities; HC&S Puunene facility, the Chevron Refinery, the Tesoro Refinery, the MECO—Kahului facility, the HECO—Waiau facility, and the HECO—Kahe facility are not subject to BART.

As shown in Table 12, EPA proposes to exempt six of the eight BART-eligible sources in the State from further review under the BART requirements. The visibility impacts attributable to each of these sources fell below 0.5 deciviews. Our proposed contribution threshold captures those sources responsible for most of the total visibility impacts, while still excluding other sources with very small impacts.

The results of the CALPUFF modeling are summarized in Table 12. Those facilities listed with demonstrated impacts at all Class I areas less than 0.5 deciviews are proposed by EPA to not be subject to BART; those with impacts greater than 0.5 deciviews are proposed by EPA to be subject to BART.

TABLE 12—INDIVIDUAL BART-ELIGIBLE SOURCE VISIBILITY IMPACTS ON HAWAII CLASS I AREAS

| Source and unit | Class I area | Maximum 24-hour 98th percentile visibility impact (deciview) | Subject to BART or exempt |
|---|---|---|---|
| HC&S Puunene facility (Bagasse) | Haleakala Hawaii Volcanoes | 0.059<br>0.008 | Exempt. |

[32] Note that our reference to CALPUFF encompasses the entire CALPUFF modeling system, which includes the CALMET, CALPUFF, and CALPOST models and other pre and post processors. The different versions of CALPUFF have corresponding versions of CALMET, CALPOST, etc. which may not be compatible with previous versions (e.g., the output from a newer version of CALMET may not be compatible with an older version of CALPUFF). The different versions of the CALPUFF modeling system are available from the model developer at *http://www.src.com/calpuff/calpuff1.htm.*

[33] Subject-to-Best Available Retrofit Technology (BART) and Reasonable Progress (RP) Prioritization Modeling Protocol for the State of Hawaii Application of the CALPUFF Modeling System, November 30, 2009, Alpine Geophysics, LLC.

[34] MM5 Application for 2005 Over the Hawaiian Islands, prepared for Hawaii State Department of Health, Environmental Management Division, Clean Air Branch Prepared by: Alpine Geophysics, LLC.

[35] Three years (2005, 2006, 2007) of MM5 data have since been prepared for HECO. MM5 Meteorological Dataset Development for Hawaii, Draft December 2008, JCA. EPA has not reviewed this additional data, but may evaluate and consider this data for future visibility actions.

[36] Subject-to-Best Available Retrofit Technology (BART) Modeling for the State of Hawaii, Application of the CALPUFF Modeling System, Alpine Geophysics, LLC, 3 March 2010.

TABLE 12—INDIVIDUAL BART-ELIGIBLE SOURCE VISIBILITY IMPACTS ON HAWAII CLASS I AREAS—Continued

| Source and unit | Class I area | Maximum 24-hour 98th percentile visibility impact (deciview) | Subject to BART or exempt |
|---|---|---|---|
| HC&S Puunene facility (Coal) | Haleakala Hawaii Volcanoes | 0.133<br>0.039 | Exempt. |
| Chevron Refinery | Haleakala Hawaii Volcanoes | 0.021<br>0.016 | Exempt. |
| Tesoro Refinery | Haleakala Hawaii Volcanoes | 0.025<br>0.017 | Exempt. |
| Hu Honua Bioenergy—Pepeekeo facility | Haleakala Hawaii Volcanoes | 0.323<br>0.540 | Subject to BART. |
| MECO—Kahului facility | Haleakala Hawaii Volcanoes | 0.232<br>0.108 | Exempt. |
| HELCO Kanoelehua Hill | Haleakala Hawaii Volcanoes | 0.808<br>2.334 | Subject to BART. |
| HECO—Waiau facility | Haleakala Hawaii Volcanoes | 0.083<br>0.038 | Exempt. |
| HECO—Kahe facility | Haleakala Hawaii Volcanoes | 0.221<br>0.132 | Exempt. |

The owner of the Hu Honua Bioenergy relinquished the facility's existing permit on September 16, 2010 and the facility was issued a new permit on August 31, 2011, which allows the facility to burn only non-fossil fuels.[37] Since the facility can no longer burn fossil fuels, it is no longer BART-eligible and thus not subject to BART. Therefore, the only subject-to-BART source in Hawaii is the HELCO Kanoelehua Hill facility.

3. BART Determination for Kanoelehua Hill

The third step of a BART evaluation is to perform the BART analysis. The BART Guidelines (70 FR 39164 (July 6, 2005)) describe the BART analysis as consisting of the following five steps:

- Step 1: Identify All Available Retrofit Control Technologies;
- Step 2: Eliminate Technically Infeasible Options;
- Step 3: Evaluate Control Effectiveness of Remaining Control Technologies;
- Step 4: Evaluate Impacts and Document the Results; and
- Step 5: Evaluate Visibility Impacts.

In determining BART, the state, or EPA if implementing a FIP, must consider the five statutory factors in section 169A of the CAA: (1) The costs of compliance; (2) the energy and non-air quality environmental impacts of compliance; (3) any existing pollution control technology in use at the source; (4) the remaining useful life of the source; and (5) the degree of improvement in visibility which may reasonably be anticipated to result from the use of such technology. *See also* 40 CFR 51.308(e)(1)(ii)(A). The actual visibility impact analysis occurs during steps 4 and 5 of the process.

As mentioned previously, the only source in Hawaii subject to BART is the Kanoelehua Hill Generating Station (Hill) on the Island of Hawaii (the Big Island). Specifically, there are two residual fuel oil-fired boilers at this plant that are subject to BART (Hill 5 and Hill 6). Hill 5 is a 14 megawatt (MW) front-fired boiler. Hill 6 is a 21 MW tangentially fired boiler. Both boilers currently burn residual oil with a sulfur content not to exceed 2% by weight. Table 13 summarizes the baseline emission rates and modeled visibility impact of these sources. The annual emissions are based on 2009 operations because 2009 was the most current, complete year of data available when this modeling was performed in 2010.

TABLE 13—BASELINE EMISSIONS AND VISIBILITY IMPACTS OF HILL

| | | |
|---|---|---|
| $SO_2$ emissions | tons per year [tpy] | 2,778 |
| $NO_X$ emissions | tpy | 735 |
| PM emissions | tpy | 70 |
| Visibility impact on Haleakala.[38] | delta dv | 0.44 |
| Visibility impact on Hawaii Volcanoes NP | delta dv | 1.56 |

Trinity Consulting, on behalf of HELCO, the plant operator, performed a five-factor analysis for this plant.[39] We have reviewed this analysis and believe it adequately addresses the five BART factors. Although the BART guidelines are not mandatory for Hill because the plant's total generating capacity is less than 750 megawatts, the Trinity analysis is generally consistent with the guidelines. Our analysis of the five factors is largely based on the Trinity report.

a. BART for $NO_X$ and Particulate Matter (PM)

The Trinity report appropriately examined BART controls for $NO_X$ and PM. However, due to the overwhelming contribution of sulfate to visibility impairment at the nearby Hawaii

[37] Letter from Stuart Yamada, Hawaii DOH, to John C. Silvia, Hu Honua Bioenergy (August 31, 2011) attaching Covered Source Permit (CSP) No. 0724–01–C and Covered Source Permit Review Summary.

[38] These results from Trinity's modeling indicate a lower impact than Alpine's modeling. However, even with Trinity's modeling, the baseline impacts are high enough to make the source subject to BART.

[39] BART Five-Factor Analysis Prepared for Hawaiian Electric Light Company, October 2010, Trinity Consultants.

Volcanoes Class I area, it is unlikely that reductions in these pollutants from Hill would have a measurable impact on visibility at that area.

For PM, the Trinity report considered the following technologies: Dry electrostatic precipitator (ESP), wet ESP, fabric filter, wet scrubber, cyclone and fuel switching. Dry ESPs, cyclones and fabric filters are not appropriate for the type of particulate emitted by this plant. A wet scrubber would work, but these types of devices are better suited to larger particulate than is emitted from an oil-fired boiler and their control efficiency would be small. A wet ESP would have good control efficiency and is technically feasible. Similarly, switching to distillate fuel would be an effective and technically feasible control for PM. Trinity estimated the cost effectiveness of a wet ESP as $13,000 per ton of PM controlled. They estimated the cost effectiveness of switching to distillate fuel as $170,000 per ton. Neither of these controls would be cost effective for PM.

For $NO_X$, the Trinity report considered both combustion controls such as flue gas recirculation and low-$NO_X$ burners as well as post-combustion controls such as selective catalytic reduction (SCR). There were no technical barriers to implementing any of these controls. The post-combustion controls were not found to be cost effective. Low-$NO_X$ burners were found to be cost effective by the Trinity report. However, given the monitoring data on Hawaii, EPA finds that the emission reductions provided by low-$NO_X$ burners is unlikely to provide a measurable visibility benefit at Hawaii Volcanoes or Haleakala.

Based on our consideration of the five BART factors, EPA has determined that no control for $NO_X$ and PM at the Hill plant is consistent with BART, given the unique conditions in Hawaii. $NO_X$ reductions may need to be pursued in future planning periods as anthropogenic sulfates are reduced and nitrates become a larger portion of anthropogenic visibility impairment.

b. BART for $SO_2$

The principal visibility-impairing pollutant from the Hill Plant is $SO_2$. As explained above, sulfates are the largest component of visibility impairment at Hawaii Volcanoes and at Haleakela, even on the best days. The Hill Plant is by far the largest source of anthropogenic $SO_2$ emissions on the Big Island.

The Trinity report considered both flue gas desulfurization (FGD) and fuel switching as possible controls. The report found that no other oil-fired electric generating unit had installed FGD technology and due to the lack of industry experience, the technology was infeasible. EPA agrees that FGD technology is unproven for this application and concurs with Trinity's decision to focus on fuel switching. However, the Trinity analysis only looked at switching to distillate fuel oil. Distillate fuel oil is substantially more expensive than residual fuel oil and it provides less energy per gallon. As a result, it is not a cost effective control measure.

