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FEDERAL REGISTER

Vol. 77 Friday,

No. 116 June 15, 2012

Pages 35807–36114

OFFICE OF THE FEDERAL REGISTER

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

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Conference Room, Suite 700
800 North Capitol Street, NW.
Washington, DC 20002

RESERVATIONS: (202) 741–6008

Printed on recycled paper.

Contents

Federal Register

Vol. 77, No. 116

Friday, June 15, 2012

Agriculture Department
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 35938

Army Department
See Engineers Corps

Blind or Severely Disabled, Committee for Purchase From People Who Are
See Committee for Purchase From People Who Are Blind or Severely Disabled

Centers for Disease Control and Prevention
NOTICES
Intents to Award Affordable Care Act Funding, HM10–1001, 35981

Centers for Medicare & Medicaid Services
PROPOSED RULES
Medicare Programs:
Medicare Secondary Payer and Future Medicals, 35917–35921
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 35981–35983

Coast Guard
RULES
Drawbridge Operations:
Atlantic Intracoastal Waterway, at Wrightsville Beach, NC; Cape Fear and Northeast Cape Fear River, at Wilmington, NC, 35843–35844
Umpqua River, Reedsport, OR, 35843
Safety Zone:
Brandon Road Lock and Dam to Lake Michigan including Des Plaines River, Chicago Sanitary and Ship Canal, Chicago River, and Calumet–Saganashkee Channel, Chicago, IL, 35854–35855
F/V Deep Sea, Penn Cove, WA, 35850–35852
Fourth of July Fireworks Event, Pagan River, Smithfield; VA, 35848–35850
Multiple Firework Displays in Captain of the Port, Puget Sound Zone, 35852–35854
Olde Ellison Bay Days Fireworks Display, Ellison Bay, Wisconsin, 35844–35846
Sheboygan Harbor Fest, Sheboygan, WI, 35846–35848
Safety Zones:
Bay Swim V, Presque Isle Bay, Erie, PA, 35860–35862
Fireworks display, Lake Superior; Duluth, MN, 35857–35859
Fleet Week Maritime Festival, Pier 66 Elliott Bay, Seattle, WA, 35862
Temporary Change for Recurring Fifth Coast Guard District Fireworks Displays; Northwest Harbor (East Channel) and Tred Avon River, MD, 35855–35857
Special Local Regulations and Security Zones:
War of 1812 Bicentennial Commemoration, Port of Boston, MA, 35839–35842
PROPOSED RULES
Drawbridge Operations:
Lafourche Bayou, LA, 35897–35898
Safety Zones:
Atlantic Intracoastal Waterway; Emerald Isle, NC, 35903–35906
Atlantic Intracoastal Waterway; North Topsail Beach, NC, 35898–35900
Atlantic Intracoastal Waterway; Oak Island, NC, 35906–35909
Gilmerton Bridge Center Span Float-in, Elizabeth River; Norfolk, Portsmouth, and Chesapeake, VA, 35900–35903

Commerce Department
See International Trade Administration
See National Oceanic and Atmospheric Administration
See National Telecommunications and Information Administration

Committee for Purchase From People Who Are Blind or Severely Disabled
NOTICES
Procurement List; Additions and Deletions, 35942–35944

Commodity Futures Trading Commission
PROPOSED RULES
Dual and Multiple Associations of Persons Associated with Swap Dealers, Major Swap Participants and other Commission Registrants, 35892–35897
NOTICES
Charter Renewals:
Global Markets Advisory Committee, 35944
Meetings; Sunshine Act, 35944–35945

Defense Acquisition Regulations System
RULES
Defense Federal Acquisition Regulation Supplement:
Contractors Performing Private Security Functions, 35883–35887
Title 41 Positive Law Codification—Further Implementation, 35879–35883
PROPOSED RULES
Defense Federal Acquisition Regulation Supplements:
Item Unique Identifier Update, 35921–35925

Defense Department
See Defense Acquisition Regulations System
See Engineers Corps
NOTICES
Privacy Act; Systems of Records, 35945–35946

Drug Enforcement Administration
NOTICES
Decisions and Orders:
Patrick K. Chau, M.D., 36003–36008

Education Department
NOTICES
Applications for New Awards:
Arts in Education National Program, 35947–35953
Arts in Education National Program:
Final Priority, Requirements, Definitions, and Selection Criteria, 35953–35956

Employment and Training Administration
NOTICES
Availability of Funds and Solicitation for Grant Applications
Pay for Success Pilot Projects, 36012

Energy Department
See Federal Energy Regulatory Commission

Engineers Corps
NOTICES
Environmental Impact Statements; Availability, etc.:
Proposed Berths 302–306 American President Lines Container Terminal Project, Port of Los Angeles, 35946–35947

Environmental Protection Agency
RULES
Approval and Promulgation of Implementation Plans:
Florida; New Source Review Prevention of Significant Deterioration: Nitrogen Oxides as a Precursor to Ozone, 35862–35866
Approvals and Promulgations of Implementation Plans:
Revisions to Georgia State Implementation Plan, 35866–35870
Approvals of Air Quality Implementation Plans:
Wisconsin; Partial Disapproval of Infrastructure State Implementation Plan, 35870–35873
Approvals, Disapprovals and Promulgations of Air Quality Implementation Plans:
Utah; Maintenance Plan for 1-Hour Ozone Standard for Salt Lake and Davis Counties, 35873–35878
PROPOSED RULES
Approvals and Promulgations of Implementation Plans:
Georgia; Infrastructure Requirements for 1997 and 2006 Fine Particulate Matter National Ambient Air Quality Standards, 35909–35917
Revisions to Georgia State Implementation Plan, 35917
Approvals and Promulgations of State Implementation Plans:
New Mexico; Regional Haze Rule Requirements for Mandatory Class I Areas, 36044–36083
NOTICES
Environmental Impact Statements; Availability, etc., 35961

Equal Employment Opportunity Commission
NOTICES
Meetings; Sunshine Act, 35961

Executive Office of the President
See Presidential Documents

Federal Aviation Administration
RULES
Amendments of Air Traffic Service Routes:
Southwestern United States, 35836–35837
PROPOSED RULES
Airworthiness Directives:
Diamond Aircraft Industries GmbH Airplanes, 35890–35892
PIAGGIO AERO INDUSTRIES S.p.A Airplanes, 35888–35890

Federal Bureau of Investigation
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Cargo Theft Incident Report, 36008–36009

Federal Communications Commission
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 35961–35962
Utilizing Rapidly Deployable Aerial Communications Architecture in Response to an Emergency, 35962–35964

Federal Deposit Insurance Corporation
NOTICES
Meetings; Sunshine Act, 35964
Updated Listings of Financial Institutions in Liquidation, 35964–35965

Federal Energy Regulatory Commission
NOTICES
Applications:
Appalachian Power Co., 35956–35958
Atlas Pipeline Mid-Continent WestTex, LLC, Pioneer Natural Resources USA, Inc., 35959
Northern Natural Gas Co., 35958
Commission Staff Attendance, 35959–35960
License Amendment Applications:
Hastings, MN, 35960–35961

Federal Housing Finance Agency
PROPOSED RULES
Enterprise Underwriting Standards, 36086–36110
NOTICES
Federal Home Loan Bank Members Selected for Community Support Review, 35965–35978

Federal Trade Commission
NOTICES
Proposed Consent Agreements:
Johnson and Johnson and Synthes, Inc., 35978–35981

Food and Drug Administration
RULES
Conditionally Approved New Animal Drugs for Minor Use and Minor Species:
Masitinib, 35837
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Eye Tracking Experimental Studies to Explore Consumer Use of Food Labeling Information and Consumer Response to Online Surveys, 35983–35985
Determinations That Products Were Not Withdrawn From Sale for Reasons of Safety or Effectiveness:
PARAPLATIN (Carboplatin) Injection and SUSTIVA (Efavirenz) Capsules, 35985–35986
Guidance for Industry; Small Entity Compliance Guide; Availability:
Toll-Free Number Labeling and Related Requirements for Over-the-Counter and Prescription Drugs, etc., 35986–35987

Foreign Assets Control Office
NOTICES
Additional Designations, Foreign Narcotics Kingpin Designation Act, 36041–36042

Geological Survey
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 35997–35998

Health and Human Services Department
See Centers for Disease Control and Prevention
See Centers for Medicare & Medicaid Services
See Food and Drug Administration
See National Institutes of Health
RULES
Establishment of User Fees for Filovirus Testing of Nonhuman Primate Liver Samples, 35878

Homeland Security Department
See Coast Guard
See U.S. Citizenship and Immigration Services
See U.S. Customs and Border Protection

Housing and Urban Development Department
NOTICES
Federal Properties Suitable as Facilities to Assist Homeless, 35993–35997

Interior Department
See Geological Survey
See Land Management Bureau
See Reclamation Bureau

International Trade Administration
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Interim Procedures for Considering Requests under the Commercial Availability Provision of the United States – Colombia Trade Promotion Agreement, 35938–35939
Hand Trucks from the People's Republic of China:
Court Decision Not in Harmony With Final Results and Amended Final Results, 35939–35941
Meetings:
Environmental Technologies Trade Advisory Committee, 35941

Justice Department
See Drug Enforcement Administration
See Federal Bureau of Investigation
See Justice Programs Office
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
COPS Progress Report, 36001–36002
National Corrections Reporting Program, 36002–36003
Lodgings of Consent Decrees under Clean Water Act, 36003

Justice Programs Office
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Deaths in Custody, 36010–36012
Victims of Crime Act, Crime Victim Assistance Grant Program, State Performance Report, 36009–36010

Labor Department
See Employment and Training Administration

Land Management Bureau
NOTICES
Decisions Approving Lands for Conveyance:
Alaska Native Claims Selection, 35998–35999
Environmental Impact Statements; Availability, etc.:
Lower Sonoran and Sonoran Desert National Monument, AZ, 35999–36000
Filings of Plats of Surveys:
Arizona, 36000–36001

National Highway Traffic Safety Administration
NOTICES
Meetings:
Federal Interagency Committee on Emergency Medical Services, 36039–36040

National Institutes of Health
NOTICES
Meetings:
Center for Scientific Review, 35987–35988
Center For Scientific Review, 35990
National Human Genome Research Institute, 35991
National Institute of Arthritis and Musculoskeletal and Skin Diseases, 35988
National Institute of Dental and Craniofacial Research, 35988, 35990
National Institute of General Medical Sciences, 35989–35990
National Institute of Neurological Disorders and Stroke, 35987
National Institute of Nursing Research, 35991
National Institute on Deafness and Other Communication Disorders, 35990

National Oceanic and Atmospheric Administration
PROPOSED RULES
Fisheries of the Exclusive Economic Zone off Alaska:
Monitoring and Enforcement Requirements in the Bering Sea and Aleutian Islands Freezer Longline Fleet, 35925–35937

National Science Foundation
NOTICES
Records of Decisions, 36012

National Telecommunications and Information Administration

NOTICES
Meetings:
Commerce Spectrum Management Advisory Committee, 35941–35942

Nuclear Regulatory Commission
RULES
Fee Schedules:
Fee Recovery for Fiscal Year 2012, 35809–35836
NOTICES
Combined License Applications to Conduct Supplemental Scoping Processes on Revised Site Layouts:
PPL Bell Bend, LLC, 36012–36014
Draft Regulatory Guides; Availablity:
Initial Test Program of Emergency Core Cooling Systems for Boiling-Water Reactors, 36014–36015
Hearing; Application for License Renewal:
Entergy Nuclear Operations, Inc.; Indian Point Nuclear Generating Units 2 and 3, 36015–36017
Meetings:
Advisory Committee on Reactor Safeguards, Subcommittee on Digital I and C; Cancellation, 36017
Regulatory Guides:
Procedures for Picking Up and Receiving Packages; Withdrawal, 36017–36018

Pension Benefit Guaranty Corporation
RULES
Allocation of Assets in Single-Employer Plans:
Benefits Payable in Terminated Single-Employer Plans; Interest Assumptions for Valuing and Paying Benefits, 35838–35839

Presidential Documents
PROCLAMATIONS
Special Observances:
Flag Day and National Flag Week (Proc. 8837), 35807–35808

Reclamation Bureau
NOTICES
Draft Report Assessing Rural Water Activities and Related Programs, 36001

Securities and Exchange Commission
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 36018–36020
Applications:
Hirtle Callaghan & Co., LLC and HC Capital Trust, 36020–36022
Precidian ETFs Trust, et al., 36022–36024
Self-Regulatory Organizations; Proposed Rule Changes:
C2 Options Exchange, Inc., 36024–36025
Chicago Mercantile Exchange, Inc., 36025–36027
Financial Industry Regulatory Authority, Inc., 36029–36031
NYSE Arca, Inc., 36027–36029
Suspension of Trading Orders:
ROK Entertainment Group, Inc.; RussOil Corp.; Tricell, Inc., etc., 36031

Social Security Administration
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 36031–36032

State Department
NOTICES
Keystone XL Pipeline:
Intent to Prepare a Supplemental Environmental Impact Statement, 36032–36034

Surface Transportation Board
NOTICES
Continuances in Control Exemptions:
Watco Holdings, Inc.; San Antonio Central Railroad, LLC, 36040
Control Exemptions:
Nevada 5, Inc. and Oakland Transportation Holdings LLC; GTR Leasing LLC and US Rail Holdings LLC, 36041
Lease Exemptions:
San Antonio Central Railroad, LLC; Port Authority of San Antonio, 36041

Transportation Department
See Federal Aviation Administration
See National Highway Traffic Safety Administration
See Surface Transportation Board
NOTICES
Funding Availabilities:
Small Business Transportation Resource Center Program, 36034–36039

Treasury Department
See Foreign Assets Control Office

U.S. Citizenship and Immigration Services
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals
Petition by Entrepreneur to Remove Conditions; Correction, 35991–35992

U.S. Customs and Border Protection
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Cargo Container and Road Vehicle Certification for Transport under Customs Seal, 35993
User Fees, 35992–35993

Separate Parts In This Issue

Part II
Environmental Protection Agency, 36044–36083

Part III
Federal Housing Finance Agency, 36086–36110

Reader Aids

Consult the Reader Aids section at the end of this page for phone numbers, online resources, finding aids, reminders, and notice of recently enacted public laws.

To subscribe to the Federal Register Table of Contents LISTSERV electronic mailing list, go to http://listserv.access.gpo.gov and select Online mailing list archives, FEDREGTOC-L, Join or leave the list (or change settings); then follow the instructions.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

3 CFR

Proclamations:

8837 35807

Administrative Orders:

Notices:

Notice of June 14, 2012 36113

10 CFR

170 35809

171 35809

12 CFR

Proposed Rules:

1254 36086

14 CFR

71 35836

Proposed Rules:

39 (2 documents) 35888, 35890

17 CFR

Proposed Rules:

3 35892

23 35892

21 CFR

516 35837

29 CFR

4022 35838

4044 35838

33 CFR

100 35839

117 (2 documents) 35843

165 (11 documents) 35839, 35844, 35846, 35848, 35850, 35852, 35854, 35855, 35857, 35860, 35862

Proposed Rules:

117 35897

165 (4 documents) 35898, 35900, 35903, 35906

40 CFR

52 (4 documents) 35862, 35866, 35870, 35873

Proposed Rules:

52 (3 documents) 35909, 35917, 36044

42 CFR

71 35878

Proposed Rules:

405 35917

411 35917

48 CFR

201 35879

203 35879

204 35879

212 35879

213 35879

216 35883

217 35879

219 35879

222 35879

225 (2 documents) 35879, 35883

233 35879

243 35879

252 (2 documents) 35879, 35883

Proposed Rules:

211 35921

212 35921

218 35921

246 35921

252 35921

50 CFR

Proposed Rules:

679 35925

Federal Register
Vol. 77, No. 116
Friday, June 15, 2012

Presidential Documents

Proclamation 8837 of June 11, 2012

Flag Day and National Flag Week, 2012

By the President of the United States of America

A Proclamation

Ninety-six years ago, our Nation first came together to celebrate Flag Day—an occasion when President Woodrow Wilson asked us to ''stand with united hearts for an America which no man can corrupt, no influence draw away from its ideals, no force divide against itself.'' This week, we mark nearly one century since that historic proclamation, and more than two centuries since the Second Continental Congress brought 13 United States under a single standard.

For over 200 years, our flag has proudly represented our Nation and our ideals at home and abroad. It has billowed above monuments and memorials, flown beside the halls of government, stood watch over our oldest institutions, and graced our homes and storefronts. Generations of service members have raised our country's colors over military bases and at sea, and generations of Americans have lowered them to mourn those we have lost. Though our flag has changed to reflect the growth of our Republic, it will forever remain an emblem of the ideals that inspired our great Nation: liberty, democracy, and the enduring freedom to make of our lives what we will.

As we reflect on our heritage, let us remember that our destiny is stitched together like those 50 stars and 13 stripes. In red, white, and blue, we see the spirit of a Nation, the resilience of our Union, and the promise of a future forged in common purpose and dedication to the principles that have always kept America strong.

To commemorate the adoption of our flag, the Congress, by joint resolution approved August 3, 1949, as amended (63 Stat. 492), designated June 14 of each year as ''Flag Day'' and requested that the President issue an annual proclamation calling for its observance and for the display of the flag of the United States on all Federal Government buildings. The Congress also requested, by joint resolution approved June 9, 1966, as amended (80 Stat. 194), that the President annually issue a proclamation designating the week in which June 14 occurs as ''National Flag Week'' and call upon citizens of the United States to display the flag during that week.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, do hereby proclaim June 14, 2012, as Flag Day and the week beginning June 10, 2012, as National Flag Week. I direct the appropriate officials to display the flag on all Federal Government buildings during that week, and I urge all Americans to observe Flag Day and National Flag Week by displaying the flag. I also call upon the people of the United States to observe with pride and all due ceremony those days from Flag Day through Independence Day, also set aside by the Congress (89 Stat. 211), as a time to honor America, to celebrate our heritage in public gatherings and activities, and to publicly recite the Pledge of Allegiance to the Flag of the United States of America.

IN WITNESS WHEREOF, I have hereunto set my hand this eleventh day of June, in the year of our Lord two thousand twelve, and of the Independence of the United States of America the two hundred and thirty-sixth.

[FR Doc. 2012–14743
Filed 6–14–12; 8:45 am]
Billing code 3295–F2–P

Rules and Regulations

Federal Register
Vol. 77, No. 116
Friday, June 15, 2012

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

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

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 170 and 171

[NRC–2011–0207]

RIN 3150–AJ03

Revision of Fee Schedules; Fee Recovery for Fiscal Year 2012

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC or the Commission) is amending the licensing, inspection, and annual fees charged to its applicants and licensees. The amendments are necessary to implement the Omnibus Budget Reconciliation Act of 1990 (OBRA–90), as amended, which requires the NRC to recover through fees approximately 90 percent of its budget authority in fiscal year (FY) 2012, not including amounts appropriated for Waste Incidental to Reprocessing (WIR) and amounts appropriated for generic homeland security activities. Based on the Consolidated Appropriations Act of 2012, signed by President Obama on December 23, 2011, the NRC's required fee recovery amount for the FY 2012 budget is $1,038.1 million. After accounting for billing adjustments, the total amount to be billed as fees to licensees is $901 million.

DATES: This rule is effective on August 14, 2012.

ADDRESSES: Please refer to Docket ID NRC–2011–0207 when contacting the NRC about the availability of information for this final rule. You may access information and comment submittals related to this final rulemaking, which the NRC possesses and is publicly available, by any of the following methods:

- *Federal Rulemaking Web Site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2011–0207.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may access publicly available documents online in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''ADAMS Public Documents'' and then select ''*Begin Web-based ADAMS Search.*'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The ADAMS accession number for each document referenced in this notice (if that document is available in ADAMS) is provided the first time that a document is referenced. In addition, for the convenience of the reader, the ADAMS accession numbers are provided in a table in the section of this notice entitled, Availability of Documents.
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

FOR FURTHER INFORMATION CONTACT: Arlette Howard, Office of the Chief Financial Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–1481, email: *Arlette.Howard@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Background
II. Response to Comments
III. Final Action
A. Amendments to Title 10 of the *Code of Federal Regulations* (10 CFR) Part 170: Fees for Facilities, Materials, Import and Export Licenses, and Other Regulatory Services Under the Atomic Energy Act of 1954, as Amended
B. Amendments to 10 CFR Part 171: Annual Fees for Reactor Licenses and Fuel Cycle Licenses and Materials Licenses, Including Holders of Certificates of Compliance, Registrations, and Quality Assurance Program Approvals and Government Agencies Licensed by the NRC
IV. Plain Writing
V. Availability of Documents
VI. Voluntary Consensus Standards
VII. Environmental Impact: Categorical Exclusion
VIII. Paperwork Reduction Act Statement
IX. Regulatory Analysis
X. Regulatory Flexibility Analysis
XI. Backfit Analysis
XII. Congressional Review Act

I. Background

Over the past 40 years the NRC (and earlier as the Atomic Energy Commission (AEC), the NRC's predecessor agency), has assessed and continues to assess fees to applicants and licensees to recover the cost of its regulatory program. The NRC's cost recovery principles for fee regulation are governed by two major laws, the Independent Offices Appropriations Act of 1952 (IOAA) (31 U.S.C. 483 (a)) and OBRA–90 (42 U.S.C. 2214), as amended. The NRC is required each year, under OBRA–90, as amended, to recover approximately 90 percent of its budget authority, not including amounts appropriated for WIR, and amounts appropriated for generic homeland security activities (non-fee items), through fees to NRC licensees and applicants. The following discussion explains the various court decisions, congressional mandates and Commission policy which form the basis for the NRC's current fee policy and cost recovery methodology, which in turn form the basis for this rulemaking.

Establishment of Fee Policy and Cost Recovery Methodology

In 1968, the AEC adopted its first license fee schedule in response to Title V of the IOAA. This statute authorized and encouraged Federal regulatory agencies to recover to the fullest extent possible costs attributable to services provided to identifiable recipients. The AEC established fees under 10 CFR part 170 in two sections, § 170.21 and § 170.31. Section 170.21 established a flat application fee for filing applications for nuclear power plant construction permits. Fees were set by a sliding scale for construction permits and operating license fees depending on plant size and annual fees were levied on holders of Commission operating licenses under 10 CFR part 50. Section 170.31 established application fees and annual fees for materials licenses. Between 1971 and 1973, the 10 CFR part 170 fee schedules were adjusted to account for increased costs resulting from expanded services which included health and safety inspection services and manufacturing licenses and environmental and antitrust reviews. The annual fees assessed by the Commission began to include

inspection costs and the material fee schedule expanded from 16 to 28 categories for fee assessment. During this period, the schedules continued to be modified based on the Commission's policy to recover costs attributable to identifiable beneficiaries for the processing of applications, permits and licenses, amendments to existing licenses, and health and safety inspections relating to the licensing process.

On March 4, 1974, the U.S. Supreme Court rendered major decisions in two cases, *National Cable Television Association, Inc.* v. *United States,* 415 U.S. 36 (1974) and *Federal Power Commission* v. *New England Power Company,* 415 U.S. 345 (1974), regarding the charging of fees by Federal agencies. The Court held that the IOAA authorizes an agency to charge fees for special benefits rendered to identifiable persons measured by the ''value to the recipient'' of the agency service. The Court, thus, invalidated the Federal Power Commission's annual fee rule because its fee structure assessed annual fees against the regulated industry at large without considering whether anyone had received benefits from any Commission services during the year in question. As a result of these decisions, the AEC promptly eliminated annual licensing fees and issued refunds to licensees, but left the remainder of the fee schedule unchanged.

In November 1974, the AEC published proposed revisions to its license fee schedule (39 FR 39734; November 11, 1974). The Commission reviewed public comments while simultaneously considering alternative approaches for the proper evaluation of expanding services and proper assessment based upon increasing costs of Commission services.

While this effort was under way, the Court of Appeals for the District of Columbia issued four opinions in fee cases—*National Cable Television Assoc.* v. *FCC,* 554 F.2d 1094 (D.C. Cir. 1976); *National Association of Broadcasters* v. *FCC,* 554 F.2d 1118 (D.C. Cir. 1976); *Electronic Industries Association* v. *FCC,* 554 F.2d 1109 (D.C. Cir. 1976); and *Capital Cities Communication, Inc.* v. *FCC,* 554 F.2d 1135 (D.C. Cir. 1976). These decisions invalidated the license fee schedules promulgated by the Federal Communications Commission, and they provided the AEC with additional guidance for the prompt adoption and promulgation of an updated licensee fee schedule.

On January 19, 1975, under the Energy Reorganization Act of 1974, the licensing and related regulatory functions of the AEC were transferred to the NRC. The NRC, prompted by recent court decisions concerning fee policy, developed new guidelines for use in fee development and the establishment of a new proposed fee schedule.

The NRC published a summary of guidelines as a proposed rule (42 FR 22149; May 2, 1977), and the Commission held a public meeting to discuss the notice on May 12, 1977. A summary of the comments on the guidelines and the NRC's responses were published in the **Federal Register** (43 FR 7211; February 21, 1978).

The U.S. Court of Appeals for the Fifth Circuit upheld the Commission's fee guidelines on August 24, 1979, in *Mississippi Power and Light Co.* v. *U.S. Nuclear Regulatory Commission,* 601 F.2d 223 (5th Cir. 1979), *cert. denied,* 444 U.S. 1102 (1980). This court held that—

(1) The NRC had the authority to recover the full cost of providing services to identifiable beneficiaries;

(2) The NRC could properly assess a fee for the costs of providing routine inspections necessary to ensure a licensee's compliance with the Atomic Energy Act of 1954, as amended, and with applicable regulations;

(3) The NRC could charge for costs incurred in conducting environmental reviews required by the National Environmental Policy Act (42 U.S.C. 4321);

(4) The NRC properly included the costs of uncontested hearings and of administrative and technical support services in the fee schedule;

(5) The NRC could assess a fee for renewing a license to operate a low-level radioactive waste burial site; and

(6) The NRC's fees were not arbitrary or capricious.

The NRC's Current Statutory Requirement for Cost Recovery Through Fees

In 1986, Congress passed the Consolidated Omnibus Budget Reconciliation Act (COBRA) (H.R. 3128), which required the NRC to assess and collect annual charges from persons licensed by the Commission. These charges, when added to other amounts collected by the NRC, totaled about 33 percent of the NRC's estimated budget. In response to this mandate and separate congressional inquiry on NRC fees, the NRC prepared a report on alternative approaches to annual fees and published the decision on annual fees for power reactor operating licenses in 10 CFR part 171 for public comment (51 FR 24078; July 1, 1986). The final rule (51 FR 33224; September 18, 1986) included a summary of the comments and the NRC's related responses. The decision was challenged in the D.C. Circuit and upheld in its entirety in *Florida Power and Light Company* v. *United States,* 846 F.2d 765 (D.C. Cir. 1988), *cert. denied,* 490 U.S. 1045 (1989).

In 1987, the NRC retained the established annual and 10 CFR part 170 fee schedules in the **Federal Register** (51 FR 33224; September 18, 1986).

In 1988, the NRC was required to collect 45 percent of its budget authority through fees. The NRC published a proposed rule that included an hourly increase recommendation for public comment in the **Federal Register** (53 FR 24077; June 27, 1988). The NRC staff could not properly consider all comments received on the proposed rule. Therefore, on August 12, 1988, the NRC published an interim final rule in the **Federal Register** (53 FR 30423). The interim final rule was limited to changing the 10 CFR part 171 annual fees.

In 1989, the Commission was required to collect 45 percent of its budget authority through fees. The NRC published a proposed fee rule in the **Federal Register** (53 FR 24077; June 25, 1988). A summary of the comments and the NRC's related responses were published in the **Federal Register** (53 FR 52632; December 28, 1988).

On November 5, 1990, with respect to 10 CFR part 171, the Congress passed OBRA–90, requiring that the NRC collect 100 percent of its budget authority, less appropriations from the Nuclear Waste Fund (NWF), through the assessment of fees. The OBRA–90 allowed the NRC to collect user fees for the recovery of the costs of providing special benefits to identifiable applicants and licensees in compliance with 10 CFR part 170 and under the authority of the IOAA (31 U.S.C. 9701). These fees recovered the cost of inspections, applications for new licenses and license renewals, and requests for license amendments. The OBRA–90 also allowed the NRC to recover annual fees under 10 CFR part 171 for generic regulatory costs not otherwise recovered through 10 CFR part 170 fees. In compliance with OBRA–90, the NRC adjusted its fee regulations in 10 CFR part 170 and 171 to be more comprehensive without changing their underlying basis. The NRC published these regulations in a proposed rule for public comment in the **Federal Register** (54 FR 49763; December 1, 1989). The NRC held three public meetings to discuss the proposed changes and questions. A summary of comments and the NRC's related responses were published in the **Federal Register** (55 FR 21173; May 23, 1990).

In FYs 1991–2000, the NRC continued to comply with OBRA–90 requirements in its proposed and final rules. In 1991, the NRC's annual fee rule methodology was challenged and upheld by the D.C. Circuit Court of Appeals in *Allied Signal* v. *NRC,* 988 F.2d 146 (D.C. Cir. 1993).

The FY 2001 Energy and Water Development Appropriation Act amended OBRA–90 to decrease the NRC's fee recovery amount by 2 percent per year beginning in FY 2001, until the fee recovery amount was 90 percent in FY 2005.

The FY 2006 Energy and Water Development Appropriation Act extended this 90 percent fee recovery requirement for FY 2006. Section 637 of the Energy Policy Act of 2005 made the 90 percent fee recovery requirement permanent in FY 2007.

In addition to the requirements of OBRA–90, as amended, the NRC was also required to comply with the requirements of the Small Business Regulatory Enforcement Fairness Act of 1996. This Act encouraged small businesses to participate in the regulatory process, and required agencies to develop more accessible sources of information on regulatory and reporting requirements for small businesses and create a small entity compliance guide. The NRC, in order to ensure equitable fee distribution among all licensees, developed a fee methodology specifically for small entities that consisted of a small entity definition and the Small Business Administration's most common receipts-based size standards as described under the North American Industry Classification System (NAICS) identifying industry codes. The NAICS is the standard used by Federal statistical agencies to classify business establishments for the purposes of collecting, analyzing, and publishing statistical data related to the U.S. business economy. The purpose of this fee methodology was to lessen the financial impact on small entities through the establishment of a maximum fee at a reduced rate for qualifying licensees.

In FY 2009, the NRC computed the small entity fee based on a biennial adjustment of 39 percent, a fixed percent applied to the prior 2-year weighted average for all fee categories that have small entity licensees. The NRC also used 39 percent to compute the small entity annual fee for FY 2005, the same year the agency was required to recover only 90 percent of its budget authority. The methodology allowed small entity licensees to be able to predict changes in their fees in the biennial year based on the materials users' fees for the previous 2 years. Using a 2-year weighted average lessened the fluctuations caused by programmatic and budget variables within the fee categories for the majority of small entities.

The agency also determined that there should be a lower-tier annual fee based on 22 percent of the maximum small entity annual fee to further reduce the impact of fees. In FY 2011, the NRC applied this methodology which would have resulted in an upper-tier small entity fee of $3,300, an increase of 74 percent or $1,400 from FY 2009, and a lower-tier small entity fee of $700, an increase of 75 percent or $300 from FY 2009. The NRC determined that implementing this increase would have a disproportionate impact upon small licensees and performed a trend analysis to calculate the appropriate fee tier levels. From FY 2000 to FY 2008, $2,300 was the maximum upper-tier small entity fee and $500 was the maximum lower-tier small entity fee. Therefore, in order to lessen financial hardship for small entity licensees, the NRC concluded that for FY 2011 $2,300 should be the maximum upper-tier small entity fee and $500 should be the lower-tier small entity fee. For this fee rule, the small entity fees remain unchanged. The next small entity biennial review is scheduled for FY 2013.

II. Response to Comments

The NRC published the FY 2012 proposed fee rule on March 15, 2012 (77 FR 15530) to solicit public comment on its proposed revisions to 10 CFR parts 170 and 171. By the close of the comment period (April 16, 2012), the NRC received responses from eight commenters that were considered in this fee rulemaking. The majority of the comments were received from the uranium industry in addition to comments received from the nuclear power industry, the materials industry, and small entities. The comments have been grouped by issues and are addressed in a collective response.

A. Specific Part 170 Issues

1. Hourly Rate

Comment. The NRC staff received the following comments from the uranium recovery industry regarding the hourly rate. Several commenters stated they would be adversely impacted by the higher hourly rate in the form of larger invoices for the NRC staff's expended time during the license application and submittal review process. The commenters attributed the higher review costs to the NRC's regulatory process, which they believe has not improved as promised with the implementation of NUREG–1910—Generic Environment Impact Statement (GEIS) for *In Situ* Leach Uranium Milling Facilities, the Memorandum of Understanding (MOU) between the Commission and the Bureau of Land Management (BLM) (ADAMS Accession No. ML093430201), and performance based licensing which has resulted in delayed licensing application submittals and reviews. One commenter suggested the NRC should redouble its efforts to capitalize on GEIS. Another commenter stated the NRC should do more to ensure better implementation of the NRC/BLM MOU. The commenters suggested the NRC should expand performance based licensing because the risk posed by uranium recovery licensees is low based on materials handled, and an expansion would allow the use of Safety and Environmental Review Panels to approve certain actions, ultimately resulting in cost savings to licensees. Another commenter suggested, for example, that expending $150,000 and considerable time for the initial phase of a preoperational inspection for an existing facility is excessive. One commenter recommended that the NRC review the staff levels assigned to different activities and compare them to the risk to public health and the environment. Another commenter suggested the NRC improve the efficiency of the review processes and pass the realized gains in efficiency, in the form of decreased fees, to licensees. Several commenters stated the NRC should effectively manage resources to process new applications along with existing applications including proposed expansion projects. Another commenter suggested the NRC should move forward to provide a draft rule for public comment concerning Section 106 of the National Historic Preservation Act, and should look to other Federal agencies, such as the BLM, for best practices in the processing of 106 reviews. Several commenters recommended that the NRC, upon the completion of acceptance reviews, provide costs estimates for submittal reviews which detail the approximate staff hours required to review the submittal. The commenters stated the NRC should create a schedule of costs for common tasks which would include the approximate costs of performing tasks such as reviewing and approving surety, thereby enabling licensees to better budget for reviews by the NRC staff.

Response. Regarding the inefficiency of *in situ* leach GEIS, the NRC disagrees with the commenters because GEIS has reduced the amount of work required to prepare the site-specific supplemental environmental impact statements. The reduction was a result of the GEIS focusing on targeting issues of importance at each *in situ* leach facility. Additionally, the GEIS eliminated the need for public scoping. However, the Section 106 Tribal consultation process remains extensive for many NRC reviews due to many uranium recovery facilities located on or near land deemed important by many Indian tribes. The NRC is currently in the process of developing high level, agency-wide Section 106 guidance, which will eventually be made available to the public in the near future.

Regarding improving the implementation of the MOU for uranium recovery facilities, the NRC disagrees with the commenters because the NRC strongly supports the collaborative effort between the NRC and the BLM to foster effective communication between the two agencies and identify agency roles and responsibilities as they relate to the exchange of information concerning uranium recovery projects. The NRC recognizes certain applications have seen benefits from the enhanced cooperation realized by the MOU. However, it is the applicant's responsibility to ensure that both the BLM and the NRC receive the appropriate information at the same time; otherwise, cooperation on an environmental document is not feasible.

In reference to comments on the expansion of performance based licensing for uranium recovery facilities, the NRC disagrees with the commenters. Each license contains a list of criteria for determining whether or not an action requires a license condition. Uranium recovery licensees routinely use these criteria successfully for performing various changes and tests. However, certain activities will always fall outside the criteria resulting in the need for a license amendment. Significant well field expansions (satellite areas) and central plant modifications, for example, will always require license amendments. In general, the performance based license condition is streamlining the oversight process.

Regarding the comments on the inefficiency of the uranium recovery licensing review process, the NRC believes it has made substantial improvements that have benefitted the industry and NRC. During the licensing review process, the staff performs rigorous internal reviews of staff hours by task after completion of regulatory actions to evaluate efficiency.

Regarding the comment on tailoring staff hour levels to risk, the NRC staff determined this action is not always possible since the NRC staff must ensure facilities comply with our regulations, regardless of the perceived risk. Therefore, regardless of risk, a certain level of effort will always be required to perform certain tasks.

Regarding the comment concerning preoperational inspections as an example of a costly activity which can be reviewed based on the risk significance of a uranium recovery facility, the NRC staff is required to ensure that a new or restarting facility will be operated in a manner that complies with the regulations and license conditions. Activities such as the preoperational inspection provide the agency with an opportunity for one ''hard look'' at an operation prior to activation to determine the viability of an operation.

Regarding the processing of new uranium recovery applicants and major expansion amendments along with licensing actions for existing licensees, the NRC established a program strategy, that prioritizes work for existing licensees over new license and major expansion reviews to maintain safety. As the NRC licenses more facilities, more resources will be needed to manage the increased workload for existing licensees. The staff will prioritize available resources to accomplish the highest priority licensing work.

Regarding the commenters' suggestions to include a provision for cost estimates for the NRC review of uranium recovery license submittals, the NRC produced a general cost estimate for the completion of three new uranium recovery application reviews. The information was presented to industry in Denver, CO, in January 2011. The NRC will continue to update this information annually, or when a new license or major amendment review has been completed.

In reference to the comments to create a schedule of costs for common tasks, the staff compiled a list of over 20 amendments and reviews typically undertaken for uranium recovery licenses. The staff determined the creation of a schedule of costs for common tasks is very complex and would require additional resources in a challenging budget environment. Consequently, the NRC staff is not undertaking this task at this time in order to maintain focus on other high priority program activities.

In general, the NRC has implemented several methods which have improved the uranium recovery licensing review process. The pre-submission audit has been useful in improving the quality of applications which helps to expedite reviews. The NRC staff now issues draft licenses instead of open issues which eliminates review time. The NRC staff also performs acceptance reviews on responses to requests for additional information (RAI) to determine whether or not a review can proceed, thereby eliminating the time spent on continuing a review with incomplete information.

Finally, the NRC believes that the uranium recovery industry also plays a role in streamlining reviews. First, submitting applications that contain all the relevant information speeds up the NRC's review process. Second, the uranium recovery industry could submit design certification requests in the form of petitions for rulemaking with designs for certain common features such as central plants, satellite plants, wells, header houses, and ponds. In this manner, an applicant can merely incorporate by reference certain approved designs instead of reproducing these designs in an application. Third, the industry can maximize the effectiveness of the RAI process by providing prompt and complete answers to the NRC staff requests. Efficient and streamlined regulation requires a team-effort. Working together, both the NRC and the industry can continue to make improvements to our regulatory processes.

There are no changes to this final rule as a result of the comments concerning the hourly rate.

2. Flat Rates

Comment. One commenter suggested the NRC should establish more flat fees for activities for uranium recovery operations in order to provide more certainty regarding fees, with the goal of moving routine activities to flat fees.

Response. The NRC disagrees with this comment. Based on past experience, the NRC believes there would be a very limited number of licensing activities that would qualify for flat fees. The 10 CFR part 170 ''flat'' license fees are fees charged for most material and import/export license applications and amendments. These fees are based on the average direct hours required to process the application or amendment, multiplied by the professional hourly rate established annually in 10 CFR part 170. The average processing time is determined through a biennial review of

actual hours associated with processing these applications or amendments, and the ''flat'' rate is subject to change based on the NRC's professional hourly rate at the time of the rulemaking. Also, most potential flat fee tasks would have a large standard deviation per activity associated with each licensee because some review can be either simple or complex, thus, an average costs would not be feasible. An example is a surety review which can be either simple to complex in nature. If the agency were to impose an upper confidence limit calculation for surety reviews, the agency would benefit at the expense of some licensees who will overpay significantly for these types of reviews. Due to the complex nature of flat fees and required resources, the NRC will not undertake this activity to remain focused on high priority work. There are no changes to this final rule as a result of this comment.

3. Lack of Invoice Detail

Comment. Commenters suggested the NRC should prepare invoices with more detail, similar to invoices prepared by industry consultants, to better understand how staff time is allocated. One commenter stated invoices should include dates and times, similar to the private sector, which would allow licensees to comprehend work performed, hours spent and completion dates. Another commenter suggested that providing the names of the NRC staff members or contractors, including billable hours incurred, would allow licensees to understand how staff time is allocated and the costs of specific activities.

Response. The NRC agrees with the commenters. The NRC currently provides information requested by commenters through its invoice documentation with the exception of project manager (PM) and inspector names, which are available upon request. There is an Activity Inspection Report supplement available that further provides the detailed information identified by the commenters. Due to the large volume of data, the Activity Inspection Report is not routinely distributed with the invoice documentation unless specifically requested by the licensee or applicant.

The invoices issued to licensees and applicants summarize costs assessed under 10 CFR part 170, which include regular and non-regular hours billed, hourly and contract costs, total amount billed in addition to the vendor name, docket number, due date, and type of license. The NRC believes the Activity Inspection Report detailing the PM and inspector names for time activity code/inspection reports including regular hours billed is sufficient to enable licensees to identify tasks performed by the NRC staff along with associated costs.

Accordingly, there are no changes to this final rule as a result of these comments.

B. Specific Part 171 Issues

1. NRC's Small Business Size Standards

Comment. One commenter suggested that the NRC make a definite commitment to use the Small Business Administration's (SBA) ''Table of Small Business Size Standards'' to define a small business as it relates to the assessment of fees by the NRC. The commenter also stated that the table matches the ''North American Industry Classification System Codes,'' and should be used government-wide to ensure consistency in definitions for businesses in terms of size, type of industry, and other means of categorization.

Response. The NRC agrees with this comment. The NRC is committed to using the SBA's ''Table of Small Business Size Standards'' to qualify licensees as small entities in its assessment of fees, and acknowledges that this table matches the ''North American Industry Classification System Codes.'' Reduced fees for small entities fall into two categories, lower-tier annual fees and maximum upper-tier annual fees, to help lessen the financial impact for small entities participating in the nuclear power industry. The NRC will continue to comply with the Small Business Act which states that unless specifically authorized by statute, no Federal department or agency may prescribe a size standard for categorizing a business concern as a small business concern, unless proposed size standards meet certain criteria and are approved by the Administrator of the SBA. The NRC is currently updating its small business size standards to comply with the SBA size standards. There are no changes to this final rule as a result of this comment.

2. Small Entity Fees

Comment. One commenter suggested that the total percentage change in all fees be spread among all of the fee classes in an effort to eliminate hardships for some licensees who are impacted by an increase in annual fees.

Response. The NRC disagrees with this comment. The NRC acknowledges that an increase in fees can be difficult for some licensees to absorb. However, the NRC must remain in compliance with the OBRA–90, as amended, which requires the NRC to recover approximately 90 percent of its budget authority in a given year by charging fees to its licensees. The NRC fee methodology calculation consists of determining, to the maximum extent practicable, the reasonable relationship between costs and the provision of regulatory services to licensees. The NRC fees are based on current year budgeted costs of activities benefitting the associated license fee classes, and best reflect the license fee class to which the costs should be assessed. For each proposed fee rulemaking, in accordance with the Regulatory Flexibility Analysis Act, the NRC must consider the impact of the rulemaking on small entities and determine the best fee methodology to compute fees that minimize compliance costs and eliminate barriers to competition. The NRC's establishment of the small entity reduced fees into two tiers, lower-tier and maximum upper-tier annual fees, continues to be a practical solution for small entities. The small entity fees are reviewed biennially to assess the financial impact for small entities and encourage competition in the nuclear power industry. There are no changes to this final rule as a result of this comment.

3. Adding Additional Tiers for Small Entities

Comment. One commenter stated that the broad revenue range for small entities' gross annual receipts encompassing $450,000 to $6,500,000 tends to advantage larger firms while burdening smaller entities. The commenter indicated that its firm's revenue is at the lower end of this range, yet its fee is the same as another entity with three or four times its gross revenue. The commenter suggested that the NRC consider establishing additional tiers of gross annual receipts that correspond to more annual license fee levels in order to lower licensing fees and thereby reduce the licensing fee burden for small entities.

Response. The NRC disagrees with this comment. The NRC believes that the two-tiered reduced annual fees method currently in place provides substantial fee relief for small entities, including those with relatively low gross receipts. A reduction in fees for small entities must be paid for by other NRC licensees in order to meet the requirements of the OBRA–90, as amended, to recover most of the NRC's budget through fees. While establishing more tiers would reduce the burden for some small entities, a further reduction in fees would result in an increase in the small entity subsidy other licensees

must pay. The NRC supports the two-tiered reduced annual fees method because it provides a reasonable balance between the objectives of the OBRA-90 and the 1980 Regulatory Flexibility Act requirement that Federal agencies examine ways to minimize the significant impacts their rules may have on a substantial number of small entities. Therefore, the current two-tiered reduced annual fees method will remain intact with modifications to conform to SBA size standards, as necessary. There are no changes to this final rule as a result of this comment.

C. Other Issues

1. Transparency in Budgeting

Comment. One commenter stated that the NRC should continue to achieve greater transparency in its budgeting by revealing planned staffing and resource needs by individual programs, particularly in the areas of defense and national interest programs that are funded by taxpayers with appropriated funds. The commenter suggested that the NRC more fully explain the decrease in budgeted resources in FY 2012, and if the agency is planning similar reductions in future years for these programs.

Response. The NRC agrees with this comment. The NRC strives for transparency and openness with internal and external stakeholders in accomplishing its mission of protecting public health and safety and the environment. Although detailed budget discussions fall outside the scope of this rulemaking, the NRC recommends commenters and others review the NUREG–1100, Volume 27, ''Congressional Budget Justification: Fiscal Year 2012'' (February 2011) (ADAMS Accession No. ML12137A853), for the NRC's budget plans for FY 2012 and beyond. There are no changes to this final rule as a result of this comment.

2. Allocation of Resources

Comment. One commenter stated that the industry is aware that the agency has $32 million in unobligated balances from prior years' appropriations that could be used to fund additional Fukushima-related work or be used to reduce licensee fees in future years. The commenter commends the NRC for supporting educational programs and suggested $15 million of the funds for education programs budgeted in FY 2012 be used to support the congressionally-authorized Integrated University Program trade school, scholarships, fellowships, and faculty development grants. The remaining funds would be utilized for curriculum development and to support nuclear technology programs at minority-serving institutions.

Response. The purposes of the proposed and final fee rulemakings are to describe, and solicit and evaluate comments on, the allocation of the NRC's budget for fee calculation purposes. The rules and supporting work papers do not address changes in budget resources, or use of prior-year funds but provide detailed information on how the fee calculations were derived in compliance with the OBRA–90 and the Consolidated Appropriations Act of 2012. Commenters and others may also review the NUREG–1100, Volume 27, ''Congressional Budget Justification: Fiscal Year 2012'' (February 2011) (ADAMS Accession No. ML12137A853) for more detailed information on the NRC's budget for FY 2012, including the activities performed by each of the programs. The NRC will continue to request from Congress only those resources necessary to operate its programs efficiently, effectively, and in compliance with its mission of protecting people and the environment, while keeping fees as low as possible for all licensees. There are no changes to this final rule as a result of this comment.

III. Final Action

The NRC assesses two types of fees to meet the requirements of OBRA–90. First, user fees, presented in 10 CFR part 170 under the authority of the IOAA, recover the NRC's costs of providing special benefits to identifiable applicants and licensees. For example, the NRC assesses these fees to cover the costs of inspections, applications for new licenses and license renewals, and requests for license amendments. Second, annual fees, presented in 10 CFR part 171 under the authority of OBRA–90, recover generic regulatory costs not otherwise recovered through 10 CFR part 170 fees. Under this rulemaking, the NRC continues the fee cost recovery principles through the adjustment of fees without changing the underlying principles of the NRC fee policy in order to ensure that the NRC continues to comply with the statutory requirements of OBRA–90, the Atomic Energy Act, and the IOAA.

On December 23, 2011, President Obama signed the Consolidated Appropriations Act of 2012, giving the NRC a total appropriation of $1,038.1 million. Accordingly, in compliance with the Atomic Energy Act of 1954, as amended, and OBRA–90, the NRC is amending its licensing, inspection, and annual fees to recover approximately 90 percent of its FY 2012 budget authority, less the appropriations for non-fee items. The amount of the NRC's required fee collections is set by law and is, therefore, outside the scope of this rulemaking.

The NRC's total budget authority for FY 2012 is $1,038.1 million. The non-fee items excluded outside of the fee base include $0.8 million for WIR activities and $26.7 million for generic homeland security activities. Based on the 90 percent fee-recovery requirement, the NRC is required to recover approximately $909.5 million in FY 2012 through 10 CFR part 170 licensing and inspection fees and through 10 CFR part 171 annual fees. This amount is $6.3 million less than the amount estimated for recovery in FY 2011, a decrease of less than 1 percent. The FY 2012 fee recovery amount is decreased by $8.5 million to account for billing adjustments (i.e., for FY 2012 invoices that the NRC estimates will not be paid during the fiscal year, less payments received in FY 2012 for prior year invoices). This leaves approximately $901 million to be billed as fees in FY 2012 through 10 CFR part 170 licensing and inspection fees and 10 CFR part 171 annual fees.

Table I summarizes the budget and fee recovery amounts for FY 2012. The FY 2011 amounts are provided for comparison purposes. (Individual values may not sum to totals due to rounding.)

TABLE I—BUDGET AND FEE RECOVERY AMOUNTS

[Dollars in millions]

	FY 2011 Final rule	FY 2012 Final rule
Total Budget Authority	$1,054.1	$1,038.1
Less Non-Fee Items	−36.5	−27.5
Balance	$1,017.6	$1,010.6
Fee Recovery Rate for FY 2012	90%	90%
Total Amount to be Recovered for FY 2012	$915.8	$909.5
10 CFR Part 171 Billing Adjustments:		
Unpaid Current Year Invoices (estimated)	3.0	2.3
Less Payments Received in Current Year for Previous Year Invoices (estimated)	−2.6	−10.8
Subtotal	0.4	−8.5
Amount to be Recovered through 10 CFR Parts 170 and 171 Fees	$916.2	$901.0
Less Estimated 10 CFR Part 170 Fees	−369.3	−345.2
10 CFR Part 171 Fee Collections Required	$546.9	$555.8

In this final fee rule, the NRC amends fees for power reactors, non-power reactors, uranium recovery facilities, most fuel facilities, some small materials users, and the U.S. Department of Energy's (DOE) transportation license. The 10 CFR part 170 fees also decrease by $26.2 million from the proposed fee rule estimate of $371.4 million primarily due to a reduction in licensing actions. As a result of this change, the total annual fees for operating reactors increase by $25.1 million and fuel facilities increase by $1 million in this final rule. In general, the percentage changes in most annual fees compared to the previous year are relatively small due to a decrease in the NRC's appropriation as compared to FY 2011. The FY 2012 appropriation also resulted in a small increase to the average full-time equivalent (FTE) rate that is used to calculate the budget allocation to each of the fee classes and fee-relief activities in the final fee rule.

The NRC estimates that $345.2 million will be recovered from 10 CFR part 170 fees under this final fee rule. This represents a decrease of approximately 7.0 percent as compared to the actual 10 CFR part 170 collections of $369.3 million in FY 2011. The NRC derived the FY 2012 estimate of 10 CFR part 170 fee collections from the latest billing data available for each license fee class, with adjustments to account for changes in the NRC's FY 2012 budget, as appropriate. The remaining $555.8 million is to be recovered through the 10 CFR part 171 annual fees in FY 2012, which is an increase of approximately 1.6 percent compared to actual 10 CFR part 171 collections of $546.9 million for FY 2011. The change for each class of licensees affected is discussed in Section III.B.3 of this document.

The FY 2012 final fee rule is a ''major rule'' as defined by the Congressional Review Act of 1996 (5 U.S.C. 801–808). Therefore, the NRC's fee schedules for FY 2012 will become effective 60 days after publication of the final rule in the **Federal Register**. The NRC will send an invoice for the amount of the annual fee to reactor licensees, 10 CFR part 72 licensees, major fuel cycle facilities, and other licensees with annual fees of $100,000 or more upon publication of the FY 2012 final rule. For these licensees, payment is due on the effective date of the FY 2012 final rule. Because these licensees are billed quarterly, the payment due is the amount of the total FY 2012 annual fee, less payments made in the first three quarters of the fiscal year.

Materials licensees with annual fees of less than $100,000 are billed annually. Those materials licensees whose license anniversary date during FY 2012 falls before the effective date of the FY 2012 final rule will be billed for the annual fee during the anniversary month of the license at the FY 2011 annual fee rate. Those materials licensees whose license anniversary date falls on or after the effective date of the FY 2012 final rule will be billed for the annual fee at the FY 2012 annual fee rate during the anniversary month of the license, and payment will be due on the date of the invoice.

The NRC is amending 10 CFR parts 170 and 171 as discussed in Section III.A and III.B of this document.

A. Amendments to Title 10 of the Code of Federal Regulations (10 CFR) Part 170: Fees for Facilities, Materials, Import and Export Licenses, and Other Regulatory Services Under the Atomic Energy Act of 1954, as Amended

For FY 2012, the NRC increased the hourly rate to recover the full cost of activities under the 10 CFR part 170 and used this rate to calculate ''flat'' application fees.

The NRC is making the following changes:

1. Hourly Rate

The NRC's hourly rate is used in assessing full cost fees for specific services provided, as well as flat fees for certain application reviews. The NRC increased the FY 2012 hourly rate to $274. This rate would be applicable to all activities for which fees are assessed under §§ 170.21 and 170.31.

The FY 2012 hourly rate is less than one percent higher than the FY 2011 hourly rate of $273. The increase in the hourly rate is due primarily to higher agency direct budgeted resources, partially offset by a small increase in the number of direct FTEs. The following paragraphs described the hourly rate calculation in further detail.

The NRC's hourly rate is derived by dividing the sum of recoverable budgeted resources for (1) Mission direct program salaries and benefits; (2) mission indirect program support; and (3) agency corporate support and the Inspector General (IG), by mission direct FTE hours. The mission direct FTE hours are the product of the mission direct FTE multiplied by the hours per direct FTE. The only budgeted resources

excluded from the hourly rate are those for contract activities related to mission direct and fee-relief activities.

For FY 2012, the NRC used 1,371 hours per direct FTE, the same amount as FY 2011, to calculate the hourly fees. The NRC has reviewed data from its time and labor system to determine if the annual direct hours worked per direct FTE estimate requires updating for the FY 2012 fee rule. Based on this review of the most recent data available, the NRC determined that 1,371 hours is the best estimate of direct hours worked annually per direct FTE. This estimate excludes all indirect activities such as training, general administration, and leave.

Table II shows the results of the hourly rate calculation methodology. The FY 2011 amounts are provided for comparison purposes. (Individual values may not sum to totals due to rounding.)

TABLE II—HOURLY RATE CALCULATION

	FY 2011 Final rule	FY 2012 Final rule
Mission Direct Program Salaries & Benefits	$337.4	$349.9
Mission Indirect Program Support	25.9	25.9
Agency Corporate Support, and the IG	474.1	472.3
Subtotal	837.4	848.0
Less Offsetting Receipts	−0.0	−0.0
Total Budget Included in Hourly Rate (Millions of Dollars)	837.4	848.0
Mission Direct FTEs (Whole numbers)	2,236	2,258
Professional Hourly Rate (Total Budget Included in Hourly Rate divided by Mission Direct FTE Hours) (Whole Numbers)	273	274

As shown in Table II, dividing the FY 2012 $848 million budget amount included in the hourly rate by total mission direct FTE hours (2,258 FTE times 1,371 hours) results in an hourly rate of $274. The hourly rate is rounded to the nearest whole dollar.

2. Flat Application Fee Changes

The NRC adjusted the current flat application fees in §§ 170.21 and 170.31 to reflect the revised hourly rate of $274, an increase of $1 from FY 2011. These flat fees are calculated by multiplying the average professional staff hours needed to process the licensing actions by the professional hourly rate for FY 2012. The agency estimates the average professional staff hours needed to process licensing actions every other year as part of its biennial review of fees performed in compliance with the Chief Financial Officers Act of 1990. The NRC last performed this review as part of the FY 2011 fee rulemaking. The higher hourly rate of $274 is the primary reason for the increase in application fees.

The amounts of the materials licensing flat fees are rounded so that the fees would be convenient to the user and the effects of rounding would be minimal. Fees under $1,000 are rounded to the nearest $10, fees that are greater than $1,000 but less than $100,000 are rounded to the nearest $100, and fees that are greater than $100,000 are rounded to the nearest $1,000.

The licensing flat fees are applicable for fee categories K.1. through K.5. of § 170.21, and fee categories 1.C., 1.D., 2.B., 2.C., 3.A. through 3.S., 4.B. through 9.D., 10.B., 15.A. through 15.R., and 16 of § 170.31 of flat fee categories. Applications filed on or after the effective date of the FY 2012 final fee rule would be subject to the revised fees in the final rule.