EPA requested HECO to consider switching to lower sulfur residual fuel oil, which would be a less expensive option. HECO responded with its own cost effectiveness estimate.[40] The lowest cost option, residual fuel oil no more than 1% sulfur by weight, had a cost effectiveness of between $6,677/ton and $7,363/ton.

EPA considered this cost estimate to be too high in light of available market data and conducted our own analysis, which is summarized in Table 14, below, and further explained in the TSD for this action.

TABLE 14—COST AND BENEFITS OF SWITCHING TO 1% SULFUR FUEL OIL

| | |
|---|---|
| Baseline Weight % Sulfur [S] | 1.57 |
| Baseline Fuel Consumption [gal/yr] | 18,650,604 |
| Baseline Emissions [tons $SO_2$/yr] | 2,344 |
| New Fuel Weight % S | 1.00 |
| Cost Differential [$/gal] | 0.255 |
| Controlled Emissions [tons $SO_2$/yr] | 1,493 |
| Annual Costs [$/yr] | 4,755,904 |
| Annual Emission Reductions [tons $SO_2$/yr] | 851 |
| Cost Efficiency [$/ton $SO_2$ reduced] | 5,587 |

Based on this analysis, EPA estimates that requiring a switch to 1% sulfur fuel oil would result in a reduction in $SO_2$ emissions of 851 tons per year and an increase in fuel costs of over $4.7 million/year. Thus, the cost effectiveness of this control option is estimated to be approximately $5,600/ton. EPA contracted with the energy economics consulting firm Energy Strategies to estimate the impact of these increased fuel costs on electric rates.[41] Based on its analysis, these increased costs would translate into a roughly 1% increase in retail electric rates on the Big Island.

The next factors to consider are: (2) The energy and non-air quality environmental impacts of compliance; (3) any existing pollution control technology in use at the source; and (4) the remaining useful life of the source. There are no existing pollution controls at the site for $SO_2$. We have considered factors (2) and (4) in the context of the Hawaii Clean Energy Initiative, a collaborative effort by the State of Hawaii, the U.S. Department of Energy and various other stakeholders. The Initiative's ultimate goal is meeting 70% of the state's energy needs through energy efficiency and renewable energy by 2030. One of the key pieces of legislation aimed at achieving this goal is Hawaii's 2009 Clean Energy Omnibus Bill (ACT 155 (09), HB 1464, signed June 25, 2009). This statute calls for 30% reduction in the state's energy use via efficiency and increases the state's renewable portfolio standard to 40% by 2030. EPA contracted with UNC and ICF to project the 2018 emissions of power plants considering the requirements of the Clean Energy Omnibus Bill.[42] These projections are compared to the current 2018 projections based on the most recent Integrated Resource Plan (IRP) for Hawaii electric utilities. This IRP predates the 2009 bill and so does not account for its requirements. Table 15 compares the baseline emission projections for 2018, derived from the current IRP and the projections that take into account the requirements of the Clean Energy Bill.

[40] Letter from Brenner Munger, Manager, Environmental Department, Hawaiian Electric Company to Tom Webb, U.S. EPA Region 9, January 27, 2012.

[41] Fuel Cost Screening Tool (r1 4–18–12), Energy Strategies Incorporated, April 18, 2012.

[42] Email from Juanita Haydel, ICF Corporation to Greg Nudd, EPA Region 9, April 4, 2012, with spreadsheet titled: ''Hawaii Emissions Values_Revised_040412_FTC.xlsx.''

TABLE 15—RANGE OF 2018 EMISSIONS PROJECTIONS FOR HILL

[Tons per year]

| | 2018 $SO_2$ emissions | 2018 $SO_2$ emissions |
|---|---|---|
| | IRP | Clean energy bill |
| Kanoelehua Hill Generating Station | 3,264 | 765 |

The projections based on the goals of the Clean Energy Bill assume that the energy conservation and renewable energy goals will be met in a more or less even fashion year to year. So, by 2018, most of these projects will be in place. This is a fairly optimistic scenario, but it gives some insight into the impact of the Clean Energy Bill. By 2018, Hill is projected to be operating at a significantly lower capacity factor and/or burning biofuels with much less sulfur. Although the resulting reductions in sulfur emissions are not enforceable requirements, they suggest that $SO_2$ emissions from Hill *may* decrease even in the absence of any BART requirements. This analysis also indicates that at least some of the units at Hill may be coming to the end of their useful life within the next 20 years.

The final factor to consider is the visibility benefits of controls. Under the BART Guidelines, the improved visibility in deciviews from installing controls is determined by using the CALPUFF air quality model. CALPUFF, generally, simulates the transport and dispersion of emissions, and the conversion of $SO_2$ to particulate sulfate and $NO_X$ to particulate nitrate, at a rate dependent on meteorological conditions and background ozone concentration. These concentrations are then converted to delta deciviews by the CALPOST post-processor. The CALPUFF modeling system is available and documented at EPA's Model Distribution Web page.[43]

The ''delta deciviews'' for control options estimated by the modeling represents a BART source's impact on visibility at the Class I areas under different control scenarios. Each modeled day and location in the Class I area will have an associated delta deciviews for each control option. For each day, the model finds the maximum visibility impact of all locations (*i.e.,* receptors) in the Class I area. From among these daily values, the BART Guidelines recommend use of the 98th percentile, for comparing the base case and the effects of various controls.

In its BART analysis for Hill, Trinity modeled the lower emission rates associated with lower sulfur fuels and estimated the following visibility benefits. The delta deciview (delta dv) impact from Hill decreased from 1.56 for baseline conditions to 1.05 when burning the 1% sulfur fuel, which represents an approximately 0.5 dv benefit.

Taking into consideration all of these factors, we propose to determine that BART for Hill is no additional controls. In particular, although we consider 0.5 dv to be a significant improvement in visibility, we do not believe it justifies the imposition of a control with a cost effectiveness of approximately $5,600/ton in this case. We are particularly concerned about unduly increasing electricity rates in Hawaii, given that these rates are already three times the national average according to the Energy Information Agency.[44] Therefore, we propose to determine that no BART controls be required for Hill.

Nonetheless, as explained below, our reasonable progress analysis shows that some additional $SO_2$ controls are needed on the Big Island in order to protect against degradation of visibility and that Hill may be an appropriate source for such $SO_2$ reductions.

*F. Reasonable Progress Goals for Hawaii*

In determining if reasonable progress is being made, states, or EPA if implementing a FIP, are required to consider the following factors established in section 169A of the CAA and in our Regional Haze Rule at 40 CFR 51.308(d)(1)(i)(A): (1) The costs of compliance; (2) the time necessary for compliance; (3) the energy and non-air quality environmental impacts of compliance; and (4) the remaining useful life of any potentially affected sources (''the four RP factors''). Once these factors have been considered, the typical method for determining if a state is making reasonable progress is to use meteorological and air quality computer models to predict the visibility at Class I areas for the end of the planning period (2018). Those modeling results are then assessed to ensure that visibility is not degrading on the best days and that it is improving on the worst days at a reasonable rate, taking into consideration the relevant statutory factors, as well as the base period visibility conditions and the goal of zero anthropogenic visibility impairment by 2064.

In the case of Hawaii, though, a different method of determining reasonable progress is required. As explained above in sections III.C.1 and III.D, the dominant cause of visibility impairment at Hawaii's Class I areas is sulfate compounds and over 96% of the sulfate emissions in Hawaii are from the volcano. However, because the volcanic eruptions vary greatly from year to year with no discernible pattern, it is impossible to predict future volcanic emissions. The emissions vary by hundreds of thousands of tons per year. As a result, there is little value in attempting to model visibility at the Class I areas in 2018.

1. Identification of Pollutants for Reasonable Progress

EPA has evaluated the six particulate pollutants (ammonium sulfate, ammonium nitrate, organic carbon (OC), elemental carbon (EC), fine soil and coarse mass (CM)) that contribute to visibility impairment at Hawaii's two mandatory Class I federal areas. Sulfate is the primary cause of visibility impairment at each of Hawaii's Class I Areas, and EPA has determined that the first Regional Haze Plan RP evaluation should focus primarily on significant sources of $SO_2$ (sulfate precursor). $NO_X$ (nitrate precursor) is a secondary concern, as it contributes to 9% of the visibility degradation on the 20% worst days at Haleakala.

Coarse mass contributes to 9% of the visibility degradation at Haleakala, and is also of concern. However, the sources of coarse mass (CM) are uncertain because of emission inventory limitations associated with natural sources (predominantly wildfires) and uncertainty of fugitive (windblown) emissions. Because of the difficulty in attributing the sources of visibility impairment for this pollutant, EPA has

[43] EPA's Model Distribution Web page available at: *http://www.epa.gov/ttn/scram/dispersion_prefrec.htm#calpuff.*

[44] *http://205.254.135.7/state/state-energy-rankings.cfm?keyid=18&orderid=1.*

determined that it is not reasonable in this planning period to recommend emission control measures for coarse mass. Coarse mass contribution to visibility impairment, emissions sources, and potential control measures should be addressed in future Regional Haze plan updates.

Because fine soil appears to be primarily attributable to international transport, EPA is proposing to determine that it is not reasonable in this planning period to recommend emission control measures for fine soil. Although organic and elemental carbon contribute to base year visibility impairment, recent monitoring at the Haleakala Crater (HACR1) monitoring site and the Hawaii Volcanoes (HAVO1) site show low contributions to visibility impairment from organic and elemental carbon.

2. Determining Reasonable Progress Through Island-Specific Emissions Inventories

Due to the absence of modeling to project visibility at Hawaii's Class I areas in 2018, EPA is focusing its reasonable progress analysis on reducing anthropogenic emissions of visibility-impairing pollution. As explained in section III.D above, the key anthropogenic pollutants of concern are $SO_2$ and $NO_X$, especially $SO_2$. We looked at trends in emissions of anthropogenic $SO_2$ and $NO_X$ in order to judge if reasonable progress is being achieved.

Rather than use a full statewide inventory to judge reasonable progress, we focused on the inventories for the islands where the Class I areas are located: Maui and the island of Hawaii (''the Big Island''). Population, economic activity and therefore anthropogenic emissions in the State of Hawaii are concentrated on the island of Oahu. But, as explained below, our analysis indicates that those emissions do not significantly impair visibility at the Class I areas. Prevailing winds at the Honolulu Airport on Oahu are from the east-north-east.[45] The prevailing winds on Maui are from the northeast.[46] The Class I areas are south and east of Oahu. Therefore, these trade winds tend to transport pollution from Oahu away from the Class I areas. In addition, modeling performed to estimate the visibility impact of currently operating individual sources of pollution on the Class I areas in the state indicates that even very large sources on Oahu have relatively small visibility impacts on Haleakela.[47]

Given these modeling results and the prevailing winds in Oahu and Maui for this planning period, we have focused our RP analysis on the islands that contain the Class I areas. Tables 16 and 17 show the emission inventories for the islands of Maui and Hawaii.[48]

TABLE 16—MAUI ANTHROPOGENIC EMISSIONS INVENTORY

| Source category | 2005 Inventory | | 2018 Inventory | |
|---|---|---|---|---|
| | $NO_X$ | $SO_2$ | $NO_X$ | $SO_2$ |
| Point | 4,492 | 4,559 | 4,597 | 4,625 |
| Nonpoint | 462 | 481 | 548 | 571 |
| On-Road Mobile | 2,957 | 47 | 758 | 10 |
| Non-Road Mobile | 496 | 57 | 305 | 2 |
| Aircraft | 310 | 27 | 376 | 33 |
| Agricultural Burning | 298 | 132 | 298 | 132 |
| Wildfires | 52 | 14 | 52 | 14 |
| in/near port Marine | 699 | 569 | 836 | 32 |
| Total | 9,765 | 5,887 | 7,770 | 5,420 |

TABLE 17—HAWAII (BIG ISLAND) ANTHROPOGENIC EMISSIONS INVENTORY

| Source category | 2005 Inventory | | 2018 Inventory | |
|---|---|---|---|---|
| | $NO_X$ | $SO_2$ | $NO_X$ | $SO_2$ |
| Point | 1,036 | 4,551 | 1,736 | 5,266 |
| Nonpoint | 1,849 | 808 | 1,882 | 872 |
| On-Road Mobile | 3,217 | 53 | 839 | 11 |
| Non-Road Mobile | 784 | 95 | 428 | 1 |
| Aircraft | 177 | 18 | 207 | 21 |
| Agricultural Burning | 2 | 0 | 2 | 0 |
| Wildfires | 1,712 | 469 | 1,712 | 469 |
| in/near port Marine | 537 | 418 | 546 | 20 |
| Total | 9,314 | 6,412 | 7,352 | 6,661 |

3. Four Factor Analysis for $NO_X$ Sources on Maui and the Big Island

As shown in tables 16 and 17, mobile sources (on-road, non-road, aircraft and marine) constitute the largest fraction of base-year emissions on both islands (48%). The $NO_X$ emissions from these categories are projected to drop by over 7,100 tpy between 2005 and 2018. These decreases are largely attributable to a dramatic reduction in emissions from on-road mobile sources, resulting from the replacement of older, higher emitting vehicles with new vehicles that must meet more stringent standards under the Clean Air Act. In addition to these requirements for on-road sources, EPA regulations also require newer non-

[45] See prevailing winds data from the Western Regional Climate Center (*http://www.wrcc.dri.edu/htmlfiles/westwinddir.html#HAWAII*).

[46] *Ibid.*

[47] See Table VII–1 of the FIP TSD.

[48] See Emissions Inventory chapter of the FIP TSD for information on the development of these inventories.

road and marine mobile sources to meet stricter control requirements. Collectively, these federal mobile source requirements will result in substantial $NO_X$ reductions over the course of the first planning period.

Point sources, and in particular electric utility units, also comprise a significant portion of $NO_X$ emissions on both islands. However, considering the costs of compliance, the projected 20% net reduction in $NO_X$ emissions from existing regulations and the small contribution of nitrates to visibility impairment, EPA does not consider it reasonable to require additional $NO_X$ controls for point sources in this planning period.

The two remaining anthropogenic $NO_X$ emissions sources on the islands are agricultural burning and wildfires. EPA has evaluated the monitoring data for the Class I areas and determined that there is no evidence that agricultural burning is significantly affecting visibility at the Class I areas.[49] Wildfires have been included in the anthropogenic emissions inventory because Hawaii DOH and EPA have not been able to determine if the fires had natural causes or not. However, imposing restrictions on wildfires would not have any appreciable effect, since they are, by definition, not intentional.

In sum, taking into consideration the four RP factors and the relatively small contribution of $NO_X$ to visibility impairment at Hawaii's Class I areas, we propose not to require any additional $NO_X$ controls for this implementation period.

4. Four Factor Analysis for $SO_2$ Emissions on Maui

Our analysis shows that existing requirements under the Clean Air Act will result in net reductions of anthropogenic emissions of $SO_2$ on Maui during this first planning period. So it is reasonable to assume that the visibility at Haleakala on the best days is not getting worse. Similarly, with this drop in emissions, it is reasonable to assume that the visibility on the worst days will improve.

a. Mobile Source $SO_2$ Emissions on Maui

Mobile source $SO_2$ emissions on Maui (on-road, non-road, aircraft and marine) are expected to decrease by 89% under current regulations, primarily as a result of reductions in marine emissions due to the ECA. This control measure is in addition to the benefits of fleet turnover as described above in the discussion of $NO_X$. Given the existing benefits from the ECA and the fleet turnover benefits that take into account the four factors, we propose to determine that no additional $SO_2$ reductions from mobile sources on Maui are needed in order to show reasonable progress.

b. Point Source $SO_2$ Emissions on Maui

Point Sources comprise 77% of the $SO_2$ emissions on Maui and are expected to increase slightly by 2018. However, this increase is more than offset by the reduction in $SO_2$ from mobile source emissions. The principal point sources on Maui are the Kahului Power Plant and the Maalaea Power Plant, neither of which are BART-eligible. Maalea is downwind of the Class I area and its $SO_2$ emissions are not expected to impact visibility at Haleakala. Prevailing winds should also transport emissions from Kahului away from Haleakala. However, CAlPUFF modeling indicates that this facility has a visibility impact of 0.667 deciviews at Haleakala.[50] While this modeling is based on conservative assumptions that are unlikely to occur during normal operations, we believe this level of modeled impact is sufficient to warrant further scrutiny of this source under the four reasonable progress factors.

TABLE 18—MAUI POINT SOURCE EMISSIONS

| | 2005 | | 2018 | |
|---|---|---|---|---|
| | $NO_X$ | $SO_2$ | $NO_X$ | $SO_2$ |
| MECO—Kahului Power Plant | 536 | 3,198 | 542 | 3,233 |
| Maalaea Generating Station | 3,255 | 913 | 3,291 | 923 |
| HC & S—Puunene Sugar Mill | 617 | 424 | 760 | 469 |
| Ameron Hawaii Camp 10 Quarry | 4 | 0 | 4 | 0 |
| Maui Pineapple Co. | 80 | 24 | | |
| Total | 4,492 | 4,559 | 4,597 | 4,625 |

The first RP factor is costs of compliance. HECO (the electric utility) performed a detailed analysis of the cost of reducing $SO_2$ emissions at the Hill as part of the BART analysis for that source.[51] EPA reviewed and largely concurred with the results of that analysis. As with Hill, the most cost-effective control measure at Kahului would be to reduce the amount of sulfur in the fuel. However, even that method is expensive. The lowest cost method for reducing $SO_2$ emissions at these plants is to switch to a fuel with no more than 1% sulfur by weight. To estimate the total cost of the converting this plant to 1% fuel oil and estimate the impact of those costs on electric rates, EPA developed a base case scenario derived from 2009 operating conditions.[52] This analysis, which is summarized in Table 19 below and further explained in our FIP TSD, indicates that the cost effectiveness of this control is approximately $4,200 per ton of $SO_2$ reduced.

[49] See FIP TSD Sections II.A., II.B, and III.B.

[50] Subject-to-Best Available Retrofit Technology (BART) Modeling for the State of Hawaii, Application of the CALPUFF Modeling System, March 3, 2010, Alpine Geophysics, LLC. This modeled impact is higher than the BART modeling for this source due to inclusion of additional non-BART-eligible units.

[51] BART Five-Factor Analysis Prepared for Hawaiian Electric Light Company, October 2010, Trinity Consultants.

[52] 2009 was selected because it was consistent with the year used in the BART analysis for Hill. It is also a year where the actual capacity factors for the electric plants on the Big Island were comparable to the 4-year average.

TABLE 19—COSTS AND BENEFITS FROM SWITCHING TO 1% SULFUR FUEL OIL

| | Kahului |
|---|---|
| Baseline Weight % S | 1.57 |
| Baseline Fuel Consumption [gal/yr] | 19,790,111 |
| Baseline Emissions [tons $SO_2$/yr] | 2,489 |
| New Fuel Weight % S | 1.00 |
| Cost Differential [$/gal] | 0.190 |
| Controlled Emissions [tons $SO_2$/yr] | 1,586 |
| Annual Costs [$/yr] | 3,760,121 |
| Annual Emission Reductions [tons $SO_2$/yr] | 904 |
| Cost Efficiency [$/ton $SO_2$ reduced] | 4,160 |

The second RP factor is the time necessary for compliance. The switch to a lower sulfur residual fuel oil than is currently being burned does not require any capital investment or construction, but it does require time to get new fuel contracts into place with the new sulfur limits. It may take time for the fuel suppliers to secure the new fuel and it will take time for the current fuel inventory to be consumed.