3. Administrative Amendments

This rule is making administrative changes for clarity as follows:

a. § 170.21, fee category G, change the title for the description from ''Other Production and Utilization Facility'' to read ''Other Production or Utilization Facility.''

b. § 170.31, revise fee schedule. Under 10 CFR part 170, the descriptions for categories 14.A. and 14.B. are revised to add the phrase ''including MMLs'' in order to capture work activities outside of the category 17 description involving decommissioning actions and activities for master material license (MML) agencies (i.e., U.S. Department of Veteran Affairs, U.S. Navy, U.S. Air Force) and the fees are subject to full cost. This methodology ensures equitable fee distribution among licensees by charging the full cost for services over and above routine oversight activities to specific MMLs while minimizing the financial impact of annual fee distribution for all MMLs for the next biennial review.

c. Revises import and export licensing descriptions and correctly places them under 10 CFR part 170. The import and export licensing fee descriptions are updated for 15.F., 15.G., 15.J., 15.K., and 15.H. for clarity of the rule. This rule also further revises descriptions in sections 15.F., 15.G. and 15.H. from the FY 2012 proposed fee rule, in addition to Category 2.K. and Minor amendments section, for clarity of the rule.

In summary, the NRC is making the following changes to 10 CFR part 170:

1. Establishes a revised professional hourly rate to use in assessing fees for specific services;

2. Revises the license application fees to reflect the FY 2012 hourly rate; and

3. Makes administrative changes to §§ 170.21 and 170.31.

B. Amendments to 10 CFR Part 171: Annual Fees for Reactor Licenses and Fuel Cycle Licenses and Materials Licenses, Including Holders of Certificates of Compliance, Registrations, and Quality Assurance Program Approvals and Government Agencies Licensed by the NRC

The NRC will use its fee-relief surplus to decrease all licensees' annual fees based on their percentage share of the fee recoverable budget authority. This rulemaking also makes changes to the number of NRC licensees and establishes rebaselined annual fees based on Public Law 112–10. The amendments are described as follows:

1. Application of Fee-Relief and Low-Level Waste (LLW) Surcharge

The NRC will use its fee-relief surplus to decrease all licensees' annual fees, based on their percentage share of the budget. The NRC will apply the 10 percent of its budget that is excluded from fee recovery under OBRA–90, as amended (fee relief), to offset the total

budget allocated for activities that do not directly benefit current NRC licensees. The budget for these fee-relief activities is totaled and then reduced by the amount of the NRC's fee relief. Any difference between the fee-relief and the budgeted amount of these activities results in a fee-relief adjustment (increase or decrease) to all licensees' annual fees, based on their percentage share of the budget, which is consistent with the existing fee methodology.

The FY 2012 budgetary resources for the NRC's fee-relief activities are $91.1 million. The NRC's 10 percent fee-relief amount in FY 2012 is $101.1 million, leaving a $10 million fee-relief surplus that will reduce all licensees' annual fees based on their percentage share of the budget. The FY 2012 budget for fee-relief activities is lower than FY 2011, primarily due to a decrease in budgeted resources for nonprofit educational exemptions, international activities support for agreement states licensees and generic decommissioning reclamation activities. Also, the NRC has included medical isotope production under fee relief categories to capture program activity for medical isotope production facilities for regulatory basis development. The FY 2012 NRC medical isotope budget of approximately $3 million is not attributable to existing NRC licensees. The funding for this activity along with other activities not attributable to existing NRC licensees will be offset by the agency's 10 percent appropriation. These values are shown in Table III. The FY 2011 amounts are provided for comparison purposes. (Individual values may not sum to totals due to rounding.)

TABLE III—FEE-RELIEF ACTIVITIES

[Dollars in millions]

Fee-relief activities	FY 2011 Budgeted costs	FY 2012 Budgeted costs
1. Activities not attributable to an existing NRC licensee or class of licensee:		
a. International activities	$15.1	$9.0
b. Agreement State oversight	14.1	11.0
c. Scholarships and Fellowships	11.5	16.8
d. Medical Isotope Production	N/A	3.4
2. Activities not assessed 10 CFR part 170 licensing and inspection fees or 10 CFR part 171 annual fees based on existing law or Commission policy:		
a. Fee exemption for nonprofit educational institutions	13.3	11.2
b. Costs not recovered from small entities under 10 CFR 171.16(c)	5.6	6.5
c. Regulatory support to Agreement States	18.0	17.5
d. Generic decommissioning/reclamation (not related to the power reactor and spent fuel storage fee classes)	16.6	14.0
e. *In Situ* leach rulemaking and unregistered general licensees	1.2	1.7
Total fee-relief activities	95.4	91.1
Less 10 percent of NRC's FY 2011 total budget (less non-fee items)	−101.8	−101.1
Fee-Relief Adjustment to be Allocated to All Licensees' Annual Fees	−6.4	−10.0

Table IV shows how the NRC will allocate the $10 million fee-relief surplus adjustment to each license fee class. As explained previously, the NRC is allocating this fee-relief adjustment to each license fee class based on the percent of the budget for that fee class compared to the NRC's total budget. The fee-relief surplus adjustment is subtracted from the required annual fee recovery for each fee class.

Separately, the NRC has continued to allocate the LLW surcharge based on the volume of LLW disposal of three classes of licenses: Operating reactors, fuel facilities, and materials users. Because LLW activities support NRC licensees, the costs of these activities are recovered through annual fees. In FY 2012, this allocation percentage was updated based on review of recent data which reflects the change in the support to the various fee classes. The allocation percentage of LLW surcharge decreased for operating reactors and increased for fuel facilities and materials users compared to FY 2011.

Table IV also shows the allocation of the LLW surcharge activity. For FY 2012, the total budget allocated for LLW activity is $3.9 million. (Individual values may not sum to totals due to rounding.)

TABLE IV—ALLOCATION OF FEE-RELIEF ADJUSTMENT AND LLW SURCHARGE, FY 2012

[Dollars in millions]

	LLW Surcharge		Fee-relief adjustment		Total
	Percent	$	Percent	$	$
Operating Power Reactors	60.0	2.3	86.0	−8.6	−6.3
Spent Fuel Storage/Reactor Decommissioning			3.3	−0.3	−0.3
Research and Test Reactors			0.2	0.0	0.0
Fuel Facilities	32.0	1.2	6.1	−0.6	0.6
Materials Users	9.0	0.3	2.8	−0.3	0.0
Transportation			0.5	−0.1	−0.0
Uranium Recovery			1.0	−0.1	−0.1
Total	100.0	3.9	100.0	−10.0	−6.1

2. Revised Annual Fees

The NRC revised its annual fees in §§ 171.15 and 171.16 for FY 2012 to recover approximately 90 percent of the NRC's FY 2012 budget authority, after subtracting the non-fee amounts and the estimated amount to be recovered through 10 CFR part 170 fees. The 10 CFR part 170 collections estimate for this final rule is $345.2 million, a decrease of $24.1 million from the FY 2011 fee rule. The total amount to be recovered through annual fees for this final rule is $555.8 million, an increase of $26.2 million from the FY 2012 proposed fee rule due to a decrease in 10 CFR part 170 estimates compared to the proposed rule. The Commission has determined (71 FR 30721; May 30, 2006) that the agency should proceed with a presumption in favor of rebaselining when calculating annual fees each year. Under this method, the NRC's budget is analyzed in detail, and budgeted resources are allocated to fee classes and categories of licensees. The Commission expects that for most years there will be budgetary and other changes that warrant the use of the rebaselining method.

As compared with the FY 2011 annual fees, the FY 2012 final rebaselined fees are lower for two classes of licensees, spent fuel storage/reactors decommissioning facilities and research and test reactors and higher for operating reactors and fuel facilities. Within the uranium recovery fee class, the annual fees decrease for most licensees. The annual fee increases for most fee categories in the materials users' fee class.

The NRC's total fee recoverable budget, as mandated by law, is $6.3 million lower in FY 2012 as compared with FY 2011. The FY 2012 budget was allocated to the fee classes that the budgeted activities support. The decrease is primarily due to the lower FY 2012 budget supporting the operating reactors, spent fuel storage, research and test reactors, fuel facilities partially offset by higher FY 2012 budget for uranium recovery facilities and material users.

The factors affecting all annual fees include the distribution of budgeted costs to the different classes of licenses (based on the specific activities the NRC will perform in FY 2012), the estimated 10 CFR part 170 collections for the various classes of licenses, and allocation of the fee-relief surplus adjustment to all fee classes. The percentage of the NRC's budget not subject to fee recovery remained at 10 percent from FY 2011 to FY 2012.

Table V shows the rebaselined fees for FY 2012 for a representative list of categories of licensees. The FY 2011 amounts are provided for comparison purposes. (Individual values may not sum to totals due to rounding.)

TABLE V—REBASELINED ANNUAL FEES

Class/category of licenses	FY 2011 Annual fee	FY 2012 Annual fee
Operating Power Reactors (Including Spent Fuel Storage/Reactor Decommissioning Annual Fee)	$4,673,000	$4,766,000
Spent Fuel Storage/Reactor Decommissioning	241,000	211,000
Research and Test Reactors (Nonpower Reactors)	86,300	34,700
High Enriched Uranium Fuel Facility	6,085,000	6,329,000
Low Enriched Uranium Fuel Facility	2,290,000	2,382,000
UF_6 Conversion Facility	1,243,000	1,293,000
Conventional Mills	32,300	23,600
Typical Materials Users:		
Radiographers (Category 3O)	25,700	25,900
Well Loggers (Category 5A)	10,000	10,200
Gauge Users (Category 3P)	4,800	4,900
Broad Scope Medical (Category 7B)	45,400	46,100

The work papers that support this final rule show in detail the allocation of the NRC's budgeted resources for each class of licenses and how the fees are calculated. The work papers are available as indicated in Section V, Availability of Documents, of this document.

Paragraphs a. through h. of this section describe budgetary resources allocated to each class of licenses and the calculations of the rebaselined fees. Individual values in the tables presented in this section may not sum to totals due to rounding.

a. Fuel Facilities

The FY 2012 budgeted costs to be recovered in the annual fees assessment to the fuel facility class of licenses (which includes licensees in fee categories 1.A.(1)(a), 1.A.(1)(b), 1.A.(2)(a), 1.A.(2)(b), 1.A.(2)(c), 1.E., and 2.A.(1), under § 171.16) are approximately $29 million. This value is based on the full cost of budgeted resources associated with all activities that support this fee class, which is reduced by estimated 10 CFR part 170 collections and adjusted for allocated generic transportation resources and fee-relief. In FY 2012, the LLW surcharge for fuel facilities is added to the allocated fee-relief adjustment (see Table IV in Section III.B.1, ''Application of Fee-Relief and Low-Level Waste Surcharge,'' of this document). The summary calculations used to derive this value are presented in Table VI for FY 2012, with FY 2011 values shown for comparison. (Individual values may not sum to totals due to rounding.)

TABLE VI—ANNUAL FEE SUMMARY CALCULATIONS FOR FUEL FACILITIES

[Dollars in millions]

Summary fee calculations	FY 2011 Final	FY 2012 Final
Total budgeted resources	$55.7	$54.4
Less estimated 10 CFR part 170 receipts	−26.6	−25.6

TABLE VI—ANNUAL FEE SUMMARY CALCULATIONS FOR FUEL FACILITIES—Continued

[Dollars in millions]

Summary fee calculations	FY 2011 Final	FY 2012 Final
Net 10 CFR part 171 resources	29.1	28.8
Allocated generic transportation	+0.6	+0.9
Fee-relief adjustment/LLW surcharge	+0.3	+0.6
Billing adjustments	−0.0	−0.5
Total required annual fee recovery	30.1	29.7

The decrease in total budgeted resources allocated to this fee class from FY 2011 to FY 2012 is primarily due to a reduction in licensing amendments and rulemakings. The annual fee for fuel facilities in the final rule increased compared to the proposed rule due to a lower 10 CFR part 170 estimate for FY 2012 related to reduced licensing actions. Moreover, termination of two licenses resulted in spreading of costs to other fee categories. The NRC allocates the total required annual fee recovery amount to the individual fuel facility licensees, based on the effort/fee determination matrix developed for the FY 1999 final fee rule (64 FR 31447; June 10, 1999). In the matrix included in the publicly available NRC work papers, licensees are grouped into categories according to their licensed activities (i.e., nuclear material enrichment, processing operations, and material form) and the level, scope, depth of coverage, and rigor of generic regulatory programmatic effort applicable to each category from a safety and safeguards perspective. This methodology can be applied to determine fees for new licensees, current licensees, licensees in unique license situations, and certificate holders.

This methodology is adaptable to changes in the number of licensees or certificate holders, licensed or certified material and/or activities, and total programmatic resources to be recovered through annual fees. When a license or certificate is modified, it may result in a change of category for a particular fuel facility licensee, as a result of the methodology used in the fuel facility effort/fee matrix. Consequently, this change may also have an effect on the fees assessed to other fuel facility licensees and certificate holders. For example, if a fuel facility licensee amends its license/certificate (e.g., decommissioning or license termination) that results in it not being subject to 10 CFR part 171 costs applicable to the fee class, then the budgeted costs for the safety and/or safeguards components will be spread among the remaining fuel facility licensees/certificate holders.

The methodology is applied as follows. First, a fee category is assigned, based on the nuclear material and activity authorized by license or certificate. Although a licensee/certificate holder may elect not to fully use a license/certificate, the license/certificate is still used as the source for determining authorized nuclear material possession and use/activity. Second, the category and license/certificate information are used to determine where the licensee/certificate holder fits into the matrix. The matrix depicts the categorization of licensees/certificate holders by authorized material types and use/activities.

Each year, the NRC's fuel facility project managers and regulatory analysts determine the level of effort associated with regulating each of these facilities. This is done by assigning, for each fuel facility, separate effort factors for the safety and safeguards activities associated with each type of regulatory activity. The matrix includes ten types of regulatory activities, including enrichment and scrap/waste-related activities (see the work papers for the complete list). Effort factors are assigned as follows: One (low regulatory effort), five (moderate regulatory effort), and ten (high regulatory effort). The NRC then totals separate effort factors for safety and safeguard activities for each fee category.

The effort factors for the various fuel facility fee categories are summarized in Table VII. The value of the effort factors shown, as well as the percent of the total effort factor for all fuel facilities, reflects the total regulatory effort for each fee category (not per facility). In FY 2012, the total effort factors for the Limited Operations fee category are being zeroed because the licenses in this fee category were terminated. This results in spreading of costs to other fee categories. The Uranium Enrichment fee category factors have shifted with minimal increases and decreases between safety and safeguards factors compared to FY 2011.

TABLE VII—EFFORT FACTORS FOR FUEL FACILITIES, FY 2012

Facility type (fee category)	Number of facilities	Effort factors (percent of total)	
		Safety	Safeguards
High Enriched Uranium Fuel (1.A.(1)(a))	2	89 (38.5)	97 (47.0)
Low Enriched Uranium Fuel (1.A.(1)(b))	3	70 (30.3)	35 (17.0)
Limited Operations (1.A.(2)(a))	0	0 (0.0)	0 (0.0)
Gas Centrifuge Enrichment Demonstration (1.A.(2)(b))	1	3 (1.3)	15 (7.3)
Hot Cell (1.A.(2)(c))	1	6 (2.6)	3 (1.5)
Uranium Enrichment (1.E)	2	51 (22.1)	49 (23.8)
UF_6 Conversion (2.A.(1))	1	12 (5.2)	7 (3.4)

For FY 2012, the total budgeted resources for safety activities, before the fee-relief adjustment is made, are $15.4 million. This amount is allocated to each fee category based on its percent of the total regulatory effort for safety activities. For example, if the total effort factor for safety activities for all fuel facilities is 100, and the total effort factor for safety activities for a given fee category is 10, that fee category will be allocated 10 percent of the total budgeted resources for safety activities. Similarly, the budgeted resources amount of $13.7 million for safeguards activities is allocated to each fee category based on its percent of the total regulatory effort for safeguards activities. The fuel facility fee class' portion of the fee-relief adjustment $0.6 million is allocated to each fee category based on its percent of the total regulatory effort for both safety and safeguards activities. The annual fee per licensee is then calculated by dividing the total allocated budgeted resources for the fee category by the number of licensees in that fee category. The fee (rounded) for each facility is summarized in Table VIII.

TABLE VIII—ANNUAL FEES FOR FUEL FACILITIES

Facility type (fee category)	FY 2012 Final annual fee
High Enriched Uranium Fuel (1.A.(1)(a))	$6,329,000
Low Enriched Uranium Fuel (1.A.(1)(b))	2,382,000
Limited Operations Facility (1.A.(2)(a))	0
Gas Centrifuge Enrichment Demonstration (1.A.(2)(b))	1,225,000
Hot Cell (and others) (1.A.(2)(c))	612,000
Uranium Enrichment (1.E.)	3,403,000
UF_6 Conversion (2.A.(1))	1,293,000

b. Uranium Recovery Facilities

The total FY 2012 budgeted costs to be recovered through annual fees assessed to the uranium recovery class (which includes licensees in fee categories 2.A.(2)(a), 2.A.(2)(b), 2.A.(2)(c), 2.A.(2)(d), 2.A.(2)(e), 2.A.(3), 2.A.(4), 2.A.(5) and 18.B., under § 171.16) are approximately $1 million. The derivation of this value is shown in Table IX, with FY 2011 values shown for comparison purposes.

TABLE IX—ANNUAL FEE SUMMARY CALCULATIONS FOR URANIUM RECOVERY FACILITIES

[Dollars in millions]

Summary fee calculations	FY 2011 Final	FY 2012 Final
Total budgeted resources	$7.15	$9.52
Less estimated 10 CFR part 170 receipts	−$6.09	−8.30
Net 10 CFR part 171 resources	1.06	1.22
Allocated generic transportation	N/A	N/A
Fee-relief adjustment	−0.05	−0.1
Billing adjustments	0.00	−0.00
Total required annual fee recovery	1.01	1.03

The increase in total budgeted resources allocated to this fee class from FY 2011 is primarily due to increased support of licensing activities for new applications and DOE's Title I licensing activities underestimated 10 CFR part 170 collections.

Since FY 2002, the NRC has computed the annual fee for the uranium recovery fee class by allocating the total annual fee amount for this fee class between the DOE and the other licensees in this fee class. The NRC regulates DOE's Title I and Title II activities under the Uranium Mill Tailings Radiation Control Act (UMTRCA). The Congress established the two programs, Title I and Title II under UMTRCA, to protect the public and the environment from uranium milling. The UMTRCA Title I program is for remedial action at abandoned mill tailings sites where tailings resulted largely from production of uranium for the weapons program. The NRC also regulates DOE's UMTRCA Title II program, which is directed toward uranium mill sites licensed by the NRC or Agreement States in or after 1978.

In FY 2012, the annual fee assessed to DOE includes recovery of the costs specifically budgeted for the NRC's UMTRCA Title I activities, plus 10 percent of the remaining annual fee amount, including generic/other costs (minus 10 percent of the fee relief adjustment), for the uranium recovery class. The NRC assesses the remaining 90 percent generic/other costs minus 90 percent of the fee relief adjustment, to the other NRC licensees in this fee class that are subject to annual fees.

The costs to be recovered through annual fees assessed to the uranium recovery class are shown in Table X.

TABLE X—COSTS RECOVERED THROUGH ANNUAL FEES; URANIUM RECOVERY FEE CLASS

DOE Annual Fee Amount (UMTRCA Title I and Title II) general licenses:	
UMTRCA Title I budgeted costs less 10 CFR part 170 receipts	$751,298
10 percent of generic/other uranium recovery budgeted costs	38,509
10 percent of uranium recovery fee-relief adjustment	−10,464

TABLE X—COSTS RECOVERED THROUGH ANNUAL FEES; URANIUM RECOVERY FEE CLASS—Continued

Total Annual Fee Amount for DOE (rounded)	779,000
Annual Fee Amount for Other Uranium Recovery Licenses:	
90 percent of generic/other uranium recovery budgeted costs less the amounts specifically budgeted for Title I activities	346,577
90 percent of uranium recovery fee-relief adjustment	−94,176
Total Annual Fee Amount for Other Uranium Recovery Licenses	252,401

The DOE fee increases by 1 percent in FY 2012 compared to FY 2011 due to slightly higher budgeted resources for UMTRCA Title I activities. The annual fee for other uranium recovery licensees decreases in FY 2012.

The NRC will continue to use a matrix which is included in the work papers (ADAMS Accession No. ML12040A341) to determine the level of effort associated with conducting the generic regulatory actions for the different (non-DOE) licensees in this fee class. The weights derived in this matrix are used to allocate the approximately $252,000 annual fee amount to these licensees. The use of this uranium recovery annual fee matrix was established in the FY 1995 final fee rule (60 FR 32217; June 20, 1995). The FY 2012 matrix is described as follows.

First, the methodology identifies the categories of licenses included in this fee class (besides DOE). These categories are conventional uranium mills and heap leach facilities, uranium *In Situ* Recovery (ISR) and resin ISR facilities mill tailings disposal facilities (11e.(2) disposal facilities), and uranium water treatment facilities.

Second, the matrix identifies the types of operating activities that support and benefit these licensees. The activities related to generic decommissioning/reclamation are not included in the matrix because they are included in the fee-relief activities. Therefore, they are not a factor in determining annual fees. The activities included in the matrix are operations, waste operations, and groundwater protection. The relative weight of each type of activity is then determined, based on the regulatory resources associated with each activity. The operations, waste operations, and groundwater protection activities have weights of 0, 5, and 10, respectively, in the matrix.

Each year, the NRC determines the level of benefit to each licensee for generic uranium recovery program activities for each type of generic activity in the matrix. This is done by assigning, for each fee category, separate benefit factors for each type of regulatory activity in the matrix. Benefit factors are assigned on a scale of 0 to 10 as follows: zero (no regulatory benefit), five (moderate regulatory benefit), and ten (high regulatory benefit). These benefit factors are first multiplied by the relative weight assigned to each activity (described previously). The NRC then calculates total and per licensee benefit factors for each fee category. These benefit factors thus reflect the relative regulatory benefit associated with each licensee and fee category.

The benefit factors per licensee and per fee category, for each of the non-DOE fee categories included in the uranium recovery fee class, are as follows:

TABLE XI—BENEFIT FACTORS FOR URANIUM RECOVERY LICENSES

Fee category	Number of licensees	Benefit factor per licensee	Total value	Benefit factor percent total
Conventional and Heap Leach mills (2.(A).2.a.)	1	150	150	9
Basic *In Situ* Recovery facilities (2.(A).2.b.)	5	190	950	59
Expanded *In Situ* Recovery facilities (2.(A).2.c.)	1	215	215	13
In Situ Recovery Resin facilities (2.(A).2.d.)	1	180	180	11
11e.(2) disposal incidental to existing tailings sites (2.(A).4.)	1	65	65	4
Uranium water treatment (2.(A).5.)	1	45	45	3
			1,605	

Applying these factors to the approximately $252,000 in budgeted costs to be recovered from non-DOE uranium recovery licensees results in the total annual fees for each fee category. The annual fee per licensee is calculated by dividing the total allocated budgeted resources for the fee category by the number of licensees in that fee category, as summarized in Table XII:

TABLE XII—ANNUAL FEES FOR URANIUM RECOVERY LICENSEES

[Other than DOE]

Facility type (fee category)	FY 2012 Final annual fee
Conventional and Heap Leach mills (2.A.(2)(a))	$23,600
Basic *In Situ* Recovery facilities (2.A.(2)(b))	29,900
Expanded *In Situ* Recovery facilities (2.A.(2)(c))	33,800
In Situ Recovery Resin facilities (2.A.(2)(d))	28,300
11e.(2) disposal incidental to existing tailings sites (2.A.(4))	10,200
Uranium water treatment (2.A.(5))	7,100

c. Operating Power Reactors

The $473.7 million in budgeted costs to be recovered through FY 2012 annual fees assessed to the power reactor class was calculated as shown in Table XIII. The FY 2011 values are shown for comparison. (Individual values may not sum to totals due to rounding.)

TABLE XIII—ANNUAL FEE SUMMARY CALCULATIONS FOR OPERATING POWER REACTORS

[Dollars in millions]

Summary fee calculations	FY 2011 Final	FY 2012 Final
Total budgeted resources	$783.6	$781.4
Less estimated 10 CFR part 170 receipts	−320.6	−295.5
Net 10 CFR part 171 resources	463.0	486.0
Allocated generic transportation	+0.9	+1.3
Fee-relief adjustment/LLW surcharge	−3.4	−6.3
Billing adjustments	0.4	−7.3
Total required annual fee recovery	460.9	473.7

The annual fee for power reactors increase in FY 2012 compared to FY 2011 due to higher fee-relief adjustments/LLW surcharges and billing adjustments compared to FY 2011. The budgeted costs to be recovered through annual fees to power reactors are divided equally among the 104 power reactors licensed to operate, resulting in an FY 2012 annual fee of $4,555,000 per reactor. Additionally, each power reactor licensed to operate would be assessed the FY 2012 spent fuel storage/reactor decommissioning annual fee of $211,000. The total FY 2012 annual fee is $4,766,000 for each power reactor licensed to operate. The annual fees for power reactors are presented in § 171.15.

d. Spent Fuel Storage/Reactors in Decommissioning

For FY 2012, budgeted costs of $25.9 million for spent fuel storage/reactor decommissioning are to be recovered through annual fees assessed to 10 CFR part 50 power reactors, and to 10 CFR part 72 licensees who do not hold a 10 CFR part 50 license. Those reactor licensees that have ceased operations and have no fuel onsite are not subject to these annual fees. Table XIV shows the calculation of this annual fee amount. The FY 2011 values are shown for comparison. (Individual values may not sum to totals due to rounding.)

TABLE XIV—ANNUAL FEE SUMMARY CALCULATIONS FOR THE SPENT FUEL STORAGE/REACTOR IN DECOMMISSIONING FEE CLASS

[Dollars in millions]

Summary fee calculations	FY 2011 Final	FY 2012 Final
Total budgeted resources	$33.4	$29.4
Less estimated 10 CFR part 170 receipts	−4.0	−3.6
Net 10 CFR part 171 resources	29.4	25.8
Allocated generic transportation	+0.5	+0.7
Fee-relief adjustment	−0.2	−0.3
Billing adjustments	0.0	−0.3
Total required annual fee recovery	29.7	22.9

The value of total budgeted resources for this fee class is lower in FY 2012 than in FY 2011, due to decreased budgeted resources for spent fuel storage licensing and certification activities, higher fee-relief surplus and billing adjustment, and underestimated 10 CFR part 170 collections. The required annual fee recovery amount is divided equally among 123 licensees, resulting in an FY 2012 annual fee of $211,000 per licensee.

e. Research and Test Reactors (Nonpower Reactors)

Approximately $139,000 in budgeted costs is to be recovered through annual fees assessed to the research and test reactor class of licenses for FY 2012. Table XV summarizes the annual fee calculation for research and test reactors for FY 2012. The FY 2011 values are shown for comparison. (Individual values may not sum to totals due to rounding.)

TABLE XV—ANNUAL FEE SUMMARY CALCULATIONS FOR RESEARCH AND TEST REACTORS

[Dollars in millions]

Summary fee calculations	FY 2011 Final	FY 2012 Final
Total budgeted resources	$1.87	$1.68
Less estimated 10 CFR part 170 receipts	−1.54	−1.54
Net 10 CFR part 171 resources	0.33	0.14
Allocated generic transportation	+0.02	+0.03

TABLE XV—ANNUAL FEE SUMMARY CALCULATIONS FOR RESEARCH AND TEST REACTORS—Continued

[Dollars in millions]

Summary fee calculations	FY 2011 Final	FY 2012 Final
Fee-relief adjustment	−0.01	−0.05
Billing adjustments	0.00	−0.02
Total required annual fee recovery	0.35	0.13

The decrease in annual fees from FY 2011 to FY 2012 is primarily due to decreased budgetary resources for nonbillable power reactors. The required annual fee recovery amount is divided equally among the four research and test reactors subject to annual fees and results in an FY 2012 annual fee of $34,700 for each licensee.

f. Rare Earth Facilities

The agency does not anticipate receiving an application for a rare earth facility this fiscal year, so no budgeted resources are allocated to this fee class, and no annual fee will be published in FY 2012.

g. Materials Users

For FY 2012, budget costs of $30.4 million for material users are to be recovered through annual fees assessed to 10 CFR part 30 licensees. Table XVI shows the calculation of the FY 2012 annual fee amount for materials users' licensees. The FY 2011 values are shown for comparison. Note the following fee categories under § 171.16 are included in this fee class: 1.C., 1.D., 2.B., 2.C., 3.A. through 3.S., 4.A. through 4.C., 5.A., 5.B., 6.A., 7.A. through 7.C., 8.A., 9.A. through 9.D., 16, and 17. (Individual values may not sum to totals due to rounding.)

TABLE XVI—ANNUAL FEE SUMMARY CALCULATIONS FOR MATERIALS USERS

[Dollars in millions]

Summary fee calculations	FY 2011 Final	FY 2012 Final
Total budgeted resources	$30.0	$30.6
Less estimated 10 CFR part 170 receipts	−1.6	−1.6
Net 10 CFR part 171 resources	28.5	29.0
Allocated generic transportation	+1.0	+1.5
Fee-relief adjustment/LLW surcharge	−0.0	+0.1
Billing adjustments	−0.0	−0.2
Total required annual fee recovery	29.5	30.4

The total required annual fees to be recovered from materials licensees increase in FY 2012, mainly because of increases in the budgeted resources allocated to this fee class for oversight activities and a higher LLW surcharge partially offset by higher billing adjustments compared to FY 2011. Annual fees for most fee categories within the materials users' fee class increase.

To equitably and fairly allocate the $30.4 million in FY 2012 budgeted costs to be recovered in annual fees assessed to the approximately 3,000 diverse materials users licensees, the NRC will continue to base the annual fees for each fee category within this class on the 10 CFR part 170 application fees and estimated inspection costs for each fee category. Because the application fees and inspection costs are indicative of the complexity of the license, this approach continues to provide a proxy for allocating the generic and other regulatory costs to the diverse categories of licenses based on the NRC's cost to regulate each category. This fee calculation also continues to consider the inspection frequency (priority), which is indicative of the safety risk and resulting regulatory costs associated with the categories of licenses.

The annual fee for these categories of materials users' licenses is developed as follows: Annual fee = Constant × [Application Fee + (Average Inspection Cost divided by Inspection Priority)] + Inspection Multiplier × (Average Inspection Cost divided by Inspection Priority) + Unique Category Costs.

The constant is the multiple necessary to recover approximately $22.2 million in general costs (including allocated generic transportation costs) and is 1.58 for FY 2012. The average inspection cost is the average inspection hours for each fee category multiplied by the hourly rate of $274. The inspection priority is the interval between routine inspections, expressed in years. The inspection multiplier is the multiple necessary to recover approximately $8.0 million in inspection costs, and is 2.3 for FY 2012. The unique category costs are any special costs that the NRC has budgeted for a specific category of licenses. For FY 2012, approximately $110,000 in budgeted costs for the implementation of revised 10 CFR part 35, Medical Use of Byproduct Material (unique costs), has been allocated to holders of NRC human-use licenses.

The annual fee to be assessed to each licensee also includes a share of the fee-relief surplus adjustment of approximately $282,000 allocated to the materials users fee class (see Section III.B.1, ''Application of Fee-Relief and Low-Level Waste Surcharge,'' of this document), and for certain categories of these licensees, a share of the approximately $335,000 in LLW surcharge costs allocated to the fee class. The annual fee for each fee category is shown in § 171.16(d).

h. Transportation

Table XVII shows the calculation of the FY 2012 generic transportation budgeted resources to be recovered through annual fees. The FY 2011 values are shown for comparison. (Individual values may not sum to totals due to rounding.)

TABLE XVII—ANNUAL FEE SUMMARY CALCULATIONS FOR TRANSPORTATION

[Dollars in millions]

Summary fee calculations	FY 2011 Final	FY 2012 Final
Total budgeted resources	$7.5	$9.2
Less estimated 10 CFR part 170 receipts	−3.4	−3.4
Net 10 CFR part 171 resources	4.1	5.9

The NRC must approve any package used for shipping nuclear material before shipment. If the package meets NRC requirements, the NRC issues a Radioactive Material Package Certificate of Compliance (CoC) to the organization requesting approval of a package. Organizations are authorized to ship radioactive material in a package approved for use under the general licensing provisions of 10 CFR part 71, ''Packaging and Transportation of Radioactive Material.'' The resources associated with generic transportation activities are distributed to the license fee classes based on the number of CoCs benefitting (used by) that fee class, as a proxy for the generic transportation resources expended for each fee class.

The total FY 2012 budgetary resources for generic transportation activities including those to support DOE CoCs is $5.9 million. The increase in 10 CFR part 171 resources in FY 2012 compared to FY 2011 is primarily due to an increase in budgeted resources for transportation regulatory programs. Generic transportation resources associated with fee-exempt entities are not included in this total. These costs are included in the appropriate fee-relief category (e.g., the fee-relief category for nonprofit educational institutions).

Consistent with the policy established in the NRC's FY 2006 final fee rule (71 FR 30721; May 30, 2006), the NRC will recover generic transportation costs unrelated to DOE as part of existing annual fees for license fee classes. The NRC will continue to assess a separate annual fee under § 171.16, fee Category 18.A., for DOE transportation activities. The amount of the allocated generic resources is calculated by multiplying the percentage of total CoCs used by each fee class (and DOE) by the total generic transportation resources to be recovered.

The distribution of these resources to the license fee classes and DOE is shown in Table XVIII. The distribution is adjusted to account for the licensees in each fee class that are fee-exempt. For example, if 4 CoCs benefit the entire research and test reactor class, but only 4 of 31 research and test reactors are subject to annual fees, the number of CoCs used to determine the proportion of generic transportation resources allocated to research and test reactor annual fees equals (4/31)*4, or 0.5 CoCs.

TABLE XVIII—DISTRIBUTION OF GENERIC TRANSPORTATION RESOURCES, FY 2012

[Dollars in millions]

License fee class/DOE	Number CoCs benefiting fee class or DOE	Percentage of total CoCs	Allocated generic transportation resources
Total	87.5	100.0	$5.86
DOE	21.0	24.0	1.41
Operating Power Reactors	20.0	22.9	1.34
Spent Fuel Storage/Reactor Decommissioning	10.0	11.4	0.67
Research and Test Reactors	0.5	0.6	0.03
Fuel Facilities	13.0	14.8	0.87
Materials Users	23.0	26.3	1.54

The NRC assesses an annual fee to DOE based on the 10 CFR part 71 CoCs it holds and does not allocate these DOE-related resources to other licensees' annual fees, because these resources specifically support DOE. Note that DOE's annual fee includes a reduction for the fee-relief surplus adjustment (see Section III.B.1, ''Application of Fee-Relief and Low-Level Waste Surcharge,'' of this document), resulting in a total annual fee of $1,309,000 for FY 2012. This fee increase from FY 2011 is primarily related to higher budgeted resources for the NRC's transportation activities.

3. Administrative Amendments

This rule makes certain administrative changes for clarity:

a. § 171.16(d), revises fee schedule. Under 10 CFR part 170, the descriptions for categories 14.A. and 14.B. are revised to add the phrase ''including MMLs'' to capture work activities outside of the category 17 description involving decommissioning actions and activities for MML agencies (i.e., U.S. Department of Veterans Affairs, U.S. Navy, U.S. Air Force) and the fees are subject to full cost. This methodology ensures equitable fee distribution among licensees by charging the full cost for services over and above routine oversight activities to specific MMLs while minimizing the financial impact of annual fee distribution for all MMLs for the next biennial review.

b. Identifies ''POL'' under 10 CFR 171.17, ''Proration,'' as ''possession-only-license;'' and

c. Revises the language for clarity under 10 CFR 171.17(a)(3) and (b)(3) for downgraded licenses.

In summary, the NRC makes the following changes to 10 CFR part 171:

1. Uses the NRC's fee-relief surplus to reduce all licensees' annual fees, based on their percentage share of the NRC budget;

2. Establishes rebaselined annual fees for FY 2012; and

3. Makes administrative changes to §§ 171.16 and 171.17.

IV. Plain Writing

The Plain Writing Act of 2010, (Pub. L. 111–274), requires Federal agencies to write documents in a clear, concise,

well-organized manner that also follows other best practices appropriate to the subject or field and the intended audience. The NRC has attempted to use plain language in promulgating this rule consistent with the Federal Plain Writing Act guidelines.

V. Availability of Documents

The NRC is making the documents identified below available to interested persons through one or more of the following methods, as indicated. To access documents related to this action, see the **ADDRESSES** section of this document.

Document	PDR	Web	ADAMS
FY 2012 Work Papers	X		ML12150A163
Regulatory Flexibility Analysis			ML12046A885
Small Entity Compliance Guide			ML12041A317
NUREG–1100, Volume 27, "Congressional Budget Justification: Fiscal Year 2012" (February 2011).	X		ML12137A853
NRC Form 526		X	

VI. Voluntary Consensus Standards

The National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 3701) requires that Federal agencies use technical standards that are developed or adopted by voluntary consensus standards bodies, unless using these standards is inconsistent with applicable law or is otherwise impractical. The NRC amending the licensing, inspection, and annual fees charged to its licensees and applicants, as necessary, to recover approximately 90 percent of its budget authority in FY 2012, as required by the OBRA–90, as amended. This action does not constitute the establishment of a standard that contains generally applicable requirements.

VII. Environmental Impact: Categorical Exclusion

The NRC has determined that this final rule is the type of action described in categorical exclusion 10 CFR 51.22(c)(1). Therefore, neither an environmental assessment nor an environmental impact statement has been prepared for the final rule. By its very nature, this regulatory action does not affect the environment and, therefore, no environmental justice issues are raised.

VIII. Paperwork Reduction Act Statement

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

Public Protection Notification

The NRC may not conduct or sponsor, and a person is not required to respond to, a request for information or an information collection requirement, unless the requesting document displays a currently valid Office of Management and Budget control number.

IX. Regulatory Analysis

Under OBRA–90, as amended, and the Atomic Energy Act of 1954 (AEA), as amended, the NRC is required to recover 90 percent of its budget authority, or $909.5 million in FY 2012. The NRC established fee methodology guidelines for 10 CFR part 170 in 1978 and more fee methodology guidelines through the establishment of 10 CFR part 171 in 1986. In subsequent rulemakings, the NRC has adjusted its fees without changing the underlying principles of its fee policy in order to ensure that the NRC continues to comply with the statutory requirements for cost recovery in OBRA–90 and the AEA.

In this rulemaking, the NRC proposes to continue this long-standing approach. Therefore, the NRC did not identify any alternatives to the current fee structure guidelines and did not prepare a regulatory analysis for this rulemaking.

X. Regulatory Flexibility Analysis

Section 604 of the Regulatory Flexibility Act requires agencies to perform an analysis that considers the impact of a rulemaking on small entities. The NRC's regulatory flexibility analysis for this final rule is available as indicated in Section V, Availability of Documents, of this document, and a summary is provided in the following paragraphs.

The NRC is required by the OBRA–90, as amended, to recover approximately 90 percent of its FY 2012 budget authority through the assessment of user fees. The OBRA–90 further requires that the NRC establish a schedule of charges that fairly and equitably allocates the aggregate amount of these charges among licensees.

The FY 2012 final rule establishes the schedules of fees necessary for the NRC to recover 90 percent of its budget authority for FY 2012. This final rule results in some increases in those annual fees charged to certain licensees and holders of certificates, registrations, and approvals, and in decreases in those annual fees charged to others. Licensees affected by the annual fee increases and decreases include those that qualify as small entities under the NRC's size standards in 10 CFR 2.810.

The NRC prepared a final biennial regulatory analysis in FY 2011, in accordance with the FY 2001 final rule (66 FR 32467; June 14, 2001). The rule also stated the small entity fees will be reexamined every two years and in the same years the NRC conducts the biennial review of fees as required by the Office of Chief Financial Officer Act.

For this final fee rule, small entity fees remain unchanged at $2,300 for the maximum upper-tier small entity fee and $500 for the lower-tier small entity to ease the financial burden for small entities. The next small entity biennial review is scheduled for FY 2013.

Finally, the Small Business Regulatory Enforcement Fairness Act (SBREFA) requires all Federal agencies to prepare a written compliance guide for each rule for which the agency is required by 5 U.S.C. 604 to prepare a regulatory flexibility analysis. The NRC, in compliance with the law, has prepared the "Small Entity Compliance Guide," which is available as indicated in Section V, Availability of Documents, of this document.

XI. Backfit Analysis

The NRC has determined that the backfit rule, 10 CFR 50.109, does not apply to this final rule and that a backfit analysis is not required. A backfit analysis is not required because these amendments do not require the modification of, or addition to, systems, structures, components, or the design of a facility, or the design approval or manufacturing license for a facility, or the procedures or organization required to design, construct, or operate a facility.

XII. Congressional Review Act

In accordance with the Congressional Review Act of 1996 (5 U.S.C. 801–808), the NRC has determined that this action is a major rule and has verified the determination with the Office of Information and Regulatory Affairs of the Office of Management and Budget.

List of Subjects

10 CFR Part 170

Byproduct material, Import and export licenses, Intergovernmental relations, Non-payment penalties, Nuclear materials, Nuclear power plants and reactors, Source material, Special nuclear material.

10 CFR Part 171

Annual charges, Byproduct material, Holders of certificates, Registrations, Approvals, Intergovernmental relations, Non-payment penalties, Nuclear materials, Nuclear power plants and reactors, Source material, Special nuclear material.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 552 and 553, the NRC is adopting the following amendments to 10 CFR parts 170 and 171.

PART 170—FEES FOR FACILITIES, MATERIALS, IMPORT AND EXPORT LICENSES, AND OTHER REGULATORY SERVICES UNDER THE ATOMIC ENERGY ACT OF 1954, AS AMENDED

■ 1. The authority citation for part 170 continues to read as follows:

Authority: Independent Offices Appropriations Act sec. 501 (31 U.S.C. 9701); Atomic Energy Act sec. 161(w) (42 U.S.C. 2201(w)); Energy Reorganization Act sec. 201 (42 U.S.C. 5841); Chief Financial Officers Act sec. 205 (31 U.S.C. 901, 902); Government Paperwork Elimination Act sec. 1704, (44 U.S.C. 3504 note); Energy Policy Act secs. 623, Energy Policy Act of 2005 sec. 651(e), Pub. L. 109–58, 119 Stat. 783 (42 U.S.C. 2201(w), 2014, 2021, 2021b, 2111).

■ 2. Section 170.20 is revised to read as follows:

§ 170.20 Average cost per professional staff-hour.

Fees for permits, licenses, amendments, renewals, special projects, 10 CFR part 55 re-qualification and replacement examinations and tests, other required reviews, approvals, and inspections under §§ 170.21 and 170.31 will be calculated using the professional staff-hour rate of $274 per hour.

■ 3. In § 170.21, in the table, the heading for fee category G and fee category K are revised to read as follows:

§ 170.21 Schedule of fees for production or utilization facilities, review of standard referenced design approvals, special projects, inspections, and import and export licenses.

* * * * *

SCHEDULE OF FACILITY FEES

[See footnotes at end of table]

Facility categories and type of fees	Fees [1] [2]
* * * * * * *	
G. Other Production or Utilization Facility:	
* * * * * * *	
K. Import and export licenses:	
Licenses for the import and export only of production or utilization facilities or the export only of components for production or utilization facilities issued under 10 CFR part 110.	
1. Application for import or export of production or utilization facilities [4] (including reactors and other facilities) and exports of components requiring Commission and Executive Branch review, for example, actions under 10 CFR 110.40(b).	
Application—new license, or amendment; or license exemption request	$17,800.
2. Application for export of reactor and other components requiring Executive Branch review, for example, those actions under 10 CFR 110.41(a).	
Application—new license, or amendment; or license exemption request	$9,600.
3. Application for export of components requiring the assistance of the Executive Branch to obtain foreign government assurances.	
Application—new license, or amendment; or license exemption request	$4,400.
4. Application for export of facility components and equipment not requiring Commission or Executive Branch review, or obtaining foreign government assurances.	
Application—new license, or amendment; or license exemption request	$2,700.
5. Minor amendment of any active export or import license, for example, to extend the expiration date, change domestic information, or make other revisions which do not involve any substantive changes to license terms or conditions or to the type of facility or component authorized for export and therefore, do not require in-depth analysis or review or consultation with the Executive Branch, U.S. host state, or foreign government authorities.	
Minor amendment to license	$1,400.

[1] Fees will not be charged for orders related to civil penalties or other civil sanctions issued by the Commission under § 2.202 of this chapter or for amendments resulting specifically from the requirements of these orders. For orders unrelated to civil penalties or other civil sanctions, fees will be charged for any resulting licensee-specific activities not otherwise exempted from fees under this chapter. Fees will be charged for approvals issued under a specific exemption provision of the Commission's regulations under Title 10 of the *Code of Federal Regulations* (e.g., 10 CFR 50.12, 10 CFR 73.5) and any other sections in effect now or in the future, regardless of whether the approval is in the form of a license amendment, letter of approval, safety evaluation report, or other form.

[2] Full cost fees will be determined based on the professional staff time and appropriate contractual support services expended. For applications currently on file and for which fees are determined based on the full cost expended for the review, the professional staff hours expended for the review of the application up to the effective date of the final rule will be determined at the professional rates in effect when the service was provided. For those applications currently on file for which review costs have reached an applicable fee ceiling established by the June 20, 1984, and July 2, 1990, rules, but are still pending completion of the review, the cost incurred after any applicable ceiling was reached through January 29, 1989, will not be billed to the applicant. Any professional staff-hours expended above those ceilings on or after January 30, 1989, will be assessed at the applicable rates established by § 170.20, as appropriate, except for topical reports whose costs exceed $50,000. Costs which exceed $50,000 for any topical report, amendment, revision, or supplement to a topical report completed or under review from January 30, 1989, through August 8, 1991, will not be billed to the applicant. Any professional hours expended on or after August 9, 1991, will be assessed at the applicable rate established in § 170.20.

[3] * * * * * * * * *

[4] Imports only of major components for end-use at NRC-licensed reactors are now authorized under NRC general import license.

■ 4. In § 170.31, the table is revised to read as follows:

§ 170.31 Schedule of fees for materials licenses and other regulatory services, including inspections and import and export licenses.

* * * * *

SCHEDULE OF MATERIALS FEES

[See footnotes at end of table]

Category of materials licenses and type of fees [1]	Fee [2 3]
1. Special nuclear material:	
A. (1) Licenses for possession and use of U–235 or plutonium for fuel fabrication activities	
(a) Strategic Special Nuclear Material (High Enriched Uranium) [Program Code(s): 21130]	Full Cost.
(b) Low Enriched Uranium in Dispersible Form Used for Fabrication of Power Reactor Fuel [Program Code(s): 21210].	Full Cost.
(2) All other special nuclear materials licenses not included in Category 1.A.(1) which are licensed for fuel cycle activities	
(a) Facilities with limited operations [Program Code(s): 21310, 21320]	Full Cost.
(b) Gas centrifuge enrichment demonstration facilities	Full Cost.
(c) Others, including hot cell facilities	Full Cost.
B. Licenses for receipt and storage of spent fuel and reactor-related Greater than Class C (GTCC) waste at an independent spent fuel storage installation (ISFSI) [Program Code(s): 23200]	Full Cost.
C. Licenses for possession and use of special nuclear material in sealed sources contained in devices used in industrial measuring systems, including x-ray fluorescence analyzers.[4]	
Application [Program Code(s): 22140]	$1,300.
D. All other special nuclear material licenses, except licenses authorizing special nuclear material in unsealed form in combination that would constitute a critical quantity, as defined in § 150.11 of this chapter, for which the licensee shall pay the same fees as those under Category 1.A.[4]	
Application [Program Code(s): 22110, 22111, 22120, 22131, 22136, 22150, 22151, 22161, 22163, 22170, 23100, 23300, 23310].	$2,500.
E. Licenses or certificates for construction and operation of a uranium enrichment facility [Program Code(s): 21200]	Full Cost.
2. Source material:	
A. (1) Licenses for possession and use of source material for refining uranium mill concentrates to uranium hexafluoride [Program Code(s): 11400]	Full Cost.
(2) Licenses for possession and use of source material in recovery operations such as milling, in-situ recovery, heap-leaching, ore buying stations, ion-exchange facilities, and in processing of ores containing source material for extraction of metals other than uranium or thorium, including licenses authorizing the possession of byproduct waste material (tailings) from source material recovery operations, as well as licenses authorizing the possession and maintenance of a facility in a standby mode.	
(a) Conventional and Heap Leach facilities [Program Code(s): 11100]	Full Cost.
(b) Basic *In Situ* Recovery facilities [Program Code(s): 11500]	Full Cost.
(c) Expanded *In Situ* Recovery facilities [Program Code(s): 11510]	Full Cost.
(d) *In Situ* Recovery Resin facilities [Program Code(s): 11550]	Full Cost.
(e) Resin Toll Milling facilities [Program Code(s): 11555]	Full Cost.
(f) Other facilities [Program Code(s): 11700]	Full Cost.
(3) Licenses that authorize the receipt of byproduct material, as defined in Section 11e.(2) of the Atomic Energy Act, from other persons for possession and disposal, except those licenses subject to the fees in Category 2.A.(2) or Category 2.A.(4) [Program Code(s): 11600, 12000].	Full Cost.
(4) Licenses that authorize the receipt of byproduct material, as defined in Section 11e.(2) of the Atomic Energy Act, from other persons for possession and disposal incidental to the disposal of the uranium waste tailings generated by the licensee's milling operations, except those licenses subject to the fees in Category 2.A.(2) [Program Code(s): 12010].	Full Cost.
(5) Licenses that authorize the possession of source material related to removal of contaminants (source material) from drinking water [Program Code(s): 11820].	Full Cost.
B. Licenses which authorize the possession, use, and/or installation of source material for shielding.	
Application [Program Code(s): 11210]	$600.
C. All other source material licenses.	
Application [Program Code(s): 11200, 11220, 11221, 11230, 11300, 11800, 11810]	$5,400.
3. Byproduct material:	
A. Licenses of broad scope for the possession and use of byproduct material issued under parts 30 and 33 of this chapter for processing or manufacturing of items containing byproduct material for commercial distribution.	
Application [Program Code(s): 03211, 03212, 03213]	$12,800.
B. Other licenses for possession and use of byproduct material issued under part 30 of this chapter for processing or manufacturing of items containing byproduct material for commercial distribution.	
Application [Program Code(s): 03214, 03215, 22135, 22162]	$4,400.
C. Licenses issued under §§ 32.72 and/or 32.74 of this chapter that authorize the processing or manufacturing and distribution or redistribution of radiopharmaceuticals, generators, reagent kits, and/or sources and devices containing byproduct material. This category does not apply to licenses issued to nonprofit educational institutions whose processing or manufacturing is exempt under § 170.11(a)(4).	
Application [Program Code(s): 02500, 02511, 02513]	$6,500.
D. [Reserved]	N/A.
E. Licenses for possession and use of byproduct material in sealed sources for irradiation of materials in which the source is not removed from its shield (self-shielded units).	

SCHEDULE OF MATERIALS FEES—Continued

[See footnotes at end of table]

Category of materials licenses and type of fees [1]	Fee [2 3]
Application [Program Code(s): 03510, 03520]	$3,200.
F. Licenses for possession and use of less than 10,000 curies of byproduct material in sealed sources for irradiation of materials in which the source is exposed for irradiation purposes. This category also includes underwater irradiators for irradiation of materials where the source is not exposed for irradiation purposes.	
Application [Program Code(s): 03511]	$6,400.
G. Licenses for possession and use of 10,000 curies or more of byproduct material in sealed sources for irradiation of materials in which the source is exposed for irradiation purposes. This category also includes underwater irradiators for irradiation of materials where the source is not exposed for irradiation purposes.	
Application [Program Code(s): 03521]	$61,200.
H. Licenses issued under Subpart A of part 32 of this chapter to distribute items containing byproduct material that require device review to persons exempt from the licensing requirements of part 30 of this chapter. The category does not include specific licenses authorizing redistribution of items that have been authorized for distribution to persons exempt from the licensing requirements of part 30 of this chapter.	
Application [Program Code(s): 03254, 03255]	$4,300.
I. Licenses issued under Subpart A of part 32 of this chapter to distribute items containing byproduct material or quantities of byproduct material that do not require device evaluation to persons exempt from the licensing requirements of part 30 of this chapter. This category does not include specific licenses authorizing redistribution of items that have been authorized for distribution to persons exempt from the licensing requirements of part 30 of this chapter.	
Application [Program Code(s): 03250, 03251, 03252, 03253, 03256]	$11,500.
J. Licenses issued under Subpart B of part 32 of this chapter to distribute items containing byproduct material that require sealed source and/or device review to persons generally licensed under part 31 of this chapter. This category does not include specific licenses authorizing redistribution of items that have been authorized for distribution to persons generally licensed under part 31 of this chapter.	
Application [Program Code(s): 03240, 03241, 03243]	$2,000.
K. Licenses issued under Subpart B of part 32 of this chapter to distribute items containing byproduct material or quantities of byproduct material that do not require sealed source and/or device review to persons generally licensed under part 31 of this chapter. This category does not include specific licenses authorizing redistribution of items that have been authorized for distribution to persons generally licensed under part 31 of this chapter.	
Application [Program Code(s): 03242, 03244]	$1,100.
L. Licenses of broad scope for possession and use of byproduct material issued under parts 30 and 33 of this chapter for research and development that do not authorize commercial distribution.	
Application [Program Code(s): 01100, 01110, 01120, 03610, 03611, 03612, 03613]	$5,400.
M. Other licenses for possession and use of byproduct material issued under part 30 of this chapter for research and development that do not authorize commercial distribution.	
Application [Program Code(s): 03620]	$3,500.
N. Licenses that authorize services for other licensees, except:	
(1) Licenses that authorize only calibration and/or leak testing services are subject to the fees specified in fee Category 3.P.; and	
(2) Licenses that authorize waste disposal services are subject to the fees specified in fee Categories 4.A., 4.B., and 4.C.	
Application [Program Code(s): 03219, 03225, 03226]	$6,400.
O. Licenses for possession and use of byproduct material issued under part 34 of this chapter for industrial radiography operations.	
Application [Program Code(s): 03310, 03320]	$4,000.
P. All other specific byproduct material licenses, except those in Categories 4.A. through 9.D.	
Application [Program Code(s): 02400, 02410, 03120, 03121, 03122, 03123, 03124, 03220, 03221, 03222, 03800, 03810, 22130].	$1,500.
Q. Registration of a device(s) generally licensed under part 31 of this chapter.	
Registration	$400.
R. Possession of items or products containing radium-226 identified in 10 CFR 31.12 which exceed the number of items or limits specified in that section.[5]	
1. Possession of quantities exceeding the number of items or limits in 10 CFR 31.12(a)(4), or (5) but less than or equal to 10 times the number of items or limits specified.	
Application [Program Code(s): 02700]	$2,500.
2. Possession of quantities exceeding 10 times the number of items or limits specified in 10 CFR 31.12(a)(4), or (5).	
Application [Program Code(s): 02710]	$1,500.
S. Licenses for production of accelerator-produced radionuclides.	
Application [Program Code(s): 03210]	$6,500.
4. Waste disposal and processing:	
A. Licenses specifically authorizing the receipt of waste byproduct material, source material, or special nuclear material from other persons for the purpose of contingency storage or commercial land disposal by the licensee; or licenses authorizing contingency storage of low-level radioactive waste at the site of nuclear power reactors; or licenses for receipt of waste from other persons for incineration or other treatment, packaging of resulting waste and residues, and transfer of packages to another person authorized to receive or dispose of waste material. [Program Code(s): 03231, 03233, 03235, 03236, 06100, 06101]	Full Cost.
B. Licenses specifically authorizing the receipt of waste byproduct material, source material, or special nuclear material from other persons for the purpose of packaging or repackaging the material. The licensee will dispose of the material by transfer to another person authorized to receive or dispose of the material.	
Application [Program Code(s): 03234]	$8,400.