The third and fourth RP factors are the energy and non-air quality impacts of control measures and the remaining useful life of the source. EPA considered these factors in the context of the Hawaii Clean Energy Initiative that sets the goal of 70% clean energy by 2030. The Initiative includes the 2009 Clean Energy Omnibus Bill (ACT 155 (09), HB 1464, signed June 25, 2009). This statute calls for 30% reduction in energy use via efficiency and increases the renewable portfolio standard to 40% by 2030. EPA contracted with UNC and ICF to project the 2018 emissions of power plants considering the requirements of the Clean Energy Omnibus Bill. These projections are compared to the current 2018 projections based on the most recent Integrated Resource Plan (IRP) for Hawaii electric utilities. This IRP predates the 2009 bill and so does not account for its requirements. Table 20 compares the baseline emission projections for 2018, derived from the current IRP and the projections that take into account the goals of the Clean Energy Bill.

TABLE 20—RANGE OF 2018 EMISSIONS PROJECTIONS FOR KEY POWER PLANTS ON MAUI

| | 2018 $SO_2$ Emissions | 2018 $SO_2$ Emissions |
|---|---|---|
| | IRP | Clean Energy Bill |
| Kahului Power Plant | 2,822 | 0 |
| Maalaea Generating Station | 923 | 591 |

The projections based on the goals of the Clean Energy Bill assume that the energy conservation and renewable energy goals will be met in a more or less even fashion year to year. So, by 2018, most of these projects will be in place. Under this scenario, Kahului will cease operations by 2018 and Maalaea will operate at a significantly lower capacity factor and/or burn biofuels that contain much less sulfur than their current fuel.

c. Conclusion of Reasonable Progress Analysis for $SO_2$ Emissions on Maui

Based on the foregoing analysis for the four RP factors, we propose to determine that it is not reasonable to require additional $SO_2$ controls for point sources on Maui in this planning period. In addition, as mentioned above, electric utility rates in Hawaii are over three times the national average. Furthermore, mobile source $SO_2$ emissions are projected to decrease significantly on Maui, mostly due to the ECA. The net result is that overall $SO_2$ emissions are projected to decrease on Maui by nearly 8%. EPA proposes to find that this is a reasonable reduction for this planning period. Therefore, based on our consideration of the four RP factors, EPA proposes to determine that this level of emissions reduction is reasonable for this planning period.

5. Four Factor Analysis for $SO_2$ Emissions on the Big Island (Hawaii)

Unlike on Maui, EPA projects that, without additional controls, $SO_2$ emissions on the Big Island will increase by 3.9% between 2005 and 2018. As noted above, $SO_2$ is the key anthropogenic visibility-impairing pollutant at both of Hawaii's Class I areas. Therefore, we propose to determine that additional $SO_2$ control measures are needed on the Big Island in order to ensure reasonable progress toward the national goal of no anthropogenic visibility impairment.

a. Mobile Source $SO_2$ Emissions on the Big Island (Hawaii)

Mobile source emissions of $SO_2$ on the Big Island are projected to drop 91% under existing regulations, driven primarily by reductions in marine emissions due to the ECA. This control measure is in addition to the benefits of fleet turnover as described above in the discussion $NO_X$. Given the existing benefits from the ECA and the fleet turnover benefits and taking into account the four reasonable progress factors, EPA proposes to determine that no additional $SO_2$ reductions from mobile sources on the Big Island are needed in order to show reasonable progress during this first planning period.

b. Point Source $SO_2$ Emissions on the Big Island (Hawaii)

Point sources account for roughly 71% of the anthropogenic $SO_2$ emissions on the Big Island. See Table 17 above. Virtually all of these emissions come from electric power plants. See Table 21 below. Therefore, EPA considered all of the power plants on the Big Island as candidates for additional controls.

TABLE 21—HAWAII (BIG ISLAND) POINT SOURCE EMISSIONS

| | 2005 | | 2018 | |
|---|---|---|---|---|
| | $NO_X$ | $SO_2$ | $NO_X$ | $SO_2$ |
| HELCO—Kanoelehua Hill Generating Station | 514 | 2,822 | 595 | 3,264 |
| HELCO—Puna Power Plant | 241 | 1,345 | 279 | 1,556 |
| HELCO—Keahole Power Plant | 154 | 157 | 178 | 182 |
| HELCO—Shipman Power Plant | 38 | 222 | 28 | 166 |
| Pepeekeo Power Plant/9–16–10 Hu Honua Bioenergy | ..... | ..... | 420 | 78 |
| Tradewinds Forest Products, LLC | ..... | ..... | 133 | 15 |
| HELCO—Waimea Power Plant | 89 | 5 | 103 | 5 |
| Total | 1,036 | 4,551 | 1,736 | 5,266 |

Because of their relatively low emission rates and distance from the Class I areas, EPA eliminated the Keahole and Waimea Power Plants and the Hu Honua Bioenergy facility. Due to their emission rates and positions close to and upwind of Hawaii Volcanoes NP, Hill, Shipman and Puna are the focus of the review. Alpine Geophysics estimated the visibility impact of these plants using the CalPUFF computer model. The results are summarized in Table 22.

TABLE 22—MODELED VISIBILITY IMPACTS OF KEY POWER PLANTS ON HAWAII

| | Visibility Impact [delta dv] | |
|---|---|---|
| | HAVO | HALE |
| HELCO—Kanoelehua Hill Generating Station | 2.334 | 0.808 |
| HELCO—Puna Power Plant | 1.594 | 0.358 |
| HELCO—Shipman Power Plant | 0.777 | 0.321 |

These plants were also modeled with the same conservative assumptions as Kahului. The results for Hill and Puna indicate that these plants may be causing visibility impairment at Hawaii Volcanoes. In addition, the results indicate that Hill may be contributing to impairment at Haleakala and Shipman may be contributing to visibility impairment at Hawaii Volcanoes. Therefore, we further analyzed each of these plants in relation to the four RP factors.

The first RP factor to consider is the cost of compliance. HECO (the electric utility) performed a detailed analysis of the cost of reducing $SO_2$ emissions at Hill as part of the BART analysis for that source.[53] EPA reviewed and largely concurred with the results of that analysis. As described previously, the most cost-effective control measure is to reduce the amount of sulfur in the fuel. This is also true for Shipman and Puna. Table 23 provides the full cost/benefit calculation for the Big Island sources. Based on this analysis, EPA estimates that the cost effectiveness of this control is approximately $5,500 per ton of $SO_2$ reduced for sources on the Big Island.

TABLE 23—COSTS AND BENEFITS FROM SWITCHING TO 1% SULFUR FUEL OIL

| | Hill | Shipman | Puna |
|---|---|---|---|
| Baseline Weight % S | 1.57 | 1.57 | 1.57 |
| Baseline Fuel Consumption [gal/yr] | 18,650,604 | 2,241,876 | 9,930,648 |
| Baseline Emissions [tons $SO_2$/yr] | 2,344 | 282 | 1,249 |
| New Fuel Weight % S | 1.00 | 1.00 | 1.00 |
| Cost Differential [$/gal] | 0.255 | 0.255 | 0.255 |
| Controlled Emissions [tons $SO_2$/yr] | 1493 | 180 | 796 |
| Annual Costs [$/yr] | $4,755,904 | $571,678 | $2,532,315 |
| Annual Emission Reductions [tons $SO_2$/yr] | 851 | 102 | 454 |
| Cost Efficiency [$/ton $SO_2$ reduced] | $5,587 | $5,583 | $5,583 |
| Total Annual Cost | $7,859,89 | ..... | ..... |
| Total Annual Emissions Reduction | 1,407 | ..... | ..... |

In Table 23, most of the assumptions are the same as in Table 19, but the cost differential is a bit higher due to the extra transport costs. We added 0.065 $/gal to the estimate for a total of 0.255 $/gal. The 0.065 $/gal estimate is derived from the six-year (2006–2011) cost differential between residual fuel oil delivered to Maui and the same oil delivered to the Big Island.

With these assumptions, EPA estimates an annual increase in fuel

[53] BART Five-Factor Analysis Prepared for Hawaiian Electric Light Company, October 2010, Trinity Consultants.

costs of over $7.9 million/year. EPA contracted with the energy economics consulting firm Energy Strategies to estimate the impact of these increased fuel costs on electric rates.[54] Based on its analysis, these increased costs would translate into a roughly 2% increase in retail electric rates on the Big Island. This impact is higher than just controlling Hill alone because applying the controls to all three sources of concern would result in higher fuel costs for the system. The benefit of this change would be a reduction in $SO_2$ emissions of at least 1,400 tons per year.

The second factor to consider is the time necessary for compliance. The considerations here are the same as for Maui.

The third and fourth factors to consider are the energy and non-air quality impacts of control measures and the remaining useful life of the source. As part of our consideration of these two factors, EPA is taking into account the anticipated results of the Clean Energy Bill described above. Table 24 compares the emission projections for 2018 based on the IRP and the projections that take into account the goals of the Clean Energy Bill.[55]

TABLE 24—RANGE OF 2018 EMISSIONS PROJECTIONS FOR KEY POWER PLANTS ON THE BIG ISLAND

[Tons per year]

| | 2018 $SO_2$ emissions | 2018 $SO_2$ emissions |
|---|---|---|
| | IRP | Clean Energy Bill |
| HELCO—Kanoelehua Hill Generating Station | 3,264 | 765 |
| HELCO—Puna Power Plant | 1,566 | 365 |
| HELCO—Shipman Power Plant | 166 | 0 |

Under the Clean Energy Bill scenario, Shipman is projected to cease operations by 2018 and Hill and Puna are projected to be operating at a significantly lower capacity factor and/or burning biofuels with a much lower sulfur content than their current fuel. However, as noted above, these projections are based on optimistic assumptions about implementation of the Clean Energy Bill. In addition, these requirements are not federally enforceable. Therefore, we cannot rely upon these projected reductions to demonstrate reasonable progress.

c. Conclusion of Reasonable Progress Analysis for $SO_2$ Emissions on the Big Island (Hawaii)

In summary, without further control, emissions of $SO_2$ on the Big Island are projected to increase by nearly 4% between 2005 and 2018. Therefore, additional, federally enforceable $SO_2$ reductions are needed on the Big Island to ensure reasonable progress. EPA has identified the fuel oil-fired boilers at Hill, Shipman and Puna as appropriate sources for further control because they are upwind of the Hawaii Volcanoes NP, have high $SO_2$ emissions and lack modern pollution controls. Based on our analysis of the four RP factors, EPA believes that the $SO_2$ control measure for these sources should be structured so that it can be achieved through increased energy efficiency and increased reliance on renewable energy.

Therefore, EPA is proposing to cap total emissions at the fuel oil-fired boilers at Hill, Shipman and Puna at 3,550 tons of $SO_2$ per year, beginning in January 1, 2018. This cap was derived from EPA's analysis of the costs of switching these units to 1% sulfur fuel as shown in Table 23 and is equivalent to a reduction of 1,400 tons of $SO_2$ per year from the total projected 2018 emissions from these units. EPA is structuring this control requirement to allow HECO to minimize costs. If HECO implements the Hawaii Clean Energy Bill on schedule, it should be able to meet this cap with no additional costs to the ratepayers. If the cap has to be met with a lower sulfur fuel oil, HECO should be able to meet this cap at a cost of roughly $7.9 million/year. We are taking the other three factors into account by structuring the control requirement to be consistent with the State's goals for energy conservation and reduced dependence on fossil fuels. Once this control measure is in place, total $SO_2$ emissions on Big Island will decrease by at least 17% in the first planning period. Considering the four factors as shown above, the EPA considers this reduction to constitute reasonable progress toward the goal of eliminating anthropogenic visibility impairment at the Class I areas.

d. Benefits of the Emission Control Area on Emissions from In Transit Marine Vessels

In addition to reducing emissions from ships in and near ports, the ECA also significantly reduces emissions from ships traveling from port-to-port. The projected effect of the ECA on this category of marine emissions is shown in Table 25. EPA considered this as supplemental information when determining whether reasonable progress is being made with existing regulations.

TABLE 25—BENEFITS OF THE ECA FROM IN TRANSIT SHIPPING WITHIN 150 KM OF THE CLASS I AREAS

| Class I area | 2005 | | 2018 | |
|---|---|---|---|---|
| | $NO_X$ | $SO_2$ | $NO_X$ | $SO_2$ |
| Haleakala | 2,740 | 2,610 | 3,419 | 141 |
| Hawaii Volcanoes | 566 | 530 | 447 | 15 |

[54] Fuel Cost Screening Tool (r1 4–18–12), Energy Strategies Incorporated, April 18, 2012.

[55] Clean Energy Bill estimates from Email from Juanita Haydel, ICF Corporation to Greg Nudd, U.S. EPA Region 9, April 4, 2012, with spreadsheet titled: ''*Hawaii Emissions Values_Revised_040412_FTC.xlsx*''.

6. Reasonable Progress Goals—2018 Visibility Projections

As explained above, there is no modeling available for this planning period that can reliably predict the change in visibility due to changes in the emission inventory for all sources (shipping, mobile sources, point sources, etc.).[56] In the absence of reliable visibility modeling for 2018, EPA is using the island-specific inventories as a surrogate for judging whether reasonable progress is being made.

In order to show how the future emission changes may affect the aerosol levels in each of the Class 1 areas, EPA estimated the effect that the changes in the island-specific inventories for $NO_X$ and $SO_2$ will have on the levels of nitrate and sulfate for each of the Class 1 areas. The details of this analysis are set forth in the TSD.

At Hawaii Volcanoes NP, the projected visibility for 2018 is slightly worse without the proposed FIP control measures. With the proposed FIP control measure, there is a slight improvement in visibility conditions compared to the year 2005 for both the 20% best and 20% worst days. At Haleakala NP, there is a slight improvement in visibility conditions compared to the year 2005 for both the 20% best and 20% worst days.

7. Visibility Improvement Compared to URP and Number of Years to Reach Natural Conditions

The amount of improvement needed to achieve the URP for 2018 at Haleakala NP is 1.38 delta deciview. Based on the projections of visibility, discussed above, the amount of improvement by 2018 would be 0.29 delta deciview. This would result in a 2018 level of visibility of 13.0 deciview at Haleakala.

The amount of improvement needed to achieve the URP for 2018 for Hawaii NP is 2.73 delta deciview. Based on the projections of visibility, discussed above, the amount of improvement by 2018 would be 0.18 delta deciview. This would result in a 2018 level of visibility of 18.7 deciview.

Therefore, the URP will not be met at either NP. Based on our analysis of the four reasonable progress factors above, we propose to determine that the rate of progress for the implementation plan to attain natural conditions by 2064 is not reasonable and that our progress goals are reasonable.

EPA has calculated the number of years it would take to reach natural conditions, based on the rate of visibility improvement in this first planning period. Because the baseline conditions include the effect of the emissions from the volcano, the calculation of number of years to reach natural conditions by control of anthropogenic emission does not represent a realistic scenario in this case. Based on the projected rate of improvement at Haleakala of 0.021 deciview per year, natural conditions would be met in 280 years. Based upon the projected rate of improvement at Hawaii Volcanoes NP, natural conditions would be met in over 800 years. If the volcano stops erupting, natural conditions would be met significantly sooner.

*G. Long-Term Strategy*

1. Interstate Consultation Requirement

Pursuant to 40 CFR 51.308(d)(3)(i), if a state has emissions that are reasonably anticipated to contribute to visibility impairment in any mandatory Class I Federal area located in another state or states, each of the relevant states must consult with the other(s). Hawaii lies approximately 2,390 miles southwest of the Continental United States and has been included by EPA in the regional haze program, ''because of the potential for emissions from sources within [its] borders to contribute to regional haze impairment in Class I areas also located within [Hawaii's] own jurisdiction,'' 64 FR at 35720 (emphasis added). Therefore, we propose to determine that emissions from Hawaii are not reasonably anticipated to contribute to visibility impairment in any mandatory Class I Federal area located in another state or states. We also propose to determine that no emissions from any other state are reasonably anticipated to contribute to visibility impairment in either of Hawaii's mandatory Class I Federal areas.

The Regional Haze Rule also requires any state that has participated in a regional planning process, to ''ensure it has included all measures needed to achieve its apportionment of emission reduction obligations agreed upon through that process'' and to demonstrate the technical basis for this apportionment. 40 CFR 51.308(d)(3)(ii) and (iii). As noted above, both EPA and the state of Hawaii participated in the WRAP. The WRAP did not identify any obligation for emission reductions on the part of Hawaii. Therefore, we propose to determine that no additional emissions reductions are necessary in Hawaii to meet the progress goal for any mandatory Class I Federal area outside of Hawaii.

2. Identification of Anthropogenic Sources of Visibility Impairment

Pursuant to 40 CFR 51.308(d)(3)(iv), States are required to identify all anthropogenic sources of visibility impairment considered in developing the long-term strategy, including major and minor stationary sources, mobile sources, and area sources. As explained in section III.C above, we have considered each of these categories in developing our long-term strategy.

3. Other Long Term-Strategy Requirements

The RHR requires that a state consider the following factors in developing an LTS: (a) Emission reductions due to ongoing air pollution control programs, including measures to address RAVI; (b) measures to mitigate the impacts of construction activities; (c) emissions limitations and schedules for compliance to achieve the RPG; (d) source retirement and replacement schedules; (e) smoke management techniques for agricultural and forestry management purposes including plans as currently exist within the state for these purposes; (f) enforceability of emissions limitations and control measures; and (g) the anticipated net effect on visibility due to projected changes in point, area, and mobile source emissions over the period addressed by the LTS. 40 CFR 51.308(d)(3)(v). We address each of the factors below.[57]

a. Emissions Reductions Due to Ongoing Air Pollution Programs

Our LTS incorporates emission reductions due to a number of ongoing air pollution control programs.

i. Prevention of Significant Deterioration Rules

One of the primary regulatory tools for addressing visibility impairment from industrial sources under the Act is the Prevention of Significant Deterioration (PSD) program. The PSD requirements apply to new major sources and major sources making a major modification in attainment areas.[58] Among other things, the PSD

[56] As described above, there is acceptable modeling for point sources for the BART and the reasonable progress analysis for point sources.

[57] Our analysis of these factors relies in part on work performed by our contractors, UNC and ICF, which is summarized in a document entitled, ''Technical Analysis for Arizona and Hawaii Regional Haze FIPs: Task 17: Information and Analysis to Support Hawaii's Long-Term Strategy'' (April 13, 2012) (hereinafter ''Hawaii LTS Report''). The Hawaii LTS Report is available in the docket for this action.

[58] Nonattainment New Source Review (NSR) requirements apply to new major sources and major sources making major modifications in nonattainment areas. Hawaii has no nonattainment

Continued

permit program is designed to protect air quality and visibility in Class 1 Areas by requiring best available control technology (BACT) and involving the public in permit decisions. EPA has promulgated a PSD FIP for Hawaii to address the CAA's PSD requirements. See 40 CFR 52.632(b) (''PSD FIP''). DOH has been delegated authority to implement this FIP since 1983. The FIP provides procedures, including requirements for input from the relevant FLM, for considering potential visibility impacts to Class I areas from new major stationary source or major modifications of existing major stationary sources. *See* 40 CFR 52.21(p)(1).

ii. Reasonably Attributable Visibility Impairment Rules

EPA has promulgated a FIP for Hawaii, which incorporates the provisions of 40 CFR 52.26, 52.27, 52.28, 52.29, to address RAVI in Hawaii. *See* 40 CFR 52.633. There have been no certifications of RAVI in the Hawaii Class I areas, nor are any Hawaii sources affected by the RAVI provisions at this time.

iii. On-going Implementation of Federal Mobile Source Rules

Mobile source $NO_X$ and $SO_2$ emissions are expected to decrease in Hawaii from 2002 to 2018, due to several existing federal mobile source regulations. As shown in Table 26, these rules will result in significant reductions in $NO_X$ and $SO_2$ emissions from both on road and non-road mobile sources.