SCHEDULE OF MATERIALS FEES—Continued

[See footnotes at end of table]

Category of materials licenses and type of fees [1]	Fee [2 3]
C. Licenses specifically authorizing the receipt of prepackaged waste byproduct material, source material, or special nuclear material from other persons. The licensee will dispose of the material by transfer to another person authorized to receive or dispose of the material.	
Application [Program Code(s): 03232]	$4,900.
5. Well logging:	
A. Licenses for possession and use of byproduct material, source material, and/or special nuclear material for well logging, well surveys, and tracer studies other than field flooding tracer studies.	
Application [Program Code(s): 03110, 03111, 03112]	$3,300.
B. Licenses for possession and use of byproduct material for field flooding tracer studies.	
Licensing [Program Code(s): 03113]	Full Cost.
6. Nuclear laundries:	
A. Licenses for commercial collection and laundry of items contaminated with byproduct material, source material, or special nuclear material.	
Application [Program Code(s): 03218]	$21,800.
7. Medical licenses:	
A. Licenses issued under parts 30, 35, 40, and 70 of this chapter for human use of byproduct material, source material, or special nuclear material in sealed sources contained in gamma stereotactic radiosurgery units, teletherapy devices, or similar beam therapy devices.	
Application [Program Code(s): 02300, 02310]	$8,800.
B. Licenses of broad scope issued to medical institutions or two or more physicians under parts 30, 33, 35, 40, and 70 of this chapter authorizing research and development, including human use of byproduct material, except licenses for byproduct material, source material, or special nuclear material in sealed sources contained in teletherapy devices. This category also includes the possession and use of source material for shielding when authorized on the same license.	
Application [Program Code(s): 02110]	$8,500.
C. Other licenses issued under parts 30, 35, 40, and 70 of this chapter for human use of byproduct material, source material, and/or special nuclear material, except licenses for byproduct material, source material, or special nuclear material in sealed sources contained in teletherapy devices.	
Application [Program Code(s): 02120, 02121, 02200, 02201, 02210, 02220, 02230, 02231, 02240, 22160]	$2,700.
8. Civil defense:	
A. Licenses for possession and use of byproduct material, source material, or special nuclear material for civil defense activities.	
Application [Program Code(s): 03710]	$2,500.
9. Device, product, or sealed source safety evaluation:	
A. Safety evaluation of devices or products containing byproduct material, source material, or special nuclear material, except reactor fuel devices, for commercial distribution.	
Application—each device	$7,700.
B. Safety evaluation of devices or products containing byproduct material, source material, or special nuclear material manufactured in accordance with the unique specifications of, and for use by, a single applicant, except reactor fuel devices.	
Application—each device	$8,900.
C. Safety evaluation of sealed sources containing byproduct material, source material, or special nuclear material, except reactor fuel, for commercial distribution.	
Application—each source	$10,400.
D. Safety evaluation of sealed sources containing byproduct material, source material, or special nuclear material, manufactured in accordance with the unique specifications of, and for use by, a single applicant, except reactor fuel.	
Application—each source	$1,040.
10. Transportation of radioactive material:	
A. Evaluation of casks, packages, and shipping containers.	
1. Spent Fuel, High-Level Waste, and plutonium air packages	Full Cost.
2. Other Casks	Full Cost.
B. Quality assurance program approvals issued under part 71 of this chapter.	
1. Users and Fabricators.	
Application	$3,900.
Inspections	Full Cost.
2. Users.	
Application	$3,900.
Inspections	Full Cost.
C. Evaluation of security plans, route approvals, route surveys, and transportation security devices (including immobilization devices).	Full Cost.
11. Review of standardized spent fuel facilities.	Full Cost.
12. Special projects:	
Including approvals, preapplication/licensing activities, and inspections.	Full Cost.
13. A. Spent fuel storage cask Certificate of Compliance	Full Cost.
B. Inspections related to storage of spent fuel under § 72.210 of this chapter.	Full Cost.
14. A. Byproduct, source, or special nuclear material licenses and other approvals authorizing decommissioning, decontamination, reclamation, or site restoration activities under parts 30, 40, 70, 72, and 76 of this chapter, including MMLs.	Full Cost.
B. Site-specific decommissioning activities associated with unlicensed sites, including MMLs, regardless of whether or not the sites have been previously licensed.	Full Cost.
15. Import and Export licenses:	

SCHEDULE OF MATERIALS FEES—Continued

[See footnotes at end of table]

Category of materials licenses and type of fees [1]	Fee [2 3]
Licenses issued under part 110 of this chapter for the import and export only of special nuclear material, source material, tritium and other byproduct material, and the export only of heavy water, or nuclear grade graphite (fee categories 15.A. through 15.E.).	
A. Application for export or import of nuclear materials, including radioactive waste requiring Commission and Executive Branch review, for example, those actions under 10 CFR 110.40(b).	
Application—new license, or amendment; or license exemption request	$17,800.
B. Application for export or import of nuclear material, including radioactive waste, requiring Executive Branch review, but not Commission review. This category includes applications for the export and import of radioactive waste and requires NRC to consult with domestic host state authorities (i.e., Low-Level Radioactive Waste Compact Commission, the U.S. Environmental Protection Agency, etc.).	
Application—new license, or amendment; or license exemption request	$9,600.
C. Application for export of nuclear material, for example, routine reloads of low enriched uranium reactor fuel and/or natural uranium source material requiring the assistance of the Executive Branch to obtain foreign government assurances.	
Application—new license, or amendment; or license exemption request	$4,400.
D. Application for export or import of nuclear material, including radioactive waste, not requiring Commission or Executive Branch review, or obtaining foreign government assurances. This category includes applications for export or import of radioactive waste where the NRC has previously authorized the export or import of the same form of waste to or from the same or similar parties located in the same country, requiring only confirmation from the receiving facility and licensing authorities that the shipments may proceed according to previously agreed understandings and procedures.	
Application—new license, or amendment; or license exemption request	$2,700.
E. Minor amendment of any active export or import license, for example, to extend the expiration date, change domestic information, or make other revisions which do not involve any substantive changes to license terms and conditions or to the type/quantity/chemical composition of the material authorized for export and, therefore, do not require in-depth analysis, review, or consultations with other Executive Branch, U.S. host state, or foreign government authorities.	
Minor amendment	$1,400.
Licenses issued under part 110 of this chapter for the import and export only of Category 1 and Category 2 quantities of radioactive material listed in Appendix P to part 110 of this chapter (fee categories 15.F. through 15.R.).	
Category 1 (Appendix P, 10 CFR part 110) Exports:	
F. Application for export of Appendix P Category 1 materials requiring Commission review (e.g. exceptional circumstance review under 10 CFR 110.42(e)(4)) and to obtain one government-to-government consent for this process. For additional consent see 15.I.).	
Application—new license, or amendment; or license exemption request	$15,100.
G. Application for export of Appendix P Category 1 material requiring Executive Branch review and to obtain one government-to-government consent for this process. For additional consents see 15.I.	
Application—new license, or amendment; or license exemption request	$8,800.
H. Application for export of Appendix P Category 1 Materials and to obtain one government-to-government consent for this process. For additional consents see 15.I.	
Application—new license, or amendment; or license exemption request	$5,500.
I. Requests for additional government-to-government consents in support of an export license application or active export license.	
Application—new license, or amendment; or license exemption request	$270.
Category 2 (Appendix P, 10 CFR part 110) Exports:	
J. Application for export of Appendix P Category 2 materials requiring Commission review (e.g. exceptional circumstance review under 10 CFR 110.42(e)(4)).	
Application—new license, or amendment; or license exemption request	$15,100.
K. Applications for export of Appendix P Category 2 materials requiring Executive Branch review.	
Application—new license, or amendment; or license exemption request	$8,800.
L. Application for the export of Category 2 materials.	
Application—new license, or amendment; or license exemption request	$5,500.
M. [Reserved]	N/A.
N. [Reserved]	N/A.
O. [Reserved]	N/A.
P. [Reserved]	N/A.
Q. [Reserved]	N/A.
Minor Amendments (Category 1 and 2, Appendix P, 10 CFR part 110, Export):	
R. Minor amendment of any active export license, for example, to extend the expiration date, change domestic information, or make other revisions which do not involve any substantive changes to license terms and conditions or to the type/quantity/chemical composition of the material authorized for export and, therefore, do not require in-depth analysis, review, or consultations with other Executive Branch, U.S. host state, or foreign authorities.	
Minor amendment	$1,400.
16. Reciprocity:	
Agreement State licensees who conduct activities under the reciprocity provisions of 10 CFR 150.20.	
Application	$2,300.
17. Master materials licenses of broad scope issued to Government agencies.	
Application [Program Code(s): 03614]	Full Cost.
18. Department of Energy.	
A. Certificates of Compliance. Evaluation of casks, packages, and shipping containers (including spent fuel, high-level waste, and other casks, and plutonium air packages).	Full Cost.

SCHEDULE OF MATERIALS FEES—Continued

[See footnotes at end of table]

Category of materials licenses and type of fees [1]	Fee [2 3]
B. Uranium Mill Tailings Radiation Control Act (UMTRCA) activities.	Full Cost.

[1] *Types of fees*—Separate charges, as shown in the schedule, will be assessed for preapplication consultations and reviews; applications for new licenses, approvals, or license terminations; possession-only licenses; issuances of new licenses and approvals; certain amendments and renewals to existing licenses and approvals; safety evaluations of sealed sources and devices; generally licensed device registrations; and certain inspections. The following guidelines apply to these charges:

(a) *Application and registration fees.* Applications for new materials licenses and export and import licenses; applications to reinstate expired, terminated, or inactive licenses, except those subject to fees assessed at full costs; applications filed by Agreement State licensees to register under the general license provisions of 10 CFR 150.20; and applications for amendments to materials licenses that would place the license in a higher fee category or add a new fee category must be accompanied by the prescribed application fee for each category.

(1) Applications for licenses covering more than one fee category of special nuclear material or source material must be accompanied by the prescribed application fee for the highest fee category.

(2) Applications for new licenses that cover both byproduct material and special nuclear material in sealed sources for use in gauging devices will pay the appropriate application fee for fee Category 1.C. only.

(b) *Licensing fees.* Fees for reviews of applications for new licenses, renewals, and amendments to existing licenses, preapplication consultations and other documents submitted to the NRC for review, and project manager time for fee categories subject to full cost fees are due upon notification by the Commission in accordance with § 170.12(b).

(c) *Amendment fees.* Applications for amendments to export and import licenses must be accompanied by the prescribed amendment fee for each license affected. An application for an amendment to an export or import license or approval classified in more than one fee category must be accompanied by the prescribed amendment fee for the category affected by the amendment, unless the amendment is applicable to two or more fee categories, in which case the amendment fee for the highest fee category would apply.

(d) *Inspection fees.* Inspections resulting from investigations conducted by the Office of Investigations and nonroutine inspections that result from third-party allegations are not subject to fees. Inspection fees are due upon notification by the Commission in accordance with § 170.12(c).

(e) *Generally licensed device registrations under 10 CFR 31.5.* Submittals of registration information must be accompanied by the prescribed fee.

[2] Fees will not be charged for orders related to civil penalties or other civil sanctions issued by the Commission under 10 CFR 2.202 or for amendments resulting specifically from the requirements of these orders. For orders unrelated to civil penalties or other civil sanctions, fees will be charged for any resulting licensee-specific activities not otherwise exempted from fees under this chapter. Fees will be charged for approvals issued under a specific exemption provision of the Commission's regulations under Title 10 of the *Code of Federal Regulations* (e.g., 10 CFR 30.11, 40.14, 70.14, 73.5, and any other sections in effect now or in the future), regardless of whether the approval is in the form of a license amendment, letter of approval, safety evaluation report, or other form. In addition to the fee shown, an applicant may be assessed an additional fee for sealed source and device evaluations as shown in Categories 9.A. through 9.D.

[3] Full cost fees will be determined based on the professional staff time multiplied by the appropriate professional hourly rate established in § 170.20 in effect when the service is provided, and the appropriate contractual support services expended. For applications currently on file for which review costs have reached an applicable fee ceiling established by the June 20, 1984, and July 2, 1990, rules, but are still pending completion of the review, the cost incurred after any applicable ceiling was reached through January 29, 1989, will not be billed to the applicant. Any professional staff-hours expended above those ceilings on or after January 30, 1989, will be assessed at the applicable rates established by § 170.20, as appropriate, except for topical reports for which costs exceed $50,000. Costs which exceed $50,000 for each topical report, amendment, revision, or supplement to a topical report completed or under review from January 30, 1989, through August 8, 1991, will not be billed to the applicant. Any professional hours expended on or after August 9, 1991, will be assessed at the applicable rate established in § 170.20.

[4] Licensees paying fees under Categories 1.A., 1.B., and 1.E. are not subject to fees under Categories 1.C. and 1.D. for sealed sources authorized in the same license, except for an application that deals only with the sealed sources authorized by the license.

[5] Persons who possess radium sources that are used for operational purposes in another fee category are not also subject to the fees in this category. (This exception does not apply if the radium sources are possessed for storage only.)

PART 171—ANNUAL FEES FOR REACTOR LICENSES AND FUEL CYCLE LICENSES AND MATERIALS LICENSES, INCLUDING HOLDERS OF CERTIFICATES OF COMPLIANCE, REGISTRATIONS, AND QUALITY ASSURANCE PROGRAM APPROVALS AND GOVERNMENT AGENCIES LICENSED BY THE NRC

■ 5. The authority citation for part 171 continues to read as follows:

Authority: Consolidated Omnibus Budget Reconciliation Act sec. 6101 Pub. L. 99–272, as amended by sec. 5601, Pub. L. 100–203 as amended by sec. 3201, Pub. L. 101–239, as amended by sec. 6101, Pub. L. 101–508, as amended by sec. 2903a, Pub. L. 102–486 (42 U.S.C. 2213, 2214), and as amended by Title IV, Pub. L. 109–103 (42 U.S.C. 2214); Atomic Energy Act sec. 161(w), 223, 234 (42 U.S.C. 2201(w), 2273, 2282); Energy Reorganization Act sec. 201 (42 U.S.C. 5841); Government Paperwork Elimination Act sec. 1704 (44 U.S.C. 3504 note); Energy Policy Act of 2005 sec. 651(e), Pub. L. 109–58 (42 U.S.C. 2014, 2021, 2021b, 2111).

■ 6. In § 171.15, paragraph (b)(1), the introductory text of paragraph (b)(2), paragraph (c)(1), the introductory text of paragraphs (c)(2) and (d)(1), and paragraphs (d)(2), (d)(3), and (e) are revised to read as follows:

§ 171.15 Annual fees: Reactor licenses and independent spent fuel storage licenses.

* * * * *

(b)(1) The FY 2012 annual fee for each operating power reactor which must be collected by September 30, 2012, is $4,766,000.

(2) The FY 2012 annual fee is comprised of a base annual fee for power reactors licensed to operate, a base spent fuel storage/reactor decommissioning annual fee, and associated additional charges (fee-relief adjustment). The activities comprising the spent storage/reactor decommissioning base annual fee are shown in paragraphs (c)(2)(i) and (ii) of this section. The activities comprising the FY 2012 fee-relief adjustment are shown in paragraph (d)(1) of this section. The activities comprising the FY 2012 base annual fee for operating power reactors are as follows:

* * * * *

(c)(1) The FY 2012 annual fee for each power reactor holding a 10 CFR part 50 license that is in a decommissioning or possession-only status and has spent fuel onsite, and for each independent spent fuel storage 10 CFR part 72 licensee who does not hold a 10 CFR part 50 license, is $211,000.

(2) The FY 2012 annual fee is comprised of a base spent fuel storage/reactor decommissioning annual fee (which is also included in the operating power reactor annual fee shown in paragraph (b) of this section) and an additional charge (fee-relief adjustment). The activities comprising the FY 2012 fee-relief adjustment are shown in paragraph (d)(1) of this section. The activities comprising the FY 2012 spent

fuel storage/reactor decommissioning rebaselined annual fee are:

* * * * *

(d)(1) The fee-relief adjustment allocated to annual fees includes a surcharge for the activities listed in paragraph (d)(1)(i) of this section, plus the amount remaining after total budgeted resources for the activities included in paragraphs (d)(1)(ii) and (d)(1)(iii) of this section are reduced by the appropriations the NRC receives for these types of activities. If the NRC's appropriations for these types of activities are greater than the budgeted resources for the activities included in paragraphs (d)(1)(ii) and (d)(1)(iii) of this section for a given FY, annual fees will be reduced. The activities comprising the FY 2012 fee-relief adjustment are as follows:

* * * * *

(2) The total FY 2012 fee-relief adjustment allocated to the operating power reactor class of licenses is a $6.3 million fee-relief surplus, not including the amount allocated to the spent fuel storage/reactor decommissioning class. The FY 2012 operating power reactor fee-relief adjustment to be assessed to each operating power reactor is approximately a $60,055 fee relief surplus. This amount is calculated by dividing the total operating power reactor fee-relief surplus adjustment, $6.3 million, by the number of operating power reactors (104).

(3) The FY 2012 fee-relief adjustment allocated to the spent fuel storage/reactor decommissioning class of licenses is a $331,202 fee-relief surplus. The FY 2012 spent fuel storage/reactor decommissioning fee-relief adjustment to be assessed to each operating power reactor, each power reactor in decommissioning or possession-only status that has spent fuel onsite, and to each independent spent fuel storage 10 CFR part 72 licensee who does not hold a 10 CFR part 50 license, is a $2,693 fee-relief surplus. This amount is calculated by dividing the total fee-relief adjustment costs allocated to this class by the total number of power reactor licenses, except those that permanently ceased operations and have no fuel onsite, and 10 CFR part 72 licensees who do not hold a 10 CFR part 50 license.

(e) The FY 2012 annual fees for licensees authorized to operate a research and test (nonpower) reactor licensed under part 50 of this chapter, unless the reactor is exempted from fees under § 171.11(a), are as follows:

Research reactor—$34,700.

Test reactor—$34,700.

■ 7. In § 171.16, paragraph (d) and the introductory text of paragraph (e) are revised to read as follows:

§ 171.16 Annual fees: Materials licensees, holders of certificates of compliance, holders of sealed source and device registrations, holders of quality assurance program approvals, and government agencies licensed by the NRC.

* * * * *

(d) The FY 2012 annual fees are comprised of a base annual fee and an allocation for fee-relief adjustment. The activities comprising the FY 2012 fee-relief adjustment are shown for convenience in paragraph (e) of this section. The FY 2012 annual fees for materials licensees and holders of certificates, registrations, or approvals subject to fees under this section are shown in the following table:

SCHEDULE OF MATERIALS ANNUAL FEES AND FEES FOR GOVERNMENT AGENCIES LICENSED BY NRC

[See footnotes at end of table]

Category of materials licenses	Annual fees [1 2 3]
1. Special nuclear material:	
A. (1) Licenses for possession and use of U–235 or plutonium for fuel fabrication activities.	
(a) Strategic Special Nuclear Material (High Enriched Uranium) [Program Code(s): 21130]	$6,329,000.
(b) Low Enriched Uranium in Dispersible Form Used for Fabrication of Power Reactor Fuel [Program Code(s): 21210].	$2,382,000.
(2) All other special nuclear materials licenses not included in Category 1.A.(1) which are licensed for fuel cycle activities.	
(a) Facilities with limited operations [Program Code(s): 21310, 21320]	N/A.[5]
(b) Gas centrifuge enrichment demonstration facilities	$1,225,000.
(c) Others, including hot cell facilities	$612,000.
B. Licenses for receipt and storage of spent fuel and reactor-related Greater than Class C (GTCC) waste at an independent spent fuel storage installation (ISFSI) [Program Code(s): 23200]	[11] N/A.
C. Licenses for possession and use of special nuclear material in sealed sources contained in devices used in industrial measuring systems, including x-ray fluorescence analyzers [Program Code(s): 22140]	$3,600.
D. All other special nuclear material licenses, except licenses authorizing special nuclear material in unsealed form in combination that would constitute a critical quantity, as defined in § 150.11 of this chapter, for which the licensee shall pay the same fees as those for Category 1.A.(2) [Program Code(s): 22110, 22111, 22120, 22131, 22136, 22150, 22151, 22161, 22163, 22170, 23100, 23300, 23310]	$7,300.
E. Licenses or certificates for the operation of a uranium enrichment facility [Program Code(s): 21200]	$3,403,000.
2. Source material:	
A. (1) Licenses for possession and use of source material for refining uranium mill concentrates to uranium hexafluoride [Program Code(s): 11400]	$1,293,000.
(2) Licenses for possession and use of source material in recovery operations such as milling, *in-situ* recovery, heap-leaching, ore buying stations, ion-exchange facilities and in-processing of ores containing source material for extraction of metals other than uranium or thorium, including licenses authorizing the possession of byproduct waste material (tailings) from source material recovery operations, as well as licenses authorizing the possession and maintenance of a facility in a standby mode.	
(a) Conventional and Heap Leach facilities [Program Code(s): 11100]	$23,600.
(b) Basic *In Situ* Recovery facilities [Program Code(s): 11500]	$29,900.
(c) Expanded *In Situ* Recovery facilities [Program Code(s): 11510]	$33,800.
(d) *In Situ* Recovery Resin facilities [Program Code(s): 11550]	$28,300.
(e) Resin Toll Milling facilities [Program Code(s): 11555]	N/A.[5]
(f) Other facilities [4] [Program Code(s): 11700]	N/A.[5]
(3) Licenses that authorize the receipt of byproduct material, as defined in Section 11e.(2) of the Atomic Energy Act, from other persons for possession and disposal, except those licenses subject to the fees in Category 2.A.(2) or Category 2.A.(4) [Program Code(s): 11600, 12000].	N/A.[5]

SCHEDULE OF MATERIALS ANNUAL FEES AND FEES FOR GOVERNMENT AGENCIES LICENSED BY NRC—Continued

[See footnotes at end of table]

Category of materials licenses	Annual fees [1 2 3]
(4) Licenses that authorize the receipt of byproduct material, as defined in Section 11e.(2) of the Atomic Energy Act, from other persons for possession and disposal incidental to the disposal of the uranium waste tailings generated by the licensee's milling operations, except those licenses subject to the fees in Category 2.A.(2) [Program Code(s): 12010].	$10,200.
(5) Licenses that authorize the possession of source material related to removal of contaminants (source material) from drinking water [Program Code(s): 11820].	$7,100.
B. Licenses that authorize only the possession, use, and/or installation of source material for shielding [Program Code(s): 11210]	$1,800.
C. All other source material licenses [Program Code(s): 11200, 11220, 11221, 11230, 11300, 11800, 11810]	$12,400.
3. Byproduct material:	
A. Licenses of broad scope for possession and use of byproduct material issued under parts 30 and 33 of this chapter for processing or manufacturing of items containing byproduct material for commercial distribution [Program Code(s): 03211, 03212, 03213]	$43,500.
B. Other licenses for possession and use of byproduct material issued under part 30 of this chapter for processing or manufacturing of items containing byproduct material for commercial distribution [Program Code(s): 03214, 03215, 22135, 22162]	$12,400.
C. Licenses issued under §§ 32.72 and/or 32.74 of this chapter authorizing the processing or manufacturing and distribution or redistribution of radiopharmaceuticals, generators, reagent kits, and/or sources and devices containing byproduct material. This category also includes the possession and use of source material for shielding authorized under part 40 of this chapter when included on the same license. This category does not apply to licenses issued to nonprofit educational institutions whose processing or manufacturing is exempt under § 171.11(a)(1). [Program Code(s): 02500, 02511, 02513]	$16,900.
D. [Reserved]	N/A.[5]
E. Licenses for possession and use of byproduct material in sealed sources for irradiation of materials in which the source is not removed from its shield (self-shielded units) [Program Code(s): 03510, 03520]	$9,100.
F. Licenses for possession and use of less than 10,000 curies of byproduct material in sealed sources for irradiation of materials in which the source is exposed for irradiation purposes. This category also includes underwater irradiators for irradiation of materials in which the source is not exposed for irradiation purposes [Program Code(s): 03511]	$15,500.
G. Licenses for possession and use of 10,000 curies or more of byproduct material in sealed sources for irradiation of materials in which the source is exposed for irradiation purposes. This category also includes underwater irradiators for irradiation of materials in which the source is not exposed for irradiation purposes [Program Code(s): 03521]	$140,900.
H. Licenses issued under subpart A of part 32 of this chapter to distribute items containing byproduct material that require device review to persons exempt from the licensing requirements of part 30 of this chapter, except specific licenses authorizing redistribution of items that have been authorized for distribution to persons exempt from the licensing requirements of part 30 of this chapter [Program Code(s): 03254, 03255]	$8,300.
I. Licenses issued under subpart A of part 32 of this chapter to distribute items containing byproduct material or quantities of byproduct material that do not require device evaluation to persons exempt from the licensing requirements of part 30 of this chapter, except for specific licenses authorizing redistribution of items that have been authorized for distribution to persons exempt from the licensing requirements of part 30 of this chapter [Program Code(s): 03250, 03251, 03252, 03253, 03256]	$20,200.
J. Licenses issued under subpart B of part 32 of this chapter to distribute items containing byproduct material that require sealed source and/or device review to persons generally licensed under part 31 of this chapter, except specific licenses authorizing redistribution of items that have been authorized for distribution to persons generally licensed under part 31 of this chapter [Program Code(s): 03240, 03241, 03243]	$4,800.
K. Licenses issued under subpart B of part 32 of this chapter to distribute items containing byproduct material or quantities of byproduct material that do not require sealed source and/or device review to persons generally licensed under part 31 of this chapter, except specific licenses authorizing redistribution of items that have been authorized for distribution to persons generally licensed under part 31 of this chapter [Program Code(s): 03242, 03244]	$3,200.
L. Licenses of broad scope for possession and use of byproduct material issued under parts 30 and 33 of this chapter for research and development that do not authorize commercial distribution [Program Code(s): 01100, 01110, 01120, 03610, 03611, 03612, 03613]	$14,700.
M. Other licenses for possession and use of byproduct material issued under part 30 of this chapter for research and development that do not authorize commercial distribution [Program Code(s): 03620]	$8,700.
N. Licenses that authorize services for other licensees, except: (1) Licenses that authorize only calibration and/or leak testing services are subject to the fees specified in fee Category 3.P.; and (2) Licenses that authorize waste disposal services are subject to the fees specified in fee categories 4.A., 4.B., and 4.C. [Program Code(s): 03219, 03225, 03226]	$14,900.
O. Licenses for possession and use of byproduct material issued under part 34 of this chapter for industrial radiography operations. This category also includes the possession and use of source material for shielding authorized under part 40 of this chapter when authorized on the same license [Program Code(s): 03310, 03320]	$25,900.
P. All other specific byproduct material licenses, except those in Categories 4.A. through 9.D. [Program Code(s): 02400, 02410, 03120, 03121, 03122, 03123, 03124, 3140, 3130, 03220, 03221, 03222, 03800, 03810, 22130]	$4,900.
Q. Registration of devices generally licensed under part 31 of this chapter	N/A.[13]
R. Possession of items or products containing radium–226 identified in 10 CFR 31.12 which exceed the number of items or limits specified in that section:[14]	
1. Possession of quantities exceeding the number of items or limits in 10 CFR 31.12(a)(4), or (5) but less than or equal to 10 times the number of items or limits specified [Program Code(s): 02700].	$9,000.
2. Possession of quantities exceeding 10 times the number of items or limits specified in 10 CFR 31.12(a)(4), or (5) [Program Code(s): 02710].	$4,900.
S. Licenses for production of accelerator-produced radionuclides [Program Code(s): 03210]	$15,500.
4. Waste disposal and processing:	

SCHEDULE OF MATERIALS ANNUAL FEES AND FEES FOR GOVERNMENT AGENCIES LICENSED BY NRC—Continued

[See footnotes at end of table]

Category of materials licenses	Annual fees [1 2 3]
A. Licenses specifically authorizing the receipt of waste byproduct material, source material, or special nuclear material from other persons for the purpose of contingency storage or commercial land disposal by the licensee; or licenses authorizing contingency storage of low-level radioactive waste at the site of nuclear power reactors; or licenses for receipt of waste from other persons for incineration or other treatment, packaging of resulting waste and residues, and transfer of packages to another person authorized to receive or dispose of waste material [Program Code(s): 03231, 03233, 03235, 03236, 06100, 06101]	N/A.[5]
B. Licenses specifically authorizing the receipt of waste byproduct material, source material, or special nuclear material from other persons for the purpose of packaging or repackaging the material. The licensee will dispose of the material by transfer to another person authorized to receive or dispose of the material [Program Code(s): 03234]	$32,000.
C. Licenses specifically authorizing the receipt of prepackaged waste byproduct material, source material, or special nuclear material from other persons. The licensee will dispose of the material by transfer to another person authorized to receive or dispose of the material [Program Code(s): 03232]	$14,900.
5. Well logging:	
A. Licenses for possession and use of byproduct material, source material, and/or special nuclear material for well logging, well surveys, and tracer studies other than field flooding tracer studies [Program Code(s): 03110, 03111, 03112]	$10,200.
B. Licenses for possession and use of byproduct material for field flooding tracer studies [Program Code(s): 03113]	N/A.[5]
6. Nuclear laundries:	
A. Licenses for commercial collection and laundry of items contaminated with byproduct material, source material, or special nuclear material [Program Code(s): 03218]	$46,100.
7. Medical licenses:	
A. Licenses issued under 10 CFR parts 30, 35, 40, and 70 of this chapter for human use of byproduct material, source material, or special nuclear material in sealed sources contained in gamma stereotactic radiosurgery units, teletherapy devices, or similar beam therapy devices. This category also includes the possession and use of source material for shielding when authorized on the same license [Program Code(s): 02300, 02310]	$17,900.
B. Licenses of broad scope issued to medical institutions or two or more physicians under 10 CFR parts 30, 33, 35, 40, and 70 of this chapter authorizing research and development, including human use of byproduct material, except licenses for byproduct material, source material, or special nuclear material in sealed sources contained in teletherapy devices. This category also includes the possession and use of source material for shielding when authorized on the same license.[9] [Program Code(s): 02110]	$46,100.
C. Other licenses issued under 10 CFR parts 30, 35, 40, and 70 of this chapter for human use of byproduct material, source material, and/or special nuclear material, except licenses for byproduct material, source material, or special nuclear material in sealed sources contained in teletherapy devices. This category also includes the possession and use of source material for shielding when authorized on the same license.[9] [Program Code(s): 02120, 02121, 02200, 02201, 02210, 02220, 02230, 02231, 02240, 22160]	$8,600.
8. Civil defense:	
A. Licenses for possession and use of byproduct material, source material, or special nuclear material for civil defense activities [Program Code(s): 03710]	$9,000.
9. Device, product, or sealed source safety evaluation:	
A. Registrations issued for the safety evaluation of devices or products containing byproduct material, source material, or special nuclear material, except reactor fuel devices, for commercial distribution	$12,000.
B. Registrations issued for the safety evaluation of devices or products containing byproduct material, source material, or special nuclear material manufactured in accordance with the unique specifications of, and for use by, a single applicant, except reactor fuel devices	$13,900.
C. Registrations issued for the safety evaluation of sealed sources containing byproduct material, source material, or special nuclear material, except reactor fuel, for commercial distribution	$16,200.
D. Registrations issued for the safety evaluation of sealed sources containing byproduct material, source material, or special nuclear material, manufactured in accordance with the unique specifications of, and for use by, a single applicant, except reactor fuel	$1,600.
10. Transportation of radioactive material:	
A. Certificates of Compliance or other package approvals issued for design of casks, packages, and shipping containers.	
1. Spent Fuel, High-Level Waste, and plutonium air packages	N/A.[6]
2. Other Casks	N/A.[6]
B. Quality assurance program approvals issued under 10 CFR part 71 of this chapter.	
1. Users and Fabricators	N/A.[6]
2. Users	N/A.[6]
C. Evaluation of security plans, route approvals, route surveys, and transportation security devices (including immobilization devices)	N/A.[6]
11. Standardized spent fuel facilities	N/A.[6]
12. Special Projects	N/A.[6]
13. A. Spent fuel storage cask Certificate of Compliance	N/A.[6]
B. General licenses for storage of spent fuel under 10 CFR 72.210	N/A.[12]
14. Decommissioning/Reclamation:	
A. Byproduct, source, or special nuclear material licenses and other approvals authorizing decommissioning, decontamination, reclamation, or site restoration activities under 10 CFR parts 30, 40, 70, 72, and 76 of this chapter, including MMLs	N/A.[7]
B. Site-specific decommissioning activities associated with unlicensed sites, including MMLs, whether or not the sites have been previously licensed.	N/A.[7]
15. Import and Export licenses	N/A.[8]
16. Reciprocity	N/A.[8]
17. Master materials licenses of broad scope issued to Government agencies [Program Code(s): 03614]	$485,000.
18. Department of Energy:	

SCHEDULE OF MATERIALS ANNUAL FEES AND FEES FOR GOVERNMENT AGENCIES LICENSED BY NRC—Continued

[See footnotes at end of table]

Category of materials licenses	Annual fees [1 2 3]
A. Certificates of Compliance	$1,309,000.[10]
B. Uranium Mill Tailings Radiation Control Act (UMTRCA) activities	$779,000.

[1] Annual fees will be assessed based on whether a licensee held a valid license with the NRC authorizing possession and use of radioactive material during the current FY. The annual fee is waived for those materials licenses and holders of certificates, registrations, and approvals who either filed for termination of their licenses or approvals or filed for possession only/storage licenses before October 1, 2011, and permanently ceased licensed activities entirely before this date. Annual fees for licensees who filed for termination of a license, downgrade of a license, or for a possession-only license during the FY and for new licenses issued during the FY will be prorated in accordance with the provisions of § 171.17. If a person holds more than one license, certificate, registration, or approval, the annual fee(s) will be assessed for each license, certificate, registration, or approval held by that person. For licenses that authorize more than one activity on a single license (e.g., human use and irradiator activities), annual fees will be assessed for each category applicable to the license. Licensees paying annual fees under Category 1.A.(1) are not subject to the annual fees for Categories 1.C. and 1.D. for sealed sources authorized in the license.

[2] Payment of the prescribed annual fee does not automatically renew the license, certificate, registration, or approval for which the fee is paid. Renewal applications must be filed in accordance with the requirements of 10 CFR parts 30, 40, 70, 71, 72, or 76 of this chapter.

[3] Each FY, fees for these materials licenses will be calculated and assessed in accordance with § 171.13 and will be published in the **Federal Register** for notice and comment.

[4] Other facilities include licenses for extraction of metals, heavy metals, and rare earths.

[5] There are no existing NRC licenses in these fee categories. If NRC issues a license for these categories, the Commission will consider establishing an annual fee for this type of license.

[6] Standardized spent fuel facilities, 10 CFR parts 71 and 72 Certificates of Compliance and related Quality Assurance program approvals, and special reviews, such as topical reports, are not assessed an annual fee because the generic costs of regulating these activities are primarily attributable to users of the designs, certificates, and topical reports.

[7] Licensees in this category are not assessed an annual fee because they are charged an annual fee in other categories while they are licensed to operate.

[8] No annual fee is charged because it is not practical to administer due to the relatively short life or temporary nature of the license.

[9] Separate annual fees will not be assessed for pacemaker licenses issued to medical institutions that also hold nuclear medicine licenses under Categories 7.B. or 7.C.

[10] This includes Certificates of Compliance issued to the Department of Energy that are not funded from the Nuclear Waste Fund.

[11] See § 171.15(c).

[12] See § 171.15(c).

[13] No annual fee is charged for this category because the cost of the general license registration program applicable to licenses in this category will be recovered through 10 CFR part 170 fees.

[14] Persons who possess radium sources that are used for operational purposes in another fee category are not also subject to the fees in this category. (This exception does not apply if the radium sources are possessed for storage only.)

(e) The fee-relief adjustment allocated to annual fees includes the budgeted resources for the activities listed in paragraph (e)(1) of this section, plus the total budgeted resources for the activities included in paragraphs (e)(2) and (e)(3) of this section, as reduced by the appropriations NRC receives for these types of activities. If the NRC's appropriations for these types of activities are greater than the budgeted resources for the activities included in paragraphs (e)(2) and (e)(3) of this section for a given FY, a negative fee-relief adjustment (or annual fee reduction) will be allocated to annual fees. The activities comprising the FY 2012 fee-relief adjustment are as follows:

* * * * *

8. In § 171.17, paragraphs (a)(2), (a)(3), and (b)(3)(i) are revised to read as follows:

§ 171.17 Proration.

* * * * *

(a) * * *

(2) *Terminations.* The base operating power reactor annual fee for operating reactor licensees who have requested amendment to withdraw operating authority permanently during the FY will be prorated based on the number of days during the FY the license was in effect before docketing of the certifications for permanent cessation of operations and permanent removal of fuel from the reactor vessel or when a final legally effective order to permanently cease operations has come into effect. The spent fuel storage/reactor decommissioning annual fee for reactor licensees who permanently cease operations and have permanently removed fuel from the site during the FY will be prorated on the basis of the number of days remaining in the FY after docketing of both the certifications of permanent cessation of operations and permanent removal of fuel from the site. The spent fuel storage/reactor decommissioning annual fee will be prorated for those 10 CFR part 72 licensees who do not hold a 10 CFR part 50 license who request termination of the 10 CFR part 72 license and permanently cease activities authorized by the license during the FY based on the number of days the license was in effect before receipt of the termination request. The annual fee for materials licenses with annual fees of $100,000 or greater for a single fee category for the current FY will be prorated based on the number of days remaining in the FY when a termination request or a request for a possession-only license is received by the NRC, provided the licensee permanently ceased licensed activities during the specified period.

(3) *Downgraded licenses.* The annual fee for a materials license with an annual fee of $100,000 or greater for a single fee category for the current FY, that is subject to fees under this part and downgraded on or after October 1 of a FY, is automatically prorated by the agency on the basis of the number of days remaining in the FY when the application for downgrade is received and approved by the NRC, provided the licensee permanently ceased the stated activities during the specified period.

* * * * *

(b) * * *

(3) * * *

(i) The annual fee for a materials license that is subject to fees under this part and downgraded on or after October 1 of a FY is automatically prorated on the basis of the date when the application for downgrade is received and approved by the NRC, provided the licensee permanently ceased the stated activities during the specified period.

* * * * *

Dated at Rockville, Maryland, this 5th day of June, 2012.

For the Nuclear Regulatory Commission.

J.E. Dyer,

Chief Financial Officer.

[FR Doc. 2012–14589 Filed 6–14–12; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2012–0287; Airspace Docket No. 11–AWP–21]

RIN 2120–AA66

Amendment of Air Traffic Service Routes; Southwestern United States

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies Jet Route J–2, and VOR Federal airways V–16, V–66 and V–202 in southern Arizona and New Mexico due to the scheduled decommissioning of the Cochise, AZ, VHF Omnidirectional Range Tactical Air Navigation (VORTAC) which currently is used to define segments of the routes.

DATES: Effective date 0901 UTC, July 26, 2012. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

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

SUPPLEMENTARY INFORMATION:

History

On April 23, 2012, the FAA published in the **Federal Register** a notice of proposed rulemaking (NPRM) to establish two new RNAV routes in the southwestern United States (78 FR 24156). An NPRM correction published in the **Federal Register** of May 23, 2012 (77 FR 30437) corrected the description of VOR Federal airway V–16.

Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal. One comment was received which expressed support for the proposal.

The Rule

The FAA is amending Title 14, Code of Federal Regulations (14 CFR) part 71 to modify the descriptions of Jet Route J–2, and VOR Federal airways V–16, V–66 and V–202 in southern Arizona and New Mexico. The FAA is taking this action due to the scheduled decommissioning of the Cochise, AZ, VORTAC, which is used in the descriptions of the routes. Specifically, the portion of J–2 that extends from Gila Bend, AZ; to Cochise, AZ; to El Paso, TX is realigned to proceed from Gila Bend to Tucson, AZ, and then to El Paso, TX (with the remainder of the route is unchanged). The portion of V–16 that currently extends from Tucson, AZ; to Cochise, AZ; to Columbus, NM, is realigned to proceed from Tucson, AZ; to San Simon, AZ; then to Columbus, NM (remainder of route unchanged). V–66 is modified by removing language that excludes altitudes above 13,000 feet MSL in one segment of the route no longer required by air traffic control. V–202 currently extends from Tucson, AZ; to Cochise, AZ; to San Simon, AZ; to Silver City, NM; to Truth or Consequences, NM. The western portion of V–202 that extends between Tucson-Cochise-San Simon is deleted. The modified V–202 begins at San Simon, AZ; to Silver City, NM; to Truth or Consequences, NM.

Jet Routes are published in paragraph 2004, and Domestic VOR Federal airways are published in paragraph 6010, 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 Jet Routes and VOR Federal airways listed in this document will be published subsequently in the Order.

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

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

This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it modifies Air Traffic Service routes to maintain the continuity of navigation guidance in the southwestern United States.

Environmental Review

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.9V, Airspace Designations and Reporting Points, dated August 9, 2011, and effective September 15, 2011, is amended as follows:

Paragraph 2004 Jet routes.

J–2 [Amended]

From Mission Bay, CA, via Imperial, CA; Bard, AZ; INT of the Bard 089° and Gila Bend, AZ, 261° radials; Gila Bend; Tucson, AZ; El Paso, TX; Fort Stockton, TX; Junction, TX; San Antonio, TX; Humble, TX; Lake Charles, LA; Baton Rouge, LA; Semmes, AL; Crestview, FL; INT of the Crestview 091° and the Seminole, FL, 290° radials; Seminole to Taylor, FL.

Paragraph 6010 Domestic VOR federal airways.

V–16 [Amended]

From Los Angeles, CA; Paradise, CA; Palm Springs, CA; Blythe, CA; Buckeye, AZ; Phoenix, AZ; INT Phoenix 155° and Stanfield, AZ, 105° radials; Tucson, AZ; San Simon, AZ; INT San Simon 119° and Columbus, NM, 277° radials; Columbus; El Paso, TX; Salt Flat, TX; Wink, TX; INT Wink 066° and Big Spring, TX, 260° radials; Big Spring; Abilene, TX; Bowie, TX; Bonham, TX; Paris, TX; Texarkana, AR; Pine Bluff, AR; Marvell, AR; Holly Springs, MS; Jacks Creek, TN; Shelbyville, TN; Hinch Mountain, TN; Volunteer, TN; Holston Mountain, TN; Pulaski, VA; Roanoke, VA; Lynchburg, VA; Flat Rock, VA; Richmond, VA; INT Richmond 039° and Patuxent, MD, 228° radials; Patuxent; Smyrna, DE; Cedar Lake, NJ; Coyle, NJ; INT Coyle 036° and Kennedy, NY, 209° radials; Kennedy; INT Kennedy 040° and Calverton, NY 261° radials; Calverton; Norwich, CT; Boston, MA. The airspace within Mexico and the airspace below 2,000 feet MSL outside the United States is excluded. The airspace within Restricted Areas R–5002A, R–5002C, and R–5002D is excluded during their times of use. The airspace within Restricted Areas R–4005 and R–4006 is excluded.

V–66 [Amended]

From Mission Bay, CA; Imperial, CA; 13 miles, 24 miles, 25 MSL; Bard, AZ; 12 miles, 35 MSL; INT Bard 089° and Gila Bend, AZ, 261°radials; 46 miles, 35 MSL; Gila Bend; Tucson, AZ, 7 miles wide (3 miles south and 4 miles north of centerline); Douglas, AZ; INT Douglas 064° and Columbus, NM, 277° radials; Columbus; El Paso, TX; 6 miles wide; INT El Paso 109° and Hudspeth, TX, 287° radials; 6 miles wide; Hudspeth; Pecos, TX; Midland, TX; INT Midland 083° and Abilene, TX, 252° radials; Abilene; to Millsap, TX. From Crimson, AL, Brookwood, AL; LaGrange, GA; INT LaGrange 120° and Columbus, GA, 068° radials; INT Columbus 068° and Athens, GA, 195° radials; Athens; Greenwood, SC; Sandhills, NC; Raleigh-Durham, NC; Franklin, VA.

V–202 [Amended]

From San Simon, AZ; Silver City, NM; to Truth or Consequences, NM.

Issued in Washington, DC, on June 7, 2012.

Colby Abbott,

Acting Manager, Airspace, Regulations and ATC Procedures Group.

[FR Doc. 2012–14412 Filed 6–14–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 516

[Docket No. FDA–2012–N–0002]

Conditionally Approved New Animal Drugs for Minor Use and Minor Species; Masitinib

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect a conditionally approved supplemental application for conditional approval of a new animal drug (CNADA) intended for a minor use filed by AB Science. The supplemental CNADA provides for a revised indication for masitinib mesylate tablets in dogs.

DATES: This rule is effective June 15, 2012.

FOR FURTHER INFORMATION CONTACT: Steven Fleischer, Center for Veterinary Medicine (HFV–110), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 240–276–8234, email: *steven.fleischer@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: AB Science, 3 Avenue George V, 75008 Paris, France, filed a supplemental CNADA 141–308 for KINAVET–CA1 (masitinib mesylate) Tablets for a revised indication for the treatment of nonresectable Grade II or III cutaneous mast cell tumors in dogs that have not previously received radiotherapy and/or chemotherapy except corticosteroids. In accordance with the Federal Food, Drug, and Cosmetic Act (the FD&C Act), as amended by the Minor Use and Minor Species Animal Health Act of 2004 (MUMS Act), this supplemental application is conditionally approved as of January 30, 2012, and the regulations in 21 CFR part 516 are amended to reflect this action.

A summary of safety and effectiveness data and information submitted to support conditional approval of this application may be seen in the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, between 9 a.m. and 4 p.m., Monday through Friday.

KINAVET–CA1 (masitinib mesylate) Tablets for the intended uses conditionally approved by FDA under application number 141–308 qualifies for 7 years of exclusive marketing rights beginning on December 15, 2010, the date of the original conditional approval. This new animal drug qualifies for exclusive marketing rights under section 573(c) of the FD&C Act (21 U.S.C. 360ccc–2(c)) because it has been declared a designated new animal drug by FDA under section 573(a) of the FD&C Act.

FDA has determined under 21 CFR 25.33 that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

This rule does not meet the definition of ''rule'' in 5 U.S.C. 804(3)(A) because it is a rule of ''particular applicability.'' Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801–808.

List of Subjects in 21 CFR Part 516

Administrative practice and procedure, Animal drugs, Confidential business information, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under the authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 516 is amended as follows:

PART 516—NEW ANIMAL DRUGS FOR MINOR USE AND MINOR SPECIES

■ 1. The authority citation for 21 CFR part 516 continues to read as follows:

Authority: 21 U.S.C. 360ccc–1, 360ccc–2, 371.

■ 2. In § 516.1318, revise paragraph (c)(2) to read as follows:

§ 516.1318 Masitinib.

* * * * *

(c) * * *

(2) *Indications for use.* For the treatment of nonresectable Grade II or III cutaneous mast cell tumors in dogs that have not previously received radiotherapy and/or chemotherapy except corticosteroids.

* * * * *

Dated: June 8, 2012.

Elizabeth Rettie,

Deputy Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 2012–14635 Filed 6–14–12; 8:45 am]

BILLING CODE 4160–01–P

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Parts 4022 and 4044

Allocation of Assets in Single-Employer Plans; Benefits Payable in Terminated Single-Employer Plans; Interest Assumptions for Valuing and Paying Benefits

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: This final rule amends the Pension Benefit Guaranty Corporation's regulations on Benefits Payable in Terminated Single-Employer Plans and Allocation of Assets in Single-Employer Plans to prescribe interest assumptions under the benefit payments regulation for valuation dates in July 2012 and interest assumptions under the asset allocation regulation for valuation dates in the third quarter of 2012. The interest assumptions are used for valuing and paying benefits under terminating single-employer plans covered by the pension insurance system administered by PBGC.

DATES: Effective July 1, 2012.

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

SUPPLEMENTARY INFORMATION: PBGC's regulations on Allocation of Assets in Single-Employer Plans (29 CFR part 4044) and Benefits Payable in Terminated Single-Employer Plans (29 CFR part 4022) prescribe actuarial assumptions—including interest assumptions—for valuing and paying plan benefits under terminating single-employer plans covered by title IV of the Employee Retirement Income Security Act of 1974. The interest assumptions in the regulations are also published on PBGC's Web site (*http://www.pbgc.gov*).

The interest assumptions in Appendix B to Part 4044 are used to value benefits for allocation purposes under ERISA section 4044. PBGC uses the interest assumptions in Appendix B to Part 4022 to determine whether a benefit is payable as a lump sum and to determine the amount to pay. Appendix C to Part 4022 contains interest assumptions for private-sector pension practitioners to refer to if they wish to use lump-sum interest rates determined using PBGC's historical methodology. Currently, the rates in Appendices B and C of the benefit payment regulation are the same.

The interest assumptions are intended to reflect current conditions in the financial and annuity markets. Assumptions under the asset allocation regulation are updated quarterly; assumptions under the benefit payments regulation are updated monthly. This final rule updates the benefit payments interest assumptions for July 2012 and updates the asset allocation interest assumptions for the third quarter (July through September) of 2012.

The third quarter 2012 interest assumptions under the allocation regulation will be 2.95 percent for the first 20 years following the valuation date and 3.66 percent thereafter. In comparison with the interest assumptions in effect for the second quarter of 2012, these interest assumptions represent no change in the select period (the period during which the select rate (the initial rate) applies), a decrease of 0.16 percent in the select rate, and an increase of 0.30 percent in the ultimate rate (the final rate).

The July 2012 interest assumptions under the benefit payments regulation will be 1.00 percent for the period during which a benefit is in pay status and 4.00 percent during any years preceding the benefit's placement in pay status. In comparison with the interest assumptions in effect for June 2011, these interest assumptions represent a decrease of 0.25 percent in the immediate annuity rate and are otherwise unchanged.

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

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

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

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

List of Subjects

29 CFR Part 4022

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

29 CFR Part 4044

Employee benefit plans, Pension insurance, Pensions.

In consideratin of the foregoing, 29 CFR parts 4022 and 4044 are amended as follows:

PART 4022—BENEFITS PAYABLE IN TERMINATED SINGLE-EMPLOYER PLANS

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

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

■ 2. In appendix B to part 4022, Rate Set 225, as set forth below, is added to the table.

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

* * * * *

Rate set	For plans with a valuation date		Immediate annuity rate (percent)	Deferred annuities (percent)				
	On or after	Before		i_1	i_2	i_3	n_1	n_2
*	*		*	*	*	*	*	
225	7–1–12	8–1–12	1.00	4.00	4.00	4.00	7	8

■ 3. In appendix C to part 4022, Rate Set 225, as set forth below, is added to the table.

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

* * * * *

Rate set	For plans with a valuation date		Immediate annuity rate (percent)	Deferred annuities (percent)				
	On or after	Before		i_1	i_2	i_3	n_1	n_2
*	*		*	*	*	*	*	
225	7–1–12	8–1–12	1.00	4.00	4.00	4.00	7	8

PART 4044—ALLOCATION OF ASSETS IN SINGLE-EMPLOYER PLANS

■ 4. The authority citation for part 4044 continues to read as follows:

Authority: 29 U.S.C. 1301(a), 1302(b)(3), 1341, 1344, 1362.

■ 5. In appendix B to part 4044, a new entry for July–September 2012, as set forth below, is added to the table.

Appendix B to Part 4044—Interest Rates Used To Value Benefits

* * * * *

For valuation dates occurring in the month—	The values of i_t are:					
	i_t	for t =	i_t	for t =	i_t	for t =
*	*	*	*	*	*	
July–September 2012	0.0295	1–20	0.0366	>20	N/A	N/A

Issued in Washington, DC, on this 11th day of June 2012.

John H. Hanley,

Director, Legislative and Regulatory Department, Pension Benefit Guaranty Corporation.

[FR Doc. 2012–14722 Filed 6–14–12; 8:45 am]

BILLING CODE 7709–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Parts 100 and 165

[Docket No. USCG–2012–0100]

RIN 1625–AA00; 1625–AA08

Special Local Regulation and Security Zone: War of 1812 Bicentennial Commemoration, Port of Boston, MA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary special local regulation and temporary security zones during and after the War of 1812 Bicentennial Commemoration events in the Port of Boston, Massachusetts, to be held between June 28, 2012 and July 6, 2012. These regulations are necessary to promote the safe navigation of vessels and the safety of life and property during the heavy volume of vessel traffic expected during this event.

DATES: This rule is effective and will be enforced from 9 a.m. on June 29, 2012 to 6 p.m. on July 6, 2012.

ADDRESSES: Documents mentioned in this preamble are part of docket USCG–2012–0100. To view documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* type the docket number in the ''SEARCH'' Box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with the rulemaking. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation, West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary final rule, call or email Mr. Mark Cutter, Coast Guard Sector Boston Waterways Management Division, telephone 617–223–4000, email *Mark.E.Cutter@uscg.mil.* If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

DHS Department of Homeland Security
FR **Federal Register**
NPRM Notice of Proposed Rulemaking

A. Regulatory History and Information

On April 3, 2012, we published a notice of proposed rulemaking (NPRM) entitled: Special Local Regulation and Security Zone: War of 1812 Bicentennial Commemoration, Port of Boston, Massachusetts; in the **Federal Register** (77 FR 19963). Two comments were received in the proposed rule's docket:

- One comment was accidentally misfiled from an unrelated FAA regulation and did not pertain to our proposed rulemaking. It has since been removed from the docket for this rule by the Docket Management System.
- One comment asked simply ''Will there be any provisions for Press Boats for the event? If so how should the vessel be flagged or identified as such?'' The Coast Guard recommends that a boat with members of the media onboard, display something with the word ''MEDIA'' that is visible to other vessels.

No public meeting was requested of the Coast Guard, and none was held.

The event sponsor hosted a planning and coordination meeting that was open to the public on October 12, 2011 and held an Initial Planning Conference on February 14–15, 2012 and a mid-term planning conference on May 8, 2012 in

Boston, MA. Recommendations to employ a similar pattern to that which was used during the Sail Boston 2009 events were received during this meeting; such recommendations are incorporated into this document.

Additionally, informal discussions were held with port stakeholders in December 2011, January, March, April, and May 2012 during the Boston's Port Operators Group monthly Meetings, and comments recommending the use of traffic patterns the way they were used during Sail Boston 2009 have been addressed.

On January 26, 2012 the Coast Guard briefed federal, state, and local government agencies to update them on Coast Guard planning for the War of 1812 Bicentennial Commemoration Events. This meeting was also attended by several local business leaders. Nothing discussed at this meeting impacted the drafting of this proposed regulation.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Any delay in the effective date of this rule could jeopardize the safety of life on navigable waters and protection of U.S. and Foreign military vessels, U.S. and foreign government sailing vessels, private vessels, spectators, and the Port of Boston during these events.

B. Basis and Purpose

The legal basis for the temporary rule is 33 U.S.C. 1226, 1231, 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; Public Law 107–295, 116 Stat. 2064; and Department of Homeland Security Delegation No. 0170.1, which collectively authorize the Coast Guard to define special local regulations and security zones.

The purpose of this rule is to promote the safe navigation of vessels and the safety of life and property during the heavy volume of vessel traffic expected in the Port of Boston during the War of 1812 Bicentennial Commemoration events.

C. Discussion of Comments, Changes and the Final Rule

The United States Navy is planning a series of events nationwide to celebrate the commemoration of the War of 1812. The Port of Boston events will occur between June 28 and July 6, 2012. The events will consist of a gathering of U.S and foreign military vessels, U.S. and foreign government sailing vessels mooring in various berths throughout the Port of Boston.

The War of 1812 Bicentennial Commemoration events are expected to conform to the following outline of events:

1. June 28–29—Multiple U.S. and foreign military vessels arrive;
2. June 30: Arrival of the U.S. and foreign government sailing vessels;
3. June 28 through July 6: Security Zones in effect;
4. June 30 through July 6: Public tours of U.S and Foreign military vessels and U.S and foreign government sailing vessels;
5. June 29 through July 6: Vessel movement control measures in effect;
6. July 4: USS CONSTITUTION and USCGC EAGLE Parade;
7. July 4: USN Blue Angles aerial demonstration.

On July 4, starting at 11 a.m. there will be salute to the USS CONSITUTION and USCGC EAGLE as they sail from Constitution Pier, outbound Boston Main Channel to Castle Island and return. This will be followed by an air demonstration by the Navy's Blue Angels above Boston Inner Harbor at approximately 12:15 p.m.

Special Local Regulations

In the year 2009, a similar event, Sail Boston 2009, drew several hundred thousand spectators by both land as well as water to Boston Harbor.

Recognizing the significant draw this event may have on recreational boating traffic, the Coast Guard's is establishing a special local regulation that would create vessel movement control measures in Boston Harbor through a Regulated Area, which will be in effect during the War of 1812 Bicentennial Commemoration events.

This regulated area is needed for vessel movement control measures and to facilitate law enforcement vessel access to support facilities. Additionally, the regulated areas will protect the maritime public and participating vessels from possible hazards to navigation associated with dense vessel traffic.

The Regulated Area establishes a counter-clockwise traffic pattern around Boston Inner Harbor to ensure spectator vessels are following an organized route, facilitating the smooth flow of boating traffic, thereby minimizing disruption on the waterway. A Coast Guard Patrol Commander (PATCOM) will be designated and on scene controlling the flow of traffic through the Regulated Area.

The waterway between the World Trade Center Pier and the Fish Pier, as well as the waterway within the Reserved Channel do not constitute large areas for unhindered navigation. Due to the navigation restrictions in these waterways, when vessels over 125 feet enter the area, on-scene patrol personnel will halt the flow of vessel traffic and allow no other vessel in the channel until the vessel greater than 125 feet is clear of the narrow channel.

Due to concerns of tenants at the World Trade Center, Fish Piers and the Black Falcon Terminal, waterside viewing hours for vessels berthed at these facilities will be limited to times specified in the regulatory text, outside of which only vessels which are tenants within the channels of the World Trade Center, Fish Pier and Reserved Channel will be authorized access within those areas.

A comment was received on the proposed ruling requesting to know what provisions will be made to identify press boats. To help identify a press boat, The Coast Guard recommends that a boat with members of the media onboard, display something with the word ''MEDIA'' that is visible to other vessels.

Security Zones

Additionally, the Coast Guard is establishing 25-yard security zones surrounding participating vessels while moored. The regulations will be in effect in Boston Harbor throughout the effective period. These restrictions are expected to minimize the risks associated with the anticipated large number of recreational vessel traffic within the confines of Boston Inner Harbor operating in conjunction with commercial deep draft vessel traffic that pose a significant threat to the safety of life.