TABLE 26—STATEWIDE INVENTORY OF $NO_X$ AND $SO_2$ EMISSIONS FROM ON-ROAD AND NON-ROAD MOBILE SOURCES: 2005, 2008 AND 2018 [59]

| Source category | 2005 | | 2008 | | 2018 | |
|---|---|---|---|---|---|---|
| | $NO_X$ | $SO_2$ | $NO_X$ | $SO_2$ | $NO_X$ | $SO_2$ |
| On-Road Mobile Sources | 20,642 | 321 | 14,239 | 97 | 5,058 | 72 |
| Non-Road Mobile Sources | 4,750 | 534 | 4,573 | 78 | 3,090 | 7 |

iv. North American Emissions Control Area

An additional air pollution control program that will limit emissions of visibility-impairing pollutants in Hawaii is the North American Emissions Control Area (NA ECA). The United States Government, together with Canada and France, established the NA ECA under the auspices of Annex VI of the International Convention for the Prevention of Pollution from Ships (MARPOL Annex VI), a treaty developed by the International Maritime Organization. This ECA will require use of lower sulfur fuels in ships operating within 200 nautical miles of the majority of the U.S. and Canadian coastline, including the U.S. Gulf Coast and Hawaii, beginning in August 2012. The ECA is expected to significantly reduce both $NO_X$ and $SO_2$ emissions from marine sources in Hawaii during the first implementation period. These reductions are reflected in Table 27.

TABLE 27—STATEWIDE INVENTORY OF $NO_X$ AND $SO_2$ EMISSIONS FROM MARINE SOURCES: 2005, 2008 AND 2018 [60]

| Source category | 2005 | | 2008 | | 2018 | |
|---|---|---|---|---|---|---|
| | $NO_X$ | $SO_2$ | $NO_X$ | $SO_2$ | $NO_X$ | $SO_2$ |
| In and Near Port Marine | 2,572 | 2,201 | 12,432 | 2,638 | 2,097 | 117 |
| Underway Marine (<30nm) | 3,052 | 1,418 | 562 | 282 | 1,867 | 68 |

b. Measures to Mitigate the Impacts of Construction Activities

Potential sources of emissions from construction activities include exhaust from fuel-burning equipment on the site; vehicles working on the site, delivering materials, and hauling away excavate; employee vehicles; and fugitive dust from exposed earth, material stockpiles, and vehicles on roadways, especially unpaved site accesses. These activities can result in emissions of $NO_X$, $SO_X$, particulate matter ($PM_{10}$ and $PM_{2.5}$ from engine exhaust and as fugitive dust from roadways and material handling) and primary organic aerosols.[61]

Hawaii DOH regulates emissions of air pollutants, including construction emissions, under Chapter 11–60.1 of Hawaii Administrative Rules (HAR). These rules generally prohibit the emission of any ''regulated air pollutant'' without the written approval of DOH. HAR § 11–60.1–2.[62] ''Regulated air pollutant'' is defined to include, among other things, $NO_X$, VOCs and ''any air pollutant for which a national or state ambient air quality standard has been promulgated'' (e.g., $SO_2$, $PM_{10}$ and $PM_{2.5}$). HAR § 11–60.1–2.[63] Fugitive dust emissions are specifically regulated under HAR § 11–60.1–33,[64] which requires the use of ''reasonable precautions'' to mitigate the impacts of visible fugitive dust. ''Fugitive dust'' is defined as ''the emission of solid airborne particulate matter from any source other than combustion.'' HAR § 11–60.1–1.

areas at this time and therefore the nonattainment NSR requirements are not relevant.

[59] Excerpted from FIP TSD Table III–3.

[60] Excerpted from FIP TSD Table III–3.

[61] See Hawaii LTS Report, §§ 2.2.

[62] The Hawaii SIP currently contains an earlier version of this rule, HAR § 11–60–17. See 40 CFR 52.620(c) (2011). EPA has proposed to replace the old rule with HAR § 11–60.1–2. See 77 FR 25111 (April 27, 2012).

[63] The Hawaii SIP currently contains an earlier version of this rule, HAR § 11–60–1. See 40 CFR 52.620(c) (2011). EPA has proposed to replace the old rule with HAR § 11–60.1–1. See 77 FR 25111 (April 27, 2012).

[64] The Hawaii SIP contains an earlier version of this rule, HAR § 11–60–26. See 40 CFR 52.620(c) (2011).

In addition to fugitive dust, another potential source of visibility-impairing pollutants from construction activities is fuel-burning construction equipment and vehicles. Emissions from construction equipment are reflected in the non-road mobile source category of the Hawaii Emissions Inventory,[65] while emissions from trucks and other construction-related vehicles are reflected in the on-road category.[66] As described in section III.C above, statewide $NO_X$ and $SO_2$ from the on-road and non-road mobile source categories are expected to decrease significantly between 2005 and 2018, as new federal mobile source regulations are implemented. In addition to the federal mobile source regulations, emissions from motor vehicles are regulated under HAR § 11–60.1–34.[67]

Given the significant decreases in this category expected from ongoing pollution control measures, we propose that no additional measures are needed to mitigate the impact of construction activities during this time period. However, as noted above, coarse mass contributes to 9% of the visibility degradation on the 20% worst days and 17% on the 20% best days at Haleakala. It is unknown how much of this coarse mass derives from fugitive dust emissions. Therefore, for the next planning period, a detailed study of the source contribution to coarse mass and soil measured at the Haleakala Crater Class 1 area monitors is needed. Depending on the results of this study, further regulation of fugitive dust emissions, including construction emissions, may be appropriate.

c. Emission Limitations and Schedules for Compliance

As explained above, we are proposing to place a 3,550 tpy cap on $SO_2$ emissions from the residual fuel-fired boilers at Hill, Shipman and Puna on the Big Island, which represents a 1,400 tpy reduction from the 2018 projected emission from these units. We propose that this emission limit, together with the ongoing requirements described above, will be sufficient to meet the RPGs for the first implementation period.

d. Sources Retirement and Replacement Schedules

In order to assess potential source retirements and replacements during the first implementation period, our contractor, ICF, reviewed the last set of Integrated Resource Plans (IRPs) for HECO and its subsidiaries. In its IRP, HECO indicated that Wauai Units 3 and 4 would be placed into emergency reserve or retired in 2011 and 2014, respectively. HELCO, MECO, and Kauai Island Utility Cooperative (KIUC) had no plans to retire any of their units in their last IRP.[68]

It should be noted, however, that existing state legislation and voluntary measures by the Hawaiian utilities are likely to result in further reductions in oil-fired electricity generating units in Hawaii by 2018. In particular, Hawaii's current Renewable Portfolio Standard (RPS) requires each electric utility company in the state to achieve the following percentages of renewable electrical energy sales:

- 10% of its net electricity sales by December 31, 2010;
- 15% of its net electricity sales by December 31, 2015;
- 25% of its net electricity sales by December 31, 2020; and
- 40% of its net electricity sales by December 31, 2030.[69]

Although the Hawaii RPS is a state law and is not federally enforceable, it is likely to result in significant reductions in $SO_2$ and $NO_X$ emissions over the next twenty years, as existing fossil fuel-fired generation is replaced with renewables.

In addition, as part of the Hawaii Clean Energy Initiative, the State of Hawaii, Division of Consumer Advocacy of the Department of Commerce & Consumer Affairs, and the Hawaiian Electric Companies have entered into an ''Energy Agreement'', which includes an extensive list of renewable energy commitments and related provisions.[70] Among other things, the Agreement provides that, ''the utilities will 'retire' the older and less efficient fossil-fired firm capacity generating units by removing such units from normal daily operating service as expeditiously as possible.''[71] Although this is not a federally enforceable requirement, we expect that the output of the utilities' existing oil-fired units will decrease over the period of the first implementation period and will be replaced by renewable energy generation.

e. Agricultural and Forestry Smoke Management Techniques

Hawaii's agricultural fire emissions come from crop waste combustion of over roughly 30,000 acres of sugarcane, which is cultivated mostly on Maui. Burn permits are required under HAR § 11–60.1–53[72] and records must be kept in accordance with such permits under HAR § 11–60.1–56.[73] While there is no smoke management plan as such, widespread and persistent haze conditions are used as a criterion for establishment of a ''no-burn'' period by Hawaii DOH. See HAR § 11–60.1–55.[74] Given our focus on $SO_2$ as the dominant visibility-impairing pollutant for this implementation period, and our finding that there is no evidence of agricultural burning contributing to haze at Class I areas,[75] we propose to determine that no further controls on agricultural burning or forest fires are reasonable at this time.

f. Enforceability of Control Measures

40 CFR 51.308(d)(3)(v)(F) of the Regional Haze Rule requires us to ensure that emission limitations and control measures used to meet RPGs are enforceable. As described above, we are proposing that cumulative $SO_2$ emissions from the residual fuel fired boilers at the Hill, Shipman and Puna plants be limited to 3,550 tons per year (tpy) (rolling 12-month average). We propose that enforceability of this control measure will be ensured through the following measurement, recordkeeping and reporting requirements:

The sources will be required to measure the sulfur content (weight percent), heat value (million British thermal units per gallon (MMBtu/gal)) and total gallons of fuel burned at each of the affected units. Based on these

[65] ''Final Emission Inventory Report: Data Population for Air System for Hawaii Emissions Data (AirSHED)'', Environ International Corporation, (April 12, 2010) (hereinafter ''Environ Inventory'') Appendix D, Figures 2, 3 and 4.

[66] ''Technical Analysis for Hawaii's Regional Haze FIP Report—Task 16: On-Road Mobile Emissions Inventory'', ICF International, March 23, 2012.

[67] The Hawaii SIP currently contains an earlier version of this rule, HAR § 11–60–25. See 40 CFR 52.620(c) (2011). EPA has proposed to replace the old rule with HAR § 11–60.1–34. See 77 FR 25111 (April 27, 2012).

[68] Technical Analysis for Arizona and Hawaii Regional Haze FIPs: Task 17: Information and Analysis to Support Hawaii's Long-Term Strategy University of North Carolina at Chapel Hill, ICF International, April 13, 2012.

[69] HRS § 269–92.

[70] ''Energy Agreement Among the State of Hawaii, Division of Consumer Advocacy of the Department of Commerce & Consumer Affairs, and Hawaiian Electric Companies.'' (Oct. 2008) (hereinafter ''Energy Agreement'').

[71] Section 11 of the Energy Agreement.

[72] The Hawaii SIP currently contains an earlier version of this rule, HAR § 11–60–19. See 40 CFR 52.620(c) (2011). EPA has proposed to replace the old rule with HAR § 11–60.1–53. See 77 FR 25111 (April 27, 2012).

[73] The Hawaii SIP currently contains an earlier version of this rule, HAR § 11–60–22. See 40 CFR 52.620(c) (2011). EPA has proposed to replace the old rule with HAR § 11–60.1–56. See 77 FR 25111 (April 27, 2012).

[74] The Hawaii SIP contains an earlier version of this rule, HAR § 11–60–21. See 40 CFR 52.620(c) (2011).

[75] See FIP TSD Sections II.A, II.B and III.B.

parameters, the $SO_2$ emissions for each unit will be calculated on a monthly basis, then the rolling 12-month average of the total emissions for all units will be calculated. All of this information must be recorded and these records must be maintained for at least five years. In addition, all of this information must be reported to Hawaii DOH and EPA on an annual basis. Finally, any exceedance of the 3,550 tpy cumulative emission limit for these 5 units must be reported to Hawaii DOH and EPA within 30 days.

g. Anticipated Net Effect on Visibility Due to Projected Changes in Point, Area, and Mobile Source Emissions over the next 10 years

As described above, total statewide anthropogenic emissions of $NO_X$ and VOC are projected to decrease between 2005 and 2018. However, anthropogenic $SO_2$ emissions are expected to increase between 2005 and 2018, largely due to increased emissions from point sources.

Our analysis of the monitoring data indicates that visibility impacts of $SO_2$ emissions are of greater concern in Hawaii's Class I areas than the impacts of either $NO_X$ or VOC. The increase in anthropogenic $SO_2$ emissions indicates that some additional pollution reductions are needed to ensure reasonable progress toward the goal of eliminating anthropogenic visibility impairment in Hawaii's mandatory class I areas. Our proposal to achieve these reductions is explained in section III.F.5 of this notice.

*H. Coordination of RAVI and Regional Haze Requirements*

Our visibility regulations direct states to coordinate their RAVI LTS and monitoring provisions with those for regional haze, as explained in section IV.G, above. Under our RAVI regulations, the RAVI portion of a state SIP must address any integral vistas identified by the FLMs pursuant to 40 CFR 51.304. *See* 40 CFR 51.302. An *integral vista* is defined in 40 CFR 51.301 as a ''view perceived from within the mandatory Class I federal area of a specific landmark or panorama located outside the boundary of the mandatory Class I federal area.'' Visibility in any mandatory Class I Federal area includes any integral vista associated with that area. The FLMs did not identify any integral vistas in Hawaii. In addition, there have been no certifications of RAVI in the Hawaii Class I areas, nor are any Hawaii sources affected by the RAVI provisions.

Because Hawaii has not submitted a SIP to address RAVI, EPA previously promulgated a FIP for Hawaii, which incorporates the provisions of 40 CFR 52.26, 52.27, 52.28, 52.29 to address RAVI. We propose to find that the Regional Haze FIP appropriately supplements and augments EPA's FIP for RAVI visibility provisions by updating the monitoring and LTS provisions to address regional haze. We discuss the relevant monitoring provisions further below.

*I. Monitoring Strategy*

40 CFR 51.308(d)(4) requires that the FIP contain a monitoring strategy for measuring, characterizing, and reporting regional haze visibility impairment that is representative of all mandatory Class I Federal areas within the state. This monitoring strategy must be coordinated with the monitoring strategy required in 40 CFR 51.305 for RAVI. As 40 CFR 51.308(d)(4) notes, compliance with this requirement may be met through participation in the IMPROVE network. 40 CFR 51.308(d)(4)(i) further requires the establishment of any additional monitoring sites or equipment needed to assess whether RPGs to address regional haze for all mandatory Class I Federal areas within the state are being achieved. Consistent with EPA's monitoring regulations for RAVI and regional haze, EPA will rely on the IMPROVE network for compliance purposes, in addition to any RAVI monitoring that may be needed in the future. Further information on monitoring methods and monitor locations can be found in the docket.[76] [77] The most recent report also can be found in the docket.[78] Therefore, we propose to find that we have satisfied the requirements of 40 CFR 51.308(d)(4) enumerated in this paragraph.

Currently there are two IMPROVE monitoring sites operating in or near the Haleakala NP. The Haleakala (HALE1) IMPROVE monitoring site is located outside of the Haleakala NP near the Maui Central Valley, at an elevation of 1153 meters. The HALE1 IMPROVE monitoring site began operation at end of 2000, and will end operation in May, 2012. The Haleakala Crater (HACR1) IMPROVE monitoring site is at the park's Western boundary, at an elevation of 2158 meters. The HACR1 IMPROVE monitoring site began operation in 2007. In this proposal, EPA is proposing to use monitoring data from the HALE1 monitoring site as a basis for establishing baseline visibility, because the HACR1 site was not yet in operation for the base year time period of 2000–2004. Future regional haze planning efforts need to be based on data collected at the HACR1 site.

Hawaii DOH has prepared two reports comparing the two IMPROVE monitoring sites at Haleakala NP,[79] including a detailed comparison of organic and elemental carbon data at the two sites.[80] The reports find that the most significant difference between data measured at the two sites appears to be that the HALE1 site has higher levels of organic and elemental carbon. The levels of the other species are generally lower at the HACR1 IMPROVE monitoring site than at the HALE1 monitoring site. The reports conclude that, based on the available data, the HACR1 IMPROVE monitoring site is more representative of visibility conditions within the Haleakala NP than the HALE1 IMPROVE monitoring site.

*J. Federal Land Manager Consultation and Coordination*

Under section 169A(d) of the Clean Air Act, we are required to consult with the appropriate FLM(s) before holding a public hearing on the Hawaii Regional Haze FIP. We must also include a summary of the FLMs' conclusions and recommendations in this notice. Both EPA and Hawaii DOH have consulted informally with the FLMs throughout the development of the Hawaii Regional Haze FIP. Most recently, we consulted with the FLMs by phone on March 26 and April 5, 2012.

In addition, 40 CFR 51.308(i)(4) specifies the regional haze FIP must provide procedures for continuing consultation with the FLMs on the implementation of the visibility protection program required by 40 CFR subpart P, including development and review of implementation plan revisions and 5-year progress reports, and on the implementation of other programs having the potential to contribute to impairment of visibility in mandatory Class I Federal areas. We intend to continue to consult with the FLMs

[76] ''Visibility Monitoring Guidance,'' EPA–454/R–99–003, June 1999, *http://www.epa.gov/ttn/amtic/files/ambient/visible/r-99-003.pdf.*

[77] ''Guidance for Tracking Progress Under the Regional Haze Rule,'' EPA–454/B–03–004, September 2003, available at *http://www.epa.gov/ttncaaa1/t1/memoranda/rh_tpurhr_gd.pdf.* Figure 1–2 shows the monitoring network on a map, while Table A–2 lists Class I areas and corresponding monitors.

[78] ''Spatial and Seasonal Patterns and Temporal Variability of Haze and its Constituents in the United States,'' Report V, ISSN 0737–5352–87, June 2011.

[79] Comparison of Haleakala NP HALE1 and HACR1 IMPROVE Monitoring Site 2007–2008 Data Sets, March 30, 2012, State of Hawaii, Department of Health, Clean Air Branch.

[80] Review of VIEWS2.0 2009–2010 Haleakala National Park Organic and Elemental Carbon Data, March 30, 2012, State of Hawaii, Department of Health, Clean Air Branch.

regarding all aspects of the visibility protection program and we encourage Hawaii to do the same.

## IV. Proposed Action

EPA is proposing to establish an emissions cap of 3,550 tons of $SO_2$ per year from the fuel oil-fired boilers at Hill, Shipman and Puna, beginning in January 1, 2018. This represents a reduction of 1,400 tons per year from the total projected 2018 annual emissions of $SO_2$ from these facilities. We propose to determine that this control measure, in conjunction with $SO_2$ and $NO_X$ emissions control requirements that are already in place, will ensure that reasonable progress is made during this first planning period toward the national goal of no anthropogenic visibility impairment by 2064 at Hawaii's two Class I areas.

## V. Statutory and Executive Order Reviews

### *A. Executive Order 12866: Regulatory Planning and Review*

This proposed action is not a ''significant regulatory action'' under the terms of Executive Order 12866 (58 FR 51735, October 4, 1993) and is therefore not subject to review under Executive Orders 12866 and 13563 (76 FR 3821, January 21, 2011). The proposed Hawaii Regional Haze FIP requires implementation of emissions controls for $SO_2$ on specific units at three sources. Since EPA is proposing direct emission controls on selected units at only three sources, the Hawaii Regional Haze FIP is not a rule of general applicability.

### *B. Paperwork Reduction Act*

This proposed action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* Under the Paperwork Reduction Act, a ''collection of information'' is defined as a requirement for ''answers to * * * identical reporting or recordkeeping requirements imposed on ten or more persons. * * * '' 44 U.S.C. 3502(3)(A). Because the proposed FIP applies to just three facilities, the Paperwork Reduction Act does not apply. See 5 CFR 1320(c).