This rule is effective and will be enforced from 9 a.m. on June 29, 2012 to 6 p.m. on July 6, 2012.

D. 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.

1. Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under that Order.

Although this regulation imposes traffic restrictions in portions of Boston Harbor during the events, the effect of this regulation will not be significant for the following reasons: the regulated area and security zones will only be in place during the week long War of 1812 activities, and Extensive advance notice will be made to mariners via appropriate means, which may include broadcast notice to mariners, local notice to mariners, facsimile, marine safety information bulletin, local Port Operators Group meetings, the Internet, USCG Sector Boston Homeport Web page, and local newspapers and media. The advance notice will permit mariners to adjust their plans accordingly. Additionally, the regulated area is tailored to impose the least impact on maritime interests without compromising safety.

Similar restrictions were established for Sailing Boston 1992, 2000, and 2009 events. Based upon the Coast Guard's experiences from those previous similar magnitude events, these regulations have been narrowly tailored to impose the least impact on maritime interests yet provide the necessary level of safety.

2. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612, as amended requires federal agencies to consider the potential impact of regulations on small entitles during rulemaking. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule would not have a significant economic impact on a substantial number of small entities.

This rule would affect the following entities, some of which might be small entities: The owners or operators of vessels intending to transit, fish, or anchor in portions of Boston Harbor during various times during the effective period.

The rule would not have a significant economic impact on a substantial number of small entities for the same reasons outlined in the Executive Order 12866 and Executive Order 13563 section above.

3. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this rule. If the would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT**, above.

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.

4. 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).

5. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on 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 analyzed this rule under that Order and determined that it does not have implications for federalism.

6. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

7. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such expenditure, we do discuss the effects of this rule elsewhere in this preamble.

8. 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.

9. 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.

10. 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.

11. 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.

12. Energy Effects

This action is not a ''Significant energy action'' under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.

13. Technical Standards

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

14. 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 involves temporary security zones and a special local regulation. This regulatory action is categorically excluded from further environmental analysis and review paragraph 34(g) and (h) respectively of figure 2–1 of the Commandant Instruction. An environmental analysis checklist and Categorical Exclusion Determination are available in the

docket where indicated under **ADDRESSES**. We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

List of Subjects

33 CFR Part 100

Marine Safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

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 100 and 165 as follows:

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

■ 1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233.

■ 2. Add temporary § 100.35T01–0100 to read as follows:

§ 100.35T01–0100 Special Local Regulation; War of 1812 Bicentennial Commemoration, Port of Boston, Massachusetts.

(a) *Location:* This special local regulation establishes a regulated area to include all waters west of a line drawn from position 42°20′21″ N, 71°00′37″ W, the monument at Castle Island, to position 42°20′45″ N, 71°00′29″ W, the Logan Airport Security Zone Buoy ''24'' and then position 42°20′48″ N, 71°00′27″ W, a point of land, including the Reserved Channel to position 42°20′34″ N, 71°02′11″ W, the Summer Street retractile bridge, the Charles River to position 42°22′07″ N, 71°03′40″ W, the Gridley Locks at the Charles River Dam, the Mystic River to position 42°23′22″ N, 71°04′16″ W, the Alford Street Bridge and the Chelsea River to position 42°23′09″ N, 71°02′21″ W the McArdle Bridge.

(b) *Special Local Regulations.*

(1) During the effective period, vessel operators transiting through the regulated area shall proceed in a counterclockwise direction at no wake speeds not to exceed five knots, unless otherwise authorized by the Captain of the Port.

(2) Vessel operators shall comply with the instructions of on-scene Coast Guard patrol personnel. On-scene Coast Guard patrol personnel include commissioned, warrant, and petty officers of the Coast Guard onboard Coast Guard, Coast Guard Auxiliary, local, state, and federal law enforcement vessels.

(3) From 9 a.m. on June 29, 2012 through 6 p.m. on July 6, 2012 vessel control measures will be implemented. The traffic pattern will be in a counterclockwise rotation, such that all vessels shall stay generally as far to the starboard side of the channel as is safe and practicable.

(4) To facilitate commercial ferry traffic with minimal disruption, commercial ferries within the regulated area, moving between stops on their normal routes, will be exempt from the mandatory counterclockwise traffic pattern. This exemption does not give ferries navigational precedence or in any way alter their responsibilities under the Rules of the Road or any other pertinent regulations.

(5) Vessel operators transiting the waterway between the Fish Pier and World Trade Center must enter and keep to the starboard side of the channel, proceeding as directed by on-scene Coast Guard patrol personnel. Vessel traffic shall move in a counterclockwise direction around a turning point as marked by an appropriate on-scene patrol vessel.

(6) Vessel operators transiting the regulated area must maintain at least twenty five (25) yard safe distance from all official War of 1812 event participants, all U.S. military vessels under 100 feet, and all foreign military vessels, and must make way for all deep draft vessel traffic underway in the regulated area.

(7) When a vessel greater than 125 feet enters the waterway between the World Trade Center and the Fish Pier and inside the Reserved Channel, no other vessel will be allowed to enter until that vessel departs that area unless authorized by the on-scene Patrol Commander.

(8) From 10 p.m. through 8 a.m. daily, while regulated area is in effect, only vessels which are tenants within the channels of the World Trade Center, Fish Pier and Reserved Channel will be authorized access.

(9) The Captain of the Port (COTP) may control the movement of all vessels operating on the navigable waters of Boston Harbor when the COTP has determined that such orders are justified in the interest of safety by reason of weather, visibility, sea conditions, temporary port congestion, and other temporary hazards circumstance.

(c) *Effective period.* This regulation is effective from 9 a.m. on June 29, 2012 through 6 p.m. on July 6, 2012.

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 3. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6 and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 4. Add temporary § 165.T01–0100 to read as follows:

§ 165.T01–0100 Security Zones: War of 1812 Bicentennial Commemoration, Port of Boston, Massachusetts.

(a) *Location.* The following are security zones: A twenty five (25) yard safety and security zone around all moored official War of 1812 event participants, all moored U.S. military vessels under 100 feet, and all foreign military vessels within the Captain of the Port Zone Boston.

(b) *Definitions.* For purposes of this section ''Designated on-scene representative'' is any Coast Guard commissioned, warrant, or petty officer who has been designated by the Captain of the Port (COTP) Boston to act on the COTP's behalf. The designated on-scene representative may be on a Coast Guard vessel, or onboard a federal, state, or local agency vessel that is authorized to act in support of the Coast Guard.

(c) *Effective period.* This regulation is effective from 9 a.m. on June 28, 2012 until 6 p.m. on July 6, 2012.

(d) *Regulations.*

(1) In accordance with the general regulations in 33 CFR 165.33, subpart D, no person or vessel may enter, transit, anchor or otherwise move within the security zones created by this section unless granted permission to do so by the COTP Boston or the designated on-scene representative.

(2) Vessel operators desiring to enter or operate within the security zone shall contact the COTP or the designated on-scene representative via VHF channel 16 to obtain permission.

(3) Penalties. Vessels or persons violating this rule are subject to the penalties set forth in 33 U.S.C. 1232 and 50 U.S.C. 192.

Dated: June 4, 2012.

J.N. Healey,

Captain, U.S. Coast Guard, Captain of the Port Boston.

[FR Doc. 2012–14650 Filed 6–14–12; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2012–0534]

Drawbridge Operation Regulation; Umpqua River, Reedsport, OR

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Coast Guard has issued a temporary deviation from the operating schedule that governs the US 101 Highway Bridge across the Umpqua River, mile 11.1, at Reedsport, OR. This deviation is necessary to accommodate electrical system upgrades on the bridge. This deviation allows the US 101 Umpqua River Bridge to remain in the closed position during system upgrade and maintenance.

DATES: This deviation is effective from 8 a.m. on June 25, 2012 through 5 p.m. June 28, 2012.

ADDRESSES: Documents mentioned in this preamble as being available in the docket are part of docket USCG–2012–0534 and are available online by going to *http://www.regulations.gov,* inserting USCG–2012–0534 in the ''Keyword'' box and then clicking ''Search''. They are also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email the Bridge Administrator, Coast Guard Thirteenth District; telephone 206–220–7282; email *randall.d.overton@uscg.mil.* If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION: The Oregon Department of Transportation has requested that the US 101 Umpqua River Bridge remain closed to vessel traffic to facilitate electrical system upgrades to the bridge's control circuitry. The US 101 Bridge crosses the Umpqua River at mile 11.1 and provides 36 feet of vertical clearance above mean high water when in the closed position. Vessels which do not require an opening of the bridge may continue to transit beneath the bridge during this maintenance period. Under normal conditions the US 101 Umpqua River Bridge operates in accordance with 33 CFR 117.893(a) which states that the draw shall open on signal if at least two hours advance notice is given. This deviation period is from 8 a.m. on June 25, 2012 through 5 p.m. June 28, 2012. The deviation allows the US 101 Umpqua River Bridge, mile 11.1, to remain in the closed position and need not open for maritime traffic from 8 a.m. June 25, 2012 through 5 p.m. June 28, 2012. The bridge shall operate in accordance to 33 CFR 117.893(a) at all other times. Waterway usage on this stretch of the Umpqua River includes vessels ranging from occasional commercial tug and barge to small pleasure craft. Mariners will be notified and kept informed of the bridge's operational status via the Coast Guard Notice to Mariners publication and Broadcast Notice to Mariners as appropriate. The draw span will be required to open, if needed, for public vessels of the United States and for vessels engaged in emergency response operations during this closure period.

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

Dated: June 6, 2012.

Randall D. Overton,

Bridge Administrator.

[FR Doc. 2012–14642 Filed 6–14–12; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2012–0192]

Drawbridge Operation Regulation; Atlantic Intracoastal Waterway (AIWW), at Wrightsville Beach, NC; Cape Fear and Northeast Cape Fear River, at Wilmington, NC

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, Coast Guard Fifth District, has issued a temporary deviation from the operating schedules that govern three North Carolina Department of Transportation (NCDOT) bridges: The S.R. 74 Bridge, across AIWW, mile 283.1 at Wrightsville Beach, NC; the Cape Fear Memorial Bridge across the Cape Fear River, mile 26.8; and the Isabel S. Holmes Bridge across the Northeast Cape Fear River, mile 1.0; both at Wilmington, NC. The deviation is necessary to accommodate the YMCA Tri Span 5K & 10K races. This deviation allows the bridges to remain in the closed position during the races.

DATES: This deviation is effective from 7 a.m. through 9 a.m. on Saturday, July 14, 2012.

ADDRESSES: Documents mentioned in this preamble as being available in the docket are part of docket USCG–2012–0192 and are available online by going to *http://www.regulations.gov,* inserting USCG–2012–0192 in the ''Keyword'' box and then clicking ''Search''. They are also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Terrance Knowles, Coast Guard; telephone 757–398–6587, email *Terrance.A.Knowles@uscg.mil.* If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION: The Wilmington Family YMCA, on behalf of NCDOT, has requested a temporary deviation from the current operating schedules for the S.R. 74 Bridge, across AIWW, mile 283.1 at Wrightsville Beach, NC; the Cape Fear Memorial Bridge across the Cape Fear River, mile 26.8; and the Isabel S. Holmes Bridge across the Northeast Cape Fear River, mile 1.0; both at Wilmington, NC. The requested deviation is to accommodate the annual YMCA Tri Span 5K & 10K races scheduled for Saturday, July 14, 2012. To facilitate these events, the draw of the bridges will be maintained in the closed-to-navigation positions from 7 a.m. to 9 a.m.

The SR 74 Bridge is a double-leaf bascule drawbridge with a vertical clearance of 20 feet, above mean high water, in the closed position. The current operating schedule is set out in 33 CFR 117.821(a)(4). During the month of July, the bridge is required to open on signal, except that from 7 a.m. to 7 p.m., the draw need only open on the hour.

The Cape Fear Memorial Bridge is a vertical-lift drawbridge with a vertical clearance of 65 feet, above mean high water, in the closed position. The current operating schedule is set out in 33 CFR 117.823. During the month of

July the bridge is required to open on signal, except that on the second Saturday of July of every year, the draw need not open 8 a.m. to 10 a.m.

The Isabel S. Holmes Bridge is a double-leaf bascule drawbridge with a vertical clearance of 40 feet, above mean high water, in the closed position. The current operating schedule is set out in 33 CFR 117.829. During the month of July the bridge is required to open on signal except that the draw will be closed to pleasure craft, from 6 a.m. to 6 p.m., every day, except at 10 a.m. and 2 p.m., when the draw will open for all waiting vessels; and the draw need not open, from 8 a.m. to 10 a.m., on the second Saturday of July of every year. Vessels that can pass under these bridges in the closed position may do so at any time. The bridges will be able to open for emergencies.

There are no alternate routes available to vessels transiting these waterways. These races have been an annual event; therefore local waterway users should be familiar with the closure. To ensure that waterway users are aware of the closure, the Coast Guard will issue a Local and Broadcast Notice to Mariners to allow mariners to schedule their transits accordingly. Most waterway traffic for these bridges consists of recreational boats with a few barges and tugs in the daytime.

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

Dated: June 7, 2012.

Waverly W. Gregory, Jr.,

Bridge Program Manager, Fifth Coast Guard District.

[FR Doc. 2012–14644 Filed 6–14–12; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2012–0536]

RIN 1625–AA00

Safety Zone; Olde Ellison Bay Days Fireworks Display, Ellison Bay, WI

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone on Lake Michigan in Ellison Bay, Wisconsin. This safety zone is intended to restrict vessels from a portion of Lake Michigan during the Olde Ellison Bay Days Fireworks display. This temporary safety zone is necessary to protect spectators and vessels from the hazards associated with a fireworks display.

DATES: This rule will be effective between 9 p.m. until 10 p.m. on June 25, 2012.

ADDRESSES: Documents mentioned in this preamble are part of docket [USCG–2012–0536]. To view documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* type the docket number in the ''SEARCH'' box, and click ''Search.'' You may visit the Docket Management Facility, Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary rule, call or email CWO Jon Grob, U.S. Coast Guard Sector Lake Michigan; telephone 414–747–7188, email *Jon.K.Grob@uscg.mil.* If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

DHS Department of Homeland Security
FR **Federal Register**
NPRM Notice of Proposed Rulemaking

A. Regulatory History and Information

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because doing so would be impracticable. The final details for this event were not known to the Coast Guard until there was insufficient time remaining before the event to publish an NPRM. Thus, delaying the effective date of this rule to wait for a comment period to run would be impracticable and it would inhibit the Coast Guard's ability to protect spectators and vessels from the hazards associated with a maritime fireworks display, which are discussed further below.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. For the same reasons discussed in the preceding paragraph, waiting for 30 day notice period run would be impracticable and contrary to the public interest.

B. Basis and Purpose

Between 9 p.m. and 10 p.m. on June 25, 2012, a fireworks display will be held on Lake Michigan in Ellison Bay, WI. The Captain of the Port, Sector Lake Michigan has determined that fireworks launched proximate to a gathering of watercraft pose a significant risk to public safety and property. Such hazards include premature and accidental detonations, dangerous projectiles, and falling or burning debris.

C. Discussion of Rule

With the aforementioned hazards in mind, the Captain of the Port, Sector Lake Michigan, has determined that this temporary safety zone is necessary to ensure the safety of spectators and vessels during the Town of Porter Fireworks. This zone will be effective and enforced from 9 p.m. until 10 p.m. on June 25, 2012. This zone will encompass all waters of Lake Michigan, Ellison Bay, WI within a 400 foot radius of position 45°15′39.36″ N and 87°05′03″ W (NAD 83).

Entry into, transiting, or anchoring within the safety zone is prohibited unless authorized by the Captain of the Port, Sector Lake Michigan, or his designated on-scene representative. The Captain of the Port or his designated on-scene representative may be contacted via VHF Channel 16.

D. 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.

1. Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. Executive Order 12866 or under section 1 of

Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders. It is not ''significant'' under the regulatory policies and procedures of the Department of Homeland Security (DHS). We conclude that this rule is not a significant regulatory action because we anticipate that it will have minimal impact on the economy, will not interfere with other agencies, will not adversely alter the budget of any grant or loan recipients, and will not raise any novel legal or policy issues. The safety zone created by this rule will be relatively small and enforced for relatively short time. Also, the safety zone is designed to minimize its impact on navigable waters. Furthermore, the safety zone has been designed to allow vessels to transit around it. Thus, restrictions on vessel movement within that particular area are expected to be minimal. Under certain conditions, moreover, vessels may still transit through the safety zone when permitted by the Captain of the Port.

2. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

This rule will affect the following entities, some of which might be small entities: The owners or operators of vessels intending to transit or anchor in a portion of Lake Michigan on the evening of June 25, 2012.

This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons: This safety zone would be activated, and thus subject to enforcement, for only one hour in the evening. Traffic may be allowed to pass through the zone with the permission of the Captain of the Port. The Captain of the Port can be reached via VHF channel 16. Before the activation of the zone, we would issue local Broadcast Notice to Mariners.

3. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section above.

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.

4. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

5. Federalism

A rule has implications for federalism 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 analyzed this rule under that Order and determined that this rule does not have implications for federalism.

6. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the **FOR FURTHER INTFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

7. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

8. 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.

9. 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.

10. 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.

11. 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.

12. Energy Effects

This action is not a ''significant energy action'' under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.

13. Technical Standards

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

14. 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 determined 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 involves the establishment of a safety zone, and therefore it is categorically excluded from further review under paragraph 34(g) of Figure 2–1 of the Commandant Instruction. An environmental analysis checklist supporting this determination and a Categorical Exclusion

Determination are available in the docket where indicated under **ADDRESSES**. We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

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 parts 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. Chapters 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 165.T09–0536 to read as follows:

§ 165.T09–0536 Safety Zone; Olde Ellison Bay Days Fireworks Display, Ellison Bay, Wisconsin.

(a) Location. The safety zone will encompass all waters of Lake Michigan, Ellison Bay, Wisconsin within a 400 foot radius of position 45°15′36″ N and 87°05′03″ W (NAD 83).

(b) Effective and enforcement period. This regulation is effective and will be enforced on June 25, 2012 from 9 p.m. until 10 p.m.

(c) Regulations. (1) In accordance with the general regulations in section 165.23 of this part, entry into, transiting, or anchoring within this safety zone is prohibited unless authorized by the Captain of the Port, Sector Lake Michigan or his designated on-scene representative.

(2) This safety zone is closed to all vessel traffic, except as may be permitted by the Captain of the Port, Sector Lake Michigan or his designated on-scene representative.

(3) The ''on-scene representative'' of the Captain of the Port, Sector Lake Michigan is any Coast Guard commissioned, warrant or petty officer who has been designated by the Captain of the Port, Sector Lake Michigan to act on his behalf.

(4) Vessel operators desiring to enter or operate within the safety zone shall contact the Captain of the Port, Sector Lake Michigan or his on-scene representative to obtain permission to do so. The Captain of the Port, Sector Lake Michigan or his on-scene representative may be contacted via VHF Channel 16. Vessel operators given permission to enter or operate in the safety zone must comply with all directions given to them by the Captain of the Port, Sector Lake Michigan, or his on-scene representative.

Dated: June 6, 2012.

M.W. Sibley,

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

[FR Doc. 2012–14714 Filed 6–14–12; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2012–0539]

RIN 1625–AA00

Safety Zone; Sheboygan Harbor Fest, Sheboygan, WI

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone on Lake Michigan and the Sheboygan River, Sheboygan, WI. This safety zone is intended to restrict vessels from a portion of Lake Michigan and the Sheboygan Harbor during the Sheboygan Harbor Fest Fireworks display. This temporary safety zone is necessary to protect spectators and vessels from the hazards associated with a fireworks display.

DATES: This rule will be effective between 9:15 p.m. until 10:15 p.m. on June 16, 2012.

ADDRESSES: Documents mentioned in this preamble are part of docket [USCG–2012–0539]. To view documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* type the docket number in the ''SEARCH'' box, and click ''Search.'' You may visit the Docket Management Facility, Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary rule, call or email CWO3 Jon Grob, Prevention, Waterways Management Division, U.S. Coast Guard Sector Lake Michigan; telephone 414–747–7188, email *Jon.K.Grob@USCG.Mil.* If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

DHS Department of Homeland Security
FR **Federal Register**
NPRM Notice of Proposed Rulemaking

A. Regulatory History and Information

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because doing so would be impracticable. The final details for this event were not known to the Coast Guard until there was insufficient time remaining before the event to publish an NPRM. Thus, delaying the effective date of this rule to wait for a comment period to run would be impracticable because it would inhibit the Coast Guard's ability to protect spectators and vessels from the hazards associated with a maritime fireworks display, which are discussed further below.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register.** For the same reasons discussed in the preceding paragraph, waiting for 30 day notice period to run would be impracticable.

B. Basis and Purpose

Between 9:15 p.m. and 10:15 p.m. on June 16, 2012, a fireworks display will be held on Lake Michigan near Sheboygan, WI. The Captain of the Port Sector Lake Michigan has determined that fireworks launched proximate to a gathering of watercraft pose a significant risk to public safety and property. Such hazards include premature and accidental detonations, dangerous projectiles, and falling or burning debris.

C. Discussion of Rule

With the aforementioned hazards in mind, the Captain of the Port Sector Lake Michigan has determined that this temporary safety zone is necessary to ensure the safety of spectators and

vessels during the Sheboygan Harbor Fest Fireworks. This zone will be effective and enforced from 9:15 p.m. until 10:15 p.m. on June 16, 2012. This zone will encompass all waters of Lake Michigan and the Sheboygan Harbor, Sheboygan, WI within a 1000 foot radius of position 43°44′55″ N and 87°41′54.8″ W (NAD 83).

Entry into, transiting, or anchoring within the safety zone is prohibited unless authorized by the Captain of the Port Sector Lake Michigan or his or her designated on-scene representative. The Captain of the Port or his or her designated on-scene representative may be contacted via VHF Channel 16.

D. 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.

1. Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders. It is not ''significant'' under the regulatory policies and procedures of the Department of Homeland Security (DHS). We conclude that this rule is not a significant regulatory action because we anticipate that it will have minimal impact on the economy, will not interfere with other agencies, will not adversely alter the budget of any grant or loan recipients, and will not raise any novel legal or policy issues. The safety zone created by this rule will be relatively small and enforced for relatively short time. Also, the safety zone is designed to minimize its impact on navigable waters. Furthermore, the safety zone has been designed to allow vessels to transit around it. Thus, restrictions on vessel movement within that particular area are expected to be minimal. Under certain conditions, moreover, vessels may still transit through the safety zone when permitted by the Captain of the Port.

2. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

This rule will affect the following entities, some of which might be small entities: The owners or operators of vessels intending to transit or anchor in a portion of the Lake Michigan and the Sheboygan Harbor on the evening of June 16, 2012.

This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons: This safety zone would be activated, and thus subject to enforcement, for only one hour in the evening. Traffic may be allowed to pass through the zone with the permission of the Captain of the Port. The Captain of the Port can be reached via VHF channel 16. Before the activation of the zone, we would issue local Broadcast Notice to Mariners.

3. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section above.

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.

4. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

5. Federalism

A rule has implications for federalism 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 analyzed this rule under that Order and determined that this rule does not have implications for federalism.

6. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

7. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

8. 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.

9. 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.

10. 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.

11. 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.

12. Energy Effects

This action is not a ''significant energy action'' under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.

13. Technical Standards

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

14. 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 determined 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 involves the establishment of a safety zone and, therefore it is categorically excluded from further review under paragraph 34(g) of Figure 2–1 of the Commandant Instruction. An environmental analysis checklist supporting this determination and a Categorical Exclusion Determination are available in the docket where indicated under **ADDRESSES**. We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

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 parts 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. Chapters 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 165.T09–0539 to read as follows:

§ 165.T09–0539 Safety Zone; Sheboygan Harbor Fest, Sheboygan, WI.

(a) Location. The safety zone will encompass all waters of Lake Michigan and the Sheboygan Harbor, Sheboygan, WI within a 1000 foot radius of position 43°44′55″ N and 87°41′54.8″ W (NAD 83).

(b) Effective and Enforcement Period. This regulation is effective and will be enforced on June 16, 2012 from 9:15 p.m. until 10:15 p.m.

(c) Regulations. (1) In accordance with the general regulations in section 165.23 of this part, entry into, transiting, or anchoring within this safety zone is prohibited unless authorized by the Captain of the Port Sector Lake Michigan or his or her designated on-scene representative.

(2) This safety zone is closed to all vessel traffic, except as may be permitted by the Captain of the Port Sector Lake Michigan or his or her designated on-scene representative.

(3) The ''on-scene representative'' of the Captain of the Port Sector Lake Michigan is any Coast Guard commissioned, warrant or petty officer who has been designated by the Captain of the Port Sector Lake Michigan to act on his behalf.

(4) Vessel operators desiring to enter or operate within the safety zone shall contact the Captain of the Port Sector Lake Michigan or his or her on-scene representative to obtain permission to do so. The Captain of the Port Sector Lake Michigan or his or her on-scene representative may be contacted via VHF Channel 16. Vessel operators given permission to enter or operate in the safety zone must comply with all directions given to them by the Captain of the Port Sector Lake Michigan, or his or her on-scene representative.

Dated: June 6, 2012.

M.W. Sibley,

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

[FR Doc. 2012–14725 Filed 6–14–12; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2012–0377]

RIN 1625–AA00

Safety Zone, Fourth of July Fireworks Event, Pagan River, Smithfield, VA

AGENCY: Coast Guard, DHS.

ACTION: Temporary Final rule.

SUMMARY: The Coast Guard is establishing a 420-foot radius safety zone on the navigable waters of the Pagan River in Smithfield, VA in support of the Fourth of July Fireworks event. This action is intended to restrict vessel traffic movement to protect mariners and spectators from the hazards associated with aerial fireworks displays.

DATES: This rule will be effective from 9 p.m. on July 3, 2012, until 10 p.m. on July 4, 2012.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket USCG–2012–0377 and are available online by going to *http://www.regulations.gov,* inserting USCG–2012–0377 in the ''Search'' box, and then clicking ''Search.'' They are also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary rule, call or email LCDR Hector Cintron, Waterways Management Division Chief, Sector Hampton Roads, Coast Guard; telephone 757–668–5581, email *Hector.L.Cintron@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), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule, as publication of an NPRM would be impracticable because the Coast Guard did not receive the application for this event in sufficient time to allow for publication of an NPRM.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register.** Delaying the effective date

would be impracticable because the Coast Guard did not receive an application for this event in sufficient time to allow for publication more than 30 days prior to the date scheduled for the event, and any delay in the effective date would prevent the safety zone from being effective at the time of the event. Therefore, immediate action is needed to ensure the safety of vessels transiting the area.

Background and Purpose

On July 3, 2012, the Isle of Wight County, VA will sponsor a fireworks display on the navigable waters of the Pagan River shoreline centered on position 36°59′18″ N/076°37′45″ W (NAD 1983). Due to the need to protect mariners and spectators from the hazards associated with the fireworks display, such as the accidental discharge of fireworks, dangerous projectiles, and falling hot embers or other debris, vessel traffic will be temporarily restricted within 420 feet of the fireworks launch site.

Discussion of Rule

The Coast Guard is establishing a safety zone on the navigable waters of the Pagan River within the area bounded by a 420-foot radius circle centered on position 36°59′18″ N/076°37′45″ W (NAD 1983). This safety zone will be established in the vicinity of Smithfield, VA from 9 p.m. to 10 p.m. on July 3, 2012, with a rain date of July 4, 2012 from 9 p.m. until 10 p.m. In the interest of public safety, general navigation within the safety zone will be restricted during the specified date and times. Except for participants and vessels authorized by the Coast Guard Captain of the Port or his representative, no person or vessel may enter or remain in the regulated area.

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.

Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. Although this regulation restricts access to the safety zone, the effect of this rule will not be significant because: (i) The safety zone will be in effect for a limited duration; (ii) the zone is of limited size; (iii) mariners may transit the waters in and around this safety zone at the discretion of the Captain of the Port or designated representative; and (iv), the Coast Guard will make notifications via maritime advisories so mariners can adjust their plans accordingly.

Small Entities

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

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

The rule would affect the following entities, some of which might be small entities: the owners or operators of vessels intending to transit or anchor in a portion of the Pagan River from 9 p.m. to 10 p.m. on July 3, 2012.

This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons: (i) The safety zone will only be in place for a limited duration and limited size. (ii) Before the enforcement period of July 3, 2012, maritime advisories will be issued allowing mariners to adjust their plans accordingly.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

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

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

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of 100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

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

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

Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction. This rule involves establishing a temporary safety zone. An environmental analysis checklist and a categorical exclusion determination will be available in the docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, and Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 subpart C 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 § 165.T05–0377, to read as follows:

§ 165.T05–0377 Safety Zone, Fourth of July Fireworks Event, Pagan River, Smithfield, VA.

(a) *Regulated Area.* The following area is a safety zone: specified waters of the Captain of the Port Sector Hampton Roads zone, as defined in 33 CFR 3.25–10, within 420 feet of position 36°59′18″ N/076°37′45″ W (NAD 1983) in the vicinity of Clontz Park in Smithfield, VA.

(b) *Definition.* For purposes of enforcement of this section, *Captain of the Port Representative* means any U.S. Coast Guard commissioned, warrant or petty officer who has been authorized by the Captain of the Port, Hampton Roads, Virginia to act on his behalf.

(c) *Regulation.* (1) In accordance with the general regulations in 165.23 of this part, entry into this zone is prohibited unless authorized by the Captain of the Port, Hampton Roads or his designated representatives.

(2) The operator of any vessel in the immediate vicinity of this safety zone shall:

(i) Stop the vessel immediately upon being directed to do so by any commissioned, warrant or petty officer on board a vessel displaying a U.S. Coast Guard Ensign; and

(ii) Proceed as directed by any commissioned, warrant or petty officer on board a vessel displaying a U.S. Coast Guard Ensign.

(3) The Captain of the Port, Hampton Roads, Virginia can be contacted at telephone number (757) 638–6637.

(4) U.S. Coast Guard vessels enforcing the safety zone can be contacted on VHF–FM marine band radio, channel 13 (156.65 MHz) and channel 16 (156.8 MHz).

(d) *Enforcement period:* This rule will be enforced from 9 p.m. until 10 p.m. on July 3, 2012, with a rain date of July 4, 2012 from 9 p.m. until 10 p.m.

Dated: May 14, 2012.

Mark S. Ogle,

Captain, U.S. Coast Guard, Captain of the Port Hampton Roads.

[FR Doc. 2012–14727 Filed 6–14–12; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2011–1007]

RIN 1625–AA00

Safety Zone; F/V Deep Sea, Penn Cove, WA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a safety zone around the Fishing Vessel (F/V) Deep Sea, located in Penn Cove, WA. This action is necessary to ensure the safety of the maritime public by preventing contact with potential debris and or hazardous material and allow emergency on-scene vessels to respond to the incident by prohibiting vessels from entering or remaining in the safety zone unless authorized by the Captain of the Port or his Designated Representative.

DATES: This rule is effective in the CFR on June 15, 2012 until 11:59 p.m. on June 15, 2012. This rule is effective with actual notice for purposes of enforcement from May 19, 2012 until June 15, 2012.

ADDRESSES: Documents mentioned in this preamble are part of docket USCG–2011–1007. To view documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov*, type the docket number in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE.,

Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Ensign Nathaniel P. Clinger, Waterways Management Division, Coast Guard Sector Puget Sound; Coast Guard; telephone 206–217–6323, email *SectorPugetSoundWWM@uscg.mil*. If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

DHS Department of Homeland Security
FR **Federal Register**
NPRM Notice of Proposed Rulemaking

A. Regulatory History and Information

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because publishing an NPRM would be impracticable since immediate action is necessary to protect maritime public and response vessels in or around Penn Cove, WA, from hazards created by a sunken fishing vessel, which may include debris and other potentially hazardous materials, and requires emergency response and salvage operations.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Normal notice and comment procedures cannot be followed due to the immediate threat of collision and/or exposure to hazardous debris and/or materials associated with the sunken F/V Deep Sea.

B. Basis and Purpose

On the evening of May 13, 2012, the F/V Deep Sea, sank after catching fire. Containment and absorbent boom is being used to mitigate any impact to the environment from released hazardous wastes. Multiple assets are on-scene responding to contain and clean up hazardous material, assess potential environmental impact and/or response and coordinate salvage operations. As a result the Coast Guard is establishing a safety zone around the F/V Deep Sea, located in Penn Cove, WA. The safety zone created by this rule is necessary to help ensure the safety of maritime public and the personnel involved in response and salvage operations with regard to the sunken F/V Deep Sea. It prevents navigation in areas where response and salvage vessels may be operating and that may contain debris or hazardous materials produced from and as a result of the sunken F/V Deep Sea.

C. Discussion of the Final Rule

The Coast Guard is establishing a safety zone which encompasses all waters within 200 yards of the F/V Deep Sea, sunken in Penn Cove, WA. Vessels wishing to enter the zone must request permission for entry by contacting on-scene patrol craft on VHF CH 13 or Joint Harbor Operation Center at (206) 217–6001. Once permission for entry is granted, vessels must proceed at a minimum speed necessary for safe navigation.

D. 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.

1. Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders. This rule is not a significant regulatory action due to being limited in size and duration.

2. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule will affect the following entities, some of which may be small entities: the owners or operators vessels intending to transit the affected waterway during the period mentioned. This safety zone will not have a significant economic impact on a substantial number of small entities because the zone established in this rule is limited in size and vessels may transit through area with permission from the COTP.

3. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT**, above.

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.

4. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

5. Federalism

A rule has implications for federalism 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 analyzed this rule under that Order and determined that this rule does not have implications for federalism.

6. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

7. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

8. 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.

9. 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.

10. 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.

11. 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.

12. Energy Effects

This action is not a ''significant energy action'' under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.

13. Technical Standards

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

14. 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 determined 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 involves the establishment of an emergency safety zone. This rule is categorically excluded from further review under paragraph 34(g) of Figure 2–1 of the Commandant Instruction. An environmental analysis checklist supporting this determination and a Categorical Exclusion Determination will be available in the docket where indicated under **ADDRESSES**. We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

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 § 165.T13–220 to read as follows:

§ 165.T13–220 Safety Zone; F/V Deep Sea, Penn Cove, WA.

(a) *Location.* The following area is designated as a safety zone: All waters encompassing 200 yards of the Fishing Vessel Deep Sea located at approximately 48°13′18″ N, 122°47′42″ W, Penn Cove, WA.

(b) *Regulations.* In accordance with the general regulations in 33 CFR 165, Subpart C, vessels wishing to enter the zone must request permission for entry by contacting the Joint Harbor Operation Center at (206) 217–6001 or the on-scene patrol craft on VHF CH 13. Once permission for entry is granted vessels must proceed at a minimum speed necessary for safe navigation.

(c) *Enforcement period.* This rule will be effective from 12 a.m. on May 19, 2012 until 11:59 p.m. on June 15, 2012 unless cancelled sooner by the Captain of the Port.

Dated: May 18, 2012.

S.J. Ferguson,

Captain, U.S. Coast Guard, Captain of the Port, Puget Sound.

[FR Doc. 2012–14640 Filed 6–14–12; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2012–0488]

RIN 1625–AA00

Safety Zones; Multiple Firework Displays in Captain of the Port, Puget Sound Zone

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing safety zones in Boston Harbor, Holmes Harbor, Port Gardner and Port Townsend for various summer fireworks displays. The safety zones are necessary to help ensure the safety of the maritime public during the displays and will do so by prohibiting all persons and vessels from entering the safety zones unless authorized by the Captain of the Port or his designated representative.

DATES: This rule is effective from 5 p.m. on July 3, 2012, until 1 a.m. on July 5, 2012.

ADDRESSES: Documents mentioned in this preamble are part of docket USCG–2012–0488. To view documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* type the docket number in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email ENS Anthony P. LaBoy, Coast Guard Sector Puget Sound, Waterways Management Division; telephone 206–217–6323, email *SectorPugetSoundWWM@uscg.mil.* If you have questions on viewing or submitting material to the docket, call

Renee V. Wright, Program Manager, Docket Operations, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

DHS Department of Homeland Security
FR **Federal Register**
NPRM Notice of Proposed Rulemaking

A. Regulatory History and 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.'' Given the short time until the fireworks displays commence, it would be impracticable to issue an NPRM and subsequent final rule before the commencement of the fireworks displays. For that reason, we find there is good cause to issue this final rule without notice and comment.

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 to do so would be impracticable, since the events would be over before notice could be given and comments taken, and it is immediately necessary to protect the events' spectators from the hazards associated with fireworks displays.

B. Basis and Purpose

(a) The authority for this action can be found in 33 CFR 1.05–1(f).

(b) Fireworks displays create hazardous conditions for the maritime public because of the large number of vessels that congregate near the displays as well as the noise, falling debris, and explosions that occur during the event. The establishment of a safety zone around displays helps to ensure the safety of the maritime public by prohibiting all persons and vessels from coming too close to the fireworks display and the associated hazards.

C. Discussion of the Final Rule

This rule establishes four safety zones for the following firework displays: Boston Harbor Fireworks on July 3, 2012 in Boston Harbor near Olympia, WA; Celebrate America Festival on July 3, 2012 in Holmes Harbor near Freeland, WA; Everett 4th of July Foundation on July 4, 2012 in Port Gardner near Everett, WA; and Port Townsend July 4th Fireworks on July 4, 2012 in Port Townsend near Point Hudson. All persons and vessels will be prohibited from entering the safety zones during the dates and times they are effective unless authorized by the Captain of the Port or his Designated Representative.

D. 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.

1. Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders. This rule is not a significant regulatory action because it creates safety zones that are minimal in size and short in duration.

2. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule will affect the following entities, some of which may be small entities: The owners or operators of vessels intending to transit through the established safety zones during the times of enforcement. This rule will not have a significant economic impact on a substantial number of small entities because the temporary safety zones are minimal in size and short in duration, maritime traffic will be able to transit around them and may be permitted to transit them with permission from the Captain of the Port or his designated representative.

3. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT**, above.

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.

4. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

5. Federalism

A rule has implications for federalism 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 analyzed this rule under that Order and determined that this rule does not have implications for federalism.

6. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the **FOR FURTHER INTFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

7. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

8. 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.

9. 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.

10. 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.

11. 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.

12. Energy Effects

This action is not a ''significant energy action'' under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.

13. Technical Standards

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

14. 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 determined 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 involves the establishment of safety zones. This rule is categorically excluded from further review under paragraph 34(g) of Figure 2–1 of the Commandant Instruction. An environmental analysis checklist and a categorical exclusion determination are available in the docket where indicated under **ADDRESSES**. We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

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. 1226, 1231; 46 U.S.C. Chapters 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 165.T13–220 to read as follows:

§ 165.T13–220 Safety Zones; Multiple Firework Displays in Captain of the Port, Puget Sound Zone

(a) *Location.* The following areas are designated as safety zones:

(1) *Boston Harbor Fireworks, Boston Harbor, Olympia, WA:* All waters of Boston Harbor encompassed within a 100 yard radius around position 47°08.626′ N, 122°54.149′ W.

(2) *Celebrate America Festival, Holmes Harbor, Freeland, WA:* All waters of Holmes Harbor encompassed within a 200 yard radius around position 48°01.048′ N, 122°31.866′ W.

(3) *Everett Fourth of July Foundation, Port Gardner, Everett, WA:* All waters of Port Gardner encompassed within a 300 yard radius around position 48°00.672′ N, 122°13.391′ W.

(4) *Port Townsend July 4th Fireworks, Point Hudson, Port Townsend, WA:* All waters of Port Townsend encompassed within a 150 yard radius around position 48°06.900′ N, 122°45.120′ W.

(b) *Regulations.* In accordance with the general regulations in 33 CFR part 165, subpart C, no person or vessel may enter or remain in the safety zone created by this section without the permission of the Captain of the Port or his designated representative. Designated representatives are Coast Guard Personnel authorized by the Captain of the Port to grant persons or vessels permission to enter or remain in the safety zone created by this section. See 33 CFR part 165, Subpart C, for additional information and requirements.

(c) *Enforcement Period.* The safety zones created by this section will be enforced as follows:

(1) *Boston Harbor Fireworks, Boston Harbor, Olympia, WA:* 5 p.m. on July 3, 2012 until 1 a.m. on July 4, 2012.

(2) *Celebrate America Festival, Holmes Harbor, Freeland, WA:* 5 p.m. on July 3, 2012 until 1 a.m. on July 4, 2012.

(3) *Everett Fourth of July Foundation, Port Gardner, Everett, WA:* 5 p.m. July 4, 2012 until 1 a.m. on July 5, 2012.

(4) *Port Townsend July 4th Fireworks, Point Hudson, Port Townsend, WA:* 5 p.m. on July 4, 2012 until 1 a.m. on July 5, 2012.

Dated: June 1, 2012.

S.J. Ferguson,

Captain, U.S. Coast Guard, Captain of the Port, Puget Sound.

[FR Doc. 2012–14709 Filed 6–14–12; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2011–0228]

Safety Zone, Brandon Road Lock and Dam to Lake Michigan Including Des Plaines River, Chicago Sanitary and Ship Canal, Chicago River, and Calumet-Saganashkee Channel, Chicago, IL

AGENCY: Coast Guard, DHS.

ACTION: Notice of enforcement of regulation.

SUMMARY: The Coast Guard will enforce a segment of the Safety Zone; Brandon Road Lock and Dam to Lake Michigan including Des Plaines River, Chicago Sanitary and Ship Canal, Chicago River, Calumet-Saganashkee Channel on all waters of the Chicago Sanitary and Ship Canal from Mile Marker 296.1 to Mile Marker 296.7 at various times from July 19, 2012 until July 27, 2012. This action is necessary to protect the waterways, waterway users, and vessels from hazards associated with the Army Corps of Engineers' safety testing of the demonstration barrier and barriers IIA and IIB.

DATES: The regulations in 33 CFR 165.930 will be enforced from 7 a.m. to 11 a.m. and from 1 p.m. to 5 p.m. on July 19, 2012, through July 27, 2012.

FOR FURTHER INFORMATION CONTACT: If you have questions on this notice, call or email CWO Jon Grob, Prevention Department, Coast Guard Sector Lake

Michigan, telephone 414–747–7188, email address *Jon.K.Grob@uscg.mil.*

SUPPLEMENTARY INFORMATION: The Coast Guard will enforce a segment of the Safety Zone; Brandon Road Lock and Dam to Lake Michigan including Des Plaines River, Chicago Sanitary and Ship Canal, Chicago River, Calumet-Saganashkee Channel, Chicago, IL, listed in 33 CFR 165.930. Specifically, the Coast Guard will enforce this safety zone between Mile Marker 296.1 to Mile Marker 296.7 on all waters of the Chicago Sanitary and Ship Canal. Enforcement will occur from 7 a.m. until 11 a.m. and again from 1 p.m. until 5 p.m. on each day from July 19 until July 27, 2012.

This enforcement action is necessary because the Captain of the Port, Sector Lake Michigan has determined that the Army Corp of Engineers' safety testing of the demonstration barrier and barriers IIA and IIB pose risks to life and property. The combination of vessel traffic and the testing operations in the water makes the controlling of vessels through the impacted portion of the Chicago Sanitary and Ship Canal necessary to prevent injury and property loss.

In accordance with the general regulations in § 165.23 of this part, entry into, transiting, mooring, laying up or anchoring within the enforced area of this safety zone by any person or vessel is prohibited unless authorized by the Captain of the Port, Sector Lake Michigan, or his or her designated representative.

This notice is issued under authority of 33 CFR 165.930 and 5 U.S.C. 552(a). In addition to this notice in the **Federal Register,** the Captain of the Port, Sector Lake Michigan, will also provide notice through other means, which may include, but are not limited to, Broadcast Notice to Mariners, Local Notice to Mariners, local news media, distribution in leaflet form, and on-scene oral notice.

Additionally, the Captain of the Port, Sector Lake Michigan, may notify representatives from the maritime industry through telephonic and email notifications.

Dated: June 6, 2012.

M.W. Sibley,

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

[FR Doc. 2012–14720 Filed 6–14–12; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2012–0251]

RIN 1625–AA00

Safety Zone, Temporary Change for Recurring Fifth Coast Guard District Fireworks Displays; Northwest Harbor (East Channel) and Tred Avon River, MD

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is temporarily changing the enforcement periods and regulated areas of safety zone regulations for two recurring fireworks displays within the Fifth Coast Guard District. This regulation applies to recurring fireworks display events that take place at Baltimore, MD and Oxford, MD. Safety zone regulations are necessary to provide for the safety of life on navigable waters during the event. This action is intended to restrict vessel traffic in portions of the Northwest Harbor (East Channel), Patapsco River, and Tred Avon River during the event.

DATES: This rule is effective from 8 p.m. on June 16, 2012, until 10:30 p.m. on July 3, 2012.

ADDRESSES: Documents mentioned in this preamble are part of docket [USCG–2012–0251]. To view documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* type the docket number in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Mr. Ronald Houck, Sector Baltimore Waterways Management Division, U.S. Coast Guard; telephone 410–576–2674, email *Ronald.L.Houck@uscg.mil.* If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

DHS Department of Homeland Security
FR **Federal Register**
NPRM Notice of Proposed Rulemaking

A. Regulatory History and Information

On May 9, 2012, we published a notice of proposed rulemaking (NPRM) entitled ''Safety Zone, Temporary Change for Recurring Fifth Coast Guard District Fireworks Displays; Northwest Harbor (East Channel) and Tred Avon River, MD'' in the **Federal Register** (77 FR 27159). We received no comments on the proposed rule. No public meeting was requested, and none was held.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Due to the need for immediate action, the restriction of vessel traffic is necessary to protect life, property and the environment; therefore, a 30-day notice is impracticable. Delaying the effective date would be contrary to the safety zones' intended objectives of protecting persons and vessels involved in the event, and enhancing public and maritime safety.

B. Basis and Purpose

Fireworks display events are frequently held on or adjacent to navigable waters within the boundary of the Fifth Coast Guard District. For a description of the geographical area of each Coast Guard Sector—Captain of the Port Zone, please see 33 CFR 3.25. This regulation temporarily changes the enforcement period and regulated area for a safety zone for two annually recurring fireworks events, described at (b)(5) and (b)(21) of the Table to 33 CFR 165.506, that are normally scheduled to occur each year on June 14th and June and July—Saturday or Sunday before Independence Day holiday, respectively.

On June 16, 2012, the American Flag Foundation will sponsor their annual fireworks event. This event will take place in Baltimore, MD on the waters of the Patapsco River. The regulation at 33 CFR 165.506 is enforced annually for this event. Also, a fleet of spectator vessels is expected to gather near the event site to view the fireworks. To provide for the safety of participants, spectators, and transiting vessels, the Coast Guard will temporarily restrict vessel traffic in the event area from 8 p.m. to 10:30 p.m. on June 16, 2012. The regulation at 33 CFR 165.506 will be enforced for the duration of the event. Vessels may not enter the regulated area unless they receive permission from the Coast Guard Captain of the Port

Baltimore or the designated on-scene patrol personnel.

On July 3, 2012, the Tred Avon Yacht Club will sponsor their annual fireworks event. This event will take place in Oxford, MD on the waters of the Tred Avon River. The regulation at 33 CFR 165.506 is enforced annually for this event. Also, a fleet of spectator vessels is expected to gather near the event site to view the fireworks. To provide for the safety of participants, spectators, and transiting vessels, the Coast Guard will temporarily restrict vessel traffic in the event area from 8 p.m. to 10:30 p.m. on July 3, 2012. The regulation at 33 CFR 165.506 will be enforced for the duration of the event. Vessels may not enter the regulated area unless they receive permission from the Coast Guard Captain of the Port Baltimore or the designated on-scene patrol personnel.

C. Discussion of Comments, Changes and the Final Rule

The Coast Guard received no comments in response to the NPRM. No public meeting was requested and none was held.

D. 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.

1. Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders. Although this regulation would restrict access to these areas, the effect of this rule will not be significant because: (i) The safety zones will only be in effect from 8 p.m. to 10:30 p.m. on June 16, 2012 and from 8 p.m. to 10:30 p.m. on July 3, 2012, (ii) the Coast Guard will give advance notification via maritime advisories so mariners can adjust their plans accordingly, and (iii) although the safety zone will apply to the sections of the Patapsco River, Northwest Harbor (East Channel), and the Tred Avon River, vessel traffic will be able to transit safely around the safety zone.

2. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The Coast Guard received no comments from the Small Business Administration on this rule. 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 would affect the following entities, some of which might be small entities: The owners or operators of vessels intending to transit or anchor in the effected portions of the Potomac River and National Harbor Access Channel during the event. Although this regulation prevents traffic from transiting specified portions of the Patapsco River, Northwest Harbor (East Channel), from 8 p.m. through 10:30 p.m. on June 16, 2012, and the Tred Avon River, from 8 p.m. through 10:30 p.m. on July 3, 2012. This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons: (i) The regulated areas are of limited size, (ii) this rule will only be in effect for five hours total, and (iii) although the safety zone will apply to a section of the Patapsco River and Tred Avon River, vessel traffic will be able to transit safely around the safety zone. Before the enforcement period, the Coast Guard will issue maritime advisories widely available to users of the waterway, to allow mariners to make alternative plans for transiting the affected area.

3. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT**, above.

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.

4. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

5. Federalism

A rule has implications for federalism 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 analyzed this rule under that Order and determined that this rule does not have implications for federalism.

6. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the **FOR FURTHER INTFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

7. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

8. 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.

9. 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.

10. 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.

11. 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.

12. Energy Effects

This action is not a ''significant energy action'' under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.

13. Technical Standards

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

14. 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 determined 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 involves implementation of regulations at 33 CFR part 165 that establish safety zones on navigable waters of the United States for fireworks events. These safety zones are enforced for the duration of fireworks display events. The fireworks are launched from or immediately adjacent to navigable waters of the United States and may have potential for negative impact on the safety or other interest of waterway users and near shore activities in the event area. The category of activities includes fireworks launched from barges at or near the shoreline that generally rely on the use of navigable waters as a safety buffer. This rule is categorically excluded from further review under paragraph 34(g) of Figure 2–1 of the Commandant Instruction. An environmental analysis checklist supporting this determination 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. In § 165.506, amend the table as follows:

■ a. Under ''(b) Coast Guard Sector Baltimore-COTP Zone,'' suspend number 5,

■ b. Under ''(b) Coast Guard Sector Baltimore-COTP Zone,'' suspend number 21, and

■ c. Under ''(b) Coast Guard Sector Baltimore-COTP Zone,'' add numbers 26 and 27, to read as follows:

§ 165.506 Safety Zones; Fifth Coast Guard District Fireworks Displays.

* * * * *

TABLE TO § 165.506—ALL COORDINATES LISTED IN THE TABLE TO § 165.506 REFERENCE DATUM NAD 1983

Number	Date	Location	Regulated area
		Coast Guard Sector Baltimore—COTP Zone	
*	*	*	*
26	June 16th, July 4th, September—2nd Saturday, December 31st.	Northwest Harbor (East Channel), Patapsco River, MD, Safety Zone.	All waters of the Patapsco River within a 200 yards radius of the fireworks barge in approximate position 39°15′54″ N, 076°34′40″ W, located adjacent to the East Channel of Northwest Harbor.
27	July 3rd	Tred Avon River, Oxford, MD, Safety Zone.	All waters of the Tred Avon River within a 150 yard radius of the fireworks barge in approximate position latitude 38°41′24″ N, longitude 076°10′37″ W, approximately 500 yards northwest of the waterfront at Oxford, MD.

* * * * *

Dated: June 4, 2012.

Mark P. O'Malley,

Captain, U.S. Coast Guard, Captain of the Port Baltimore.

[FR Doc. 2012–14647 Filed 6–14–12; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2012–0483]

RIN 1625–AA00

Safety Zone, Fireworks Display, Lake Superior; Duluth, MN

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone on Lake Superior near Duluth, MN on July 4, 2012. This zone is intended to restrict vessels from a portion of the Duluth area of Lake Superior during the Duluth Fourth Fest fireworks display. This temporary safety zone is necessary to protect spectators and vessels from the hazards associated with fireworks displays.

DATES: This rule is effective from 7 p.m. to 11 p.m. on July 4, 2012

ADDRESSES: Documents mentioned in this preamble are part of docket USCG–

2012–0483. To view documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* type the docket number in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Lt. Judson Coleman at 218–720–5286 ext. 111 or by email at *Judson.A.Coleman@uscg.mil.* If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

DHS Department of Homeland Security
FR **Federal Register**
NPRM Notice of Proposed Rulemaking

A. Regulatory History and Information

The Coast Guard is issuing this final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because doing so would be impracticable. The final details for this event were not known to the Coast Guard until there was insufficient time remaining before the event to publish an NPRM. Thus, delaying the effective date of this rule to wait for a comment period to run would be because it would inhibit the Coast Guard's ability to protect spectators and vessels from the hazards associated with fireworks displays, which are discussed further below.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. For the same reasons discussed in the preceding paragraph, waiting for 30 day notice period run would also be impracticable.

B. Basis and Purpose

Between 7 p.m. and 11 p.m. on July 4, 2012, a fireworks display will occur in the vicinity of Duluth Harbor in Duluth, MN. Based on accidents that have occurred in other Captain of the Port zones and the explosive hazards of fireworks, the Captain of the Port Duluth has determined that fireworks launches proximate to watercraft pose a significant risk to public safety and property. The likely combination of large numbers of recreational vessels, congested waterways, darkness punctuated by bright flashes of light, alcohol use, and debris falling into the water could easily result in serious injuries or fatalities. Establishing a safety zone to control vessel movement around the location of the launch platform will help ensure the safety of persons and property at these events and help minimize the associated risks.

C. Discussion of the Final Rule

A temporary safety zone is necessary to ensure the safety of spectators and vessels during the setup, loading and launching of a fireworks display in conjunction with the Duluth Fourth Fest fireworks display. The fireworks display will occur between 7 p.m. and 11 p.m. on July 4, 2012.

The safety zone for the fireworks will encompass all U.S. navigable waters of the Duluth Harbor Basin Northern Section within a 600 foot radius of position 46°46′47″ N., 092°06′10″ W.; at Duluth, MN. (DATUM: NAD 83).

All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or the on-scene representative. Entry into, transiting, or anchoring within the safety zone is prohibited unless authorized by the Captain of the Port, Marine Safety Unit Duluth or his on-scene representative. The Captain of the Port or his on-scene representative may be contacted via VHF Channel 16.

D. 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.

1. Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders. It is not ''significant'' under the regulatory policies and procedures of the Department of Homeland Security (DHS). We conclude that this rule is not a significant regulatory action because we anticipate that during the short time this zone will be in effect, it will have minimal impact on the economy, will not interfere with other agencies, will not adversely alter the budget of any grant or loan recipients, and will not raise any novel or legal policy issue.

2. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

This rule will be in effect for only a few hours on a single night. Also, vessel traffic can safely pass outside the safety zone during the event. Additionally, vessels may request permission from the Captain of the Port Duluth to transit through the safety zone.

3. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT**, above.

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.

4. Collection of Information

This rule will not call for a new collection of information under the

Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

5. Federalism

A rule has implications for federalism 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 analyzed this rule under that Order and determined that this rule does not have implications for federalism.

6. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the **FOR FURTHER INTFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

7. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

8. 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.

9. 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.

10. 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.

11. 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.

12. Energy Effects

This action is not a ''significant energy action'' under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.

13. Technical Standards

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

14. 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 determined 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 involves establishing a safety zone. This rule is categorically excluded from further review under paragraph 34(g) of Figure 2–1 of the Commandant Instruction. An environmental analysis checklist supporting this determination and a Categorical Exclusion Determination are available in the docket where indicated under **ADDRESSES**. We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 165.T10–0483 to read as follows:

§ 165.T10–0483 Safety zone; Fireworks display, Lake Superior, Duluth, MN.

(a) *Location.* The following area is a temporary safety zone: All waters of Duluth harbor, Duluth, MN, within a 600 foot radius of position 46°46′47″ N, 092°06′10″ W.; at Duluth, MN (DATUM: NAD 83).

(b) *Effective and enforcement period.* This regulation is effective and will be enforced from 7 p.m. to 11 p.m. on July 4, 2012. The Captain of the Port, Marine Safety Unit Duluth, or his on-scene representative may suspend enforcement of the safety zones at any time.

(c) *Regulations.* (1) In accordance with the general regulations in section 165.23 of this part, entry into, transiting, or anchoring within this safety zone is prohibited unless authorized by the Captain of the Port, Marine Safety Unit Duluth, or his designated on-scene representative.

(2) This safety zone is closed to all vessel traffic, except as may be permitted by the Captain of the Port, Marine Safety Unit Duluth or his designated on-scene representative.

(3) The ''on-scene representative'' of the Captain of the Port is any Coast Guard commissioned, warrant or petty officer who has been designated by the Captain of the Port to act on his behalf. The on-scene representative of the Captain of the Port will be aboard either a Coast Guard or Coast Guard Auxiliary vessel. The Captain of the Port or his designated on-scene representative may be contacted via VHF Channel 16.

(4) Vessel operators desiring to enter or operate within the safety zone shall contact the Captain of the Port, Marine Safety Unit Duluth or his on-scene representative to obtain permission to do so. Vessel operators given permission to enter or operate in the safety zone must comply with all directions given to them by the Captain of the Port, Marine Safety Unit Duluth or his on-scene representative.

Dated: May 21, 2012.

K.R. Bryan,

Commander, U.S. Coast Guard, Captain of the Port Duluth.

[FR Doc. 2012–14641 Filed 6–14–12; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2012–0163]

RIN 1625–AA00

Safety Zone; Bay Swim V, Presque Isle Bay, Erie, PA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard will establish a temporary safety zone on the waters of Presque Island Bay, Erie, PA. This safety zone is intended to restrict vessels from a portion of the Presque Island Bay during the Bay Swim V swimming event. The safety zone is necessary to protect participants, spectators, and vessels from the hazards associated with a large scale swimming event.

DATES: This regulation will be effective June 30, 2012 from 8:30 a.m. until 11:30 a.m.

ADDRESSES: Documents indicated in this preamble as being available in the docket, are part of docket USCG–2012–0163 and are available online by going to *www.regulations.gov,* inserting USCG–2012–0163 in the ''Search'' box, and then clicking ''Search.'' This material is also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary rule, call or email LT Christopher Mercurio, Chief of Waterway Management, U.S. Coast Guard Sector Buffalo; telephone 716–843–9343, email *SectorBuffaloMarineSafety@uscg.mil.* If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On March 28, 2012, we published a notice of proposed rulemaking entitled Safety Zone; Bay Swim V, Presque Isle Bay, Erie, PA in the **Federal Register** (77 FR 18739). We received no letters commenting on the proposed rule. No public meeting was requested, and none was held.

Background and Purpose

Between 9 a.m. and 11 a.m. on June 30, 2012, a large scale swimming event will take place on Presque Isle Bay near Erie, PA. The Captain of the Port Buffalo has determined that this large scale swimming event across a navigable waterway will pose significant risks to participants and the boating public.

Discussion of Proposed Rule

With the aforementioned hazards in mind, the Captain of the Port Buffalo has determined that a temporary safety zone is necessary to ensure the safety of participants and the boating public during the Bay Swim V. The safety zone will be effective and enforced from 8:30 a.m. until 11:30 a.m. on June 30, 2012.

The safety zone will encompass all U.S. navigable waters of Presque Isle Bay, Erie, PA starting from Vista 3 in Presque Isle State Park at position 42°07′29.30″ N, 80°08′48.82″ W and extend in a straight line 1,000 feet wide to the Erie Yacht Club at position 42°07′21.74″ N, 80°07′58.30″ W (DATUM: NAD 83).

Entry into, transiting, or anchoring within the safety zone is prohibited unless authorized by the Captain of the Port Buffalo or his designated on-scene representative. The Captain of the Port or his designated on-scene representative may be contacted via VHF Channel 16.

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.

Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not ''significant'' under the regulatory policies and procedures of the Department of Homeland Security (DHS). We conclude that this rule is not a significant regulatory action because we anticipate that it will have minimal impact on the economy, will not interfere with other agencies, will not adversely alter the budget of any grant or loan recipients, and will not raise any novel legal or policy issues. The safety zone created by this rule will be relatively small and enforced for relatively short time. Also, the safety zone is designed to minimize its impact on navigable waters. Furthermore, the safety zone has been designed to allow vessels to transit around it. Thus, restrictions on vessel movement within that particular area are expected to be minimal. Under certain conditions, moreover, vessels may still transit through the safety zone when permitted by the Captain of the Port.

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.

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 temporary final rule may affect the following entities, some of which may be small entities: the owners of operators of vessels intending to transit or anchor in a portion of Presque Isle Bay near Erie, PA between 8:30 a.m. to 11:30 p.m. on June 30, 2012.

This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons: This rule will be in effect for only approximately three hours and the safety zone will allow vessels to move freely around the safety zone in Presque Isle Bay. If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offer to assist small entities in understanding this 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.

If the rule will affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact LT Christopher Mercurio, Chief of Waterway Management, U.S. Coast Guard Sector Buffalo; telephone 716–843–9343, email. 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.

Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the **FOR FURTHER INTFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children From Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and will not create an environmental risk to health or risk to safety that might 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 will 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 made a determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction because it involves the establishment of a safety zone. A final environmental analysis checklist and a categorical exclusion determination are available in the docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and 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. Chapters 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 165.T09–0163 to read as follows:

§ 165.T09–0163 Safety Zone; Bay Swim V, Presque Isle Bay, Erie, PA.

(a) *Location.* The safety zone will encompass all waters of Presque Isle Bay, Erie, PA starting from Vista 3 in Presque Isle State Park at position 42°07′29.30″ N, 80°08′48.82″ W and extend in a straight line 1,000 feet wide to the Erie Yacht Club at position 42°07′21.74″ N, 80°07′58.30″ W. (NAD 83)

(b) *Effective and Enforcement Period.* This regulation is effective and will be enforced from 8:30 a.m. to 11:30 a.m. on June 30, 2012.

(c) *Regulations.*

(1) In accordance with the general regulations in § 165.23 of this part, entry into, transiting, or anchoring within this safety zone is prohibited unless authorized by the Captain of the Port Buffalo or his designated on-scene representative.

(2) This safety zone is closed to all vessel traffic, except as may be permitted by the Captain of the Port Buffalo or his designated on-scene representative.

(3) The ''on-scene representative'' of the Captain of the Port Buffalo is any Coast Guard commissioned, warrant or petty officer who has been designated by the Captain of the Port Buffalo to act on his behalf.

(4) Vessel operators desiring to enter or operate within the safety zone shall contact the Captain of the Port Buffalo or his on-scene representative to obtain permission to do so. The Captain of the Port Buffalo or his on-scene representative may be contacted via VHF Channel 16. Vessel operators given permission to enter or operate in the safety zone must comply with all directions given to them by the Captain of the Port Buffalo, or his on-scene representative.

Dated: May 29, 2012.

S.M. Wischmann,

Captain, U. S. Coast Guard, Captain of the Port Buffalo.

[FR Doc. 2012–14648 Filed 6–14–12; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2010–0062]

Safety Zone; Fleet Week Maritime Festival, Pier 66 Elliott Bay, Seattle, WA

AGENCY: Coast Guard, DHS.

ACTION: Notice of enforcement of regulation.

SUMMARY: The Coast Guard will enforce the Fleet Week Maritime Festival's Pier 66 Safety Zone in Elliott Bay, WA from 8 a.m. until 8 p.m. on August 1, 2012, however, it will only be enforced thirty minutes prior to, during, and thirty minutes after the annual parade of ships and aerial demonstration. This action is necessary to promote safety on navigable waters. During the enforcement period, entry into, transit through, mooring, or anchoring within this zone is prohibited unless authorized by the Captain of the Port, Puget Sound or his Designated Representative.

DATES: The regulations in 33 CFR 165.1330 will be enforced from 8 a.m. until 8 p.m. on August 1, 2012.

FOR FURTHER INFORMATION CONTACT: If you have questions on this notice, call or email Ensign Anthony P. LaBoy, Sector Puget Sound Waterways Management Division Coast Guard; telephone 206–217–6323, email *SectorPugetSoundWWM@uscg.mil.*

SUPPLEMENTARY INFORMATION: The Coast Guard will enforce the Safety Zone for the Fleet Week Maritime Festival in 33 CFR 165.1330 on August 1, 2012, from 8 a.m. until 8 p.m.; however, it will only be enforced thirty minutes prior to, during, and thirty minutes after the annual parade of ships and aerial demonstration.

In accordance with the general regulations in 33 CFR Part 165, Subpart C, no vessel operator may enter, transit, moor, or anchor within this safety zone, except for vessels authorized by the Captain of the Port or Designated Representative, thirty minutes prior to the beginning, during and thirty minutes following the conclusion of the Parade of Ships. For the purpose of this rule, the Parade of Ships includes both the pass and review of the ships near Pier 66 and the aerial demonstrations immediately following the pass and review. The Captain of the Port may be assisted by other federal, state, or local agencies as needed.

In order to transit through this safety zone, authorization must be granted by the Captain of the Port, Puget Sound, or his Designated Representative. All vessel operators desiring entry into this safety zone shall gain authorization by contacting either the on-scene U.S. Coast Guard patrol craft on VHF Ch 13 or Ch 16, or Coast Guard Sector Puget Sound Joint Harbor Operations Center (JHOC) via telephone at (206) 217–6002. Requests shall Indicate the reason why movement within the safety zone is necessary and the vessel's arrival and/or departure facility name, pier and/or berth. Vessel operators granted permission to enter this safety zone will be escorted by the on-scene patrol until no longer within the safety zone.

This notice is issued under authority of 33 CFR 165.1330 and 5 U.S.C. 552(a). In addition to this notice in the **Federal Register**, the Coast Guard will provide the maritime community with extensive advance notification of this enforcement period via the Local Notice to Mariners and marine information broadcasts. If the Captain of the Port determines that the regulated area need not be enforced for the full duration stated in this notice, he may use a Broadcast Notice to Mariners to grant general permission to enter the regulated area.

Dated: June 1, 2012.

S.J. Ferguson,

Captain, U.S. Coast Guard, Captain of the Port, Puget Sound.

[FR Doc. 2012–14545 Filed 6–14–12; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2012–0166; FRL–9687–1]

Approval and Promulgation of Implementation Plans; State of Florida: New Source; Review Prevention of Significant Deterioration: Nitrogen Oxides as a Precursor to Ozone

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is taking final action to approve changes to the Florida State Implementation Plan (SIP), submitted by the Florida Environmental Protection (FDEP), through the Division of Air Resource Management, to EPA in two separate SIP revisions on October 19, 2007, and July 1, 2011. These SIP revisions modify Florida's New Source Review (NSR) Prevention of Significant Deterioration (PSD) program to address requirements promulgated in the 1997 8-hour ozone national ambient air quality standards (NAAQS) Implementation Rule NSR Update Phase II (hereafter referred to as the ''Ozone Implementation NSR Update'' or ''Phase II Rule'') recognizing nitrogen oxide (NO_X) as an ozone precursor, among other requirements. In addition, both SIP revisions make clarifying and corrective changes to Florida's regulations. EPA is approving both SIP revisions because the Agency has determined that the changes are in accordance with the Clean Air Act (CAA or Act) and EPA regulations regarding NSR permitting.

DATES: *Effective Date:* This rule will be effective July 16, 2012.

ADDRESSES: EPA has established a docket for this action under Docket Identification No. EPA–R04–OAR–2012–0166. All documents in the docket are listed on the *www.regulations.gov* web site. Although listed in the index, some information is not publicly available, i.e., Confidential Business Information 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 Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. EPA requests that if at all possible, you contact the person 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 federal holidays.

FOR FURTHER INFORMATION CONTACT: For information regarding the Florida SIP, contact Ms. Twunjala Bradley, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. Telephone number: (404) 562–9352; email address: *bradley.twunjala@epa.gov.* For information regarding NSR, contact Ms. Yolanda Adams, Air Permits Section, at the same address above. Telephone number: (404) 562–9214; email address: *adams.yolanda@epa.gov.* For information regarding 8-hour ozone NAAQS, contact Ms. Jane Spann, Regulatory Development Section, at the same address above. Telephone number: (404) 562–9029; email address: *spann.jane@epa.gov.*

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Background
II. This Action
III. Final Action
IV. Statutory and Executive Order Reviews

I. Background

EPA is taking final action to approve changes to the Florida SIP such that it is consistent with federal requirements for NSR permitting. On October 19, 2007, and July 1, 2011,[1] FDEP submitted revisions to EPA for approval into the Florida SIP to adopt federal requirements for NSR permitting promulgated in the Phase II Rule. Florida's October 19, 2007, SIP revision makes changes to the State's air quality regulations at Chapter 62–210, Florida Administrative Code (F.A.C.), *Stationary Sources—General Requirements, Section 200—Definitions (rule 62–210.200),* and Chapter 62–212, F.A.C., *Stationary Sources—Preconstruction Review, Section 400—Prevention of Significant Deterioration (rule 62–210.400).* Florida's July 1, 2011, SIP revision also makes changes at Chapter 62–210, F.A.C., to adopt PSD provisions promulgated in the Phase II Rule. Specifically, both SIP revisions amend the State's PSD regulations to establish that PSD permit applicants must identify NOx as an ozone precursor as established in the Phase II Rule. Lastly, both SIP revisions make clarifying and corrective changes to Florida's rules at Chapters 62–210 and 62–212, F.A.C. Pursuant to section 110 of the CAA, EPA is approving these changes into the Florida SIP. EPA notes that Florida's October 19, 2007, SIP submission makes clarifying changes to rule 62–212.400(11), F.A.C., regarding applicable public participation requirements for PSD permitting. However, because Florida's subsequent July 1, 2011, SIP revision made subsequent revisions to this public participation provision, EPA is not taking action to approve Florida's October 19, 2007, revision to rule 62–212.400(11), F.A.C. EPA is taking final action to approve the subsequent July 1, 2011, clarifying amendments to rule 62–212.400(11), F.A.C. into the Florida SIP.

On April 5, 2012, EPA published a proposed rulemaking to approve the aforementioned changes to Florida's NSR PSD program. *See* 77 FR 20582. Comments on the proposed rulemaking were due on or before May 7, 2012. No comments, adverse or otherwise, were received on EPA's April 5, 2012, proposed rulemaking. EPA is now taking final action to approve the changes to Florida's NSR PSD program as outlined in EPA's April 5, 2012, proposed rulemaking. A summary of the background for today's final actions is provided below.

a. Phase II Rule

With regard to the 1997 8-hour ozone NAAQS,[2] EPA's Phase II Rule, finalized on November 29, 2005, addressed control and planning requirements as they applied to areas designated nonattainment for the 1997 8-hour ozone NAAQS such as reasonably available control technology, reasonably available control measures, reasonable further progress, modeling and attainment demonstrations, NSR, and the impact to reformulated gas for the 1997 8-hour ozone NAAQS transition. *See* 70 FR 71612. The NSR permitting requirements established in the rule included the following provisions: Recognizing NO_X as an ozone precursor for PSD purposes; changes to the nonattainment new source review (NNSR) rules establishing major stationary thresholds (marginal, moderate, serious, severe, and extreme nonattainment classifications) and significant emission rates for the 8-hour ozone, PM_{10} and carbon monoxide NAAQS; revising the criteria for crediting emission reductions credits from operation shutdowns and curtailments as offsets, and changes to offset ratios for marginal, moderate, serious, severe, and extreme ozone nonattainment.

The Phase II Rule made changes to federal regulations at 40 CFR 51.165 and 51.166 (which govern the NNSR and PSD permitting programs respectively). Pursuant to these requirements, states were required to submit SIP revisions adopting the relevant federal requirements of the Phase II Rule (at 40 CFR 51.165 and 51.166) into their SIP no later than June 15, 2007. Florida's October 19, 2007, and July 1, 2011, SIP revisions adopt the relevant provisions at 40 CFR 51.66 into the Florida SIP to be consistent with federal regulations for NSR PSD permitting requirements promulgated in the Phase II Rule with minor variations. States may meet the requirements of 40 CFR part 51 and the Phase II Rules with alternative but equivalent regulations. As part of its analysis of Florida's October 19, 2007 and July 1, 2011, SIP revisions, EPA conducted a thorough review of the State's submittals including those provisions that differ from the federal rules (specifically the term ''regulated NSR pollutant'' at 40 CFR 51.166(b)(49)). EPA determined that Florida's term ''PSD pollutant'' [3] is

[1] Florida's July 1, 2011, SIP revision also makes additional changes to Chapters 62–210, 212 and 296, F.A.C. which will be addressed in a separate rulemaking.

[2] On July 18, 1997, EPA promulgated a revised 8-hour ozone NAAQS of 0.08 parts per million—also referred to as the 1997 8-hour ozone NAAQS. On April 30, 2004, EPA designated areas as unclassifiable/attainment, nonattainment and unclassifiable for the 1997 8-hour ozone NAAQS. In addition, on April 30, 2004, as part of the framework to implement the 1997 8-hour ozone NAAQS, EPA promulgated an implementation rule in two phases (Phase I and II). The Phase I Rule (effective on June 15, 2004), provided the implementation requirements for designating areas under subpart 1 and subpart 2 of the CAA. *See* 69 FR 23951.

[3] On June 27, 2008 (73 FR 36435), EPA took final action to approve a February 3, 2006, Florida SIP revision to adopt the provisions promulgated in the 2002 NSR Reform Rule. *See* 67 FR 80186. In the June 27, 2008, final rulemaking, EPA approved Florida's definition of ''PSD Pollutant'' as an equivalent to the federal term ''regulated NSR pollutant'' into the Florida SIP. As part of its February 3, 2006, SIP revision to adopt the NSR Reform provisions, Florida provided an equivalency demonstration that addressed how the State's definition of ''PSD pollutant'' was comparable to the federal term ''regulated NSR pollutant.'' EPA's June 27, 2008, rulemaking also conditionally approved portions of Florida's PSD program that

Continued

equivalent to the federal PSD definition ''regulated NSR pollutant'' and consistent with the program requirements for NSR, set forth at 40 CFR 51.166 related to the relevant revisions amended in the Phase II Rule. For more detail on Florida's equivalent PSD provisions for the definition of ''regulated NSR pollutant'' related to the Phase II Rule, please refer to EPA's proposed rulemaking at 77 FR 20584 (May 5, 2012). *See* also 73 FR 36435 (June 27, 2008).

b. Florida's Clarifying Changes and Corrections

Finally, Florida's October 19, 2007, and July 1, 2011, SIP revisions make clarifying changes and typographical corrections to portions of the State's NSR regulations at Chapter 62–210 and 212. Florida's October 19, 2007, SIP revisions make clarifying and/or corrective changes to rule 62–212.400, F.A.C including amending subsection entitled ''General Prohibitions'' at rule 62–212.400(1) by replacing the term ''Prohibitions'' with the term ''Provisions''; and adding language at rule 62–212.400(1)(c) and 62–212.720—*Actuals Plantwide Applicability Limits (PALs),* to clarify that the term ''Administrator'' in 40 CFR 52.21 shall mean ''Department'' when applying the portions of the federal rule cited from within the FDEP rules.

In addition, Florida's July 1, 2011, SIP revision corrected an administrative error in the definition of ''major modification'' by replacing the term ''PSD pollutant'' with ''regulated air pollutant'' at rule 62–210.200(186)(d), F.A.C. The July 1, 2011, SIP revision also amends the public participation provision at 62–212.400(11), F.A.C., to clarify that the applicable public notice and participation provisions can be found at 62–210.350, F.A.C., and 62–110.106, F.A.C., to satisfy the federal public participation requirements. Florida's October 19, 2007, SIP submission also made changes to rule 62–212.400(11), F.A.C., regarding applicable public participation requirements for PSD permitting. However, Florida's July 1, 2011, SIP revision made subsequent changes to the public participation provision at rule 62–212.400(11), F.A.C., and therefore, EPA is not taking action to approve Florida's October 19, 2007, revision to rule 62–212.400(11), F.A.C. EPA is instead approving the latest revision to rule 62–212.400(11), F.A.C., included in Florida's July 1, 2011, SIP revision.

II. This Action

Florida's October 19, 2007 and July 1, 2011, SIP revisions update the State's PSD definitions at Chapter 62–210, F.A.C. and provisions at Chapter 62–212, F.A.C. to adopt the NSR requirements promulgated in the Phase II Rule (at 40 CFR 52.21) recognizing NO_X as an ozone precursor regarding: amendments to the definitions for ''*major stationary source*'' (40 CFR 52.21(b)(1)), ''*major modification*'' (40 CFR 52.21(b)(2)), ''*significant*'' (for significant emissions rate) (at 40 CFR 52.21(b)(23)(i)), ''*regulated NSR pollutant*'' (40 CFR 52.21(b)(50)), and the addition of a footnote at 40 CFR 52.21(i)(5)(i)(f) establishing the requirement for ambient air impact analysis. The Phase II rule also made other revisions to the NNSR program; however, only the addition of PSD amendments recognizing NO_X as an ozone precursor is relevant to this action.

Florida's October 19, 2007, SIP revision, which became state effective July 16, 2007, revised definitions at rule 62–210.200, F.A.C., for ''*major stationary source,*'' ''*significant emissions rate*'' (or ''*significant*'' at 40 CFR 52.21(b)(23)(i)), and ''*PSD pollutant*''[4] (Florida's equivalent to the federal term ''*regulated NSR pollutant*'' at 40 CFR 52.21 (b)(50)) by adding the term ''nitrogen oxides'' to recognize NO_X as an ozone precursor. The changes at rule 62–212.400, F.A.C., also addressed the inclusion of ''nitrogen oxides'' in the footnote at 62–212.400(3)(e)1.e., (as amended at 40 CFR 52.21 (i)(5)(i)(f)) regarding air quality level for ozone.[5] Florida's July 1, 2011, SIP revision, which became state effective October 12, 2008, revised the definition for ''*major modification*'' to be consistent with the definition promulgated in the Phase II Rule to include NO_X as an ozone precursor.

As mentioned above, both Florida SIP submittals made clarifying changes and corrected typographical errors at Florida Chapter 62–210 and 212, F.A.C. Specifically Florida's October 19, 2007, SIP submission made changes to rule 62–212.400(11), F.A.C., regarding applicable public participation requirements for PSD permitting. However, because Florida's July 1, 2011 SIP revision made subsequent changes 62–212.400(11), F.A.C., EPA is not approving the October 19, 2007 SIP revision to 62–212.400(11), F.A.C., into the Florida SIP. EPA is instead approving the latest revision to rule 62–212.400(11), F.A.C., included in Florida's July 1, 2011, SIP revision. EPA has determined that Florida's October 19, 2007, and July 1, 2011, SIP revisions, both meet the NSR PSD permitting requirements established in the Phase II Rule and are consistent with section 110 of the CAA.

III. Final Action

Pursuant to section 110 of the CAA, EPA is taking final action to approve Florida's October 19, 2007, and July 1, 2011, SIP revisions adopting federal PSD definitions and provisions amended in the Phase II Rule specifically recognizing NO_X as an ozone precursor into the Florida SIP. EPA is also taking final action to approve Florida's clarifying changes and correction to Florida's NSR rules. EPA is approving these revisions into the Florida SIP because they are consistent with section 110 of the CAA and EPA implementing NSR regulations.

IV. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);

were not consistent with federal PSD regulations (including the definition for significant emissions rate). On June 17, 2009, in response to the conditional approval FDEP submitted a SIP revision to revise portions of its PSD program to be consistent with the federal PSD regulations. EPA took final action to approve this revision on April 12, 2011, which converted the State's PSD program from conditional to full approval. *See* 76 FR 20239.

[4] Florida defines ''PSD Pollutant'' at rule 62–210.200, F.A.C., as ''any pollutant listed as having a significant emissions rate. Florida's October 19, 2007, SIP revision (the subject of this action) amends the definition of ''significant emissions rate'' to adopt the Phase II Rule provisions by listing NO_X for the pollutant ''ozone.'' In doing so, Florida's definition of ''PSD pollutant'' is also amended to establish NO_X as an ozone precursor.

[5] The rule at 40 CFR 52.21(i)(5)(i)(f) establishes that there is no de minimis air quality level for ozone, however any source subject to PSD with a net increase of 100 tons per year or more of volatile organic compounds or NO_X is required to perform an ambient impact analysis.

• Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);

• Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);

• Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);

• Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);

• Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);

• Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and

• Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country 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 this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 14, 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* CAA section 307(b)(2), 42 U.S.C. 7607(b)(2).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Oxides of nitrogen, Ozone, Reporting and recordkeeping requirements.

Dated: June 5, 2012.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

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

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

Subpart K—Florida

■ 2. Section 52.520(c) is amended under Chapters 62–210 and 62–212 by revising the entries for ''Section 62–210.200'' and ''Section 62–212.400'' to read as follows:

§ 52.520 Identification of plan

* * * * *

(c) * * *

EPA-APPROVED FLORIDA REGULATIONS

State citation (section)	Title/subject	State effective date	EPA approval date	Explanation
*	*	*	*	*
Chapter 62–210 Stationary Source—General Requirements				
*	*	*	*	*
62–210.200	Definitions	10/12/08	6/15/12 [Insert citation of publication].	This final rulemaking approves changes to the following definitions: ''major modification,'' ''major stationary source,'' ''PSD pollutant'' and ''significant emissions rate.''
*	*	*	*	*
Chapter 62–212 Stationary Source—Preconstruction Review				
*	*	*	*	*
62–212.400	Prevention of Significant Deterioration.	10/6/08	6/15/12 [Insert citation of publication].	
*	*	*	*	*

* * * * *

[FR Doc. 2012–14419 Filed 6–14–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2010–0969; FRL–9686–9]

Approval and Promulgation of Implementation Plans; Revisions to the Georgia State Implementation Plan

AGENCY: Environmental Protection Agency.

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve a State Implementation Plan (SIP) revision submitted by the State of Georgia, through the Department of Natural Resources (GA DNR), on November 16, 2010. This revision consists of transportation conformity criteria and procedures related to interagency consultation and enforceability of certain transportation-related control measures and mitigation measures. The intended effect is to update the transportation conformity criteria and procedures in the Georgia SIP. This action is being taken pursuant to section 110 of the Clean Air Act.

DATES: This direct final rule is effective August 14, 2012 without further notice, unless EPA receives adverse comment by July 16, 2012. If EPA receives such comments, it will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R04–OAR–2010–0969, by one of the following methods:

1. *www.regulations.gov:* Follow the on-line instructions for submitting comments.
2. *Email: somerville.amanetta@epa.gov.*
3. *Fax:* (404) 562–9019.
4. *Mail:* ''EPA–R04–OAR–2010–0969,'' Air Quality Modeling and Transportation Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960.
5. *Hand Delivery or Courier:* Amanetta Somerville, Air Quality Modeling and Transportation Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding federal holidays.

Instructions: Direct your comments to Docket ID No. ''EPA–R04–OAR–2010–0969.'' EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit through *www.regulations.gov* or email, information that you consider to be CBI or otherwise protected. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through *www.regulations.gov,* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

Docket: All documents in the electronic docket are listed in the *www.regulations.gov* index. 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 in *www.regulations.gov* or in hard copy at the Air Quality Modeling and Transportation Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. EPA requests that if at all possible, you contact the person 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 federal holidays.

FOR FURTHER INFORMATION CONTACT: Amanetta Somerville, Air Quality Modeling and Transportation Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. Ms. Somerville's telephone number is 404–562–9025. She can also be reached via electronic mail at *somerville.amanetta@epa.gov.*

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Transportation Conformity
II. Background for This Action
  A. Federal Requirements
  B. Atlanta Conformity SIP
  C. Chattanooga Conformity SIP
  D. Macon Conformity SIP
  E. Rome Conformity SIP
III. State Submittal and EPA Evaluation
IV. Public Comment and Final Action
V. Statutory and Executive Order Reviews

I. Transportation Conformity

Transportation conformity (hereafter referred to as ''conformity'') is required under section 176(c) of the Clean Air Act (CAA or Act) to ensure that federally supported highway, transit projects, and other activities are consistent with (''conform to'') the purpose of the SIP. Conformity currently applies to areas that are designated nonattainment, and to areas that have been redesignated to attainment after 1990 (maintenance areas) with plans developed under section 175A of the Act, for the following transportation related criteria pollutants: Ozone, particulate matter (e.g., $PM_{2.5}$ and PM_{10}), carbon monoxide, and nitrogen dioxide.

Conformity to the purpose of the SIP means that transportation activities will not cause new air quality violations, worsen existing violations, or delay timely attainment of the relevant criteria pollutants, also known as national ambient air quality standards (NAAQS). The transportation conformity regulation is found in 40 CFR part 93 and provisions related to conformity SIPs are found in 40 CFR 51.390.

II. Background for This Action

A. Federal Requirements

EPA promulgated the Federal transportation conformity criteria and procedures (''Conformity Rule'') on November 24, 1993 (58 FR 62188). Among other things, the rule required states to address all provisions of the conformity rule in their SIPs frequently referred to as ''conformity SIPs.'' Under 40 CFR 51.390, most sections of the conformity rule were required to be copied verbatim. States were also required to tailor all or portions of the following three sections of the conformity rule to meet their state's individual circumstances: 40 CFR 93.105, which addresses consultation procedures; 40 CFR 93.122(a)(4)(ii), which addresses written commitments to control measures that are not included in a metropolitan planning organization's (MPO's) transportation plan and transportation improvement program that must be obtained prior to a conformity determination, and the requirement that such commitments, when they exist, must be fulfilled; and 40 CFR 93.125(c), which addresses written commitments to mitigation measures that must be obtained prior to a project-level conformity determination, and the requirement that project sponsors must comply with such commitments, when they exist.

On August 10, 2005, the ''Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users'' (SAFETEA–LU) was signed into law. SAFETEA–LU revised section 176(c) of the CAA transportation conformity provisions. One of the changes streamlines the requirements for conformity SIPs. Under SAFETEA–LU, states are required to address and tailor only three sections of the rule in their conformity SIPs: 40 CFR 93.105, 40 CFR 93.122(a)(4)(ii), and, 40 CFR 93.125(c), described above. In general, states are no longer required to submit conformity SIP revisions that address the other sections of the conformity rule. These changes took effect on August 10, 2005, when SAFETEA–LU was signed into law.

B. Atlanta Conformity SIP

Effective June 15, 2004, EPA designated 20 whole counties in the Atlanta area, as nonattainment for the 1997 8-hour ozone standard. The counties include Barrow, Bartow, Carroll, Cherokee, Clayton, Cobb, Coweta, DeKalb, Douglas, Fayette, Forsyth, Fulton, Gwinnett, Hall, Henry, Newton, Paulding, Rockdale, Spalding, and Walton counties. Effective April 5, 2005, EPA designated 20 whole counties, and a portion of two counties in the Atlanta area, as nonattainment for the 1997 Annual $PM_{2.5}$ standard. The whole counties include Barrow, Bartow, Carroll, Cherokee, Clayton, Cobb, Coweta, DeKalb, Douglas, Fayette, Forysth, Fulton, Gwinnett, Hall, Henry, Newton, Paulding, Rockdale, Spalding, and Walton counties; the partial counties include Heard and Putnam counties. The current designation status of both the Atlanta 1997 8-hour ozone and 1997 Annual $PM_{2.5}$ areas is nonattainment.

There are two MPOs that are responsible for transportation planning for areas within the Atlanta nonattainment areas. The Atlanta Regional Commission (ARC) is the MPO for most of the Atlanta 1997 8-hour ozone and 1997 Annual $PM_{2.5}$ nonattainment areas. ARC's planning boundary includes the whole counties of Cherokee, Clayton, Cobb, Coweta, DeKalb, Douglas, Fayette, Forsyth, Fulton, Gwinnett, Henry, Paulding and Rockdale counties; and portions of Barrow, Bartow, Newton, Spalding and Walton counties in the Atlanta, Georgia area. Gainesville-Hall MPO (GHMPO) is the other MPO for the Atlanta 1997 8-hour ozone and 1997 Annual $PM_{2.5}$ nonattainment areas. GHMPO's planning boundary includes Hall County. Walton County and the portions of Barrow, Bartow, Heard, Newton, Putnam, Spalding counties are considered ''donut'' [1] areas for the purposes of implementing transportation conformity in this area. Per the Transportation Conformity Rule, the MPO's conformity determination is not complete without a regional analysis that considers the projects in the MPO area(s) as well as the donut areas that are within the nonattainment/maintenance area. For the purposes of implementing 1997 8-hour ozone and 1997 Annual $PM_{2.5}$ conformity, ARC serves as the lead agency for the preparation, consultation, and distribution of the conformity determinations.

Previously Georgia had established transportation conformity SIP for the Atlanta area. On September 27, 2002, EPA approved the Atlanta area's SIP revision which incorporated by reference 40 CFR 93 Subpart A, 67 FR 60869, and customized 40 CFR 93.105, 93.122(a)(4)(ii), and 93.125(c) for all of the MPOs in the entire state. Specifically, the Atlanta area established a Memorandum of Agreement (MOA) for implementing the conformity Criteria and Consultation Procedure. The new conformity SIP (the subject of this rule making) has removed any incorporation by reference and has converted the MOA to a State Rule to be consistent with the SAFETEA–LU revisions to the CAA (Pub. L. 109–59) and subsequent regulations published on January 24, 2008 (73 FR 4420).

C. Chattanooga Conformity SIP

Effective April 5, 2005, EPA designated Hamilton County in Tennessee, Walker and Catoosa Counties in Georgia, and a portion of Jackson County, Alabama in the tri-state Chattanooga area, as nonattainment for the 1997 Annual $PM_{2.5}$ standard. The current designation status of the Chattanooga 1997 Annual $PM_{2.5}$ area is nonattainment.

The Chattanooga-Hamilton County, North Georgia Transportation Planning Organization (CHNGTPO) is the MPO for most of the tri-state Chattanooga, TN-GA, 1997 Annual $PM_{2.5}$ area. CHCNGTPO's planning boundary includes Portions of Walker and Catoosa Counties in Georgia and Hamilton County in Tennessee; Portions of Walker and Catoosa Counties in Georgia; and a portion of Jackson County, Alabama. The portion of Jackson County, Alabama that is within the Chattanooga 1997 Annual $PM_{2.5}$ area is not within the CHCNGTPO planning boundary and thus is considered a ''donut'' area for the purposes of implementing transportation conformity in this area. Per the Transportation Conformity Rule, the MPO's conformity determination is not complete without a regional analysis that considers the projects in the MPO area as well as the donut areas that are within the nonattainment/maintenance area. For the purposes of implementing 1997 Annual $PM_{2.5}$ conformity, CHCNGTPO serves as the lead agency for the preparation, consultation, and distribution of the conformity determinations.

Walker and Catoosa Counties in Georgia which are a part of the Chattanooga area do not have a previous conformity SIP. The states of Tennessee and Alabama will establish conformity procedures for the counties that make up the Tennessee and Alabama portion of the Chattanooga nonattainment area in their individual conformity SIPs. The SIP revision at issue now includes the conformity procedures for Walker and Catoosa Counties as part of the 1997 Annual $PM_{2.5}$ Chattanooga nonattainment area.

[1] Donut areas are geographic areas outside a metropolitan planning area boundary, but inside the boundary of a nonattainment or maintenance area that contains any part of a metropolitan area.

D. Macon Conformity SIP

Effective June 15, 2004, EPA designated Bibb County and a portion of Monroe County in the Macon, Georgia area as nonattainment for the 1997 8-hour ozone standard. Effective April 5, 2005, EPA designated Bibb County and a portion of Monroe County in the Macon, Georgia area as nonattainment for the 1997 Annual $PM_{2.5}$ standard. The current designation status of the Macon 1997 8-hour ozone and 1997 Annual $PM_{2.5}$ areas are nonattainment for $PM_{2.5}$ and attainment (with a maintenance plan) for 1997 8-hour ozone (72 FR 53432, September 19, 2007).

The Macon Area Transportation Study (MATS) is the MPO for most of the Macon 1997 8-hour ozone and 1997 Annual $PM_{2.5}$ nonattainment area. The MATS planning boundary includes all of Bibb County. The portion of Monroe County that is included in the Macon 1997 8-hour ozone and 1997 Annual $PM_{2.5}$ nonattainment areas is not within the MATS planning boundary, and thus is considered a ''donut'' area for the purposes of implementing transportation conformity in this area. The donut area of Monroe County entered into an agreement with the Georgia Department of Transportation (DOT) that will allow the Georgia DOT to represent them. Per the transportation conformity regulations, the MPO's conformity determination is not complete without a regional analysis that considers the transportation projects in the MPO area as well as the donut areas that are within the nonattainment area. For the purposes of implementing 1997 8-hour ozone and 1997 Annual $PM_{2.5}$ conformity, MATS serves as the lead agency for the preparation, consultation and distribution of the conformity determination.

Bibb County and the portion of Monroe County, Georgia which are a part of the Macon area do not have a previous conformity SIP. The SIP revision at issue now includes the conformity procedures for both the entire county of Bibb and the portion of Monroe County, Georgia, for the Macon area.

E. Rome Conformity SIP

Effective April 5, 2005, EPA designated a portion of Floyd County in the Rome-Floyd area as nonattainment for the 1997 Annual $PM_{2.5}$ standard. The current designation status of the Rome-Floyd County 1997 Annual $PM_{2.5}$ area is nonattainment. The Rome Floyd County MPO (RFCMPO) is the MPO for the entire Rome-Floyd 1997 Annual $PM_{2.5}$ area. For the purposes of implementing 1997 Annual $PM_{2.5}$ conformity, RFCMPO serves as the lead agency for the preparation, consultation, and distribution of the conformity determinations.

Floyd County, Georgia which is a part of the Rome area does not have a previous conformity SIP. The SIP revision at issue now includes the conformity procedures for the entire county of Floyd county, Georgia, for the Rome area.

III. State Submittal and EPA Evaluation

On November 16, 2010, the State of Georgia, through GA DNR, submitted the State's transportation conformity and consultation interagency rule to EPA as a revision to the SIP. On February 21, 2011, and again on March 10, 2011, GA DNR submitted supplemental information regarding the Georgia transportation conformity rule. These three SIP revisions established procedures for interagency consultation and replaced the Memorandum of Agreement submitted by GA DNR and approved by EPA on September 27, 2002 (67 FR 60869).

The State of Georgia developed its consultation rule based on the elements contained in 40 CFR 93.105, 93.122(a)(4)(ii), and 93.125(c). As a first step, the State worked with the existing transportation planning organization's interagency committee that included representatives from the State air quality agency, State DOT, Federal Highway Administration—Georgia Division, Federal Transit Administration, the MPOs of the maintenance and nonattainment areas of Georgia, and EPA. The interagency committee met regularly and drafted the consultation rules considering elements in 40 CFR Part 93.105, 93.122(a)(4)(ii), and 93.125(c), and integrated the local procedures and processes into the rule. The consultation process developed in this rule is for the State of Georgia. On July 6, 2010, GA DNR held a public hearing for the transportation conformity rulemaking.

EPA has evaluated this SIP and has determined that the State has met the requirements of Federal transportation conformity rule as described in 40 CFR Part 51, Subpart T and 40 CFR Part 93, Subpart A. GA DNR has satisfied the public participation and comprehensive interagency consultation requirement during development and adoption of the State Rule at the local level. Therefore, EPA is approving the rule as a revision to the Georgia SIP. EPA's rule requires the states to develop their own processes and procedures for interagency consultation among the federal, state, and local agencies and resolution of conflicts meeting the criteria in 40 CFR 93.105. The SIP revision must include processes and procedures to be followed by the MPO, state DOT, and U.S. DOT in consulting with the state and local air quality agencies and EPA before making conformity determinations. The transportation conformity SIP revision must also include processes and procedures for the state and local air quality agencies and EPA to coordinate the development of applicable SIPs with MPOs, state DOTs, and U.S. DOT.

EPA has reviewed the submittal to assure consistency with the CAA as amended by SAFETEA–LU and EPA regulations (40 CFR part 93 and 40 CFR 51.390) governing state procedures for transportation conformity and interagency consultation and has concluded that the submittal is approvable. Details of EPA's review are set forth in a technical support document (TSD), which has been included in the docket for this action. Specifically, in the TSD, EPA identifies how the submitted procedures satisfy our requirements under 40 CFR 93.105 for interagency consultation with respect to the development of transportation plans and programs, SIPs, and conformity determinations, the resolution of conflicts, and the provision of adequate public consultation, and our requirements under 40 CFR 93.122(a)(4)(ii) and 93.125(c) for enforceability of control measures and mitigation measures.

IV. Public Comment and Final Action

For the reasons set forth above, EPA is taking action under section 110 of the Act to approve the rule implementing the conformity criteria and consultation procedures revision to the Georgia SIP pursuant to the CAA, as a revision to the Georgia SIP. As a result of this action, Georgia's previously SIP-approved conformity procedures for Georgia (67 FR 60869, September 27, 2002), will be replaced by the procedures submitted to EPA on November 16, 2010, for approval and adopted by State of Georgia on August 25, 2010. This action also establishes consultation procedures for all counties in Georgia.

EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should adverse comments be filed. This rule will be effective August 14, 2012 without further notice unless the

Agency receives adverse comments by July 16, 2012.

If EPA receives such comments, then EPA will publish a document withdrawing the final rule and informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period. Parties interested in commenting should do so at this time. If no such comments are received, the public is advised that this rule will be effective on August 14, 2012 and no further action will be taken on the proposed rule.

V. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

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

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 14, 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. Parties with objections to this direct final rule are encouraged to file a comment in response to the parallel notice of proposed rulemaking for this action published in the proposed rules section of today's **Federal Register**, rather than file an immediate petition for judicial review of this direct final rule, so that EPA can withdraw this direct final rule and address the comment in the proposed rulemaking. 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, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Incorporation by reference, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: June 1, 2012.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

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

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

Subpart L—Georgia

■ 2. Section 52.570 is amended:

■ a. In paragraph (c) by adding a new entry in numerical order for ''391–3–1–.15'';

■ b. In paragraph (e) by removing and reserving entry 12 to read as follows:

§ 52.570 Identification of plan.

* * * * *

(c) * * *

EPA-APPROVED GEORGIA REGULATIONS

State citation	Title/subject	State effective date	EPA approval date	Explanation
*	*	*	*	*
391–3–1–.15	Georgia Transportation Conformity and Consultation Interagency Rule.	10/6/10	6/15/2012 [Insert citation of publication].	

* * * * *

(e) * * *

EPA-APPROVED GEORGIA NON-REGULATORY PROVISIONS

Name of nonregulatory SIP Provision	Applicable geographic or non-attainment area	State submittal date/effective date	EPA approval date
*	*	*	*
12. [Reserved].			
*	*	*	*

[FR Doc. 2012–14595 Filed 6–14–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R05–OAR–2007–1179; FRL–9685–7]

Approval of Air Quality Implementation Plans; Wisconsin; Partial Disapproval of ''Infrastructure'' State Implementation Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: Pursuant to its authority under the Clean Air Act (CAA), EPA is taking final action to disapprove two narrow portions of submissions made by the Wisconsin Department of Natural Resources (WDNR) to address the section 110(a)(1) and (2) requirements of the CAA, often referred to as the ''infrastructure'' State Implementation Plan (SIP). Specifically, we are finalizing the disapproval of portions of WDNR's submissions intended to meet certain requirements of section 110(a)(2)(C) with respect to the 1997 8-hour ozone National Ambient Air Quality Standards (NAAQS) and 1997 24-hour $PM_{2.5}$ NAAQS. Among other conditions, section 110(a)(2)(C) of the CAA requires states to correctly address oxides of nitrogen (NO_X) as a precursor to ozone in their respective prevention of significant deterioration (PSD) programs. EPA is finalizing disapproval of a portion of Wisconsin's submissions intended to satisfy this requirement. EPA is also finalizing disapproval of a portion of Wisconsin's submissions because the SIP currently contains a new source review (NSR) exemption for fuel changes as major modifications where the source was capable of accommodating the change before January 6, 1975. The proposed rule associated with this final action was published on April 20, 2012.

DATES: This final rule is effective on July 16, 2012.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–R05–OAR–2007–1179. All documents in the docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly-available only in hard copy. Publicly-available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the U.S. Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. We recommend that you telephone Andy Chang at (312) 886–0258 before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT: Andy Chang, Environmental Engineer, Attainment Planning and Maintenance Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–0258, *chang.andy@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document whenever ''we,'' ''us,'' or ''our'' is used, we mean EPA. This supplementary information section is arranged as follows:

I. What is the background for this action?
II. What is our response to comments received on the proposed rulemaking?
III. What action is EPA taking?
IV. Statutory and Executive Order Reviews

I. What is the background for this action?

Under sections 110(a)(1) and (2) of the CAA, and implementing EPA guidance, states were required to submit either revisions to their existing EPA approved SIPs necessary to provide for implementation, maintenance, and enforcement of the 1997 ozone NAAQS and the 1997 $PM_{2.5}$ NAAQS, or certifications that their existing SIPs for ozone and particulate matter already met those basic requirements. The statute requires that states make these submissions within 3 years after the promulgation of new or revised NAAQS. However, intervening litigation over the 1997 ozone NAAQS and the 1997 $PM_{2.5}$ NAAQS created uncertainty about how states were to proceed.[1] Accordingly, both EPA and the states were delayed in addressing these basic SIP requirements.

In a consent decree with Earth Justice, EPA agreed to make completeness findings with respect to these SIP submissions. Pursuant to this consent decree, EPA published completeness findings for all states for the 1997 8-hour ozone NAAQS on March 27, 2008, and for all states for the 1997 $PM_{2.5}$ NAAQS on October 22, 2008.

On October 2, 2007, EPA issued a guidance document entitled ''Guidance on SIP Elements Required Under Sections 110(a)(1) and (2) for the 1997 8-hour Ozone and $PM_{2.5}$ National Ambient Air Quality Standards,'' making recommendations to states concerning these SIP submissions (the 2007 Guidance). Within the 2007 Guidance, EPA gave general guidance relevant to matters such as the timing and content of the submissions. Wisconsin made its infrastructure SIP submission for the 1997 ozone and $PM_{2.5}$ NAAQS on December 12, 2007. The State provided supplemental submissions to EPA on January 24, 2011, and March 28, 2011.

On April 28, 2011, EPA published its proposed action on the Region 5 states' submissions (*see* 76 FR 23757). Notably, we proposed to find that Wisconsin had met the requirements of section 110(a)(2)(C) concerning state PSD programs generally, and in particular the requirement to include NO_X as a precursor to ozone (*see* 76 FR 23757 at 23760–23761), thereby satisfying the

[1] *See, e.g., Whitman* v. *American Trucking Associations, Inc.,* 531 U.S. 457 (2001).

requirement that the State has an adequate PSD program pursuant to section 110(a)(2)(C) for both the 1997 ozone and 1997 $PM_{2.5}$ NAAQS.[2]

During the comment period for the April 28, 2011, proposed rulemaking, EPA received three sets of comments. Two of the commenters observed that although we had proposed to approve Wisconsin's infrastructure SIP as meeting the correct requirements for NO_X as a precursor to ozone in the State's PSD program, Wisconsin's PSD SIP does not contain the most recent PSD program revisions required by EPA for this purpose. One of the commenters also noted that Wisconsin's existing SIP does not meet current EPA requirements with respect to NSR because Wisconsin has not included fuel changes as ''major modifications'' in its NSR program for certain sources under certain conditions. A detailed discussion of these comments as they relate to Wisconsin's SIP was included in the April 20, 2012, proposed rulemaking (*see* 77 FR 23647), which is the basis for this final action.

As a result of the comments received in response to our April 28, 2011, proposed rulemaking, we did not promulgate final action on those two limited aspects of Wisconsin's infrastructure SIP in our July 13, 2011, final rulemaking (*see* 76 FR 41075). We did, however, promulgate final action on all other applicable elements of Wisconsin's infrastructure SIP. In the July 13, 2011, rulemaking, we committed to address the issues raised in the comments concerning NO_X as a precursor to ozone and the definition of ''major modification'' related to fuel changes for certain sources in Wisconsin in a separate action; our April 20, 2012, proposed rulemaking and this final rulemaking serve as that action.

On April 20, 2012, we proposed to disapprove the State's infrastructure SIP submission with respect to two narrow issues related to section 110(a)(2)(C). During the comment period on the April 20, 2012, proposed rulemaking, EPA received two comment letters. EPA addresses the significant and relevant comments in this final action, specifically in the following section.

[2] EPA noted that each state's PSD program must meet certain basic program requirements, e.g., if a state lacks specific required provisions needed to address NO_X as a precursor to ozone, the provisions of section 110(a)(2)(C) requiring an adequate permitting program must be considered not to be met, irrespective of the pollutant being addressed in the infrastructure SIP submission.

II. What is our response to comments received on the proposed rulemaking?

The public comment period for EPA's proposal to disapprove the narrow portions of the submittals from Wisconsin addressing the current regulatory requirements for NO_X as a precursor to ozone in PSD permitting and the definition of ''major modification'' related to fuel changes for certain sources[3] closed on May 21, 2012. EPA received two comment letters, one of which was not relevant to this rulemaking. A synopsis of the significant individual comments contained in the other letter, as well as EPA's response to each comment, is discussed below:

Comment 1: WDNR submitted a comment letter that states that although Wisconsin's SIP does not explicitly include all portions of the regulatory language EPA required states to adopt in the ''Final Rule to Implement the 8-Hour Ozone National Ambient Air Quality Standard—Phase 2; Final Rule to Implement Certain Aspects of the 1990 Amendments Relating to New Source Review and Prevention of Significant Deterioration as They Apply in Carbon Monoxide, Particulate Matter, and Ozone NAAQS; Final Rule for Reformulated Gasoline'' (Phase 2 Rule) (*see* 70 FR 71612), WDNR does in fact consider NO_X as a precursor of ozone in its permitting decisions. WDNR also states that it has consistently treated NO_X as a precursor to ozone, and existing language in Wisconsin Administrative Code section NR 405.02(25i) clearly gives WDNR the authority to regulate NO_X as a precursor for ozone, as it has been identified as such by EPA. WDNR further states that it is not aware of any situation where it has not consistently used this existing authority in its major NSR program. Lastly, WDNR states that in response to EPA's and the public's concern over this issue, it currently has under development a revision to Wisconsin Administrative Code section NR 405.02(25i) to ensure that the language is wholly consistent with Federal language contained in 40 CFR 51.166, as required by the Phase 2 Rule. Upon revision and final adoption at the state level, WDNR has committed to submit the revisions to EPA for approval and incorporation into the SIP.

Response 1: EPA recognizes that Wisconsin currently has some authority to treat NO_X as a precursor to ozone in permitting decisions, and EPA appreciates the State's efforts to ensure that NO_X is correctly evaluated as a precursor to ozone in fact. However, the Phase 2 Rule obligates states to make explicit regulatory changes in order to clarify and remove any ambiguity concerning the requirement that NO_X be treated as a precursor to ozone in permitting contexts in specific ways. The Phase 2 Rule requires states to submit SIP revisions incorporating the requirements of the rule, including these specific NO_X as a precursor to ozone provisions, by June 15, 2007 (*see* 70 FR 71612 at 71683). As explained in our April 20, 2012, proposed rulemaking, states that had not incorporated the necessary changes specific to NO_X as a precursor to ozone as required by the Phase 2 Rule were included in EPA's March 27, 2008, ''Completeness Findings for Section 110(a) State Implementation Plans for the 8-hour Ozone NAAQS'' and received a finding of failure to submit related to section 110(a)(2)(C) for this reason (*see* 73 FR 16205).

As a result of EPA's own regulations, submission deadlines, and actions germane to the explicit identification of NO_X as a precursor to ozone in Federally approved PSD programs, EPA is finalizing the disapproval of portions of Wisconsin's infrastructure SIP submission with respect to the NO_X as a precursor to ozone provision requirements of section 110(a)(2)(C) for the 1997 ozone and $PM_{2.5}$ NAAQS.

EPA appreciates Wisconsin's efforts to develop SIP revisions that will be wholly consistent with the Federal language contained in 40 CFR 51.166. EPA will work actively with the State to ensure that the necessary SIP revisions are completed as expeditiously as possible. In the interim, we will work actively with the State to ensure that NO_X is correctly treated as a precursor to ozone in a manner consistent with the requirements of the Phase 2 Rule.

Comment 2: In the same comment letter, WDNR recognizes that its definition of ''major modification'' as found in Wisconsin Administrative Code section NR 405.02(21)(b)5.a. does not include language that recognizes prohibitions on fuel use exemptions that may have been contained in Federally-issued PSD permits issued prior to EPA's approval of Wisconsin's PSD SIP. However, WDNR does not agree with the notion that the omission in fact allows more exemptions than what is allowed by Federal rules.

WDNR states that under its title V operating permit program, all applicable requirements to a source are included in

[3] Although the evaluation of states' definitions of ''major modification'' related to fuel changes was not a criterion outlined in EPA's April 28, 2011 proposed rulemaking, this issue is intrinsically linked to states' PSD regulations, covered under section 110(a)(2)(C).

its operation permit. As a result, WDNR states that it clearly recognizes that requirements contained in a Federally-issued PSD permit would be an applicable requirement to the source and that it would be included in the source's title V operating permit, therefore making the requirement fully enforceable under State and Federal law.

WDNR states that this issue is a very narrow one, and that it is not aware of a single situation where an omission has occurred in practice. Further, WDNR believes that the omission in its definition of ''major modification'' was an oversight that occurred during rule writing, and cites a previous commitment to EPA to make a correction. Lastly, WDNR states that a correction to the definition in question has begun, and will be part of the same rulemaking effort that will address the NO_X as a precursor to ozone provision.

Response 2: EPA agrees that this issue is a very narrow one, and that an omission in practice is perhaps nonexistent. Nonetheless, as explained in EPA's April 20, 2012, proposed rulemaking, this is an issue that has previously arisen, and that the State has acknowledged and agreed to address. WDNR's previous commitment to address the issue, dated June 1, 2011, did not include a date certain by which it would complete the requested revision of the State's regulation. As a result, EPA could not promulgate an approval or conditional approval of the section 110(a)(2)(C) portion of Wisconsin's infrastructure SIP for the 1997 ozone and $PM_{2.5}$ NAAQS with respect to this narrow issue.

EPA recognizes that in practice, WDNR has the authority and means to ensure adherence to the prohibitions on fuel use exemptions in certain instances, consistent with our own definition of ''major modification.'' However, our regulations along with a previous request to the State to make appropriate revisions to the SIP necessary to address this issue result in finalizing the disapproval of Wisconsin's infrastructure SIP submissions for the 1997 ozone and $PM_{2.5}$ NAAQS. This narrow disapproval pertains to the NSR exemption for fuel changes as ''major modifications'' where the source was capable of accommodating the change before January 6, 1975. Once again, we note that this disapproval is a narrow one, and limited to the specific state regulatory language concerning the exemption.

EPA appreciates WDNR's efforts to correct the definition of ''major modification'' and will actively work with the State to ensure that alignment of the State and Federal definition for ''major modification'' occurs as expeditiously as possible. In addition, we will work actively with the State as needed to ensure adherence to the prohibitions on fuel use exemptions in Federally-issued permits.

III. What action is EPA taking?

For the reasons discussed in the proposed rulemaking, EPA is taking final action to disapprove two narrow portions of Wisconsin's infrastructure SIP submissions for the 1997 ozone and $PM_{2.5}$ NAAQS with respect to section 110(a)(2)(C). Specifically, we are finalizing disapproval of portions of Wisconsin's submissions because the current SIP does not satisfy the requirements of the Phase 2 Rule for explicit identification of NOx as a precursor to ozone in PSD permitting. We are also finalizing disapproval of portions of Wisconsin's submissions because the current SIP contains an impermissible NSR exemption for fuel changes as ''major modifications'' where the source was capable of accommodating the change before January 6, 1975. These grounds for disapproval are narrow, and pertain only to these specific deficiencies in Wisconsin's SIP. The State has begun the process for rectifying these two issues, and we will work with the State to rectify these issues promptly.

Under section 179(a) of the CAA, final disapproval of a submission that addresses a requirement of a Part D Plan (section 171–section 193 of the CAA), or is required in response to a finding of substantial inadequacy as described in section 110(k)(5) starts a sanction clock. The provisions in the submissions we are disapproving were not submitted by Wisconsin to meet either of those requirements. Therefore, no sanctions under section 179 will be triggered.

The full or partial disapproval of a SIP revision triggers the requirement under section 110(c) that EPA promulgate a Federal Implementation Plan (FIP) no later than 2 years from the date of the disapproval unless the State corrects the deficiency, and the Administrator approves the plan or plan revision before the Administrator promulgates such FIP. As previously mentioned, Wisconsin has begun the process to rectify each of these deficiencies. Further, EPA anticipates acting on WDNR's submissions to address these two issues within the 2-year time frame prior to our FIP obligation on these very narrow issues. In the interim, EPA expects WDNR to address NOx as a precursor to ozone correctly for PSD permitting consistent with the requirements of the Phase 2 Rule, and to ensure adherence to the prohibitions on fuel use exemptions in Federally-issued permits. The State has indicated that it will be addressing both issues correctly in permitting decisions in the interim, so EPA anticipates that the practical implications of these disapprovals should be minimal.

IV. Statutory and Executive Order Reviews

Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and, therefore, is not subject to review by the Office of Management and Budget.

Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

Because it is not a ''significant regulatory action'' under Executive Order 12866 or a ''significant energy action,'' this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001).

Regulatory Flexibility Act

This action merely disapproves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule 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.*).

Unfunded Mandates Reform Act

Because this rule disapproves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This rule also does not have tribal implications because it will 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,

as specified by Executive Order 13175 (59 FR 22951, November 9, 2000).

Executive Order 13132: Federalism

This action also does not have Federalism implications because it does 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 (64 FR 43255, August 10, 1999). This action merely disapproves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the CAA.

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

This rule also is not subject to Executive Order 13045 ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it disapproves a state rule implementing a Federal Standard.