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. The OMB control numbers for our regulations in 40 CFR are listed in 40 CFR part 9.

### *C. Regulatory Flexibility Act*

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's proposed rule on small entities, small entity is defined as: (1) A small business as defined by the Small Business Administration's (SBA) regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of this proposed action on small entities, I certify that this proposed action will not have a significant economic impact on a substantial number of small entities. The three sources in question are electric generating plants that are owned by the Hawaii Electric Light Company, Inc. (HELCO), which is an electric utility subsidiary of HECO. Pursuant to 13 CFR 121.201, footnote 1, an electric utility firm is small if, including its affiliates, it is primarily engaged in the generation, transmission, and/or distribution of electric energy for sale and its total electric output for the preceding fiscal year did not exceed 4 million megawatt hours (MWH). In the fiscal year ended December 31, 2011, HELCO generated or purchased a total of 1,186.6 MWH.[81] Therefore, it is not a small business.

### *D. Unfunded Mandates Reform Act (UMRA)*

This rule does not contain a Federal mandate that may result in expenditures that exceed the inflation-adjusted UMRA threshold of $100 million by State, local, or Tribal governments or the private sector in any 1 year. Thus, this rule is not subject to the requirements of sections 202 or 205 of UMRA.

This rule is also not subject to the requirements of section 203 of UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments.

### *E. Executive Order 13132: Federalism*

The proposed Hawaii Regional Haze FIP does not have federalism implications. This action will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. In this action, EPA is fulfilling its statutory duty under CAA Section 110(c) to promulgate a Regional Haze FIP following its finding that Hawaii had failed to submit a regional haze SIP. Thus, Executive Order 13132 does not apply to this action. In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and State and local governments, EPA specifically solicits comment on this proposed rule from State and local officials.

### *F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments*

This proposed rule does not have tribal implications, as specified in Executive Order 13175. It will not have substantial direct effects on tribal governments. Thus, Executive Order 13175 does not apply to this rule.

### *G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks*

EPA interprets EO 13045 as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under section 5–501 of the EO has the potential to influence the regulation. This action is not subject to EO 13045 because it

[81] Hawaiian Electric Industries, Inc. and Hawaiian Electric Company, Inc., Form 10–K for the fiscal year ended December 31, 2011 ''Generation Statistics.''

implements specific standards established by Congress in statutes. However, to the extent this proposed rule will limit emissions of $SO_2$, the rule will have a beneficial effect on children's health by reducing air pollution.

*H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use*

This action is not subject to Executive Order 13211 (66 FR 28355 (May 22, 2001)), because it is not a significant regulatory action under Executive Order 12866.

*I. National Technology Transfer and Advancement Act*

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires Federal agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA, EPA must consider and use ''voluntary consensus standards'' (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical. EPA believes that VCS are inapplicable to this action. Today's action does not require the public to perform activities conducive to the use of VCS.

*J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations*

Executive Order 12898 (59 FR 7629, February 16, 1994), establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

We have determined that this proposed rule, if finalized, will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it increases the level of environmental protection for all affected populations without having any disproportionately high and adverse human health or environmental effects on any population, including any minority or low-income population.

**List of Subjects in 40 CFR Part 52**

Air pollution control, Environmental protection, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: May 14, 2012.

**Jared Blumenfeld,**

*Regional Administrator, Region 9.*

For the reasons stated in the preamble, part 52 of title 40, chapter I, of the Code of Federal Regulations is proposed to be 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 M—Hawaii

2. Section 52.633 is amended by adding paragraph (d) to read as follows:

### § 52.633 Visibility protection.

* * * * *

(d) Regional Haze Plan Provisions.

(1) *Applicability.* This paragraph (d) applies to the following electric generating units (EGUs) and boilers: Kanoelehua Hill Generating Station, Hill 5 and Hill 6; Puna Power Plant, Boiler 1; Shipman Power Plant, Boiler S–3 and Boiler S–4.

(2) *Definitions.* Terms not defined below shall have the meaning given to them in the Clean Air Act or EPA's regulations implementing the Clean Air Act. For purposes of this paragraph (d):

$SO_2$ means sulfur dioxide.

*Owner/operator* means any person who owns, leases, operates, controls, or supervises an EGU or boiler identified in paragraph (d)(1).

Unit means any of the EGUs or boilers identified in paragraph (d)(1).

(3) *Emissions cap.* The EGUs identified in paragraph (d)(1) shall not emit or cause to be emitted $SO_2$ in excess of a total of 3,550 tons per year, calculated as the sum of total $SO_2$ emissions for all five units over a rolling 12-month period.

(4) *Compliance date.* Compliance with the emissions cap and other requirements of this section is required at all times on and after January 1, 2018.

(5) *Monitoring, recordkeeping and reporting requirements.*

(i) All records, including support information, required by this paragraph (5) shall be maintained for at least five (5) years from the date of the measurement, test or report. These records shall be in a permanent form suitable for inspection and made available to EPA, the Hawaii Department of Health or their representatives upon request.

(ii) The owners and operators of the EGUs identified in paragraph (d)(1) shall maintain records of fuel deliveries identifying the delivery dates and the type and amount of fuel received. The fuel to be fired in the boilers shall be sampled and tested in accordance with the most current American Society for Testing and Materials (ASTM) methods.

(iii) The owners and operators of the EGUs identified in paragraph (d)(1) shall analyze a representative sample of each batch of fuel received for its sulfur content and heat value following ASTM D4057. The samples shall be analyzed for the total sulfur content of the fuel using ASTM D129, or alternatively D1266, D1552, D2622, D4294, or D5453.

(iv) The owners and operators of the EGUs identified in paragraph (d)(1) shall calculate on a monthly basis the $SO_2$ emissions for each unit for the preceding month based on the sulfur content, heat value and total gallons of fuel burned fired.

(v) The owners and operators of the EGUs identified in paragraph (d)(1) shall calculate on a monthly basis the total emissions for all units for the preceding twelve (12) months.

(vi) The owners and operators of the EGUs identified in paragraph (1) shall notify the Hawaii Department of Health and EPA Region 9 of any exceedance of the emission cap in paragraph (d)(3) within thirty (30) days of such exceedance.

(vii) Within sixty (60) days following the end of each calendar year, the owners and operators of the EGUs identified in paragraph (d)(1) shall report to the Hawaii Department of Health and EPA Region 9 the total tons of $SO_2$ emitted from all units for the preceding calendar year by month and the corresponding rolling 12-month total emissions for all units.

(viii) Any document (including reports) required to be submitted by this rule shall be certified as being true, accurate, and complete by a responsible official and shall be mailed to the following addresses:

Clean Air Branch, Environmental Management Division, State of Hawaii Department of Health, P.O. Box 3378, Honolulu, HI 96801–3378,

and

Director of Enforcement Division, U.S. EPA Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

[FR Doc. 2012–12415 Filed 5–25–12; 8:45 am]

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**H.R. 298/P.L. 112–107**

To designate the facility of the United States Postal Service located at 500 East Whitestone Boulevard in Cedar Park, Texas, as the "Army Specialist Matthew Troy Morris Post Office Building". (May 15, 2012; 126 Stat. 328)

**H.R. 1423/P.L. 112–108**

To designate the facility of the United States Postal Service located at 115 4th Avenue Southwest in Ardmore, Oklahoma, as the "Specialist Michael E. Phillips Post Office". (May 15, 2012; 126 Stat. 329)

**H.R. 2079/P.L. 112–109**

To designate the facility of the United States Postal Service located at 10 Main Street in East Rockaway, New York, as the "John J. Cook Post Office". (May 15, 2012; 126 Stat. 330)

**H.R. 2213/P.L. 112–110**

To designate the facility of the United States Postal Service located at 801 West Eastport Street in Iuka, Mississippi, as the "Sergeant Jason W. Vaughn Post Office". (May 15, 2012; 126 Stat. 331)

**H.R. 2244/P.L. 112–111**

To designate the facility of the United States Postal Service located at 67 Castle Street in Geneva, New York, as the "Corporal Steven Blaine Riccione Post Office". (May 15, 2012; 126 Stat. 332)

**H.R. 2660/P.L. 112–112**

To designate the facility of the United States Postal Service located at 122 North Holderrieth Boulevard in Tomball, Texas, as the "Tomball Veterans Post Office". (May 15, 2012; 126 Stat. 333)

**H.R. 2668/P.L. 112–113**

Brian A. Terry Memorial Act (May 15, 2012; 126 Stat. 334)

**H.R. 2767/P.L. 112–114**

To designate the facility of the United States Postal Service located at 8 West Silver Street in Westfield, Massachusetts, as the "William T. Trant Post Office Building". (May 15, 2012; 126 Stat. 336)

**H.R. 3004/P.L. 112–115**

To designate the facility of the United States Postal Service located at 260 California Drive in Yountville, California, as the "Private First Class Alejandro R. Ruiz Post Office Building". (May 15, 2012; 126 Stat. 337)

**H.R. 3246/P.L. 112–116**

To designate the facility of the United States Postal Service located at 15455 Manchester Road in Ballwin, Missouri, as the "Specialist Peter J. Navarro Post Office Building". (May 15, 2012; 126 Stat. 338)

**H.R. 3247/P.L. 112–117**

To designate the facility of the United States Postal Service located at 1100 Town and Country Commons in Chesterfield, Missouri, as the "Lance Corporal Matthew P. Pathenos Post Office Building". (May 15, 2012; 126 Stat. 339)

**H.R. 3248/P.L. 112–118**

To designate the facility of the United States Postal Service located at 112 South 5th Street in Saint Charles, Missouri, as the "Lance Corporal Drew W. Weaver Post Office Building". (May 15, 2012; 126 Stat. 340)

**S. 1302/P.L. 112–119**

To authorize the Administrator of General Services to convey a parcel of real property in Tracy, California, to the City of Tracy. (May 15, 2012; 126 Stat. 341)

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