National Technology Transfer Advancement Act

In reviewing state submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. In this context, in the absence of a prior existing requirement for the state to use voluntary consensus standards (VCS), EPA has no authority to disapprove a state submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a state submission, to use VCS in place of a state submission that otherwise satisfies the provisions of the CAA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply.

Paperwork Reduction Act

This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Congressional Review Act

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

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 14, 2012. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule 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, Ozone, Particulate matter, Reporting and recordkeeping requirements.

Dated: May 30, 2012.

Susan Hedman,

Regional Administrator, Region 5.

Therefore, 40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

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

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

■ 2. Amend § 52.2591 by adding paragraphs (c) and (d) to read as follows:

§ 52.2591 Section 110(a)(2) infrastructure requirements.

* * * * *

(c) *Disapproval.* EPA is disapproving the portions of Wisconsin's infrastructure SIP for the 1997 ozone NAAQS with respect to two narrow issues that relate to section 110(a)(2)(C):

(1) The requirement for consideration of NOx as a precursor to ozone; and

(2) The definition of ''major modification'' related to fuel changes for certain sources.

(d) *Disapproval.* EPA is disapproving the portions of Wisconsin's infrastructure SIP for the 1997 $PM_{2.5}$ NAAQS with respect to two narrow issues that relate to section 110(a)(2)(C):

(1) The requirement for consideration of NOx as a precursor to ozone; and

(2) The definition of ''major modification'' related to fuel changes for certain sources.

[FR Doc. 2012–14417 Filed 6–14–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R08–OAR–2011–0719; FRL–9683–1]

Approval, Disapproval and Promulgation of Air Quality Implementation Plan; Utah; Maintenance Plan for the 1-Hour Ozone Standard for Salt Lake and Davis Counties

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is partially approving and partially disapproving State Implementation Plan (SIP) revisions submitted by the Governor of Utah on February 22, 1999. These revisions updated the State of Utah's maintenance plan for the 1-hour ozone standard for Salt Lake County and Davis County. As part of this action, EPA is also addressing certain actions it took in 2003 concerning such maintenance plan. This action is being taken under section 110 of the Clean Air Act (CAA).

DATES: This action is effective on July 16, 2012.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–R08–OAR–2011–0719. All documents in the docket are listed on the *http://www.regulations.gov* Web site. Although listed in the index, some information may not be publicly available, i.e., Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *http://www.regulations.gov* or in hard copy at EPA Region 8, Air Quality Planning Unit (8P–AR), 1595 Wynkoop Street, Denver, Colorado 80202. EPA requests that if at all possible, you contact the person 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 federal holidays.

FOR FURTHER INFORMATION CONTACT: Jody Ostendorf, Air Program, Mailcode 8P–

AR, Environmental Protection Agency, Region 8, 1595 Wynkoop Street, Denver, Colorado 80202–1129, (303) 312–7814, or *ostendorf.jody@epa.gov*.

SUPPLEMENTARY INFORMATION:

Information is organized as follows:

Table of Contents

I. Background of State Submittal
II. EPA's Analysis of the Revisions to the Maintenance Plan for the 1-Hour Ozone Standard for Salt Lake County and Davis County
III. Response to Comments
IV. Final Action
V. Statutory and Executive Order Reviews

Definitions

For the purpose of this document, we are giving meaning to certain words 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 *ACT* mean or refer to Alternative Control Guidance Document.

(iii) The initials *CO* mean or refer to carbon monoxide.

(iv) The initials *EPA,* and the words ''*we,*'' ''*us,*'' or ''*our,*'' mean or refer to the Environmental Protection Agency.

(v) The initials *NAAQS* mean or refer to national ambient air quality standards.

(vi) The initials NO_X mean or refer to nitrogen oxides.

(vii) The initials *RACT* mean or refer to reasonably available control technology.

(viii) The initials *SIP* mean or refer to State Implementation Plan.

(ix) The words *State* or *Utah* mean the State of Utah, unless the context indicates otherwise.

I. Background of State Submittal

Under the CAA enacted in 1970, EPA established national ambient air quality standards (NAAQS) for certain pervasive air pollutants, such as photochemical oxidant, carbon monoxide (CO), and particulate matter. The NAAQS represent concentration levels below which public health and welfare are protected. The 1970 Act also required states to adopt and submit SIPs to implement, maintain, and enforce the NAAQS.

SIP revisions are required from time-to-time by the CAA to account for new or amended NAAQS or to meet other changed circumstances. The CAA was significantly amended in 1977, and under the 1977 Amendments, EPA promulgated attainment status designations for all areas of the country with respect to the NAAQS.

The CAA requires EPA to periodically review and revise the NAAQS, and in 1979, EPA established a new NAAQS of 0.12 ppm for ozone, averaged over 1 hour. This new NAAQS replaced the oxidant standard of 0.08 ppm. See 44 FR 8202 (February 8, 1979). Areas designated nonattainment for oxidant were considered to be nonattainment for ozone as well. Part D of CAA Title I requires special measures for areas designated nonattainment. In 1984, EPA approved Utah's SIP for the 1-hour ozone standard for the Salt Lake County and Davis County nonattainment area (49 FR 32575).

Congress significantly amended the CAA again in 1990. Under the 1990 Amendments, each area of the country that was designated nonattainment for the 1-hour ozone NAAQS, including Salt Lake County and Davis County, was classified by operation of law as marginal, moderate, serious, severe, or extreme nonattainment depending on the severity of the area's air quality problem. The ozone nonattainment designation for Salt Lake County and Davis County continued by operation of law according to section 107(d)(1)(C)(i) of the CAA, as amended in 1990. Furthermore, the area was classified by operation of law as moderate for ozone under CAA section 181(a)(1).

Under CAA section 175A, states may request redesignation of a nonattainment area to attainment if monitoring data showed that the area has met the NAAQS and certain other requirements. On July 18, 1995, both Salt Lake and Davis Counties were found to be attaining the 1-hour ozone standard (60 FR 36722). On July 17, 1997, EPA approved the State's request to redesignate Salt Lake and Davis County to attainment for the 1-hour ozone standard. As part of that action, EPA approved the State's 1-hour ozone maintenance plan (62 FR 38213).

On July 18, 1997, EPA promulgated an 8-hour ozone NAAQS (62 FR 38856). This standard was intended to replace the 1-hour ozone standard.

On February 22, 1999, partially in response to EPA's promulgation of the 8-hour ozone NAAQS, but for other purposes as well, Utah submitted six revisions to its approved 1-hour maintenance plan. These revisions consisted of the following: (1) Changes to the nitrogen oxides (NO_X) Reasonably Available Control Technology (RACT) provisions; (2) clarification of the transportation conformity provisions; (3) removal of budgets for sources other than on-road mobile sources; (4) changes to the trigger for contingency measures; (5) removal of the commitment to develop an annual inventory for point sources; and (6) removal of references to CO in various sections of the maintenance plan. EPA did not act on the revisions at the time, in part because of a 1999 legal challenge to the 1997 8-hour ozone NAAQS.

On December 31, 2002, Utah submitted what it characterized as non-substantive changes to the 1-hour ozone maintenance plan. The primary purpose of the changes was to revise cross-references in the 1-hour maintenance plan to Utah air rules whose numbering Utah had changed. EPA approved these changes in 2003 (68 FR 37744, June 25, 2003). Subsequently, EPA discovered that in the June 25, 2003 action it had inadvertently incorporated by reference certain changes to the contingency measures provision in the 1-hour ozone maintenance plan that were substantive in nature and had not been previously approved—i.e., the proposed changes to the contingency measures that Utah had submitted on February 22, 1999. On October 15, 2003, EPA issued a technical correction to delete the changes to the contingency measures provision from the approved SIP (68 FR 59327).

We have since discovered that Utah's December 31, 2002, submittal included other revisions from its February 22, 1999, submittal that were substantive in nature. These revisions included the (1) Changes to the NO_X RACT provisions, (2) removal of the commitment to develop an annual inventory for point sources, and (3) removal of references to CO in some sections of the maintenance plan. Because we were not aware that we had inadvertently approved these revisions in 2003, we did not issue a technical correction to reverse our approval. As we explain more fully below, in this action we are proposing to ratify our 2003 inadvertent approval of these revisions.

On April 30, 2004, EPA designated areas of the country for the 1997 8-hour ozone standard. EPA designated all areas in Utah, including Salt Lake County and Davis County, as unclassifiable/attainment for the 1997 8-hour ozone NAAQS (69 FR 23858, April 30, 2004).

Also, on April 30, 2004, EPA revoked the pre-existing 1-hour NAAQS (69 FR 23951; 40 CFR 50.9(b)). As part of this rulemaking, EPA also established certain requirements to prevent backsliding in those areas that were designated as nonattainment for the 1-hour ozone standard at the time of designation for the 8-hour ozone standard, or that were redesignated to ''attainment'' but subject to a maintenance plan, as is the case for Salt Lake County and Davis County. These requirements are codified at 40 CFR 51.905.

In the case of Utah, one of these requirements was to submit a maintenance plan for the 1997 8-hour ozone standard. Also, the rule clarifies

that revisions to pre-existing 1-hour ozone maintenance plans must be approved by EPA and must meet the requirements of CAA sections 110(l) and 193. It also clarifies that EPA will not approve certain changes to the 1-hour ozone maintenance plan until a state in Utah's position has submitted and EPA has approved the maintenance plan for the 1997 8-hour ozone standard. We have not approved a maintenance plan for the 1997 8-hour ozone standard for Salt Lake County or Davis County.

On March 22, 2007, the Governor of Utah submitted a maintenance plan for the 1997 8-hour ozone standard for Salt Lake County and Davis County, and associated rule revisions. EPA is not taking action on that submittal at this time.[1] Rather, EPA is only acting on the revisions to the maintenance plan submitted on February 22, 1999.

II. EPA's Analysis of the Revisions to the Maintenance Plan for the 1-Hour Ozone Standard for Salt Lake County and Davis County

The State's February 22, 1999, submittal included six revisions to the 1-hour ozone maintenance plan. As noted above, the State's December 31, 2002, submittal included some of the same revisions, and we inadvertently approved some of those revisions. We describe the various revisions and our analysis of them in the following paragraphs.

A. Section IX.D.2.b(4)(a), ''NO_X RACT.'' The State's 1999 submittal proposed to remove from the maintenance plan a commitment to address new ''Alternative Control Guidance Documents (ACTs)'' for NO_X issued by EPA. That commitment read as follows:

> As the EPA publishes ACT documents containing new determinations of what constitutes RACT for various source categories of NO_X located within nonattainment areas for ozone, the State will either make a negative declaration for that source category in Salt Lake and Davis Counties, or will revise the Air Conservation Rules to reflect such determinations. This documentation will then be submitted to EPA for approval as a specific SIP revision according to the schedule included in the final guidance. In the absence of such an implementation schedule the State will act as expeditiously as practicable.

As noted, we inadvertently approved the removal of this commitment and accompanying introductory language in our 2003 action, in which we only intended to approve non-substantive changes to numbering and cross-references.

In this action, we are proposing to ratify our 2003 approval for the following reasons. First, when we approved the maintenance plan in 1997, we simultaneously approved Utah's NO_X RACT exemption request for major stationary sources in the 1-hour ozone nonattainment area, except to the extent the SIP already included specific NO_X RACT requirements (62 FR 28403, May 23, 1997; 62 FR 38213, July 17, 1997). The basis for our approval was that ambient air quality monitoring data showed that the area met the 1-hour ozone standard of 0.12 ppm without additional RACT measures. Thus, if the maintenance plan had omitted the commitment regarding future NO_X ACTs, we would have approved it; the commitment was not required or necessary, and the purpose of Utah's revision to the maintenance plan was to align the plan with the NO_X RACT exemption request. In light of our approval of that exemption request, the removal of the commitment in the maintenance plan is reasonable, since it is not needed to ensure maintenance of the 1-hour ozone NAAQS.

Second, ACTs do not determine what constitutes RACT; instead they evaluate a range of potential control options. EPA has updated only two NO_X ACTs since we approved the maintenance plan in 1997—one for cement manufacturing and one for internal combustion engines—and we do not read those updates as being ''new determinations of what constitutes RACT.'' In other words, we conclude that the commitment has not been triggered, even if there are sources in the maintenance area for which the updated ACTs would be relevant. We also conclude that the commitment will not be triggered in the future because EPA does not determine RACT in ACTs. Thus, we conclude that the removal of the commitment from the maintenance plan will not interfere with attainment of any NAAQS or any other applicable requirement of the CAA. See CAA section 110(l).

B. Section IX.D.2.f(3), ''Safety Margin,'' and Table 9, ''Safety Margin.'' The State's 1999 submittal proposed to modify the maintenance plan's language regarding the use of any safety margin for transportation conformity determinations and to add new Table 9, which specifies the safety margin available for various years. For a maintenance plan, our regulations define safety margin as the amount by which the total projected emissions from all sources of a given pollutant are less than the total emissions that would satisfy the maintenance requirement. 40 CFR 93.101. The existing language in Utah's 1-hour ozone maintenance plan uses the term ''emissions credit'' rather than ''safety margin.'' Also, the existing language doesn't identify the available safety margin. The revised language uses the term ''safety margin,'' which is consistent with EPA's regulations, and indicates that the safety margin is defined in Table 9 of the maintenance plan. Our regulations require that the safety margin be explicitly quantified in the SIP before it may be used for conformity purposes. 40 CFR 93.124. The revised language also clarifies and strengthens the procedures for use of the safety margin for transportation or general conformity determinations. Use of all or a portion of the safety margin for general conformity purposes would require EPA approval of a SIP revision. Also, the Utah Board would need to approve the use of any part of the safety margin for either transportation or general conformity purposes. We find that the revisions to Section IX.D.2.f(3) and the addition of Table 9 are consistent with our conformity regulations and will not interfere with maintenance of the 1-hour ozone standard, attainment or maintenance of any other NAAQS, or any other CAA requirement.

C. Section IX.D.2.f, Table 8. The State's 1999 submittal proposed to remove from Table 8 of the maintenance plan the budgets for sources other than on-road mobile sources. The previously approved maintenance plan contains budgets for area sources, non-road mobile sources, and point sources, in addition to the budgets for on-road mobile sources. These budgets are specified for years 1994 through 2006, 2007 (the end of the maintenance period), 2015, and 2020. The 2007 budgets are identical to the inventory values used to demonstrate maintenance in 2007. Under our general conformity regulations, these 2007 inventory values for sources other than on-road mobile sources are defined as budgets for general conformity regardless of whether they are explicitly stated in the maintenance plan. We also note that the 2007 budgets are more stringent than the 2015 and 2020 budgets (except for two instances in which the differences are very slight). Thus, we find that the removal of the 2015 and 2020 budgets for sources other than on-road mobile sources will make it more difficult to show general conformity. In this sense, removal of such budgets will make the SIP more stringent. In addition, we have confirmed with the State that the State

[1] The area violated the 1997 8-hour ozone standard based on monitored data for 2005–2007. Thus, we have suggested that Utah withdraw and revise its maintenance plan for the 1997 8-hour ozone standard.

has never allowed reliance on such budgets for a general conformity showing. Finally, such budgets are not needed to ensure ongoing maintenance of the 1-hour ozone NAAQS; nor will their removal from the maintenance plan interfere with the attainment or maintenance of other NAAQS or compliance with other CAA requirements. Thus, we approve the removal from the maintenance plan of the budgets for area, on-road mobile, and point sources.

D. Section IX.D.2.h(2), ''Determination of Contingency Action Level.'' The State's 1999 submittal proposed to change the maintenance plan's trigger for contingency measures. Instead of a defined trigger, the revised plan would allow the State to consider several factors in deciding whether contingency measures should be implemented to attain or maintain the 8-hour ozone standard. The revision would also redefine the contingency trigger date to be the date the State determines that one or more contingency measures should be implemented. EPA is disapproving these changes.

Our consistent interpretation has been that contingency measures in a maintenance plan must include a pre-defined trigger, such as a violation of the standard. In the maintenance plan, the State must commit to implement one or more contingency measures within a set period after the violation. The revised SIP does not include a pre-defined trigger, and, thus, we disapprove the State's revisions to Section IX.D.2.h(2) of the maintenance plan.[2]

While 40 CFR 51.905(e) discusses modifications that may be implemented upon revocation of the 1-hour standard, including removal of the obligation to implement contingency measures upon a violation of the 1-hour NAAQS, the modifications only apply to areas with an approved maintenance plan for the 8-hour ozone standard. The State does not have an approved 8-hour ozone maintenance plan.

E. Section IX.D.2.j(1), ''Tracking System for Verification of Emission Inventory.'' The State's 1999 submittal proposed to remove the maintenance plan's reference to an annual inventory for point sources. Specifically, section IX.D.2.j(1)(b) of the previously approved maintenance plan includes the State's commitment to develop an annual inventory for point sources in the area. A separate section of the previously approved maintenance plan—section IX.D.2.j(1)(a)—includes a commitment to update the inventory for all source categories every three years. The State's 1999 submittal did not propose to change this latter commitment.

As noted, in our 2003 action we inadvertently approved the removal of the State's commitment to develop an annual inventory for point sources. In that 2003 action, we only intended to approve non-substantive changes to numbering and cross-references. In this action, we are ratifying our 2003 approval of the State's removal of the commitment to develop an annual inventory for point sources. Approval is warranted because such an inventory is not needed to ensure maintenance of the 1-hour ozone NAAQS. Nor will removal of the commitment to submit an annual inventory for point sources interfere with attainment or maintenance of any other NAAQS or compliance with any other CAA requirement. The maintenance plan retains the requirement that the State update its inventory of all source categories every three years. This is consistent with EPA's regulatory requirements for inventories, and we find that a three-year frequency is adequate to track emissions relevant to the maintenance plan.

F. Various Sections. The State's 1999 submittal proposed to remove all references to CO because CO is not a significant contributor to ozone formation. These references occur in a variety of locations in the 1-hour ozone maintenance plan. For example, the maintenance plan includes inventories for CO, transportation conformity budgets for CO, budgets for CO for sources other than on-road mobile sources, and references to inspection and maintenance provisions for CO.

As noted, we inadvertently approved the removal of some of these references to CO in our 2003 action, in which we only intended to approve non-substantive changes to numbering and cross-references. In this action, we are ratifying our 2003 approval of the State's removal of some of the references to CO and approving the State's removal of all other references to CO in the 1-hour ozone maintenance plan.

First, we agree with the State that CO is not a significant contributor to ozone formation. Thus, there is no need for CO measures to ensure maintenance of the 1-hour ozone standard or any other ozone standard. Second, the removal of the CO measures in the 1-hour ozone maintenance plan will not interfere with attainment or maintenance of any other NAAQS or compliance with any other CAA requirement. In particular, there are no CO nonattainment areas in Utah. Within Salt Lake and Davis Counties, the only maintenance area for CO is Salt Lake City. It has its own maintenance plan, with its own motor vehicle emissions budgets and CO measures. In addition, recent monitored ambient CO values for Salt Lake City and other areas in Utah are well below the level of the CO NAAQS.

Thus, the removal of CO measures in the 1-hour ozone maintenance plan is consistent with continued maintenance of the 1-hour ozone NAAQS and with CAA section 110(l).

G. Miscellaneous. As noted above, we previously approved revisions to the 1-hour ozone maintenance plan that the State submitted on December 31, 2002, a date that post-dates the date of the revisions we are proposing to act on today. In particular, in our June 25, 2003 action on the December 31, 2002 submittal, we approved Utah's updating of references in the 1-hour ozone maintenance plan to Utah air rules whose numbering Utah had changed after it submitted revisions to the 1-hour ozone maintenance plan in 1999. See 68 FR 37744. We are retaining the updated references to Utah air rules as we approved them in our June 25, 2003 action. We are not replacing these updated references with the older references contained in the 1-hour ozone maintenance plan that Utah submitted in 1999.

III. Response to Comments

We received one comment letter on our April 10, 2012 notice of proposed rulemaking, from the Utah Division of Air Quality (UDAQ). Below we provide a summary of, and our response to, the State's comment.

Comment: UDAQ comments on EPA's proposed disapproval of Utah's revisions to the contingency measure provisions in the 1-hour ozone maintenance plan. UDAQ recommends that EPA approve the revisions. In the alternative, UDAQ asks that if partial disapproval is deemed necessary, EPA indicated that it will not require a revision of the plan or initiate work on a Federal Implementation Plan. UDAQ reasons that it would not be an acceptable use of limited state or EPA resources to prepare a revised plan for the 1-hour ozone standard, which has not been violated in the area since 1992 and which was revoked in 2005. UDAQ also indicates that ozone levels have continued to drop and that Salt Lake and Davis Counties were declared attainment areas for both the 1997 and 2008 ozone NAAQS. UDAQ asserts that it is not possible for Utah to revise the

[2] We note that one of the potential contingency measures (stage two vapor recovery) has not been approved by EPA as a stand-alone SIP measure; however it is part of the maintenance plan.

1-hour ozone maintenance plan because any new regulatory requirements for ozone in Utah must reflect the current ozone standard, not the standard that was in effect 15 years ago and has been revoked in Utah. UDAQ also suggests that the contingency measure language in the federally-approved SIP is not practically enforceable by EPA. UDAQ states that it submitted a new maintenance plan in 2007 that addresses the 1997 ozone NAAQS and that contains an automatic trigger for contingency measures and a different set of contingency measures. UDAQ notes that EPA has not acted on the 2007 maintenance plan.

Response: The comments do not provide a basis for us to reverse our proposed disapproval of Utah's revisions to the contingency measure provisions. As noted in our April 10, 2012 proposal (77 FR 21515) and in section II, above, EPA's consistent interpretation has been that contingency measures in a maintenance plan must include a pre-defined trigger, such as a violation of the standard. In the maintenance plan, the State must commit to implement one or more contingency measures within a set period after the violation. The revised maintenance plan does not include a pre-defined trigger. Therefore, we cannot approve the State's revision.

This disapproval does not trigger a FIP obligation because the approved SIP remains in place and, contrary to UDAQ's assertion, remains federally enforceable. This is a well-established principle concerning SIPs—once approved, their provisions remain federally enforceable unless and until EPA approves a revision. As a practical matter, this may have little significance because Utah has been attaining the 1-hour ozone standard for many years and the relevant areas were designated unclassifiable/attainment for the 1997 and 2008 ozone standards. Thus, a violation of the 1-hour standard is unlikely. Nonetheless, as noted in our proposal and in section I above, the revocation of the 1-hour ozone standard did not automatically eliminate existing 1-hour ozone plan provisions from the SIP. Any changes require EPA approval, and EPA will not approve the removal of contingency measures for the 1-hour ozone standard until an area has an approved maintenance plan for the 8-hour ozone NAAQS. 77 FR 21514, 21515; 40 CFR 51.905(e). We intend to address Utah's 2007 maintenance plan for the 1997 ozone standard and any plans for the 2008 standard in separate actions, as necessary.[3]

IV. Final Action

For the reasons described above, we are taking the following actions concerning Utah's revisions to the 1-hour ozone maintenance plan for Salt Lake and Davis Counties:[4]

A. We are ratifying our June 25, 2003 approval (at 68 FR 37744) of the following revisions to the 1-hour ozone maintenance plan that Utah submitted on December 31, 2002:

1. The revisions to Section IX.D.2.b(4)(a), ''NOx RACT;''
2. The revisions to subsection IX.D.2.j(1)(b) of Section IX.D.2.j(1), ''Tracking System for Verification of Emission Inventory;'' and
3. The removal of references to CO in the sections of the plan that we approved on June 25, 2003.

B. We are approving the revisions to the 1-hour ozone maintenance plan that Utah submitted on February 22, 1999 except for the following:

1. The revisions to Section IX.D.2.h(2), ''Determination of Contingency Action Level,'' which EPA is disapproving;
2. The revisions to the remainder of Section IX.D.2.h, which were superseded by the revisions to the plan that EPA approved on June 25, 2003;
3. The revisions to Sections IX.D.2.b, IX.D.2.d(1)(a), IX.D.2.e(1), IX.D.2.f(1)(a), IX.D.2.i, and IX.D.2.j, which were superseded by the revisions to the plan that EPA approved on June 25, 2003.

V. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations (42 U.S.C. 7410(k), 40 CFR 52.02(a)). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this final action merely approves some state law as meeting Federal requirements and disapproves other state law because it does not meet Federal requirements; this action does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and,
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have Tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the State, and EPA notes that it will not impose substantial direct costs on Tribal governments or preempt Tribal law.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

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

Dated: May 24, 2012.

James B. Martin,

Regional Administrator, Region 8.

Part 52, Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

[3] The area violated the 1997 8-hour ozone standard based on monitored data for 2005–2007. Thus, we have previously suggested that Utah may want to withdraw and revise its maintenance plan for the 1997 8-hour ozone standard.

[4] All section and table references are to sections and tables in the 1-hour ozone maintenance plan for Salt Lake and Davis Counties.

PART 52—[AMENDED]

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

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

Subpart TT—Utah

■ 2. Amend § 52.2320 by adding paragraph (c)(70) to read as follows:

§ 52.2320 Identification of plan.

* * * * *

(c) * * *

(70) On February 22, 1999, the Governor submitted revisions to the Ozone Maintenance Provisions for Salt Lake and Davis Counties, Section IX, Part D.2 of the Utah State Implementation Plan (SIP). EPA is approving the revisions except for the following: the revisions to Section IX.D.2.h(2) of the SIP, ''Determination of Contingency Action Level,'' which EPA is disapproving; the revisions to the remainder of Section IX.D.2.h, which were superseded by revisions to the SIP that EPA approved at § 52.2320(c)(56); and the revisions to Sections IX.D.2.b, IX.D.2.d(1)(a), IX.D.2.e(1), IX.D.2.f(1)(a), IX.D.2.i, and IX.D.2.j, which were superseded by revisions to the SIP that EPA approved at § 52.2320(c)(56).

(i) [Reserved]

(ii) Additional material.

(A) Ozone Maintenance Provisions for Salt Lake and Davis Counties, Section IX, Part D.2 that was adopted by the Air Quality Board on June 3, 1998 and submitted by the Governor on February 22, 1999.

[FR Doc. 2012–14668 Filed 6–14–12; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

42 CFR Part 71

[Docket No. CDC–2012–0003]

RIN 0920–AA47

Establishment of User Fees for Filovirus Testing of Nonhuman Primate Liver Samples

AGENCY: Centers for Disease Control and Prevention (HHS/CDC), Department of Health and Human Services (HHS).

ACTION: Correcting amendment.

SUMMARY: On February 10, 2012, the Centers for Disease Control and Prevention (CDC), within the Department of Health and Human Services (HHS) published a Direct Final Rule (DFR) that solicited public comment on the establishment of user fees for filovirus testing of all nonhuman primates that die during the HHS/CDC-required 31-day quarantine period for any reason other than trauma. That document incorrectly listed the effective date as March 12, 2012. On February 10, 2012, HHS/CDC also published in the **Federal Register** a companion Notice of Proposed Rulemaking (NPRM) (77 FR 7109) that proposed identical filovirus testing and user fee requirements. In both the DFR and NPRM, HHS/CDC indicated that if it did not receive any significant adverse comments by April 10, 2012, it would publish a document in the **Federal Register** withdrawing the NPRM and confirming the effective date of the DFR within 30 days after the end of the comment period.

Because of the error in effective date the DFR took effect prior to the expiration of the comment period. Because of this error and due to receiving significant adverse public comments, HHS/CDC is amending 42 CFR 71.53 by removing paragraph (j) which will have the same effect as the withdrawal of the DFR. HHS/CDC will carefully review the comments received on the notice of proposed rulemaking published on February 10, 2012.

DATES: This action is effective June 15, 2012.

FOR FURTHER INFORMATION CONTACT: For questions concerning this document: Ashley A. Marrone, JD, Centers for Disease Control and Prevention, 1600 Clifton Road NE., Mailstop E–03, Atlanta, Georgia 30333; telephone 404–498–1600. For information concerning program operations: Dr. Robert Mullan, Centers for Disease Control and Prevention, 1600 Clifton Road NE., Mailstop E–03, Atlanta, Georgia 30333; telephone 404–498–1600.

SUPPLEMENTARY INFORMATION: On February 10, 2012 HHS/CDC published a Direct Final Rule (DFR) (77 FR 6971) amending 42 CFR 71.53 by adding a new paragraph (j) to establish a user fee for filovirus testing of nonhuman primates. HHS/CDC took this action because (1) testing is no longer being offered by the only private, commercial laboratory that previously performed these tests and (2) we believed that these requirements were non-controversial and unlikely to generate significant adverse comment. The DFR incorrectly listed the effective date as March 12, 2012. On February 10, 2012, HHS/CDC also published a companion Notice of Proposed Rulemaking (NPRM) (77 FR 7109) that proposed identical filovirus testing and user fee requirements in the **Federal Register**. In both the DFR and NPRM, HHS/CDC indicated that if it did not receive any significant adverse comments by April 10, 2012, it would publish a document in the **Federal Register** withdrawing the notice of proposed rulemaking and confirming the effective date of the direct final rule within 30 days after the end of the comment period. Because of the error in effective date the DFR took effect prior to the expiration of the comment period.

HHS/CDC is now amending 42 CFR 71.53 by removing paragraph (j) which will have the same effect as if HHS/CDC had withdrawn the DFR. HHS/CDC is taking this action because of the error in effective date and due to having received significant adverse public comments. HHS/CDC will carefully review the comments received on the notice of proposed rulemaking published on February 10, 2012.

List of Subjects in 42 CFR Part 71

Communicable diseases, Public health, Quarantine, Reporting and recordkeeping requirements, Testing, User fees.

Accordingly, 42 CFR part 71 is corrected by making the following correcting amendment:

PART 71—FOREIGN QUARANTINE

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

Authority: Secs. 215 and 311 of the Public Health Service (PHS) Act, as amended (42 U.S.C. 216, 243); section 361–369, PHS Act, as amended (42 U.S.C. 264–272); 31 U.S.C. 9701.

§ 71.53 [Amended]

■ 2. Effective June 15, 2012, amend § 71.53 by removing paragraph (j).

Dated: June 6, 2012.

Kathleen Sebelius,

Secretary.

[FR Doc. 2012–14603 Filed 6–14–12; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 201, 203, 204, 212, 213, 217, 219, 222, 225, 233, 243, 252, and Appendix I to Chapter 2

RIN 0750–AH55

Defense Federal Acquisition Regulation Supplement: Title 41 Positive Law Codification—Further Implementation (DFARS Case 2012–D003)

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD is issuing a final rule to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to conform statutory titles throughout the DFARS to the new Positive Law Codification of Title 41, United States Code, ''Public Contracts.''

DATES: June 15, 2012.

FOR FURTHER INFORMATION CONTACT: Ms. Amy G. Williams, telephone 571–371–6106.

SUPPLEMENTARY INFORMATION:

I. Background

DoD published a proposed rule in the **Federal Register** at 76 FR 78874 on December 20, 2011. The comment period closed on February 21, 2012. One respondent submitted a public comment in response to the proposed rule.

DoD is updating the historical names of the Acts in the DFARS (e.g., the ''Service Contract Act of 1965'' is now the ''Service Contract Labor Standards statute''). A table providing the historical titles of the Acts, the present statutory citation, and the new titles of the statutes is being proposed under FAR case 2011–018 for inclusion at FAR 1.110. That table will cover acts under both titles 40 and 41. Additionally, editorial changes are being made to conform to DFARS drafting conventions.

Although there were no substantive changes to the meaning of the statutes, there were some changes in terminology.

II. Discussion and Analysis

One respondent submitted two edits, which have been incorporated in the final rule at 225.1101(2)(i)(C) and 225.7000(b).

III. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 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). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

IV. Regulatory Flexibility Act

DoD certifies that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.,* because the rule does not change any policies or requirements. It just changes and updates references and terminology. Additionally, the proposed rule published at 76 FR 78874 on December 20, 2011, invited comments from small businesses and other interested parties. No comments were received from small entities on the affected DFARS subparts with regard to small businesses. Therefore, a Final Regulatory Flexibility Analysis has not been performed.

V. Paperwork Reduction Act

The rule does not impose any new information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

List of Subjects in 48 CFR Parts 201, 203, 204, 212, 213, 217, 219, 222, 225, 233, 243, 252, and Appendix I to Chapter 2

Government procurement.

Ynette R. Shelkin,

Editor, Defense Acquisition Regulations System.

Therefore, 48 CFR parts 201, 203, 204, 212, 213, 217, 219, 222, 225, 233, 243, 252, and 48 CFR chapter 2 appendix I are amended as follows:

■ 1. The authority citation for 48 CFR parts 201, 204, 212, 213, 217, 219, 225, 243, 252, and 48 CFR chapter 2 appendix I continues to read as follows:

Authority: 41 U.S.C. 1303 and CFR chapter 1.

PART 201—FEDERAL ACQUISITION REGULATIONS SYSTEM

201.107 [Amended]

■ 2. Section 201.107 introductory text is amended by removing ''In accordance with section 29 of the Office of Federal Procurement Policy Act (41 U.S.C. 1304)'' and adding ''In accordance with 41 U.S.C. 1304'' in its place.

201.304 [Amended]

■ 3. Section 201.304 is amended in paragraph (2) introductory text in by removing ''In accordance with section 29 of the Office of Federal Procurement Policy Act (41 U.S.C. 1304)'' and adding ''In accordance with 41 U.S.C. 1304'' in its place.

PART 203—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

■ 4. The authority citation for 48 CFR part 203 is revised to read as follows:

Authority: 41 U.S.C. 1303 and 48 CFR chapter 1

203.070 [Amended]

■ 5. Section 203.070 is amended in paragraph (f) by removing ''Anti-kickback Act'' and adding ''Kickbacks'' in its place.

203.502–2 [Amended]

■ 6. Section 203.502–2 is amended in paragraph (h) introductory text by removing ''under the Anti-Kickback Act of 1986'' and adding ''under 41 U.S.C. chapter 87, Kickbacks'' in its place.

PART 204—ADMINISTRATIVE MATTERS

204.1202 [Amended]

■ 7. Section 204.1202 is amended—

■ a. In paragraph (2)(v), by removing ''Buy American Act—Balance of Payments Program Certificate'' and adding ''Buy American—Balance of Payments Program Certificate'' in its place; and

■ b. In paragraph (2)(ix), by removing ''Buy American Act—Free Trade Agreements—Balance of Payments Program Certificate'' and adding ''Buy American—Free Trade Agreements—Balance of Payments Program Certificate'' in its place.

■ 8. In 204.7003, revise paragraph (a)(3)(vi) to read as follows:

204.7003 Basic PII number.

(a) * * *

(3) * * *

(vi) Contracting actions placed with or through other Government departments or agencies or against contracts placed

by such departments or agencies outside the DoD (including actions from nonprofit agencies employing people who are blind or severely disabled (AbilityOne), and the Federal Prison Industries (UNICOR))—F

* * * * *

PART 212—ACQUISITION OF COMMERCIAL ITEMS

212.301 [Amended]

■ 9. Section 212.301 is amended—

■ a. In paragraph (f)(i)(A) by removing ''Buy American Act—Balance of Payments Program Certificate'' and adding ''Buy American—Balance of Payments Program Certificate'' in its place; and

■ b. In paragraph (f)(i)(C), removing ''Buy American Act—Free Trade Agreements—Balance of Payments Program Certificate'' and adding ''Buy American—Free Trade Agreements—Balance of Payments Program Certificate'' in its place.

212.7102–1 [Amended]

■ 10. Section 212.7102–1 is amended in paragraph (e)(2) by removing ''section 26 of the Office of Federal Procurement Policy Act (41 U.S.C. 1502)'' and adding ''41 U.S.C. 1502'' in its place.

PART 213—SIMPLIFIED ACQUISITION PROCEDURES

213.301 [Amended]

■ 11. Section 213.301 is amended in paragraph (1) by removing ''Continental Shelf lands'' and adding ''Continental Shelf'' in its place.

213.302–5 [Amended]

■ 12. Section 213.302–5 is amended—

■ a. In the first sentence of paragraph (d) introductory text by removing ''Buy American Act—Supplies'' and adding ''Buy American—Supplies'' in its place and in the second sentence, removing ''Buy American Act'' and adding ''Buy American statute'' in its place; and

■ b. Removing ''Act'' from paragraphs (d)(i) and (d)(ii).

PART 217—SPECIAL CONTRACTING METHODS

217.7000 [Amended]

■ 13. Section 217.7000 is amended by removing ''Section 201(c) of the Federal Property and Administrative Services Act of 1949, 63 Stat. 384, as amended (40 U.S.C. 481(c))'' and adding ''40 U.S.C. 503'' in its place.

PART 219—SMALL BUSINESS PROGRAMS

219.703 [Amended]

■ 14. Section 219.703 is amended in paragraph (a) by removing ''the Javits-Wagner-O'Day Act (41 U.S.C. 8502–8504)'' and adding ''41 U.S.C. chapter 85'' in its place.

PART 222—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

■ 15. The authority citation for 48 CFR part 222 is revised to read as follows:

Authority: 41 U.S.C. 1303 and CFR chapter 1.

Subpart 222.3—[Amended]

■ 16. Subpart 222.3 is amended in the subpart heading by removing ''Act''.

222.302 [Amended]

■ 17. Section 222.302 is amended in the introductory text by removing ''Act''.

■ 18. Section 222.402–70 is amended by revising paragraph (a) introductory text and paragraphs (b), (c), (d), and (f) to read as follows:

222.402–70 Installation support contracts.

(a) Apply both the Service Contract Labor Standards statute and the Construction Wage Rate Requirements statute to installation support contracts if—

* * * * *

(b) *Service Contract Labor Standards statute coverage under the contract.* Contract installation support requirements, such as plant operation and installation services (i.e., custodial, snow removal, etc.) are subject to the Service Contract Labor Standards. Apply Service Contract Labor Standards clauses and minimum wage and fringe benefit requirements to all contract service calls or orders for such maintenance and support work.

(c) *Construction Wage Rate Requirements statute coverage under the contract.* Contract construction, alteration, renovation, painting, and repair requirements (i.e., roof shingling, building structural repair, paving repairs, etc.) are subject to the Construction Wage Rate Requirements statute. Apply Construction Wage Rate Requirements clauses and minimum wage requirements to all contract service calls or orders for construction, alteration, renovation, painting, or repairs to buildings or other works.

(d) *Repairs versus maintenance.* Some contract work may be characterized as either Construction Wage Rate Requirements painting/repairs or Service Contract Labor Standards maintenance. For example, replacing broken windows, spot painting, or minor patching of a wall could be covered by either the Construction Wage Rate Requirements or the Service Contract Labor Standards. In those instances where a contract service call or order requires construction trade skills (i.e., carpenter, plumber, painter, etc.), but it is unclear whether the work required is Service Contract Labor Standards maintenance or Construction Wage Rate Requirements painting/repairs, apply the following rules:

(1) Individual service calls or orders which will require a total of 32 or more work hours to perform shall be considered to be repair work subject to the Construction Wage Rate Requirements.

(2) Individual service calls or orders which will require less than 32 work hours to perform shall be considered to be maintenance subject to the Service Contract Labor Standards.

(3) Painting work of 200 square feet or more to be performed under an individual service call or order shall be considered to be subject to the Construction Wage Rate Requirements statute regardless of the total work hours required.

* * * * *

(f) Contracting officers may not avoid application of the Construction Wage Rate Requirements statute by splitting individual tasks between orders or contracts.

■ 19. The 222.404 section heading is revised to read as follows:

222.404 Construction Wage Rate Requirements statute wage determinations.

* * * * *

■ 20. Section 222.406–1 is amended by revising paragraph (b)(1)(A)(*1*), and in paragraph (b)(1)(A)(*2*) by removing the word ''Act'' and adding ''statute'' in its place.

The revision reads as follows:

222.406–1 Policy.

* * * * *

(b) * * *

(1) * * *

(A) * * *

(*1*) Construction Wage Rate Requirements statute.

* * * * *

222.406–8 [Amended]

■ 21. Section 222.406–8 is amended in paragraph (c)(4)(A) introductory text by removing ''Contract Work Hours and Safety Standards Act (CWHSSA)'' and adding ''Contract Work Hours and Safety Standards (CWHSS) statute'' in its place.

222–406–9 [Amended]

■ 22. Section 222.406–9 is amended in paragraph (a) by removing ''Davis-Bacon or CWHSSA'' and adding ''Construction Wage Rate Requirements or CWHSS statute'' in its place.

■ 23. Section 222.406–13 is amended—

■ a. In the introductory text by removing ''Davis-Bacon Act and the CWHSSA'' and adding ''Construction Wage Rate Requirements statute and the CWSS statute'' in its place;

■ b. By revising paragraphs (7)(i) and (ii) and (8)(i) and (ii);

■ c. In paragraph (9) introductory text by removing ''CWHSSA'' and adding ''CWSS statute'' in its place;

■ d. In paragraph (9)(i), by adding ''; and'' to the end; and

■ e. By revising paragraphs (10)(i) and (ii).

The revisions read as follows:

222.406–13 Semiannual enforcement reports.

* * * * *

(7) * * *

(i) Construction Wage Rate Requirements statute; and

(ii) CWSS statute;

(8) * * *

(i) Construction Wage Rate Requirements statute; and

(ii) CWHSS statute;

* * * * *

(10) * * *

(i) Construction Wage Rate Requirements statute;

(ii) CWSS statute;

* * * * *

Subpart 222.10—Service Contract Labor Standards

■ 24. The subpart 222.10 heading is revised as set forth above.

Subpart 222.14—Employment of Workers with Disabilites

■ 25. The subpart 222.14 heading is revised to read as set forth above.

PART 225—FOREIGN ACQUISITION

225.003 [Amended]

■ 26. Section 225.003 is amended in paragraphs (4) and (11) by removing ''Act'' each time it appears.

Subpart 225.1—Buy American—Supplies

■ 27. The subpart 225.1 is revised to read as set forth above.

225.103 [Amended]

■ 28a. Section 225.103 is amended—

■ a. In paragraph (a)(i)(B) by removing ''Buy American Act'' and adding ''Buy American statute'' in its place; and

■ b. In paragraph (a)(ii)(A) introductory text by removing ''Subpart 225.5'' and adding ''subpart 225.5'' in its place and by removing ''Buy American Act'' and adding ''Buy American statute'' in its place.

Subpart 225.2—Buy American—Construction Materials

■ 28b. The subpart 225.2 heading is revised to read as set forth above.

225.502 [Amended]

■ 29. Section 225.502 is amended—

■ a. In paragraphs (c) introductory text and (c)(iii)(C), by removing ''Buy American Act'' and adding ''Buy American statute'' in its place;

■ b. In paragraph (c)(i)(A), by removing ''Buy American Act'' and ''Buy American Act or Balance of Payments Program'' and adding ''Buy American statute'' and ''Buy American or Balance of Payments Program'', respectively, in its place; and

■ c. In paragraphs (c)(i)(B), (c)(ii)(C), (c)(ii)(D), and (c)(iii)(A), by removing ''Act''.

225.872–1 [Amended]

■ 30. Section 225.872–1 is amended in paragraphs (a) introductory text and (b) introductory text by removing ''Buy American Act'' and adding ''Buy American statute'' in its place.

225.872–4 [Amended]

■ 31. Section 225.872–4 is amended by removing ''Buy American Act'' and adding ''Buy American statute'' in its place.

225.1101 [Amended]

■ 32. Section 225.1101 is amended—

■ a. In paragraphs (1)(i), (2)(i) introductory text, (2)(i)(D)(*2*), (3)(i), (3)(iii), (10)(i), (11)(i) introductory text, and (11)(iii), by removing ''Act'' each time it appears; and

■ b. In paragraph (2)(i)(C), removing ''Act'' and adding ''statute'' in its place.

225.7000 [Amended]

■ 33. Section 225.7000 is amended in paragraph (b) by removing ''Buy American Act'' and adding ''Buy American statute'' in its place.

225.7017–3 [Amended]

■ 34. Section 225.7017–3 is amended in paragraph (a) by removing ''Buy American Act'' and adding ''Buy American statute'' in its place.

PART 233—PROTESTS, DISPUTES, AND APPEALS

■ 35. The authority citation for 48 CFR part 233 is revised to read as follows:

Authority: 41 U.S.C. 1303 and 48 CFR chapter 1.

233.204–70 [Amended]

■ 36. Section 233.204–70 is amended by removing ''the Contract Disputes Act of 1978'' and adding ''41 U.S.C. chapter 71 (Contract Disputes)'' in its place.

PART 243—CONTRACT MODIFICATIONS

■ 37. Section 243.204–71 is amended in paragraph (c) in the first sentence by removing ''the Contract Disputes Act of 1978 (41 U.S.C. 7103)'' and adding ''41 U.S.C. 7103, Disputes'' in its place, and in the second sentence, removing ''Contract Disputes Act'' and adding ''Contract Disputes statute'' in its place and removing ''Subpart'' and adding ''subpart'' in its place.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

252.204–7007 [Amended]

■ 38. Section 252.204–7007 is amended by removing the clause date ''(SEP 2011)'' and adding ''(JUN 2012)'' in its place and in paragraphs (d)(2)(ii) and (d)(2)(vi) by removing ''Act''.

252.212–7001 [Amended]

■ 39. Section 252.212–7001 is amended by—

■ a. Removing the clause date ''(SEP 2011)'' and adding ''(JUN 2012)'' in its place;

■ b. In paragraphs (b)(4), (b)(22), and (c)(4), removing ''(SEP 2011)'' and adding ''(JUN 2012)'' in its place;

■ c. In paragraphs (b)(6)(i) by removing ''Act'' and by removing ''(OCT 2011)'' and adding ''(JUN 2012)'' in its place;

■ d. In paragraph (b)(8) by removing ''(JAN 2011)'' and adding ''(JUN 2012)'' in its place; and

■ e. In paragraph (b)(13)(i) by removing ''(MAY 2012)'' and adding ''(JUN 2012)'' in its place.

■ f. In paragraph (b)(16)(i) by removing ''(MAY 2012)'' and adding ''(JUN 2012)'' in its place; and

■ g. In paragraphs (b)(16)(ii) through (iv) by removing ''(OCT 2011)'' and adding ''(JUN 2012)'' in its place;

■ h. In paragraphs (b)(16)(v) and (vi), by removing ''(MAY 2012)'' and adding ''(JUN 2012)'' in its place; and

■ i. In paragraphs (b)(18) and (c)(1), removing ''(AUG 2011)'' and adding ''(JUN 2012)'' in its place.

252.212–7002 [Amended]

■ 40. Section 252.212–7002 is amended by removing the clause date ''(JUN 2011)'' and adding ''(JUN 2012)'' in its place and in the definition

''Nontraditional defense contractor'', paragraph (1), removing ''Section 26 of the Office of Federal Procurement Policy Act (41 U.S.C. section 1502)'' and adding ''41 U.S.C. section 1502'' in its place.

252.217–7002 [Amended]

■ 41. Section 252.217–7002 is amended by removing the clause date ''(DEC 1991)'' and adding ''(JUN 2012)'' in its place and in paragraph (a), removing ''Section 201(c) of the Federal Property and Administrative Services Act of 1949, 63 Stat. 384 (40 U.S.C. 481(c))'' and adding ''40 U.S.C. 503'' in its place.

252.219–7003 [Amended]

■ 42. Section 252.219–7003 is amended—
■ a. By removing the clause date ''(SEP 2011)'' and adding ''(JUN 2012)'' in its place;
■ b. In paragraph (e) introductory text by removing ''Section 831'' and adding ''section 831'' in its place; and
■ c. In paragraph (e)(1), by removing ''handicapped'' and adding ''disabled'' in its place.

■ 43. Section 252.225–7000 is amended:
■ a. By revising the section heading;
■ b. By removing ''Act'' from the provision title;
■ c. By removing the clause date ''(DEC 2009)'' and adding ''(JUN 2012)'' in its place;
■ d. In paragraph (b)(2) by removing ''Act'' and adding'' statute'' in its place; and
■ e. In paragraph (c)(1) introductory text by removing ''Act''.

The revision reads as follows:

252.225–7000 Buy American Statute—Balance of Payments Program Certificate.

* * * * *

252.225–7001 [Amended]

■ 44. Section 252.225–7001 is amended—
■ a. By revising the section heading;
■ b. By removing ''Act'' from the provision title;
■ c. By removing the clause date ''(OCT 2011)'' and adding ''(JUN 2012)'' in its place;
■ d. In paragraph (a), in the definition of ''Commercially available off-the-shelf (COTS) item'', paragraph (ii), by removing ''section 3 of the Shipping Act of 1984 (46 U.S.C. 40102)'' and adding ''46 U.S.C. 40102(4)'' in its place;
■ d. In paragraph (a), in the definition of ''Domestic end product'', paragraph (ii)(A)(*2*), by removing ''Act'' and adding ''statute'' in its place;
■ e. In paragraph (b) in the first sentence, by removing ''the Buy American Act (41 U.S.C chapter 83)'' and adding '', Buy American'' in its place and in the second sentence, removing ''Act'' and adding ''statute'' in its place; and
■ f. In paragraph (c), by removing ''Act''.

252.225–7009 [Amended]

■ 45. Section 252.225–7009 is amended by removing the clause date ''(JAN 2011)'' and adding ''(JUN 2012)'' in its place; and in paragraph (a)(4)(ii), removing ''section 3 of the Shipping Act of 1984 (46 U.S.C. App 1702)'' and adding ''46 U.S.C. 40102(4)'' in its place.

252.225–7013 [Amended]

■ 46. Section 252.225–7013 is amended—
■ a. By removing the clause date ''(DEC 2009)'' and adding ''(JUN 2012)'' in its place;
■ b. In paragraph (a), by removing the numerical designations (1) through (4) from the definitions;
■ c. In paragraph (a), in the definition ''Eligible product'', paragraph (ii), by removing ''*Bahrainian end product* or a *Moroccan end product,* as defined in the Buy American Act'' and adding ''*Bahrainian end product,* a *Moroccan end product,* or a *Peruvian end product,* as defined in the Buy American'' in its place, and in paragraph (iii), by removing ''Act''; and
■ d. In paragraph (a), in the definition ''Qualifying country'' and ''qualifying country end product'', removing ''Act'' each time it appears.

252.225–7021 [Amended]

■ 47. Section 252.225–7021 is amended by removing the clause date ''(MAY 2012)'' and adding ''(JUN 2012)'' in its place, and in paragraph (a), in the definition ''Commercially available off-the-shelf (COTS) item'', paragraph (ii), by removing ''section 4 of the Shipping Act of 1984 (46 U.S.C. 40102)'' and adding ''46 U.S.C. 40102(4)'' in its place.

252.225–7035 [Amended]

■ 48. Section 252.225–7035 is amended—
■ a. By revising the section heading;
■ b. In the clause title by removing ''Act'';
■ c. By removing the clause date ''(DEC 2010)'' and adding ''(JUN 2012)'' in its place;
■ d. In paragraphs (a) and (b)(2) by removing ''Act'';
■ e. In introductory paragraph (c)(1), removing ''Buy American Act'' and adding ''Buy American'' in its place;
■ f. In Alternate II, by removing the clause date ''(DEC 2010)'' and adding ''(JUN 2012)'' in its place; and in Alternate II, paragraph (b)(2), removing ''Act''; and
■ g. In Alternate III, removing the clause date ''(DEC 2010)'' and adding ''(JUN 2012)'' in its place; and in Alternate III, paragraphs (a) and (b)(2), removing ''Act''.

The revision reads as follows:

252.225–7035 Buy American—Free Trade Agreements—Balance of Payments Program Certificate.

* * * * *

■ 49. Section 252.225–7036 is amended—
■ a. By revising the section heading;
■ b. In the clause title by removing ''Act'';
■ c. By removing the clause date ''(MAY 2012)'' and adding ''(JUN 2012)'' in its place;
■ c. In paragraph (a), in the definition ''Commercially available off-the-shelf (COTS) item'', paragraph (ii), by removing ''section 3 of the Shipping Act of 1984 (46 U.S.C. 40102)'' and adding ''46 U.S.C. 40102(4)'' in its place;
■ d. In paragraph (a), in the definition ''Domestic end product'', paragraph (ii)(A)(*2*), by removing ''Act'' and adding ''statute'' in its place;
■ e. In paragraph (c) by removing ''Act''; and
■ f. In Alternates I, II, and III, by removing the clause date ''(OCT 2011)'' and adding ''(JUN 2012)'' in its place and in paragraph (c), removing ''Act''.

The revision reads as follow:

252.225–7036 Buy American—Free Trade Agreements—Balance of Payments Program.

* * * * *

252.225–7044 [Amended]

■ 50. Section 252.225–7044 is amended by removing the clause date ''(DEC 2010)'' and adding ''(JUN 2012)'' in its place and in paragraph (a), in the definition ''Commercially available off-the-shelf (COTS) item'', paragraph (2), by removing ''section 3 of the Shipping Act of 1984 (46 U.S.C. 40102)'' and adding ''46 U.S.C. 40102(4)'' in its place.

252.227–7037 [Amended]

■ 51. Section 252.225–7037 is amended—
■ a. By removing the clause date ''(APR 2012)'' and adding ''(JUN 2012)'' in its place;
■ b. In paragraph (e)(3), by removing ''the Contract Disputes Act of 1978 (41 U.S.C. 7101)'' and adding ''41 U.S.C. 7101, Contract Disputes'' in its place; and
■ c. In paragraph (g)(2)(iv), removing ''Act'' and adding ''statute'' in its place.

252.227–7038 [Amended]

■ 52. Section 252.225–7038 is amended by removing the clause date ''(DEC 2007)'' and adding ''(JUN 2012)'' in its place and in paragraph (l)(2)(ii), by removing ''Act'' and adding ''statute'' in its place.

252.244–7001 [Amended]

■ 53. Section 252.244–7001 is amended by removing the clause date ''(MAY 2011)'' and adding ''(JUN 2012)'' in its place and in paragraph (c)(17), by removing ''the Anti-Kickback Act'' and adding ''41 U.S.C. chapter 87, Kickbacks'' in its place.

■ 54. In appendix I to chapter 2, section I–101.4 is revised to read as follows:

Appendix I to Chapter 2—Policy and Procedures for the DOD Pilot Mentor-Protege Program

* * * * *

I–101.4 Severely disabled individual.

An individual who has a physical or mental disability which constitutes a substantial handicap to employment and which, in accordance with criteria prescribed by the Committee for Purchase from People Who Are Blind or Severely Disabled established by the first section of the Act of June 25, 1938 (41 U.S.C. 8502), is of such a nature that the individual is otherwise prevented from engaging in normal competitive employment.

* * * * *

[FR Doc. 2012–14259 Filed 6–14–12; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 216, 225, and 252

RIN 0750–AH28

Defense Federal Acquisition Regulation Supplement; Contractors Performing Private Security Functions (DFARS Case 2011–D023)

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD is adopting as final, with changes, an interim rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement those sections of several National Defense Authorization Acts which establish minimum processes and requirements for the selection, accountability, training, equipping, and conduct of personnel performing private security functions under DoD contracts.

DATES: *Effective Date:* June 15, 2012.

FOR FURTHER INFORMATION CONTACT: Ms. Meredith Murphy, telephone 571–372–6098.

SUPPLEMENTARY INFORMATION:

I. Background

The interim rule implemented the legislation by establishing (1) Regulations addressing the selection, training, equipping, and conduct of personnel performing private security functions in areas of contingency operations, complex contingency operations, or other military operations or exercises that are designated by the combatant commander, (2) a contract clause, and (3) remedies. DoD published the interim rule in the **Federal Register** at 76 FR 52133 on August 19, 2011, to implement section 862, as amended, of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2008. Section 862 was amended by section 853 of the NDAA for FY 2009 and sections 831 and 832 of the NDAA for FY 2011. In addition, the DoD Instruction addressing private Security Contractors (DoDI 3020.50) was revised on August 1, 2011, and the final rule to implement section 862 of the NDAA for FY 2008, as amended, 32 CFR part 159, Private Security Contractors Operating in Contingency Operations, was published in the **Federal Register** on August 11, 2011 (76 FR 49651). Public comments on the final rule at 32 CFR part 159 had been solicited by publication of an interim rule on July 17, 2009.

II. Discussion and Analysis of the Public Comments

Three respondents submitted comments on the interim rule. A discussion of the comments and the changes made to the rule as a result of those comments are provided as follows:

A. Summary of Significant Changes

The following significant changes to the DFARS are being made by this rule:

- The definition of ''private security functions'' in the clause at DFARS 225.370–3 was revised to conform to the DoDI, and limit the definition to the specified criteria.
- The types of active, non-lethal countermeasures that must be reported when used has been added at DFARS 225.370–4(c)(1)(iv)(E) and 252.225–7039(b)(1)(iv)(E).
- The types of Government-authorized investigations with which the contractor is required to cooperate are more narrowly described in order to conform to the limitations in the statute. Changes have been made to DFARS 225.370–4(c)(3) and the clause at DFARS 252.225–7039(b)(3). In addition, a definition of ''full cooperation'' has been added to the clause at DFARS 252.225–7039 to allay concerns about waiver of attorney-client privilege.
- The remedies at DFARS 225.370–5(a) have been revised to remove paragraph (a)(4), a discussion of the right to terminate for default, because this right is already covered by the contract termination clauses.
- The applicability of the rule (DFARS 225.370–2, 225.370–4(b), and 225.370–6) and references to the title of DoDI 3020.50 at DFARS 225.370–4 and 252.225–7039(b)(2)(i)) have been updated to conform to the revised DoDI 3020.50.

B. Analysis of Public Comments

1. Definition of Private Security Functions

Comment: Two respondents commented that the definition of ''private security functions'' was (a) too broad and (b) inconsistent among the DoDI, the DFARS text, and the clause at DFARS 252.225–7039, Contractors Performing Private Security Functions.

Response: The definition of ''private security functions'' has been revised to limit the definition to the specified criteria all inclusive (rather than just ''including'' the criteria), consistent with the DoDI. The essence of the definition cannot be changed substantially in the DFARS from that in the controlling DoDI.

2. The Contractor's Requirement To Ensure Compliance of Contractor Personnel Performing Private Security Functions

Comment: One respondent stated that the requirement for prime contractors to ensure that personnel performing private security functions comply with numerous administrative and reporting requirements and are briefed on and understand various enumerated laws, regulations, orders, directives, instructions, and rules related to the private security function imposes ''untenable oversight, policing, and enforcement obligations,'' particularly for non-private security function prime contractors that subcontract with a private security function provider. The respondent recommended that the prime contractor's obligation be limited to the administrative functions of passing the requirements on to the private security function provider and conducting audits or other administrative review functions to verify compliance.

Response: No change has been made in the final rule because the law, at

section 862(b)(2), as amended, requires the contractor, without regard to whether it is a direct provider of private security functions, to ''ensure'' that its employees and any subcontractors' employees who are responsible for performing private security functions comply with the regulations prescribed under subsection (a) of section 862 implemented as DoDI 3020.50. In addition, the clause at DFARS 252.225–7039(b)(1), requires DoD to identify the applicable private security functions in the contract and make available to the contractor the relevant orders, directives, and instructions.

3. Contractors' Obligation To Cooperate With Government investigations

Comment: One respondent noted that DFARS 225.370–4(c)(3) imposes on contractors the obligation to cooperate with any Government-authorized investigation ''by providing access to employees performing private security functions and relevant information in the possession of the contractor,'' but fails to provide any explanation of the scope and limitations on this requirement. The respondent recommended that the final rule define the contractor's obligation to cooperate, as in the mandatory disclosure provisions of FAR 52.203–13, Contractor Code of Business Ethics and Conduct, by specifying that such cooperation does not require the contractor to waive attorney-client privilege or the protections afforded by the attorney work-product doctrine.

Response: The final rule has been amended to more clearly define the scope and limitations of the contractor's obligation to cooperate with Government investigations. The revised text reflects the limitations on the investigations specifically addressed by the statute, as amended (see DFARS 225.370–4(c)(3) and 252.225–7039(b)(3)). The limitation on information to that in the contractor's possession regarding the incident concerned was in the interim rule. Additionally, the final rule requires the contractor to provide ''full cooperation'' with any Government-authorized investigation. In addition, the definition of ''full cooperation'' included in the clause reflects the mandatory disclosure provisions of FAR 52.203–13, Contractor Code of Business Ethics and Conduct, with minor edits, as recommended by the respondent.

4. Removal of Personnel for Failure To Comply With ''Applicable Requirements''

Comment: One respondent stated that the interim rule, at DFARS 225.370–5(a)(1), grants the Government the very broad power to direct a contractor to remove any personnel at its own expense if the personnel fail to comply with or violate applicable requirements. The respondent believed that it is unclear whether the ''applicable requirements'' are solely limited to those spelled out in the interim rule or if they include additional requirements not identified in the interim rule.

Response: No change has been made in the final rule because the applicable requirements for contracts performed outside the United Sates have been clearly defined in DFARS subpart 225.3 and paragraph (b) of the clause at DFARS 252.225–7039, Contractors Performing Private Security Functions. As noted in the response to comment category B.2 above, relevant orders, directives, and instructions must be made available to the contractor in a single location, including an internet Web site (see section 862(a)(3) of the statute, as amended), and they must be updated as they change, *e.g.,* a change in guidance from a geographic combatant commander.

5. Award Fee Reduction or Denial for Failure To Comply With Private Security Functions Requirements

Comment: One respondent was concerned with the implementation of section 862(d), as amended. The respondent concluded that the DFARS interim rule went beyond the requirements of the statute ''by requiring the contracting officer to include this evaluation requirement in an award-fee plan. This subpart then provides the contracting officer the flexibility to determine whether to reduce, deny, or recover all or part of award fees.''

Response: No change has been made in the final rule in response to this comment. FAR 16.401(e)(2) states that the determination of the amount of award fee and the methodology for determining the award fee are unilateral decisions made solely at the discretion of the Government. In addition, FAR 16.401(e)(3) requires that all contracts providing for award fees must be supported by an award-fee plan that establishes the procedures for evaluating award fee and an award-fee board for conducting the award-fee evaluation. The use of an award-fee type contract provides the Government the maximum, subjective flexibility in the determination of the factors that will be considered, *i.e.,* the award-fee plan, and the amount of award fee granted in a performance period. The statute requires that an additional factor, *i.e.,* the failure of a contractor to comply with contractual requirements pertaining to the performance of private security functions, must always be a consideration for award fees on any award-fee contract calling for performance in the applicable areas.

6. Applicability

Comments: One respondent submitted two comments on the applicability of the interim rule. First, the respondent stated that the statute limits the regulations to ''combat operations or other significant military operations'' and the interim rule goes beyond that. Second, the respondent noted that the interim rule requires DoD subcontractors for commercial items and commercial components to comply with requirements imposed on private security providers and recommended that the applicability of the DFARS coverage be modified to require coverage only for contracts and subcontracts that provide security as a primary function.

Response: The applicability of the DFARS final rule has been revised, at DFARS 225.370–2, to encompass the categories as specified in the DoDI, except that ''combat operations'' are identified separately from ''contingency operations,'' as specified in the statute. ''Complex contingency operations'' are now identified as ''humanitarian or peacekeeping operations,'' which is a term defined in statute and FAR 2.101. The Secretary of Defense has not formally designated Iraq or Afghanistan as ''combat operations,'' yet these areas are clearly intended to be covered by the regulations for private security functions. Therefore, ''contingency operations'' are covered. Whereas Governmentwide implementation will be restricted to combat operations and other significant military operations, the DoDI requires somewhat broader application for DoD contracts.

Congress did not contemplate limiting applicability of the regulations to only those contractors providing primarily private security functions. To do so would have resulted in anomalies such as sanctions for a private security contractor whose employee wounded or killed a civilian while not sanctioning a contractor providing construction goods or foodstuffs whose personnel providing security wounded or killed a civilian. These requirements are applicable only when the contract or subcontract performance is outside the United States.

7. Reporting Requirements

Comment: One respondent noted a number of perceived shortcomings in the reporting requirements at DFARS

225.370–4(c)(1)(iv). Specifically, the respondent was concerned that the requirement to report any property destruction could overwhelm industry and Government employees alike with reports of incidental and *de minimis* damage to property. The respondent was concerned that the requirement to report incidents in which a firearm is discharged would include planned firearm discharges occurring during training and maintenance. In addition, the respondent requested that the DFARS include examples of active, non-lethal countermeasures.

Response: The statute requires contractors, at section 862(b)(2)(A)(iv), to report incidents in which (1) A weapon is discharged by personnel performing private security functions; (2) personnel performing private security functions are killed or injured; or (3) persons are killed or injured, or property is destroyed, as a result of conduct by contractor personnel. The second comment resulted in the addition of a listing of active, non-lethal countermeasures in both the DFARS text see DFARS 225.370–4(c)(1)(iv)(E) and the clause at 252.225–7039.

8. Statutory Remedies Do Not Include Contract Termination

Comment: One respondent stated that the legislation does not allow the Government to terminate a contract for default in the case of noncompliance.

Response: The Government has the right to terminate a contract for default pursuant to one of the termination clauses at FAR 52.249–6 (cost-reimbursement), –8 (fixed-price supply and service), –10 (construction), or –11 (personal services) that is included in every contract, as applicable. DoD does not acquire new or additional termination-for-default rights by including such coverage in the clause at DFARS 252.225–7039. Therefore, the final rule has removed the termination language from DFARS 225.370–5 and the clause at DFARS 252.225–7039.

While the statute does not specifically list termination of a contract for default when a contractor's failure to comply is severe, prolonged, or repeated, it does provide that the contractor must be referred to the agency suspension or debarment official and that the failure may be a cause for suspension or debarment of the contractor. Once a contractor appears on the Excluded Parties List System (FAR 9.404), all Government agencies are prohibited from awarding contracts or consenting to subcontracts with the contractor, unless there is an agency head determination to do so (FAR 9.405(a)).

III. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 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). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is a significant regulatory action and, therefore, was subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

IV. Regulatory Flexibility Act

A final regulatory flexibility analysis has been prepared consistent with the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.,* and is summarized as follows:

DoD is adopting as final, with changes, an interim rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement section 862 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2008, as amended by section 853 of the NDAA for FY 2009 and sections 831 and 832 of the NDAA for FY 2011. The final rule has been updated to conform with the governmentwide regulation at 32 CFR part 159, entitled ''Private Security Contractors Operating in Contingency Operations.'' In addition, this final rule implements DoDI 3020.50, ''Private Security Contractors (PSCs) Operating in Contingency Operations, Humanitarian or Peace Operations, or Other Military Operations or Exercises,'' which provides procedures for personnel performing private security functions for DoD. This final rule impacts only private security contractors performing outside the United States in areas of combat operations and other significant military operations designated by the Secretary of Defense, contingency operations, or other military operations designated by the combatant commanders. DoD does not expect this final rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.,* because it impacts only private security contractors performing outside the United States.

In FY 2010, DoD awarded 1,839 contracts for performance in Iraq and Afghanistan. Of this total, 361, or 20 percent, were awarded to small businesses. Firms performing private security functions in these areas were already required to report the occurrence of incidences such as those listed in the clause at DFARS 252.225–7039, Contractors Performing Private Security Functions, but there was no consistency in the manner of reporting or the individual to whom the report was to be made. This DFARS final rule provides this consistency and clarity and, in that sense, serves to relieve the burdens on small businesses.

No comments were received from the Chief Counsel for Advocacy of the Small Business Administration in response to the rule.

The rule does not duplicate, overlap, or conflict with any other Federal rules. No alternatives have been identified that accomplish the stated objectives of the applicable statutes.

V. Paperwork Reduction Act

This rule contains information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35). The rule affects the certification and information collection requirements in the provisions at DFARS 225.7402–3, currently approved under OMB Control Number 0704–0460, titled ''Synchronized Predeployment and Operational Tracker (SPOT) System,'' effective through March 31, 2013. No impact is anticipated, however, because DoD contractors operating in areas of combat operations, contingency operations, or other military operations or exercises are currently required to use SPOT for registering personnel and weapons, as well as armored vehicles, helicopters, and other military vehicles operated by personnel performing private security functions, and to report the incidents addressed in the clause at DFARS 252.225–7039.

List of Subjects in 48 CFR Parts 216, 225, and 252

Foreign currencies, Government procurement, Reporting and recordkeeping requirements.

Ynette R. Shelkin,

Editor, Defense Acquisition Regulations System.

Accordingly, the interim rule amending 48 CFR parts 216, 225, and 252, which was published at 76 FR 52133 on August 19, 2011, is adopted as a final rule with the following changes:

■ 1. The authority citation for 48 CFR parts 225 and 252 continues to read as follows:

Authority: 41 U.S.C. 1303 and 48 CFR chapter 1.

PART 225—FOREIGN ACQUISITION

■ 2. Sections 225.370–2 and 225.370–3 are revised to read as follows:

225.370–2 Applicability.

This section applies to acquisitions for supplies and services that require the performance of private security functions outside the United States in areas of—

(a) Combat and other significant military operations designated by the Secretary of Defense;

(b) Contingency operations (see FAR 2.101);

(c) Humanitarian or peacekeeping operations; or

(d) Other military operations or exercises designated by the combatant commander.

225.370–3 Definitions.

As used in this section—

Full cooperation and *private security functions* are defined in the clause at 252.225–7039, Contractors Performing Private Security Functions.

■ 3. Section 225.370–4 is amended—

■ a. By revising paragraphs (a) and (b);

■ b. In paragraph (c)(1) introductory text by removing ''Ensure that all employees'' and adding ''Ensure that the contractor and all employees'' in its place;

■ c. By revising paragraph (c)(1)(iv)(E);

■ d. In paragraph (c)(2) introductory text by removing ''Ensure that all employees'' and adding ''Ensure that the contractor and all employees'' in its place; and

■ e. By revising paragraph (c)(3).

The revisions read as follows:

225.370–4 Policy.

(a) The policy, responsibilities, procedures, accountability, training, equipping, and conduct of personnel performing private security functions in designated areas are addressed in Department of Defense Instruction (DoDI) 3020.50, Private Security Contractors (PSCs) Operating in Contingency Operations, Humanitarian or Peace Operations, or Other Military Operations or Exercises, at *http://www.dtic.mil/whs/directives/corres/pdf/302050p.pdf*.

(b) The requirements of this section apply to contractors that employ private security contractors outside the United States in areas of combat and other significant military operations designated by the Secretary of Defense, contingency operations, humanitarian or peacekeeping operations, or other military operations or exercises designated by the combatant commander, whether the contract is for the performance of private security functions or other supplies or services.

(c) * * *

(1) * * *

(iv) * * *

(E) Active, non-lethal countermeasures (other than the discharge of a weapon, including laser optical distracters, acoustic hailing devices, electromuscular TASER guns, blunt-trauma devices like rubber balls and sponge grenades, and a variety of other riot control agents and delivery systems) are employed by personnel performing private security functions in response to a perceived immediate threat;

* * * * *

(3) Provide full cooperation with any Government-authorized investigation into incidents reported pursuant to paragraph (b)(1)(iv) of the clause at 252.225–7039, Contractors Performing Private Security Functions, and incidents of alleged misconduct by personnel performing private security functions by providing access to employees performing private security functions and relevant information in the possession of the contractor.

225.370–5 [Amended]

■ 4. Section 225.370–5 is amended—

■ a. In paragraph (a)(2), by adding ''and'' at the end of the sentence;

■ b. In paragraph (a)(3), by removing ''paid for such period; and'' and adding ''paid for such period (see 216.405–2–71).'' in its place;

■ c. By removing paragraph (a)(4); and

■ d. In paragraph (b), by removing ''significant, or repeated'' and adding ''significant, severe, prolonged, or repeated'' in its place.

■ 5. Section 225.370–6 is revised to read as follows:

225.370–6 Contract clause.

Use the clause at 252.225–7039, Contractors Performing Private Security Functions, in all solicitations and contracts to be performed outside the United States in areas of—

(a) Combat and other significant military operations designated by the Secretary of Defense;

(b) Contingency operations (see FAR 2.101);

(c) Humanitarian or peacekeeping operations; or

(d) Other military operations or exercises designated by the combatant commander.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 6. Section 252.225–7039 is amended—

■ a. By removing the clause date and adding ''(JUN 2012)'' in its place;

■ b. By revising paragraph (a);

■ c. In introductory sentence (b)(1), by removing ''Ensure that all employees'' and adding ''Ensure that the Contractor and all employees'' in its place;

■ d. In paragraph (b)(1)(i), by removing ''Personnel Identity Verification of Contractor Personnel'' and adding ''Personal Identity Verification of Contractor Personnel'' in its place;

■ e. By revising paragraph (b)(1)(iv)(E);

■ f. In introductory sentence (b)(2), by removing ''Ensure that all employees'' and adding ''Ensure that the Contractor and all employees'' in its place;

■ g. In paragraph (b)(2)(i), by removing ''Combat Operations, or Other Significant Military Operations'' and adding ''Humanitarian or Peace Operations, or Other Military Operations or Exercises'' in its place;

■ h. By revising paragraph (b)(3);

■ i. In paragraph (c)(2), by adding ''and'' at the end of the sentence;

■ j. In paragraph (c)(3), by removing ''paid for such period; and'' and adding ''paid for such period.'' in its place;

■ k. By revising paragraph (c)(4); and

■ l. By revising paragraph (e).

The revisions read as follows:

252.225–7039 Contractors Performing Private Security Functions.

* * * * *

(a) *Definitions.*

Full cooperation—

(i) Means disclosure to the Government of the information sufficient to identify the nature and extent of the incident and the individuals responsible for the conduct. It includes providing timely and complete response to Government auditors' and investigators' requests for documents and access to employees with information;

(ii) Does not foreclose any Contractor rights arising in law, the FAR, the DFARS, or the terms of the contract. It does not require—

(A) The Contractor to waive its attorney-client privilege or the protections afforded by the attorney work product doctrine; or

(B) Any officer, director, owner, or employee of the Contractor, including a sole proprietor, to waive his or her attorney-client privilege or Fifth Amendment rights; and

(C) Does not restrict the Contractor from—

(*1*) Conducting an internal investigation; or

(*2*) Defending a proceeding or dispute arising under the contract or related to a potential or disclosed violation.

Private security functions means the following activities engaged in by a contractor:

(i) Guarding of personnel, facilities, designated sites, or property of a Federal agency, the contractor or subcontractor, or a third party.

(ii) Any other activity for which personnel are required to carry weapons in the performance of their duties.

(b) * * *

(1) * * *

(iv) * * *

(E) Active, non-lethal countermeasures (other than the discharge of a weapon, including laser optical distracters, acoustic hailing devices, electromuscular TASER guns, blunt-trauma devices like rubber balls and sponge grenades, and a variety of other riot control agents and delivery systems) are employed by personnel performing private security functions in response to a perceived immediate threat;

* * * * *

(3) Provide full cooperation with any Government-authorized investigation into incidents reported pursuant to paragraph (b)(1)(iv) of this clause and incidents of alleged misconduct by personnel performing private security functions by providing access to employees performing private security functions and relevant information in the possession of the Contractor regarding the incident concerned.

(c) * * *

(4) If the performance failures are significant, severe, prolonged, or repeated, the contracting officer shall refer the contractor to the appropriate suspension and debarment official.

* * * * *

(e) *Subcontracts.* The Contractor shall include the substance of this clause, including this paragraph (e), in all subcontracts that will be performed outside the United States in areas of combat and other significant military operations designated by the Secretary of Defense, contingency operations, humanitarian or peacekeeping operations, or other military operations or exercises designated by the Combatant Commander.

[FR Doc. 2012–14304 Filed 6–14–12; 8:45 am]

BILLING CODE 5001–06–P

Proposed Rules

Federal Register
Vol. 77, No. 116
Friday, June 15, 2012

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2012–0634; Directorate Identifier 2012–CE–016–AD]

RIN 2120–AA64

Airworthiness Directives; PIAGGIO AERO INDUSTRIES S.p.A Airplanes

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for PIAGGIO AERO INDUSTRIES S.p.A. Model P–180 airplanes. This proposed AD results from mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as jamming of the external bearing of the screwjack drive gear, which resulted in failure of the main wing outboard flap external actuator. We are issuing this proposed AD to require actions to address the unsafe condition on these products.

DATES: We must receive comments on this proposed AD by July 30, 2012.

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

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

For service information identified in this proposed AD, contact Piaggio Aero Industries S.p.A—Airworthiness Office, Via Luigi Cibrario, 4–16154 Genova-Italy; phone: +39 010 6481353; fax: +39 010 6481881; email: *airworthiness@piaggioaero.it;* Internet: *http://www.piaggioaero.com/#/en/aftersales/service-support.* You may review copies of the referenced service information at the FAA, Small Airplane Directorate, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call (816) 329–4148.

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

FOR FURTHER INFORMATION CONTACT: Mike Kiesov, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4144; fax: (816) 329–4090; email: *mike.kiesov@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2012–0634; Directorate Identifier 2012–CE–016–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

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

Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA AD No.: 2012–0066, dated April 24, 2012 (referred to after this as ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

> Failures of the Main Wing Outboard Flap external actuator have been reported by P.180 operators.
>
> The investigation revealed that due to jamming of the external bearing, the screwjack drive gear disengaged from its seat and the external actuator stopped, while the inner one continued its run.
>
> This condition, if not corrected, could lead to an asymmetrical flap actuators operation and cause an interference between the flap and adjacent aileron, possibly resulting in reduced control of the aeroplane.
>
> For the reasons described above, this AD requires the installation of a covering cage on the screwjack, as a temporary corrective action, which does not allow the disengagement of the affected gear.

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

Relevant Service Information

PIAGGIO AERO INDUSTRIES S.p.A. has issued Service Bulletin No. 80–0318, dated October 24, 2011; Service Bulletin No. 80–0318, revision 1, dated February 3, 2012; and Service Bulletin No. 80–0318, revision 2, dated March 28, 2012. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

FAA's Determination and Requirements of the Proposed AD

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

Costs of Compliance

We estimate that this proposed AD will affect 110 products of U.S. registry. We also estimate that it would take about 6 work-hours per product to comply with the basic requirements of this proposed AD. The average labor rate is $85 per work-hour. Required parts would cost about $2,770 per product.

Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be $360,800, or $3,280 per product.

According to the manufacturer, some of the costs of this proposed AD may be covered under warranty, thereby reducing the cost impact on affected individuals. We do not control warranty coverage for affected individuals. As a result, we have included all costs in our cost estimate.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this proposed regulation:

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

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

(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.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

PIAGGIO AERO INDUSTRIES S.p.A: Docket No. FAA–2012–0634; Directorate Identifier 2012–CE–016–AD.

(a) Comments Due Date

We must receive comments by July 30, 2012.

(b) Affected ADs

None.

(c) Applicability

This AD applies to PIAGGIO AERO INDUSTRIES S.p.A Model P–180 airplanes, serial numbers (S/Ns) 1002 and 1004 through 1223, certificated in any category.

(d) Subject

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

(e) Reason

This AD was prompted by mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. We are issuing this proposed AD to require actions to address the unsafe condition on these products.

(f) Actions and Compliance

Unless already done, before the effective date of this AD, following the Accomplishment Instructions of Piaggio Aero Industries S.p.A. Mandatory Service Bulletin No. 80–0318, revision 2, dated March 28, 2012, do the following actions:

(1) *For S/Ns 1002 and 1004 through 1135:*

(i) *For aircraft with less than 1,500 hours total time-in-service (TIS) at the effective date of this AD:* Within 1,500 hours TIS after the effective date of this AD or within 12 calendar months after the effective date of this AD, whichever occurs first, install covering cages on both left and right wing outboard flap external screwjacks. Follow the Accomplishment Instructions of Piaggio Aero Industries S.p.A. Mandatory Service Bulletin No. 80–0318, revision 2, dated March 28, 2012.

(ii) *For aircraft with 1,500 hours total TIS but less than 2,800 hours total TIS at the effective date of this AD:* Upon or before reaching a total of 3,000 hours TIS after the effective date of this AD or within 12 calendar months after the effective date of this AD, whichever occurs first, install covering cages on both left and right wing outboard flap external screwjacks. Follow the Accomplishment Instructions of Piaggio Aero Industries S.p.A. Mandatory Service Bulletin No. 80–0318, revision 2, dated March 28, 2012.

(iii) *For aircraft with 2,800 hours total TIS or more at the effective date of this AD:* Within 200 hours TIS after the effective date of this AD or within 12 calendar months after the effective date of this AD, whichever occurs first, install covering cages on both left and right wing outboard flap external screwjacks. Follow the Accomplishment Instructions of Piaggio Aero Industries S.p.A. Mandatory Service Bulletin No. 80–0318, revision 2, dated March 28, 2012.

(2) *For S/Ns 1136 through 1223 (inclusive):* Within 1,500 hours TIS after the effective date of this AD or within 12 calendar months after the effective date of this AD, whichever occurs first, install covering cages on both left and right wing outboard flap external screwjacks. Follow the Accomplishment Instructions of Piaggio Aero Industries S.p.A. Mandatory Service Bulletin No. 80–0318, revision 2, dated March 28, 2012.

Note to paragraph (f) of this AD: S/Ns 1224 and subsequent have covering cages on both left and right wing outboard flap external screwjacks installed during production.

(g) Credit for Actions Accomplished in Accordance With Previous Service Information

This AD provides credit for the actions required in this AD if already done before the effective date of this AD following Service Bulletin No. 80–0318, dated October 24, 2011; Service Bulletin No. 80–0318, revision 1, dated February 3, 2012; and Service Bulletin No. 80–0318, revision 2, dated March 28, 2012.

(h) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, Standards Office, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Mike Kiesov, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4144; fax: (816) 329–4090; email: *mike.kiesov@faa.gov.* Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

(2) *Airworthy Product:* For any requirement in this AD to obtain corrective actions from a manufacturer or other source, use these

actions if they are FAA-approved. Corrective actions are considered FAA-approved if they are approved by the State of Design Authority (or their delegated agent). You are required to assure the product is airworthy before it is returned to service.

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

(i) Related Information

Refer to MCAI European Aviation Safety Agency (EASA) AD No.: 2012–0066, dated April 24, 2012; Piaggio Aero Industries S.p.A. Mandatory Service Bulletin No. 80–0318, dated October 24, 2011; Piaggio Aero Industries S.p.A. Mandatory Service Bulletin No. 80–0318, revision 1, dated February 3, 2012; and Piaggio Aero Industries S.p.A. Mandatory Service Bulletin No. 80–0318, revision 2, dated March 28, 2012, for related information. For service information related to this AD, contact Piaggio Aero Industries S.p.A—Airworthiness Office, Via Luigi Cibrario, 4–16154 Genova-Italy; phone: +39 010 6481353; fax: +39 010 6481881; email: *airworthiness@piaggioaero.it;* Internet: *http://www.piaggioaero.com/#/en/aftersales/service-support.* You may review copies of the referenced service information at the FAA, Small Airplane Directorate, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call (816) 329–4148.

Issued in Kansas City, Missouri, on May 11, 2012.

John Colomy,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2012–14723 Filed 6–14–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2012–0633; Directorate Identifier 2012–CE–018–AD]

RIN 2120–AA64

Airworthiness Directives; Diamond Aircraft Industries GmbH Airplanes

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for certain Diamond Aircraft Industries GmbH Models DA 42, DA 42 NG, and DA 42 M–NG airplanes. This proposed AD results from mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as excessive voids in the adhesive joint between the center wing spars and the upper center wing skins. This condition could cause the wing to fail, which could result in loss of control of the airplane. We are issuing this proposed AD to require actions to address the unsafe condition on these products.

DATES: We must receive comments on this proposed AD by July 30, 2012.

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

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

For service information identified in this proposed AD, contact Diamond Aircraft Industries GmbH, N.A. Otto-Straße 5, A–2700 Wiener Neustadt, Austria, telephone: +43 2622 26700; fax: +43 2622 26780; email: *office@diamond-air.at;* Internet: *http://www.diamond-air.at.* You may review copies of the referenced service information at the FAA, Small Airplane Directorate, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call (816) 329–4148.

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

FOR FURTHER INFORMATION CONTACT: Mike Kiesov, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4144; fax: (816) 329–4090; email: *mike.kiesov@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2012–0633; Directorate Identifier 2012–CE–018–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

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

Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued AD No. 2011–0100, dated May 26, 2011 (referred to after this as ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

> During conversion of a DA 42 to a DA 42 NG, voids were detected in the adhesive joint between the centre wing spars and the upper centre wing skins, between the fuselage wall and the engine nacelle. The available information indicates that wings with voids continue to meet the certification design

limits, provided the voids are within established criteria.

However, to detect any wings that may have voids exceeding these criteria, Diamond has issued Mandatory Service Bulletin (MSB) 42–092 and MSB 42NG–022 (single document) that describes instructions for inspection of the aeroplanes that had these wings installed during manufacture. Aeroplanes that have voids within the inspection criteria may continue to operate without restriction, pending the outcome of ongoing investigations. Aeroplanes that have voids exceeding the inspection criteria must be repaired.

For reasons described above, the EASA AD required the inspection of the affected aeroplanes to measure the voids in the adhesive joint between the centre wing spars and the upper centre wing skins, the reporting of all findings to Diamond Aircraft Industries and the repair of any voids exceeding the criteria as specified in the MSB.

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

Relevant Service Information

Diamond Aircraft Industries GmbH has issued Mandatory Service Bulletin No. MSB 42–092 MSB 42NG–022, dated May 20, 2011, and Work Instruction WI–MSB–42–092 WI–MSB–42NG–22, dated May 20, 2011. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

FAA's Determination and Requirements of the Proposed AD

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

Costs of Compliance

We estimate that this proposed AD will affect 172 products of U.S. registry. We also estimate that it would take about 2 work-hours per product to comply with the basic requirements of this proposed AD. The average labor rate is $85 per work-hour.

Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be $29,240, or $170 per product.

In addition, we estimate that any necessary follow-on actions would take about 10 work-hours, for a cost of $850 per product. We have no way of determining the number of products that may need these actions.

According to the manufacturer, some of the costs of this proposed AD may be covered under warranty, thereby reducing the cost impact on affected individuals. We do not control warranty coverage for affected individuals. As a result, we have included all costs in our cost estimate.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this proposed regulation:

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

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

(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.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Diamond Aircraft Industries GmbH: Docket No. FAA–2012–0633; Directorate Identifier 2012–CE–018–AD.

(a) Comments Due Date

We must receive comments by July 30, 2012.

(b) Affected ADs

None.

(c) Applicability

This AD applies to the following Diamond Aircraft Industries GmbH Models DA 42, DA 42 NG, and DA 42 M–NG airplanes: Serial numbers 42.006 through 42.008, 42.010, 42.012 through 42.014, 42.016 through 42.033, 42.035 through 42.043, 42.045, 42.046, 42.048 through 42.051, 42.053, 42.055 through 42.059, 42.061 through 42.081, 42.083 through 42.093, 42.096 through 42.097, 42.099 through 42.120, 42.122 through 42.125, 42.127 through 42.148, 42.150 through 42.170, 42.172 through 42.176, 42.178, 42.179, 42.181 through 42.200, 42.202 through 42.224, 42.AC001 through 42.AC028, and 42.AC030 through 42.AC052, certificated in any category.

(d) Subject

Air Transport Association of America (ATA) Code 57, Wings.

(e) Reason

This AD was prompted by mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as excessive voids in the adhesive joint between the center wing spars and the upper center wing skins. We are issuing this AD to prevent wing failure, which could result in loss of control of the airplane.

(f) Actions and Compliance

Unless already done, do the following actions:

(1) Within the next 100 hours time-in-service (TIS) after the effective date of this AD or within the next 3 months after the effective date of this AD, whichever occurs first, inspect the adhesive joint between the center wing spars and the upper center wing skin following Diamond Aircraft Industries GmbH Work Instruction WI–MSB–42–092 WI–MSB–42NG–22, dated May 20, 2011, as

specified in Diamond Aircraft Industries GmbH Mandatory Service Bulletin No. MSB 42–092 MSB 42NG–022, dated May 20, 2011.

(2) Within 30 days after the inspection required in paragraph (f)(1) of this AD, using Appendix A of Diamond Aircraft Industries GmbH Work Instruction WI–MSB–42–092 WI–MSB–42NG–22, dated May 20, 2011, report the results of the inspection to Diamond Aircraft Industries GmbH at the address in paragraph (h) of this AD.

(3) If, during the inspection required in paragraph (f)(1) of this AD, voids are detected that exceed the criteria specified in Diamond Aircraft Industries GmbH Work Instruction WI–MSB–42–092 WI–MSB–42NG–22, dated May 20, 2011, before further flight, repair the airplane following Diamond Aircraft Industries GmbH Work Instruction WI–MSB–42–092 WI–MSB–42NG–22, dated May 20, 2011, as specified in Diamond Aircraft Industries GmbH Mandatory Service Bulletin No. MSB 42–092 MSB 42NG–022, dated May 20, 2011.

(4) For the purpose of compliance with paragraph (f)(3) of this AD, a single positioning flight is allowed to a location where the repair can be done following the provisions specified in Section III.1 of Diamond Aircraft Industries GmbH Work Instruction WI–MSB–42–092 WI–MSB–42NG–22, dated May 20, 2011.

(g) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, Standards Office, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Mike Kiesov, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4144; fax: (816) 329–4090; email: *mike.kiesov@faa.gov.* Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

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

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

(h) Related Information

Refer to MCAI European Aviation Safety Agency (EASA) AD No. 2011–0100, dated May 26, 2011; Diamond Aircraft Industries GmbH Mandatory Service Bulletin No. MSB 42–092 MSB 42NG–022, dated May 20, 2011, and Diamond Aircraft Industries GmbH Work Instruction WI–MSB–42–092 WI–MSB–42NG–22, dated May 20, 2011, for related information. For service information related to this AD, contact Diamond Aircraft Industries GmbH, N.A. Otto-Straße 5, A–2700 Wiener Neustadt, Austria, telephone: +43 2622 26700; fax: +43 2622 26780; email: *office@diamond-air.at;* Internet: *http://www.diamond-air.at.* You may review copies of the referenced service information at the FAA, Small Airplane Directorate, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call (816) 329–4148.

Issued in Kansas City, Missouri, on May 11, 2012.

John Colomy,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2012–14705 Filed 6–14–12; 8:45 am]

BILLING CODE 4910–13–P

COMMODITY FUTURES TRADING COMMISSION

17 CFR Parts 3 and 23

RIN 3038–AD66

Dual and Multiple Associations of Persons Associated With Swap Dealers, Major Swap Participants and Other Commission Registrants

AGENCY: Commodity Futures Trading Commission.

ACTION: Proposed rules.

SUMMARY: The Commodity Futures Trading Commission (Commission or CFTC) is proposing regulations that would make clear that each swap dealer (SD), major swap participant (MSP), and other Commission registrant with whom an associated person (AP) is associated is required to supervise the AP and is jointly and severally responsible for the activities of the AP with respect to customers common to it and any other SD, MSP or other Commission registrant (Proposal).

DATES: Comments must be received on or before August 14, 2012.

ADDRESSES: You may submit comments, identified by RIN 3038–AD66 and ''Dual and Multiple Associations of Persons Associated with Swap Dealers, Major Swap Participants and other Commission Registrants,'' by any of the following methods:

- *Agency Web Site, via its Comments Online process: http://comments.cftc.gov.* Follow the instructions on the Web site for submitting comments.
- *Mail:* Send to David A. Stawick, Secretary, Commodity Futures Trading Commission, 1155 21st Street NW., Washington, DC 20581.
- *Hand delivery/Courier:* Same as Mail above.
- *Federal eRulemaking Portal: http://www.regulations.gov/search/index.jsp.* Follow the instructions for submitting comments.

Please submit your comments using only one method. All comments must be submitted in English, or if not, accompanied by an English translation. Comments will be posted as received to *www.cftc.gov* and the information you submit will be publicly available. If, however, you submit information that ordinarily is exempt from disclosure under the Freedom of Information Act, you may submit a petition for confidential treatment of the exempt information according to the procedures set forth in Commission Regulation 145.9.[1] The Commission reserves the right, but shall have no obligation, to review, pre-screen, filter, redact, refuse or remove any or all of your submission from *www.cftc.gov* that it may deem to be inappropriate for publication, such as obscene language. All submissions that have been redacted or removed that contain comments on the merits of the rulemaking will be retained in the public comment file and will be considered as required under the Administrative Procedure Act[2] and other applicable laws, and may be accessible under the Freedom of Information Act.

FOR FURTHER INFORMATION CONTACT: Israel J. Goodman, Attorney-Advisor, or Barbara S. Gold, Associate Director, Division of Swap Dealer and Intermediary Oversight, 1155 21st Street NW., Washington, DC 20581. Telephone number: 202–418–6700 and electronic mail: *igoodman@cftc.gov* or *bgold@cftc.gov.*

SUPPLEMENTARY INFORMATION:

[1] Commission regulations referred to herein are found at 17 CFR Ch. 1 (2011). They are accessible on the Commission's Web site, *http://www.cftc.gov.*

[2] 5 U.S.C. 500 *et seq.*

I. Introduction

A. Background

On July 21, 2010, President Obama signed the Dodd-Frank Act.[3] Section 731 of the Dodd-Frank Act amended the Commodity Exchange Act (CEA)[4] by adding Section 4s, which, among other things, prohibits any person from acting as a ''swap dealer'' or ''major swap participant'' unless the person is registered with the Commission.[5] To effectuate the Congressional directive that an SD or MSP apply for registration in such form and manner as prescribed by the Commission,[6] on November 23, 2010, the Commission proposed regulations to establish a registration process for SDs and MSPs (Proposed Registration Regulations),[7] and on January 19, 2012, the Commission adopted regulations that establish a registration process for SDs and MSPs (Final Registration Regulations).[8]

However, Section 731 did not direct the Commission to adopt regulations that provide for the registration of APs of SDs and MSPs.[9] Thus, unlike APs of other Commission registrants, who are generally required to register with the Commission,[10] APs of SDs and MSPs are not required to register as such.[11] Although APs of SDs and MSPs are not subject to registration with the Commission, an SD or MSP is prohibited from permitting any person associated with it to effect or be involved in effecting swaps on its behalf if such person is subject to a statutory disqualification.[12]

The Commission adopted the Final Registration Regulations after considering the comments it received from the public on the Proposed Registration Regulations. One commenter recommended that the Commission expand the scope of the provisions on dual and multiple associations currently found in Regulation 3.12(f), or adopt a new regulation, ''to address the situations in which an individual conducts swaps-related activity on behalf of more than one Swap Entity [SD and/or MSP] or conducts swaps activity on behalf of a Swap Entity and is also registered as an AP of a different firm.''[13] When adopting the Final Registration Regulations, the Commission stated that ''[w]hile the Commission agrees with the commenter's recommendation, it anticipates promptly addressing this issue in a future rulemaking.''[14] The Proposal addresses this issue.

B. Regulation 3.12(f)

Regulation 3.12 concerns the registration of those persons who must register as an AP of a Commission registrant. Regulation 3.12(c) provides that application is made through the filing of a Form 8–R, accompanied by a specified certification from the registrant who will be employing the AP—*i.e.,* the AP's ''sponsor.'' The term ''sponsor'' is defined in Regulation 3.1(c) to mean ''the futures commission merchant, retail foreign exchange dealer, introducing broker, commodity trading advisor, commodity pool operator or leverage transaction merchant which makes the certification required by § 3.12 of [Part 3] for the registration of an associated person of such sponsor.''

Regulation 3.12(f)(1)(i) permits dual and multiple associations of a person registered as an AP.[15] Regulation 3.12(f)(1)(iii) provides that each sponsor of the AP is required to supervise the AP, and that each sponsor is jointly and severally responsible for the AP's activities with respect to any customers common to it and any other sponsor with which the AP is associated. The Commission adopted this joint and several responsibility provision in 1992 in connection with amendments to Regulation 3.12(f) that eliminated then-existing restrictions on dual and multiple associations in many circumstances.[16] The provision was intended to address concerns that permitting dual and multiple associations would lead to situations where each sponsor might disclaim responsibility for the AP's activities—that is, that each sponsor would claim that the dually associated AP was not acting on its behalf but, rather, for the other sponsor, and therefore the other sponsor should be held responsible for the conduct in question.[17]

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[3] *See* Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111–203, 124 Stat. 1376 (2010). The text of the Dodd-Frank Act also may be accessed on the Commission's Web site, *http://www.cftc.gov.*

[4] 7 U.S.C. 1 *et seq.*

[5] CEA Sections 4s(a).

[6] CEA Section 4s(b).

[7] 75 FR 71379.

[8] 77 FR 2613. Additionally, through a separate Notice and Order, the Commission delegated to the National Futures Association (NFA) the authority to perform the full range of registration functions with respect to SDs and MSPs. 77 FR 2708 (Jan. 19, 2012).

[9] *See* 77 FR at 2613 (noting that CEA Section 4s does not direct the Commission to adopt regulations that provide for the registration of APs of SDs or MSPs).

[10] *See, e.g.,* CEA Section 4k and Commission Regulation 3.12(a).

[11] As is the case for other categories of Commission registrants, the term ''associated person,'' when used with respect to an SD or MSP, means a natural person (as opposed to an entity, such as a partnership or corporation). *See* 77 FR 2614–15, whereby the Commission adopted in new Regulation 1.3(aa)(6) a definition of the term ''associated person'' of an SD or MSP to mean a natural person who is associated with an SD or MSP as:

[A] partner, officer, employee, agent (or any natural person occupying a similar status or performing similar functions), in any capacity that involves:

(i) The solicitation or acceptance of swaps (other than in a clerical or ministerial capacity); or

(ii) The supervision of any person or persons so engaged.

[12] *See* CEA Section 4s(b)(6) and Regulation 23.22(b).

[13] Comment letter from the National Futures Association at page 10 (Jan. 24, 2011).

[14] 77 FR at 2616.

[15] Section 3.12(f)(1)(i) provides that a person who is already registered as an AP in any capacity may become associated with another sponsor if the new sponsor files with the NFA a Form 8–R, as discussed below.

[16] 57 FR 23136 (June 2, 1992) (the 1992 Amendments). The Commission first adopted a prohibition on dual and multiple associations in 1980, with respect to APs of futures commission merchants (FCMs), explaining that it was necessary ''[i]n view of the obvious difficulties of supervision in such a situation and in view of the inherent possibilities for conflicts of interest that might arise if an AP were to have more than one sponsor.'' 45 FR 80485, 80489 (Dec. 5, 1980) (footnote omitted).

The Commission subsequently amended and broadened the scope of Regulation 3.12(f) such that, prior to the 1992 Amendments, Regulation 3.12(f) prohibited a person from associating as an AP with: (1) More than one FCM or more than one introducing broker (IB); (2) an FCM and an IB or a leverage transaction merchant (LTM); and (3) an IB and an LTM. Subject to certain exceptions, the regulations also prohibited a person from associating as an AP with: (1) An FCM and a commodity trading advisor (CTA); (2) an FCM and a commodity pool operator (CPO); (3) an IB and a CTA; and (4) an IB and a CPO. *See* 56 FR 37026, 37033 (Aug. 2, 1991). In proposing to eliminate most of these restrictions, the Commission explained that, in its experience, these regulations had been ''difficult to understand and follow, even for experienced practitioners'' and that, in certain cases, they could have perverse effects, such as limiting the choice of which FCM a customer could use to carry his managed account. *Id.* Moreover, the Commission explained, the concerns raised by dual and multiple associations could be better addressed through an alternative approach, as further discussed below. *Id.*

[17] *See* 56 FR at 37033; *see, e.g., In Re Global Telecom, et al.,* [2005–2007 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 30,143 (CFTC Oct. 4, 2005) (holding an FCM liable for the activities of its APs who were also APs of a CTA, and noting that holding otherwise would ''bring about the very situation the rule is aimed at preventing—one in which a futures customer who contracts with two entities to receive two products or services is left with nobody minding the store'').

In connection with the 1992 Amendments, the Commission also amended Regulation 3.12(f) to require that the new sponsor file with the NFA a Form 3–R signed by the AP's existing sponsor and that included, among other things, an acknowledgement by each sponsor that, in addition to each sponsor's responsibility to supervise the AP, each sponsor was jointly and severally responsible for the conduct of the AP with respect to customers common to it and any other sponsor. 57 FR at 23146. By signing the Form 3–R, each sponsor would make clear that it was aware of the new association and that it was jointly and severally responsible for the AP's conduct. *Id.* at 23141. As

Continued

However, and, as explained above, the Dodd-Frank Act does not direct the Commission to provide for—and, thus, the Commission has not adopted regulations requiring—the registration of APs of SDs and MSPs. As a result, the provisions of current Regulation 3.12(f)(1), which apply to a sponsoring registrant with respect to its APs who are required to register as such, do not apply to SDs and MSPs and their APs.

II. The Proposed Regulations

A. Proposed Regulations 3.12(f)(5) and 23.22(c)

The Proposal would provide for dual and multiple associations of persons associated with SDs, MSPs and other Commission registrants (*i.e.,* FCMs, retail foreign exchange dealers (RFEDs), IBs, CTAs, CPOs, and LTMs). Specifically, proposed Regulation 3.12(f)(5)(i)(A) would apply where a person associated as a registered AP of one or more (other) Commission registrants seeks to become associated as an AP of one or more SDs or MSPs; proposed Regulation 3.12(f)(5)(i)(B) would apply where a person associated as an AP of one or more SDs or MSPs seeks to become associated as a registered AP of one or more other Commission registrants; and proposed Regulation 23.22(c) would apply where a person associated as an AP of an SD or MSP seeks to become associated as an AP of one or more other SDs or MSPs.[18] The Proposal would make clear that each SD, MSP and other Commission registrant with whom the AP is associated is required to supervise the AP and is jointly and severally responsible for the activities of the AP with respect to customers common to it and any other SD, MSP or other Commission registrant. These proposed regulations are based on the form and text of current Regulation 3.12(f)(1).[19]

B. Request for Comments

The Commission requests comments on all aspects of the Proposal. In particular, the Commission is requesting comment on whether it should adopt a provision (in both Regulation 3.12(f)(5) and Regulation 23.22(c)) that would provide a mechanism to notify SDs, MSPs and existing sponsors of registered APs when one of their APs seeks to become associated with another SD or MSP (or, in the case of an AP of an SD or MSP, seeks to register as an AP of another Commission registrant). These provisions would serve the purpose of putting any other SD, MSP or other registrant associated with the AP on notice that it is (or will become) subject to the supervisory and joint and several responsibility requirements of Regulation 3.12(f) that would be applicable to it as a result of the regulations proposed herein. Under current Regulation 3.12(f)(1), which does not address dual and multiple associations with SDs and MSPs, a person registered as an AP may become an AP of another sponsor if the new sponsor files a Form 8–R with NFA, and NFA, in turn, is required to notify any existing sponsor of the AP that the person has applied to become associated with another sponsor. Thus, the current regulations provide a mechanism through which sponsors are put on notice that their registered APs will subject them to additional supervisory and joint and several responsibility requirements under Regulation 3.12(f).[20] Employment as an AP of an SD or MSP, however, does not require registration with the Commission and, thus, the filing of a Form 8–R with NFA. Therefore, NFA would not otherwise be aware of a particular person's current or planned association with an SD or MSP and would not be in a position to notify other SDs, MSPs or existing sponsors. To the extent commenters believe it is necessary to adopt regulations aimed at providing such notice, the Commission also is seeking comment specifically on how to do so. One potential mechanism would be to require any SD, MSP or other Commission registrant seeking to associate with an AP who is also associated with another SD or MSP to notify the other SD or MSP that the AP is or intends to become associated with the SD, MSP or other Commission registrant.

III. Related Matters

A. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA)[21] requires Federal agencies, in promulgating regulations, to consider the impact of those regulations on small entities. The Commission has previously established certain definitions of ''small entities'' to be used by the Commission in evaluating the impact of its rules on small entities in accordance with the RFA.[22] The Commission previously has determined that FCMs, registered CPOs,[23] LTMs and RFEDs are not small entities for purposes of the RFA, and, thus, the requirements of the RFA do not apply to those entities.[24] In addition, in connection with its adoption of the Final Registration Regulations, the Commission determined that SDs and MSPs are not small entities for purposes of the RFA.[25] Therefore, the requirements of the RFA do not apply to SDs and MSPs. With respect to CTAs and IBs, the Commission previously has stated that it would evaluate within the context of a particular rule proposal whether all or some of the affected CTAs and IBs would be considered to be small entities and, if so, the economic impact on them of the particular regulation.[26] The Commission notes that the Proposal would only impact,

further discussed in Part II.B of this **Federal Register** release, the Commission subsequently amended Regulation 3.12(f) to eliminate the requirement for each sponsor to sign a Form 3–R and to specifically acknowledge joint and several responsibility therein.

[18] Two separate regulations addressing dual and multiple associations of APs of SDs and MSPs are necessary because, as noted above, the term ''sponsor'' and the provisions of current Regulation 3.12(f) do not, by their terms, apply to SDs and MSPs with respect to their APs (who are not subject to a registration requirement).

[19] Thus, for example, proposed Regulation 3.12(f)(5)(i)(B) provides that where an AP of an SD or MSP seeks to register an as AP of another Commission registrant, the new sponsor must meet the requirements of Regulation 3.60(b)(2)(i)(A) and (B), as is required of a new sponsor under current Regulation 3.12(f)(1). However, proposed Regulation 3.12(f)(5)(i)(A) provides that an SD or MSP seeking to associate with an already registered AP must meet the requirements of Regulation 3.60(b)(2)(i)(A), but not also the requirements of Regulation 3.60(b)(2)(i)(B). This is because the requirements of the former regulation concern specified adjudicatory proceedings which would be applicable to SDs and MSPs while the requirements of the latter regulation concern financial requirements which are not applicable to SDs and MSPs.

[20] *See* 67 FR 38869 (June 6, 2002). The Commission adopted Regulation 3.12(f)(1)(ii) in 2002, in connection with other amendments to Regulation 3.12 to accommodate NFA's implementation of an online registration system. Prior to that time, a potential sponsor of an already registered AP was required to file a Form 3–R that included a certification signed by it and any existing sponsor acknowledging their supervisory obligations and their joint and several responsibility with respect to the AP's activities. In eliminating these requirements, the Commission explained that continuing to require a signature from each sponsor would result in unnecessary costs and delays under the new electronic filing system, and that the acknowledgment was not needed because Commission regulations make clear that each sponsor is required to supervise the AP and is jointly and severally responsible for his or her conduct. Instead, as adopted, Regulation 3.12(f)(1)(ii) requires NFA to notify existing sponsors of the AP of the application. *Id.* at 38870–71.

[21] 5 U.S.C. 601 *et seq.*

[22] 47 FR 18618 (Apr. 30, 1982).

[23] To the extent the Proposal (specifically, proposed Regulation 3.12(f)(5)) would have an impact on CPOs, it would only impact registered CPOs, since Regulation 3.12(f), by its terms, would not apply where an AP's new or existing association is with a person who is not registered with the Commission.

[24] *See* 47 FR at 18619–20 (discussing FCMs and CPOs); 54 FR 19556, 19557 (May 8, 1989) (discussing LTMs); 75 FR 55410, 55416 (Sept. 19, 2010) (discussing RFEDs).

[25] *See* 77 FR at 2620 (adopting the Final Registration Regulations).

[26] *See* 47 FR at 18619 (discussing CTAs); 48 FR 35248, 35276–77 (Aug. 3, 1983) (discussing IBs).

potentially, registered CTAs and registered IBs,[27] and the number of such impacted entities, if any, should likely be very small.[28] Accordingly, the Chairman, on behalf of the Commission, hereby certifies pursuant to 5 U.S.C. 605(b) that the Proposal will not have a significant economic impact on a substantial number of small entities.

B. Paperwork Reduction Act

The Paperwork Reduction Act (PRA)[29] imposes certain requirements on federal agencies (including the Commission) in connection with their conducting or sponsoring any collection of information as defined by the PRA. The Proposal would expressly obligate each SD, MSP and other Commission registrant to supervise their APs who have dual and multiple associations and make each SD, MSP and other Commission registrant jointly and severally responsible for the activities of such APs with respect to customers common to it and any other SD, MSP or other Commission registrant. The Proposal contains no provision that would impose a ''burden'' or ''collection of information'' as those terms are defined in the PRA.[30]

C. Cost-Benefit Considerations

In response to the Proposed Registration Regulations, a commenter requested that the Commission address ''situations in which an individual conducts swaps-related activity on behalf of more than one Swap Entity [SD and/or MSP] or conducts swaps activity on behalf of a Swap Entity and is also registered as an AP of a different firm.'' The Proposal addresses that issue, and in the following paragraphs, the Commission is considering the costs and benefits of the proposal in accordance with CEA section 15(a).[31]

As described in the text above, the Commission is proposing to specify the responsibilities applicable with respect to dual and multiple associations of APs of SDs and MSPs, and particularly, that such associations are permitted, but that they implicate the joint and several supervisory and responsibility provisions applicable with respect to such associations under existing Regulation 3.12(f).

As noted above, existing regulations addressing dual and multiple associations of APs do not address APs of SDs and MSPs and the obligations of those persons with whom they are associated concerning common customers. Thus, the primary benefits of the Proposal include the same benefits noted by the Commission when it adopted the supervisory and joint and several responsibility provisions under current Regulation 3.12(f), namely, the prevention of circumstances where an SD, MSP or other Commission registrant seeks to avoid responsibility for the activities of an AP who has dual or multiple associations by asserting the conduct in question was not within the purview of its supervisory responsibilities with respect to the AP. Therefore, the Commission believes the Proposal will provide protection to market participants and the public by ensuring that such APs will be adequately supervised, and those charged with supervising them will be held responsible for failing to do so. The Commission does not believe that compliance with the Proposal will impose any significant, new cost on SDs or MSPs but, as discussed below, the Commission seeks comment on the same, including the potential insurance and litigation costs associated with joint and several responsibility for APs of SDs and MSPs with dual and multiple associations.

Consideration of Costs and Benefits Relative to the Alternative of Not Taking Any Action

Under current Commission regulations, SDs and MSPs are not subject to the joint supervisory and responsibility requirements applicable to other Commission registrants with respect to the activities of their APs who have dual or multiple associations.[32] This current situation provides a reference point from which to compare the costs and benefits of the proposed regulations to the alternative of not taking any action—that is, where SDs and MSPs, though required to register, would not be subject to the supervisory or joint and several responsibility provisions under (proposed) Regulation 3.12(f) or Regulation 23.22(c), as applicable, for the activities of their APs that are also APs of other SDs, MSPs, or other Commission registrants.[33] Under such a scenario, the costs to the public of inaction would, in qualitative terms, be that: (1) APs of SDs and MSPs that have dual or multiple associations would not be subject to the same regulatory regime as APs of other Commission registrants that have dual or multiple associations; and (2) SDs and MSPs (or other Commission registrants) employing an AP with dual or multiple associations would not be prevented from attempting to disclaim responsibility for the activities of the AP by asserting that the AP was not acting on its behalf, but rather on behalf of another SD or MSP with whom the AP was associated (with respect to their common customers). In contrast, the amendment to Regulation 3.12(f) and the adoption of Regulation 23.22(c) would yield a substantial if unquantifiable benefit to the public relative to inaction by preventing SDs, MSPs and other Commission registrants from seeking to avoid supervision of and responsibility for the activities of their APs who have dual or multiple associations with respect to the common customers of the SDs, MSPs and other Commission registrants.

Section 15(a) Factors

Section 15(a) specifies that the costs and benefits shall be evaluated in light of the following five broad areas of market and public concern: (1) Protection of market participants and the public; (2) efficiency, competitiveness, and financial integrity of the futures markets; (3) price discovery; (4) sound risk management practices; and (5) other public interest considerations.

(1) The protection of market participants and the public.

As discussed above, the Commission believes the Proposal will provide protection to market participants and the public by expressly obligating each SD, MSP or other Commission registrant to supervise its APs who have dual or multiple associations and by subjecting each SD, MSP and other Commission registrant to joint and several responsibility for the activities of such APs with respect to customers common to it and any other SD, MSP or other Commission registrants. More specifically, the Proposal will prevent SDs, MSPs and other Commission registrants from disclaiming responsibility for the activities of their

[27] This is because, as noted above, Regulation 3.12(f) would not apply where an AP's new or existing association is with a person (*e.g.,* a CTA or an IB) who is not registered with the Commission.

[28] *See Amendments to Commodity Pool Operator and Commodity Trading Advisor Regulations Resulting from the Dodd-Frank Act,* 76 FR 11701, 11703 (Mar. 3, 2011) (noting with regard to RFA considerations that the regulations proposed therein would only impact registered CTAs). As of February 7, 2011, less than three percent of all registered APs (or less than 1500 APs) were associated on a dual or multiple basis with Commission registrants.

[29] 44 U.S.C. 3501 *et seq.*

[30] *See* 44 U.S.C. 3502(2) and (3).

[31] 7 U.S.C. 19(a).

[32] As noted above, these requirements, which are set forth in existing Regulation 3.12(f)(1)(iii), apply to the activities of such APs with respect to the common customers of the APs' employing registrants.

[33] Similarly, and as noted above, these proposed requirements would apply to the activities of such APs with respect to the common customers of the APs' employing SDs, MSPs and/or other Commission registrants.

APs who have dual and multiple associations.

(2) The efficiency, competitiveness, and financial integrity of the futures markets.

The Commission does not expect the Proposal to have an impact on the efficiency, competitiveness and financial integrity of the futures market.

(3) The market's price discovery functions.

The Commission does not expect the Proposal to have an impact on the market's price discovery functions.

(4) Sound risk management practices.

The Commission does not expect the Proposal to have an impact on risk management practices by SDs, MSPs and other Commission registrants.

(5) Other public interest considerations.

The Commission has not identified any other public interest considerations in light of which it should consider the costs and benefits of the Proposal. The Commission specifically requests comment on its cost and benefit considerations of the Proposal, as discussed above.

The Commission requests comment on all aspects of its proposed consideration of costs and benefits, including identification and assessment of any costs and benefits not discussed above, such as costs associated with determining if a potential AP is already associated with another SD, MSP or other Commission registrant. In addition, the Commission requests that commenters provide data and any other information or statistics that the commenters relied on to reach any conclusions on the Commission's proposed considerations of costs and benefits.

List of Subjects

17 CFR Part 3

Associated persons, Brokers, Commodity futures, Customer protection, Major swap participants, Registration, Swap dealers.

17 CFR Part 23

Associated persons, Commodity futures, Customer protection, Major swap participants, Registration, Reporting and recordkeeping requirements, Swap dealers.

For the reasons presented above, the Commission proposes to amend Chapter I of Title 17 of the Code of Federal Regulations as follows:

PART 3—REGISTRATION

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

Authority: 5 U.S.C. 522, 522b; 7 U.S.C. 1a, 2, 6, 6a, 6b, 6c, 6d, 6e, 6f, 6g, 6h, 6*i,* 6k, 6m, 6n, 6*o,* 6p, 6s, 8, 9, 9a, 12, 12a, 13b, 13c, 16a, 18, 19, 21, and 23, as amended by Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. 111–203, 124 Stat. 1376 (July 21, 2010).

2. Section 3.12 is amended by adding new paragraph (f)(5) to read as follows:

§ 3.12 Registration of associated persons of futures commission merchants, retail foreign exchange dealers, introducing brokers, commodity trading advisors, commodity pool operators and leverage transaction merchants.

* * * * *

(f) * * *

(5)(i)(A) A person who is already registered as an associated person in any capacity whose registration is not subject to conditions or restrictions may become associated as an associated person of a swap dealer or major swap participant if the swap dealer or major swap participant meets the requirements set forth in § 3.60(b)(2)(i)(A) of this part.

(B) A person who is already associated as an associated person of a swap dealer or major swap participant may become registered as an associated person of a futures commission merchant, retail foreign exchange dealer, introducing broker, commodity trading advisor, commodity pool operator, or leverage transaction merchant if the futures commission merchant, retail foreign exchange dealer, introducing broker, commodity trading advisor, commodity pool operator, or leverage transaction merchant with which the person intends to associate meets the requirements set forth in § 3.60(b)(2)(i)(A) and (B) of this part.

(ii) Each sponsor and each swap dealer and/or major swap participant with whom the person is associated shall supervise that associated person, and each sponsor and each swap dealer and/or major swap participant is jointly and severally responsible for the conduct of the associated person with respect to the:

(A) Solicitation or acceptance of customer orders,

(B) Solicitation of funds, securities or property for a participation in a commodity pool,

(C) Solicitation of a client's or prospective client's discretionary account,

(D) Solicitation or acceptance of leverage customers' orders for leverage transactions,

(E) Solicitation or acceptance of swaps, and

(F) Associated person's supervision of any person or persons engaged in any of the foregoing solicitations or acceptances, with respect to any customers common to it and any futures commission merchant, retail foreign exchange dealer, introducing broker, commodity trading advisor, commodity pool operator, leverage transaction merchant, swap dealer, or major swap participant with which the associated person is associated.

* * * * *

PART 23—SWAP DEALERS AND MAJOR SWAP PARTICIPANTS

3. The authority citation for Part 23 continues to read as follows:

Authority: 7 U.S.C. 1a, 2, 6, 6a, 6b, 6c, 6p, 6s, 9, 9a, 13b, 13c, 16a, 18, 19, 21 as amended by Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. 111–203, 124 Stat. 1376 (July 21, 2010).

4. Section 23.22 is amended by adding paragraph (c) to read as follows:

§ 23.22 Associated persons of swap dealers and major swap participants.

* * * * *

(c) *Dual and multiple associations.* (1) A person who is already associated as an associated person of a swap dealer or major swap participant may become associated as an associated person of another swap dealer or major swap participant if the other swap dealer or major swap participant meets the requirements set forth in § 3.60(b)(2)(i)(A) of this chapter.

(2) Each swap dealer and major swap participant associated with such associated person shall supervise that associated person, and each swap dealer and major swap participant is jointly and severally responsible for the conduct of the associated person with respect to the:

(i) Solicitation or acceptance of customer orders,

(ii) Solicitation of funds, securities or property for a participation in a commodity pool,

(iii) Solicitation of a client's or prospective client's discretionary account,

(iv) Solicitation or acceptance of leverage customers' orders for leverage transactions,

(v) Solicitation or acceptance of swaps, and

(vi) Associated person's supervision of any person or persons engaged in any of the foregoing solicitations or acceptances, with respect to any customers common to it and any other swap dealer or major swap participant.

Issued in Washington, DC, on June 11, 2012, by the Commission.

David A. Stawick,

Secretary of the Commission.

[FR Doc. 2012–14654 Filed 6–14–12; 8:45 am]

BILLING CODE 6351–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2011–0926]

RIN 1625–AA09

Drawbridge Operation Regulation; Lafourche Bayou, LA

AGENCY: Coast Guard, DHS.

ACTION: Notice reopening comment period.

SUMMARY: The U.S. Coast Guard is reopening the comment period to solicit additional comments concerning its Notice of Proposed Rulemaking to change the regulation governing the six bridges across Bayou Lafourche, south of the Gulf Intracoastal Waterway (GIWW).

DATES: The comment period for the proposed rule published April 16, 2012, at 77 FR 22520, is reopened. Comments and related material must be received by July 5, 2012.

ADDRESSES: You may submit comments identified by docket number USCG–2011–0926 using any one of the following methods:

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

(2) *Fax:* 202–493–2251.

(3) *Mail:* Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590–0001.

(4) *Hand delivery:* Same as mail address above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

To avoid duplication, please use only one of these four methods. See the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section below for instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Mr. Jim Wetherington; Bridge Administration Branch, Eighth Coast Guard District; telephone 504–671–2128, email *james.r.wetherington@uscg.mil.* If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

A. Public Participation and Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted, without change to *http://www.regulations.gov* and will include any personal information you have provided.

1. Submitting Comments

If you submit a comment, please include the docket number for this rulemaking (USCG–2011–0926), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online (*http://www.regulations.gov*), or by fax, mail or hand delivery, but please use only one of these means. If you submit a comment online via *http://www.regulations.gov,* it will be considered received by the Coast Guard when you successfully transmit the comment. If you fax, hand deliver, or mail your comment, it will be considered as having been received by the Coast Guard when it is received at the Docket Management Facility. We recommend that you include your name and a mailing address, an email address, or a phone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov*, click on the ''submit a comment'' box, which will then become highlighted in blue. In the ''Document Type'' drop down menu select ''Proposed Rules'' and insert ''USCG–2011–0926'' in the ''Keyword'' box. Click ''Search'' then click on the balloon shape in the ''Actions'' column. 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 them by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and may change the rule based on your comments.

2. Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* click on the ''read comments'' box, which will then become highlighted in blue. In the ''Keyword'' box insert ''USCG–2011–0926'' and click ''Search.'' Click the ''Open Docket Folder'' in the ''Actions'' column. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. We have an agreement with the Department of Transportation to use the Docket Management Facility.

3. Privacy Act

Anyone can search the electronic form of 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 a Privacy Act notice regarding our public dockets in the January 17, 2008, issue of the **Federal Register** (73 FR 3316).

4. Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for one to the docket using one of the four methods specified under **ADDRESSES**. Please explain why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register.**

B. Background and Purpose

On April 16, 2012, we published a notice of proposed rulemaking (NPRM) entitled, ''Drawbridge Operation Regulation; Lafourche Bayou, LA,'' in the **Federal Register** (77 FR 22520). The original comment period closed on May 16, 2012. The NPRM proposed the initial changes to the regulation governing six bridges that cross Lafourche Bayou and contains useful background and analysis related to the initial proposed change to accommodate traffic during the local school year schedule change. The public is encouraged to review the NPRM. We received one comment in support of the proposed change. We also received a request for an additional change specific to the operating schedule for the Tarpon Bridge, at Galliano, Lafourche Parish, LA, one of the six bridges under the regulation. The one comment received and the request for an additional change

in the Tarpon Bridge operating schedule may be accessed through the docket as indicated in the Viewing comments and documents section under Public Participation and Request for Comments. No public meeting was requested, and none was held.

The Tarpon Bridge is part of a main route to and from South Lafourche High School. The school's students, staff, and faculty face a traffic delay and back up with the current schedule allowing marine traffic through until just before 7 a.m., which is the starting time for the regulation. This traffic delay causes a 15-minute back up leading to tardiness of faculty, staff and students. The faculty, staff and students requested a change to the existing operating regulation asking that the beginning time for the regulation be moved back 15 minutes, to 6:45 a.m., to accommodate the school traffic in this area and the school hours. This modification would allow for the safe and timely arrival for all parties concerned and would not significantly affect mariners in the area. All other parts of this regulation change would remain the same.

This notice re-opening the comment period ensures notice and opportunity to comment on the additional change required to fully accommodate the updated school year school year schedule and times before making the proposed changes final.

This notice is issued under authority of 33 U.S.C. 1223 and 5 U.S.C. 552.

Dated: June 6, 2012.

Roy A. Nash,

Rear Admiral, U.S. Coast Guard, Commander, Eighth Coast Guard District.

[FR Doc. 2012–14651 Filed 6–14–12; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2012–0426]

RIN 1625–AA00

Safety Zone, Atlantic Intracoastal Waterway; North Topsail Beach, NC

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish a temporary safety zone on the waters of the Atlantic Intracoastal Waterway at North Topsail Beach, North Carolina. The safety zone will temporarily restrict vessel movement. The safety zone is necessary to provide for the safety of mariners on navigable waters during maintenance of the NC 210 Fixed Bridge crossing the Atlantic Intracoastal Waterway, mile 252.3, at North Topsail Beach, North Carolina.

DATES: Comments and related material must be received by the Coast Guard on or before July 16, 2012.

ADDRESSES: You may submit comments identified by docket number using any one of the following methods:

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

(2) *Fax:* 202–493–2251.

(3) *Mail or Delivery:* Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590–0001. Deliveries accepted between 9 a.m. and 5 p.m., Monday through Friday, except federal holidays. The telephone number is 202–366–9329.

See the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section below for further instructions on submitting comments. To avoid duplication, please use only one of these three methods.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email CWO3 Joseph M. Edge, U.S. Coast Guard Sector North Carolina; telephone 252–247–4525, email *Joseph.M.Edge@uscg.mil.* If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

DHS Department of Homeland Security
FR **Federal Register**
NPRM Notice of Proposed Rulemaking

A. Public Participation and Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted without change to *http://www.regulations.gov* and will include any personal information you have provided.

1. Submitting Comments

If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online at *http://www.regulations.gov,* or by fax, mail, or hand delivery, but please use only one of these means. If you submit a comment online, 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 Docket Management Facility. We recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov,* type the docket number (USCG–2012–0426) in the ''SEARCH'' box and click ''SEARCH.'' Click on ''Submit a Comment'' on the line associated with this rulemaking.

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 may change the rule based on your comments.

2. Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* type the docket number (USCG–2012–0426) in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

3. Privacy Act

Anyone can search the electronic form of 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 a Privacy Act notice regarding our public dockets in the January 17, 2008, issue of the **Federal Register** (73 FR 3316).

4. Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for one, using one of the methods specified under **ADDRESSES**. Please explain why you believe a public meeting would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

B. Basis and Purpose

North Carolina Department of Transportation has awarded a contract to T.A. Loving Company of Goldsboro, NC to perform bridge maintenance on the NC 210 Fixed Bridge crossing the Atlantic Intracoastal Waterway, mile 252.3, at North Topsail Beach, North Carolina. The contract provides for replacing the fender system to commence on September 12, 2012 with a completion date of December 12, 2012. The contractor will utilize a 115-foot deck barge with a 30-foot beam as a work platform and for equipment staging.

C. Discussion of Proposed Rule

The Coast Guard proposes establishing a temporary safety zone that would encompass the waters directly under the NC 210 Fixed Bridge crossing the Atlantic Intracoastal Waterway, mile 252.3, at North Topsail Beach, North Carolina (34°30′01″ N/077°25′47″ W). This safety zone would provide a safety buffer to transiting vessels as bridge repairs present potential hazards to mariners and property due to reduction of horizontal clearance.

This zone will be in effect from 8 a.m. September 1, 2012 through 8 p.m. December 12, 2012. During this period the Coast Guard would require a one-hour notification to the work supervisor at the NC 210 Fixed Bridge at the Atlantic Intracoastal Waterway crossing, mile 252.3, North Topsail Beach, North Carolina. All vessels transiting this section of the waterway requiring a horizontal clearance of greater than 50 feet will be required to make a one-hour advanced notification to the work supervisor at the NC 210 Fixed Bridge while the safety zone is in effect.

D. Regulatory Analyses

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

1. Regulatory Planning and Review

This proposed rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders. This rule does not restrict traffic from transiting a portion of the Atlantic Intracoastal Waterway, it imposes a one hour notification to ensure the waterway is clear of impediment to allow passage to vessels requiring a horizontal clearance of greater than 50 feet.

2. Impact on Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered the impact of this proposed rule on small entities. The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule will not have a significant economic impact on a substantial number of small entities. This proposed rule would affect the following entities, some of which may be small entities: The owners or operators of commercial tug and barge companies, recreational and commercial fishing vessels intending to transit the specified portion of Atlantic Intracoastal Waterway from 8 a.m. September 1, 2012 through 8 p.m. December 12, 2012.

This safety zone would not have a significant economic impact on a substantial number of small entities for the following reasons. Although the safety zone will apply to this section of the Atlantic Intracoastal Waterway, vessel traffic will be able to request passage by providing a one hour advanced notification. Before the effective period, the Coast Guard will issue maritime advisories widely available to the users of the waterway. If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

3. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT**, above. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

4. Collection of Information

This proposed rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

5. Federalism

A rule has implications for federalism 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 analyzed this proposed rule under that Order and determined that this rule does not have implications for federalism.

6. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

7. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 (adjusted for inflation) or more in any one year. Though this proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

8. Taking of Private Property

This proposed rule would 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.

9. Civil Justice Reform

This proposed 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.

10. Protection of Children From Environmental Health Risks

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

11. Indian Tribal Governments

This proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would 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.

12. Energy Effects

This proposed rule is not a ''significant energy action'' under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use 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.

13. Technical Standards

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

14. Environment

We have analyzed this proposed 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 made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This proposed rule involves the establishment of a temporary safety zone. This rule is categorically excluded from further review under paragraph 34(g) of Figure 2–1 of the Commandant Instruction. A preliminary environmental analysis checklist supporting this determination and a Categorical Exclusion Determination are available in the docket where indicated under **ADDRESSES**. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

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 proposes to amend 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 § 165.T05–0426 to read as follows:

§ 165.T05–0426 Safety Zone; Atlantic Intracoastal Waterway, North Topsail Beach, NC.

(a) *Regulated area.* The following area is a safety zone: This zone includes the waters directly under and 100 yards either side of the NC 210 Fixed Bridge crossing the Atlantic Intracoastal Waterway, mile 252.3, at North Topsail Beach, North Carolina (34°30′01″ N/ 077°25′47″ W).

(b) *Regulations.* The general safety zone regulations found in 33 CFR 165.23 apply to the safety zone created by this temporary section, § 165.T05–0426. In addition the following regulations apply:

(1) All vessels and persons are prohibited from entering this zone, except as authorized by the Coast Guard Captain of the Port North Carolina.

(2) All vessels requiring greater than 50 feet horizontal clearance to safely transit through the NC 210 Fixed Bridge crossing the Atlantic Intracoastal Waterway, mile 252.3, at North Topsail Beach, North Carolina must contact the work supervisor tender on VHF–FM marine band radio channels 13 and 16 one hour in advance of intended transit.

(3) Persons or vessels requiring entry into or passage within the zone must request authorization from the Captain of the Port North Carolina or his designated representative by telephone at (910) 343–3882 or on VHF–FM marine band radio channel 16.

(4) All Coast Guard assets enforcing this safety zone can be contacted on VHF–FM marine band radio channels 13 and 16.

(5) The operator of any vessel within or in the immediate vicinity of this safety zone shall: (i) Stop the vessel immediately upon being directed to do so by any commissioned, warrant or petty officer on board a vessel displaying a Coast Guard Ensign, and

(ii) Proceed as directed by any commissioned, warrant or petty officer on board a vessel displaying a Coast Guard Ensign.

(c) Definitions.

(1) Captain of the Port North Carolina means the Commander, Coast Guard Sector North Carolina or any Coast Guard commissioned, warrant or petty officer who has been authorized by the Captain of the Port to act on his behalf.

(2) Designated representative means any Coast Guard commissioned, warrant, or petty officer who has been authorized by the Captain of the Port North Carolina to assist in enforcing the safety zone described in paragraph (a) of this section.

(d) Enforcement. The U.S. Coast Guard may be assisted by Federal, State and local agencies in the patrol and enforcement of the zone.

(e) Enforcement period. This section will be enforced from 8 a.m. September 1, 2012 through 8 p.m. December 12, 2012 unless cancelled earlier by the Captain of the Port.

Dated: May 25, 2012.

A. Popiel,

Captain, U.S. Coast Guard, Captain of the Port Sector North Carolina.

[FR Doc. 2012–14652 Filed 6–14–12; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2012–0427]

RIN 1625–AA00

Safety Zone; Gilmerton Bridge Center Span Float-in, Elizabeth River; Norfolk, Portsmouth, and Chesapeake, VA

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes establishing a safety zone on the navigable waters of the Elizabeth River in Norfolk, Portsmouth, and Chesapeake, VA. This action is necessary to provide for the safety of life on navigable waters during the Gilmerton Bridge Center Span Float-in and bridge construction of span placement. This action is intended to restrict vessel traffic movement to protect mariners from the hazards associated with the float-in and span placement.

DATES: Comments and related material must be received by the Coast Guard on or before July 2, 2012.

ADDRESSES: You may submit comments identified by docket number USCG–2012–0427 using any one of the following methods:

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

(2) *Fax:* 202–493–2251.

(3) *Mail:* Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590–0001.

(4) *Hand delivery:* Same as mail address above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

To avoid duplication, please use only one of these four methods. See the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section below for instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions on this proposed rule, call or email Hector Cintron, Waterways Management Division Chief, Sector Hampton Roads, Coast Guard; telephone 757–668–5581, email *Hector.L.Cintron@uscg.mil.* If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

DHS Department of Homeland Security
FR **Federal Register**
NPRM Notice of Proposed Rulemaking

A. Public Participation and Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted without change to *http://www.regulations.gov* and will include any personal information you have provided.

1. Submitting Comments

If you submit a comment, please include the docket number for this rulemaking (USCG–2012–0427), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online (via *http://www.regulations.gov*) or 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 Docket Management Facility. We recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov,* type the docket number (USCG–2012–0427) in the ''SEARCH'' box and click ''SEARCH.'' Click on ''Submit a Comment'' on the line associated with this rulemaking.

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 may change the rule based on your comments.

2. Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* type the docket number (USCG–2012–0427) in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. We have an agreement with the Department of Transportation to use the Docket Management Facility.

3. Privacy Act

Anyone can search the electronic form of 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 a Privacy Act notice regarding our public dockets in the January 17, 2008, issue of the **Federal Register** (73 FR 3316).

4. Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for one using one of the four methods specified under **ADDRESSES**. Please explain why you believe a public meeting would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

B. Basis and Purpose

On July 31, 2012 through August 4, 2012 with inclement weather dates of August 5, 2012 through August 9, 2012, PCL Civil Construction, Inc will remove the existing bascule spans from the Gilmerton Bridge, transport the new center span from the Eastern Branch of the Elizabeth River at the Campostella Bridge to the Southern Branch of the Elizabeth River at the Gilmerton Bridge in Norfolk, Portsmouth, and Chesapeake, VA and place the center span at the Gilmerton Bridge in Chesapeake, VA. This movement is scheduled to begin at 6 a.m. on July 31, 2012, weather permitting. Because of the size of the Barge and the width of the waterway, vessels will not be able to transit around the Barge, necessitating closure of the entire waterway to the Gilmerton Bridge. Due to the need to protect mariners and the public transiting the Elizabeth River from hazards associated with the span move and construction of span placement, the Coast Guard believes a moving safety zone and an extended waterway closure at the Gilmerton Bridge is necessary. Access to this area would be restricted for public safety purposes.

C. Discussion of Proposed Rule

The Coast Guard proposes to establish a temporary moving safety zone around the Gilmerton Bridge Center Span barge, restricting vessels operating in the Navigable Waters on the Elizabeth River of the United States from the Campostella Bridge located in the Eastern Branch of the Elizabeth River to

the confluence of the Esatern Branch and the Southern Branch of the Elizabeth River, upriver, through the Southern Branch of the Elizabeth River to the Gilmerton Bridge. However, the Coast Guard will reopen the down river portions of the waterway as the barge transits upriver. The transit is expected to take approximately seven hours. This action is necessary to ensure the safety of PCL Construction and vessels immediately prior to, during, and following the transit of the span.

In addition, to the moving safety zone, we propose to establish a safety zone at the Gilmerton Bridge starting at 6 a.m. on July 31, 2012, weather permitting, until work is completed on the placement of the center span on the Gilmerton Bridge, estimated closure of the waterway to all vessel traffic at the Gilmerton Bridge is until August 4, 2012, with inclement weather dates of August 5, 2012 through August 9, 2012. During the removal of the existing structures and installation of the new bridge span there is a danger of falling debris. Additionally, PCL Construction will be using construction equipment that will obstruct the waterway immediately under and adjacent to the Gilmerton Bridge. This safety zone is proposed in the interest of public safety during span placement at the Gilmerton Bridge and will be enforced from 6 a.m. on July 31, 2012, weather permitting, until August 4, 2012, with inclement weather dates of August 5, 2012 through August 9, 2012. Access to the safety zone would be restricted during the specified dates. Except for vessels authorized by the Captain of the Port or his Representative, no person or vessel may enter or remain in the safety zone. Coast Guard Captain of the Port will give notice of the enforcement of the safety zone by all appropriate means to provide the widest dissemination of notice among the affected segments of the public. This will include publication in the Local Notice to Mariners and Marine Information Broadcasts. Marine information and facsimile broadcasts may also be made for these events, beginning 24 to 48 hours before the event.

D. Regulatory Analyses

We developed this proposed 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.

1. Regulatory Planning and Review

This proposed rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders. The primary impact of these regulations will be on vessels wishing to transit the affected waterways during the moving safety zone accompanying the Gilmerton Bridge Span Barge and the safety zone at the Gilmerton Bridge beginning at 6 a.m. on July 31, 2012 through August 4, 2012, with inclement weather dates of August 5, 2012 through August 9, 2012. Although these regulations prevent traffic from transiting a portion of the Elizabeth River during these events, that restriction is limited in duration, affects only a limited area, and will be well publicized to allow mariners to make alternative plans for transiting the affected area. This regulation is designed to ensure such transit is conducted in a safe and orderly fashion.

2. Impact Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered the impact of this proposed rule on small entities. The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule will not have a significant economic impact on a substantial number of small entities. This proposed rule would affect the following entities, some of which might be small entities: the owners or operators of vessels intending to operate or anchor in portions of the Elizabeth River, in Virginia. The regulations would not have a significant impact on a substantial number of small entities for the following reasons: The restrictions are limited in duration, affect only limited areas, and will be well publicized to allow mariners to make alternative plans for transiting the affected areas.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

3. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so that they can 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 contact LCDR Hector Cintron, Waterways Management Division Chief, Sector Hampton Roads, Coast Guard; telephone 757–668–5581, email *Hector.L.Cintron@uscg.mil.* The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

4. Collection of Information

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

5. 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 proposed rule under that Order and have determined that it does not have implications for federalism.

6. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

7. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 (adjusted for inflation) or more in any one year. Though this proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

8. Taking of Private Property

This proposed rule would 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.

9. Civil Justice Reform

This proposed 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.

10. Protection of Children

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

11. Indian Tribal Governments

This proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would 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.

12. Energy Effects

We have analyzed this proposed 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.

13. Technical Standards

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

14. Environment

We have analyzed this proposed 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 made a preliminary determination that this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded from further review under paragraph 34(g) of Figure 2–1 of the Commandant Instruction. Upon receipt of consultation comments all documentation will be made available in the docket where indicated under **ADDRESSES**. This proposed rule involves establishing a temporary safety zone. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

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 proposes to amend 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 § 165.T05–0427 to read as follows:

165.T05–0427 Safety Zone; Gilmerton Bridge Center Span Float-in, Elizabeth River; Norfolk, Portsmouth, and Chesapeake, Virginia.

(a) *Regulated Area.* The following area is a safety zone:

Regulated Area 1—All waters of the Eastern Branch of the Elizabeth River within 400 feet astern the Gilmerton Bridge Center Span Barge extending to the entrance of the Southern Branch of the Elizabeth River and then continuing upriver in the Southern Branch of Elizabeth River to the Gilmerton Bridge in the vicinity of Norfolk, Portsmouth and Chesapeake, VA. As the Gilmerton Bridge Center Span Barge transits through the waterway, the down river portions of the waterway will reopen.

Regulated Area 2-All waters of the Southern Branch of the Elizabeth River within 400 feet of the existing Gilmerton Bridge in the vicinity of Chesapeake, VA.

(b) *Definition:* For the purposes of this part, *Captain of the Port Representative* means any U.S. Coast Guard commissioned, warrant or petty officer who has been authorized by the Captain of the Port, Hampton Roads, Virginia to act on his behalf.

(c) *Regulations:*

(1) In accordance with the general regulations in 165.23 of this part, entry into this zone is prohibited unless authorized by the Captain of the Port, Hampton Roads or his designated representatives.

(2) The operator of any vessel in the immediate vicinity of this safety zone shall:

(i) Stop the vessel immediately upon being directed to do so by any commissioned, warrant or petty officer on shore or on board a vessel that is displaying a U.S. Coast Guard Ensign.

(ii) Proceed as directed by any commissioned, warrant or petty officer on shore or on board a vessel that is displaying a U.S. Coast Guard Ensign.

(3) The Captain of the Port, Hampton Roads can be reached through the Sector Duty Officer at Sector Hampton Roads in Portsmouth, Virginia at telephone Number (757) 668–5555.

(4) The Coast Guard Representatives enforcing the safety zone can be contacted on VHF–FM marine band radio channel 13 (165.65Mhz) and channel 16 (156.8 Mhz).

(d) Enforcement Period: This regulation will be enforced starting at 6 a.m. on July 31, 2012 through August 4, 2012, with inclement weather dates of August 5, 2012 through August 9, 2012.

Dated: May 31, 2012.

Mark S. Ogle,

Captain, U.S. Coast Guard, Captain of the Port Hampton Roads.

[FR Doc. 2012–14645 Filed 6–14–12; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2012–0432]

RIN 1625–AA00

Safety Zone, Atlantic Intracoastal Waterway; Emerald Isle, NC

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish a temporary safety zone on the waters of the Atlantic Intracoastal Waterway at Emerald Isle, North Carolina. The safety zone would temporarily restrict vessel movement. The safety zone is necessary to provide for the safety of mariners on navigable waters during maintenance of the NC 58 Fixed Bridge crossing the Atlantic Intracoastal Waterway, mile 226, at Emerald Isle, North Carolina.

DATES: Comments and related material must be received by the Coast Guard on or before July 16, 2012.

ADDRESSES: You may submit comments identified by docket number using any one of the following methods:

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

(2) *Fax:* 202–493–2251.

(3) *Mail or Delivery:* Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590–0001. Deliveries accepted between 9 a.m. and 5 p.m., Monday through Friday, except federal holidays. The telephone number is 202–366–9329.

See the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section below for further instructions on submitting comments. To avoid duplication, please use only one of these three methods.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email CWO3 Joseph M. Edge, U.S. Coast Guard Sector North Carolina; telephone 252–247–4525, email *Joseph.M.Edge@uscg.mil.* If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

DHS Department of Homeland Security
FR **Federal Register**
NPRM Notice of Proposed Rulemaking

A. Public Participation and Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted without change to *http://www.regulations.gov* and will include any personal information you have provided.

1. Submitting Comments

If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online at *http://www.regulations.gov,* or by fax, mail, or hand delivery, but please use only one of these means. If you submit a comment online, 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 Docket Management Facility. We recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov,* type the docket number (USCG–2012–0432) in the ''SEARCH'' box and click ''SEARCH.'' Click on ''Submit a Comment'' on the line associated with this rulemaking.

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 may change the rule based on your comments.

2. Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* type the docket number (USCG–2012–0432) in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

3. Privacy Act

Anyone can search the electronic form of 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 a Privacy Act notice regarding our public dockets in the January 17, 2008, issue of the **Federal Register** (73 FR 3316).

4. Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for one, using one of the methods specified under **ADDRESSES**. Please explain why you believe a public meeting would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

B. Basis and Purpose

North Carolina Department of Transportation has contracted Marine Contracting Corporation of Virginia Beach, Virginia to perform bridge maintenance on the NC 58 Fixed Bridge crossing the Atlantic Intracoastal Waterway, mile 226, at Emerald Isle, North Carolina. The contract provides for replacement of the fender system to commence on September 12, 2012 with a completion date of December 12, 2012. The contractor will utilize a 140 foot deck barge with a 40 foot beam as a work platform and for equipment staging. This safety zone is necessary to provide a safety buffer for transiting vessels as bridge repairs present potential hazards to mariners and property due to reduction of horizontal clearance. During this period the Coast Guard believes it is necessary to require a one hour notification to the work supervisor at NC 58 Fixed Bridge, Atlantic Intracoastal Waterway crossing, mile 226, Emerald Isle, North Carolina. The notification requirement would apply during the maintenance period for vessels requiring a horizontal clearance of greater than 50 feet.

C. Discussion of Proposed Rule

The proposed temporary safety zone will encompass the waters directly under the NC 58 Fixed Bridge crossing the Atlantic Intracoastal Waterway, mile 226, at Emerald Isle, North Carolina (34°40′28″ N, 077°03′56″ W). All vessels transiting this section of the waterway requiring a horizontal clearance of greater than 50 feet will be required to make a one hour advanced notification to the work supervisor at the NC 58 Fixed Bridge while the safety zone is in effect. This zone will be in effect from 8 a.m. September 12, 2012 through 8 p.m. December 12, 2012.

D. Regulatory Analyses

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

1. Regulatory Planning and Review

This proposed rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and

does not require an assessment of potential costs and benefits under section 6(a)(3) of Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders. This rule does not restrict traffic from transiting a portion of the Atlantic Intracoastal Waterway; it imposes a one hour notification to ensure the waterway is clear of impediment to allow passage to vessels requiring a horizontal clearance of greater than 50 feet.

2. Impact on Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered the impact of this proposed rule on small entities. The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule will not have a significant economic impact on a substantial number of small entities. This proposed rule would affect the following entities, some of which may be small entities: the owners or operators of commercial tug and barge companies, recreational and commercial fishing vessels intending to transit the specified portion of Atlantic Intracoastal Waterway from 8 a.m. September 12, 2012 through 8 p.m. December 12, 2012.

This safety zone would not have a significant economic impact on a substantial number of small entities for the following reasons. Although the safety zone will apply to this section of the Atlantic Intracoastal Waterway, vessel traffic will be able to request passage by providing a one hour advanced notification. Before the effective period, the Coast Guard will issue maritime advisories widely available to the users of the waterway. If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

3. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT**, above. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

4. Collection of Information

This proposed rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520.).

5. Federalism

A rule has implications for federalism 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 analyzed this proposed rule under that Order and determined that this rule does not have implications for federalism.

6. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

7. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 (adjusted for inflation) or more in any one year. Though this proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

8. Taking of Private Property

This proposed rule would 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.

9. Civil Justice Reform

This proposed 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.

10. Protection of Children From Environmental Health Risks

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

11. Indian Tribal Governments

This proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would 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.

12. Energy Effects

This proposed rule is not a ''significant energy action'' under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use 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.

13. Technical Standards

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

14. Environment

We have analyzed this proposed 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 made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This proposed rule involves the establishment of a temporary safety zone. This rule is categorically excluded from further review under paragraph 34(g) of Figure 2–1 of the Commandant Instruction. A preliminary environmental analysis

checklist supporting this determination and a Categorical Exclusion Determination are available in the docket where indicated under **ADDRESSES**. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

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 proposes to amend 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 § 165.T05–0432 to read as follows:

§ 165.T05–0432 Safety Zone; Atlantic Intracoastal Waterway, Emerald Isle, NC.

(a) *Regulated Area.* The following area is a safety zone: This zone includes the waters directly under and 100 yards either side of the NC 58 Fixed Bridge crossing the Atlantic Intracoastal Waterway, mile 226, at Emerald Isle, North Carolina (latitude 34°40′28″ N, longitude 077°03′56″ W).

(b) *Regulations.* The general safety zone regulations found in 33 CFR 165.23 apply to the safety zone created by this temporary section, § 165.T05–0432. In addition the following regulations apply:

(1) All vessels and persons are prohibited from entering this zone, except as authorized by the Coast Guard Captain of the Port North Carolina.

(2) All vessels requiring greater than 50 feet horizontal clearance to safely transit through the NC 58 Fixed Bridge crossing the Atlantic Intracoastal Waterway, mile 226, at Emerald Isle, North Carolina must contact the work supervisor on VHF–FM marine band radio channels 13 and 16 one hour in advance of intended transit.

(3) Persons or vessels requiring entry into or passage within the zone must request authorization from the Captain of the Port North Carolina or his designated representative by telephone at (910) 343–3882 or on VHF–FM marine band radio channel 16.

(4) All Coast Guard assets enforcing this safety zone can be contacted on VHF–FM marine band radio channels 13 and 16.

(5) The operator of any vessel within or in the immediate vicinity of this safety zone shall:

(i) Stop the vessel immediately upon being directed to do so by any commissioned, warrant or petty officer on board a vessel displaying a Coast Guard Ensign, and

(ii) Proceed as directed by any commissioned, warrant or petty officer on board a vessel displaying a Coast Guard Ensign.

(c) *Definitions.*

(1) *Captain of the Port North Carolina* means the Commander, Coast Guard Sector North Carolina or any Coast Guard commissioned, warrant or petty officer who has been authorized by the Captain of the Port to act on his behalf.

(2) *Designated representative* means any Coast Guard commissioned, warrant, or petty officer who has been authorized by the Captain of the Port North Carolina to assist in enforcing the safety zone described in paragraph (a) of this section.

(d) *Enforcement.* The U.S. Coast Guard may be assisted by Federal, State and local agencies in the patrol and enforcement of the zone.

(e) *Enforcement period.* This section will be enforced from 8 a.m. September 12, 2012 through 8 p.m. December 12, 2012 unless cancelled earlier by the Captain of the Port.

Dated: May 29, 2012.

A. Popiel,

Captain, U.S. Coast Guard, Captain of the Port, U.S. Coast Guard Sector North Carolina.

[FR Doc. 2012–14643 Filed 6–14–12; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2012–0431]

RIN 1625–AA00

Safety Zone, Atlantic Intracoastal Waterway; Oak Island, NC

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish a temporary safety zone on the waters of the Atlantic Intracoastal Waterway at Oak Island, North Carolina. The safety zone will temporarily restrict vessel movement. The safety zone is necessary to provide for the safety of mariners on navigable waters during maintenance of the NC 133 Fixed Bridge crossing the Atlantic Intracoastal Waterway, mile 311.8, at Oak Island, North Carolina.

DATES: Comments and related material must be received by the Coast Guard on or before July 16, 2012.

ADDRESSES: You may submit comments identified by docket number using any one of the following methods:

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

(2) *Fax:* 202–493–2251.

(3) *Mail or Delivery:* Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590–0001. Deliveries accepted between 9 a.m. and 5 p.m., Monday through Friday, except federal holidays. The telephone number is 202–366–9329.

See the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section below for further instructions on submitting comments. To avoid duplication, please use only one of these three methods.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email CWO3 Joseph M. Edge, U.S. Coast Guard Sector North Carolina; telephone 252–247–4525, email *Joseph.M.Edge@uscg.mil.* If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

DHS Department of Homeland Security
FR **Federal Register**
NPRM Notice of Proposed Rulemaking

A. Public Participation and Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted without change to *http://www.regulations.gov* and will include any personal information you have provided.

1. Submitting Comments

If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online at *http://www.regulations.gov,* or by fax, mail, or

hand delivery, but please use only one of these means. If you submit a comment online, 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 Docket Management Facility. We recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov,* type the docket number (USCG–2012–0431) in the ''SEARCH'' box and click ''SEARCH.'' Click on ''Submit a Comment'' on the line associated with this rulemaking.

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 may change the rule based on your comments.

2. Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* type the docket number (USCG–2012–0431) in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

3. Privacy Act

Anyone can search the electronic form of 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 a Privacy Act notice regarding our public dockets in the January 17, 2008, issue of the **Federal Register** (73 FR 3316).

4. Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for one, using one of the methods specified under **ADDRESSES**. Please explain why you believe a public meeting would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

B. Basis and Purpose

North Carolina Department of Transportation has awarded a contract to Marine Contracting Corporation of Virginia Beach, Virginia to perform bridge maintenance on the NC 133 Fixed Bridge crossing the Atlantic Intracoastal Waterway, mile 311.8, at Oak Island, North Carolina. The contract provides for replacing the fender system to commence on September 12, 2012 with a completion date of December 12, 2012. The contractor will utilize a 140 foot deck barge with a 40 foot beam as a work platform and for equipment staging. A safety zone is necessary to provide a safety buffer to transiting vessels as bridge repairs present potential hazards to mariners and property due to reduction of horizontal clearance. We believe it is necessary to require a one hour notification to the work supervisor at the NC 133 Fixed Bridge at the Atlantic Intracoastal Waterway crossing, mile 311.8, Oak Island, North Carolina. The notification requirement would apply during the maintenance period for vessels requiring a horizontal clearance of greater than 50 feet.

C. Discussion of Proposed Rule

The proposed temporary safety zone will encompass the waters directly under the NC 133 Fixed Bridge crossing the Atlantic Intracoastal Waterway, mile 311.8, at Oak Island, North Carolina (33°55′18″ N/078°04′22″ W). All vessels transiting this section of the waterway requiring a horizontal clearance of greater than 50 feet will be required to make a one hour advanced notification to the work supervisor at the NC 133 Fixed Bridge while the safety zone is in effect. This zone will be in effect from 8 a.m. September 12, 2012 through 8 p.m. December 12, 2012.

D. Regulatory Analyses

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

1. Regulatory Planning and Review

This proposed rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders. This rule does not restrict traffic from transiting a portion of the Atlantic Intracoastal Waterway, it imposes a one hour notification to ensure the waterway is clear of impediment to allow passage to vessels requiring a horizontal clearance of greater than 50 feet.

2. Impact on Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered the impact of this proposed rule on small entities. The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule will not have a significant economic impact on a substantial number of small entities. This proposed rule would affect the following entities, some of which may be small entities: The owners or operators of commercial tug and barge companies, recreational and commercial fishing vessels intending to transit the specified portion of Atlantic Intracoastal Waterway from 8 a.m. September 12, 2012 through 8 p.m. December 12, 2012.

This safety zone would not have a significant economic impact on a substantial number of small entities for the following reasons. Although the safety zone will apply to this section of the Atlantic Intracoastal Waterway, vessel traffic will be able to request passage by providing a one hour advanced notification. Before the effective period, the Coast Guard will issue maritime advisories widely available to the users of the waterway. If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

3. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule. If the

rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT**, above. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

4. Collection of Information

This proposed rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520.).

5. Federalism

A rule has implications for federalism 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 analyzed this proposed rule under that Order and determined that this rule does not have implications for federalism.

6. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the ''For Further Information Contact'' section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

7. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 (adjusted for inflation) or more in any one year. Though this proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

8. Taking of Private Property

This proposed rule would 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.

9. Civil Justice Reform

This proposed 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.

10. Protection of Children From Environmental Health Risks

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

11. Indian Tribal Governments

This proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would 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.

12. Energy Effects

This proposed rule is not a ''significant energy action'' under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use 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.

13. Technical Standards

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

14. Environment

We have analyzed this proposed 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 made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This proposed rule involves the establishment of a temporary safety zone. This rule is categorically excluded from further review under paragraph 34(g) of Figure 2–1 of the Commandant Instruction. A preliminary environmental analysis checklist supporting this determination and a Categorical Exclusion Determination are available in the docket where indicated under **ADDRESSES**. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

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 proposes to amend 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 § 165.T05–0431 to read as follows:

§ 165.T05–0431 Safety Zone; Atlantic Intracoastal Waterway, Oak Island, NC.

(a) Regulated Area. The following area is a safety zone: This zone includes the waters directly under and 100 yards either side of the NC 133 Fixed Bridge crossing the Atlantic Intracoastal Waterway, mile 311.8, at Oak Island, North Carolina (33°55′18″ N/078°04′22″ W).

(b) Regulations. The general safety zone regulations found in 33 CFR 165.23 apply to the safety zone created by this temporary section, § 165.T05–0431. In addition the following regulations apply:

(1) All vessels and persons are prohibited from entering this zone, except as authorized by the Coast Guard Captain of the Port North Carolina.

(2) All vessels requiring greater than 50 feet horizontal clearance to safely transit through the NC 133 Fixed Bridge crossing the Atlantic Intracoastal Waterway, mile 311.8, at Oak Island, North Carolina must contact the work supervisor on VHF–FM marine band radio channels 13 and 16 one hour in advance of intended transit.

(3) Persons or vessels requiring entry into or passage within the zone must

request authorization from the Captain of the Port North Carolina or his designated representative by telephone at (910) 343–3882 or on VHF–FM marine band radio channel 16.

(4) All Coast Guard assets enforcing this safety zone can be contacted on VHF–FM marine band radio channels 13 and 16.

(5) The operator of any vessel within or in the immediate vicinity of this safety zone shall: (i) Stop the vessel immediately upon being directed to do so by any commissioned, warrant or petty officer on board a vessel displaying a Coast Guard Ensign, and

(ii) Proceed as directed by any commissioned, warrant or petty officer on board a vessel displaying a Coast Guard Ensign.

(c) Definitions.

(1) Captain of the Port North Carolina means the Commander, Coast Guard Sector North Carolina or any Coast Guard commissioned, warrant or petty officer who has been authorized by the Captain of the Port to act on his behalf.

(2) Designated representative means any Coast Guard commissioned, warrant, or petty officer who has been authorized by the Captain of the Port North Carolina to assist in enforcing the safety zone described in paragraph (a) of this section.

(d) Enforcement. The U.S. Coast Guard may be assisted by Federal, State and local agencies in the patrol and enforcement of the zone.

(e) Enforcement period. This section will be enforced from 8 a.m. September 12, 2012 through 8 p.m. December 12, 2012 unless cancelled earlier by the Captain of the Port.

Dated: May 29, 2012.

A. Popiel,

Captain, U.S. Coast Guard Captain of the Port Sector North Carolina.

[FR Doc. 2012–14639 Filed 6–14–12; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2010–1012; FRL–9683–2]

Approval and Promulgation of Implementation Plans; Georgia; 110(a)(1) and (2) Infrastructure Requirements for the 1997 and 2006 Fine Particulate Matter National Ambient Air Quality Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve the State Implementation Plans (SIPs), submitted by the State of Georgia, through the Georgia Department of Natural Resources' Environmental Protection Division (EPD), as demonstrating that the State meets the requirements of sections 110(a)(1) and (2) of the Clean Air Act (CAA or the Act) for the 1997 annual and 2006 24-hour fine particulate matter ($PM_{2.5}$) national ambient air quality standards (NAAQS). Section 110(a) of the CAA requires that each state adopt and submit a SIP for the implementation, maintenance, and enforcement of each NAAQS promulgated by the EPA, which is commonly referred to as an ''infrastructure'' SIP. Georgia certified that the Georgia SIP contains provisions that ensure the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS is implemented, enforced, and maintained in Georgia (hereafter referred to as ''infrastructure submission''). EPA is proposing to determine that Georgia's infrastructure submissions, provided to EPA on July 23, 2008, and on October 21, 2009, addressed all the required infrastructure elements for the for the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS.

DATES: Written comments must be received on or before July 16, 2012.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R04–OAR–2010–1012, by one of the following methods:

1. *www.regulations.gov:* Follow the on-line instructions for submitting comments.
2. *Email: R4-RDS@epa.gov.*
3. *Fax:* (404) 562–9019.
4. *Mail:* ''EPA–R04–OAR–2010–1012,'' Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960.
5. *Hand Delivery or Courier:* Lynorae Benjamin, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding federal holidays.

Instructions: Direct your comments to Docket ID No. EPA–R04–OAR–2010–1012. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit through *www.regulations.gov* or email, information that you consider to be CBI or otherwise protected. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through *www.regulations.gov,* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

Docket: All documents in the electronic docket are listed in the *www.regulations.gov* index. 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 in *www.regulations.gov* or in hard copy at the Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. EPA requests that if at all possible, you contact the person 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 federal holidays.

FOR FURTHER INFORMATION CONTACT: Sean Lakeman, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection

Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. The telephone number is (404) 562–9043. Mr. Lakeman can be reached via electronic mail at *lakeman.sean@epa.gov.*

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Background
II. What elements are required under sections 110(a)(1) and (2)?
III. Scope of Infrastructure SIPs
IV. What is EPA's analysis of how Georgia addressed the elements of sections 110(a)(1) and (2) ''Infrastructure'' provisions?
V. Proposed Action
VI. Statutory and Executive Order Reviews

I. Background

On July 18, 1997 (62 FR 36852), EPA established an annual $PM_{2.5}$ NAAQS at 15.0 micrograms per cubic meter (μg/m³) based on a 3-year average of annual mean $PM_{2.5}$ concentrations. At that time, EPA also established a 24-hour NAAQS of 65 μg/m³. *See* 40 CFR 50.7. On October 17, 2006 (71 FR 61144), EPA retained the 1997 annual $PM_{2.5}$ NAAQS at 15.0 μg/m³ based on a 3-year average of annual mean $PM_{2.5}$ concentrations, and promulgated a new 24-hour NAAQS of 35 μg/m³ based on a 3-year average of the 98th percentile of 24-hour concentrations. By statute, SIPs meeting the requirements of sections 110(a)(1) and (2) are to be submitted by states within three years after promulgation of a new or revised NAAQS. Sections 110(a)(1) and (2) require states to address basic SIP requirements, including emissions inventories, monitoring, and modeling to assure attainment and maintenance of the NAAQS. States were required to submit such SIPs to EPA no later than July 2000 for the 1997 annual $PM_{2.5}$ NAAQS, no later than October 2009 for the 2006 24-hour $PM_{2.5}$ NAAQS.

On March 4, 2004, Earthjustice submitted a notice of intent to sue related to EPA's failure to issue findings of failure to submit related to the ''infrastructure'' requirements for the 1997 annual $PM_{2.5}$ NAAQS. On March 10, 2005, EPA entered into a consent decree with Earthjustice which required EPA, among other things, to complete a **Federal Register** notice announcing EPA's determinations pursuant to section 110(k)(1)(B) as to whether each state had made complete submissions to meet the requirements of section 110(a)(2) for the 1997 $PM_{2.5}$ NAAQS by October 5, 2008. In accordance with the consent decree, EPA made completeness findings for each state based upon what the Agency received from each state for the 1997 $PM_{2.5}$ NAAQS as of October 3, 2008.

On October 22, 2008, EPA published a final rulemaking entitled, ''Completeness Findings for Section 110(a) State Implementation Plans Pertaining to the Fine Particulate Matter ($PM_{2.5}$) NAAQS'' making a finding that each state had submitted or failed to submit a complete SIP that provided the basic program elements of section 110(a)(2) necessary to implement the 1997 $PM_{2.5}$ NAAQS (*See* 73 FR 62902). For those states that did receive findings, the findings of failure to submit for all or a portion of a state's implementation plan established a 24-month deadline for EPA to promulgate a Federal Implementation Plan (FIP) to address the outstanding SIP elements unless, prior to that time, the affected states submitted, and EPA approved, the required SIPs.

The findings that all or portions of a state's submission are complete established a 12-month deadline for EPA to take action upon the complete SIP elements in accordance with section 110(k). Georgia's infrastructure submissions were received by EPA on July 23, 2008, for the 1997 annual $PM_{2.5}$ NAAQS and on October 21, 2009, for the 2006 24-hour $PM_{2.5}$ NAAQS. The submissions were determined to be complete on January 23, 2009, and April 21, 2010, respectively. Georgia was among other states that did not receive findings of failure to submit because it had provided a complete submission to EPA to address the infrastructure elements for the 1997 $PM_{2.5}$ NAAQS by October 3, 2008.

On July 6, 2011, WildEarth Guardians and Sierra Club filed an amended complaint related to EPA's failure to take action on the SIP submittal related to the ''infrastructure'' requirements for the 2006 24-hour $PM_{2.5}$ NAAQS. On October 20, 2011, EPA entered into a consent decree with WildEarth Guardians and Sierra Club which required EPA, among other things, to complete a **Federal Register** notice of the Agency's final action either approving, disapproving, or approving in part and disapproving in part the Georgia 2006 24-hour $PM_{2.5}$ NAAQS Infrastructure SIP submittal addressing the applicable requirements of sections 110(a)(2)(A)–(H), (J)–(M), except for section 110(a)(2)(C) the nonattainment area requirements and section 110(a)(2)(D)(i) interstate transport requirements, by September 30, 2012.

Today's action is proposing to approve Georgia's infrastructure submission for the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS for sections 110(a)(2)(A)–(H), (J)–(M), except for section 110(a)(2)(C) nonattainment area requirements and section 110(a)(2)(D)(i) interstate transport requirements. This action is not approving any specific rule, but rather proposing that Georgia's already approved SIP meets certain CAA requirements.

II. What elements are required under Sections 110(a)(1) and (2)?

Section 110(a) of the CAA requires states to submit SIPs to provide for the implementation, maintenance, and enforcement of a new or revised NAAQS within three years following the promulgation of such NAAQS, or within such shorter period as EPA may prescribe. Section 110(a) imposes the obligation upon states to make a SIP submission to EPA for a new or revised NAAQS, but the contents of that submission may vary depending upon the facts and circumstances. In particular, the data and analytical tools available at the time the state develops and submits the SIP for a new or revised NAAQS affects the content of the submission. The contents of such SIP submissions may also vary depending upon what provisions the state's existing SIP already contains. In the case of the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS, some states may need to adopt language specific to the $PM_{2.5}$ NAAQS to ensure that they have adequate SIP provisions to implement the $PM_{2.5}$ NAAQS.

Section 110(a)(1) provides the procedural and timing requirements for SIPs. Section 110(a)(2) lists specific elements that states must meet for ''infrastructure'' SIP requirements related to a newly established or revised NAAQS. As mentioned above, these requirements include SIP infrastructure elements such as modeling, monitoring, and emissions inventories that are designed to assure attainment and maintenance of the NAAQS. The requirements that are the subject of this proposed rulemaking are listed below [1] and in EPA's October 2, 2007, memorandum entitled ''Guidance on

[1] Two elements identified in section 110(a)(2) are not governed by the three year submission deadline of section 110(a)(1) because SIPs incorporating necessary local nonattainment area controls are not due within three years after promulgation of a new or revised NAAQS, but rather due at the time the nonattainment area plan requirements are due pursuant to section 172. These requirements are: (1) Submissions required by section 110(a)(2)(C) to the extent that subsection refers to a permit program as required in part D Title I of the CAA, and (2) submissions required by section 110(a)(2)(I) which pertain to the nonattainment planning requirements of part D, Title I of the CAA. Today's proposed rulemaking does not address infrastructure elements related to section 110(a)(2)(I) but does provide detail on how Georgia's SIP addresses 110(a)(2)(C).

SIP Elements Required Under Section 110(a)(1) and (2) for the 1997 8-Hour Ozone and $PM_{2.5}$ National Ambient Air Quality Standards'' and September 25, 2009, memorandum entitled ''Guidance on SIP Elements Required Under Section 110(a)(1) and (2) for the 2006 24-Hour Fine Particle ($PM_{2.5}$) National Ambient Air Quality Standards.''

- 110(a)(2)(A): Emission limits and other control measures.
- 110(a)(2)(B): Ambient air quality monitoring/data system.
- 110(a)(2)(C): Program for enforcement of control measures.[2]
- 110(a)(2)(D): Interstate transport.[3]
- 110(a)(2)(E): Adequate resources.
- 110(a)(2)(F): Stationary source monitoring system.
- 110(a)(2)(G): Emergency power.
- 110(a)(2)(H): Future SIP revisions.
- 110(a)(2)(I): Areas designated nonattainment and meet the applicable requirements of part D.[4]
- 110(a)(2)(J): Consultation with government officials; public notification; and PSD and visibility protection.
- 110(a)(2)(K): Air quality modeling/data.
- 110(a)(2)(L): Permitting fees.
- 110(a)(2)(M): Consultation/participation by affected local entities.

III. Scope of Infrastructure SIPs

EPA is currently acting upon SIPs that address the infrastructure requirements of CAA section 110(a)(1) and (2) for ozone and $PM_{2.5}$ NAAQS for various states across the country. Commenters on EPA's recent proposals for some states raised concerns about EPA statements that it was not addressing certain substantive issues in the context of acting on those infrastructure SIP submissions.[5] Those Commenters specifically raised concerns involving provisions in existing SIPs and with EPA's statements in other proposals that it would address two issues separately and not as part of actions on the infrastructure SIP submissions: (i) Existing provisions related to excess emissions during periods of start-up, shutdown, or malfunction (SSM) at sources, that may be contrary to the CAA and EPA's policies addressing such excess emissions; and (ii) existing provisions related to ''director's variance'' or ''director's discretion'' that purport to permit revisions to SIP approved emissions limits with limited public process or without requiring further approval by EPA, that may be contrary to the CAA (''director's discretion''). EPA notes that there are two other substantive issues for which EPA likewise stated in other proposals that it would address the issues separately: (i) existing provisions for minor source new source review (NSR) programs that may be inconsistent with the requirements of the CAA and EPA's regulations that pertain to such programs (''minor source NSR''); and (ii) existing provisions for Prevention of Significant Deterioration (PSD) programs that may be inconsistent with current requirements of EPA's ''Final NSR Improvement Rule,'' 67 FR 80186 (December 31, 2002), as amended by 72 FR 32526 (June 13, 2007) (''NSR Reform''). In light of the comments, EPA believes that its statements in various proposed actions on infrastructure SIPs with respect to these four individual issues should be explained in greater depth. It is important to emphasize that EPA is taking the same position with respect to these four substantive issues in this action on the infrastructure SIPs for the 1997 and 2006 $PM_{2.5}$ NAAQS from Georgia.

EPA intended the statements in the other proposals concerning these four issues merely to be informational and to provide general notice of the potential existence of provisions within the existing SIPs of some states that might require future corrective action. EPA did not want states, regulated entities, or members of the public to be under the misconception that the Agency's approval of the infrastructure SIP submission of a given state should be interpreted as a re-approval of certain types of provisions that might exist buried in the larger existing SIP for such state. Thus, for example, EPA explicitly noted that the Agency believes that some states may have existing SIP approved SSM provisions that are contrary to the CAA and EPA policy, but that ''in this rulemaking, EPA is not proposing to approve or disapprove any existing state provisions with regard to excess emissions during SSM of operations at facilities.'' EPA further explained, for informational purposes, that ''EPA plans to address such State regulations in the future.'' EPA made similar statements, for similar reasons, with respect to the director's discretion, minor source NSR, and NSR Reform issues. EPA's objective was to make clear that approval of an infrastructure SIP for these ozone and $PM_{2.5}$ NAAQS should not be construed as explicit or implicit re-approval of any existing provisions that relate to these four substantive issues. EPA is reiterating that position in this action on the infrastructure SIP for Georgia.

Unfortunately, the Commenters and others evidently interpreted these statements to mean that EPA considered action upon the SSM provisions and the other three substantive issues to be integral parts of acting on an infrastructure SIP submission, and therefore that EPA was merely postponing taking final action on the issues in the context of the infrastructure SIPs. This was not EPA's intention. To the contrary, EPA only meant to convey its awareness of the potential for certain types of deficiencies in existing SIPs and to prevent any misunderstanding that it was reapproving any such existing provisions. EPA's intention was to convey its position that the statute does not require that infrastructure SIPs address these specific substantive issues in existing SIPs and that these issues may be dealt with separately, outside the context of acting on the infrastructure SIP submission of a state. To be clear, EPA did not mean to imply that it was not taking a full final agency action on the infrastructure SIP submission with respect to any substantive issue that EPA considers to be a required part of acting on such submissions under section 110(k) or under section 110(c). Given the confusion evidently resulting from

[2] This rulemaking only addresses requirements for this element as they relate to attainment areas.

[3] Today's proposed rule does not address element 110(a)(2)(D)(i) (Interstate Transport) for the 1997 and 2006 $PM_{2.5}$ NAAQS. Interstate transport requirements were formerly addressed by Georgia consistent with the Clean Air Interstate Rule (CAIR). On December 23, 2008, CAIR was remanded by the D.C. Circuit Court of Appeals, without vacatur, back to EPA. *See North Carolina* v. *EPA,* 531 F.3d 896 (D.C. Cir. 2008). Prior to this remand, EPA took final action to approve Georgia SIP revision, which was submitted to comply with CAIR. *See* 72 FR 57202 (October 9, 2007). In so doing, Georgia CAIR SIP revision addressed the interstate transport provisions in section 110(a)(2)(D)(i) for the 1997 and 2006 $PM_{2.5}$ NAAQS. In response to the remand of CAIR, EPA has recently finalized a new rule to address the interstate transport of nitrogen oxides and sulfur oxides in the eastern United States. *See* 76 FR 48208 (August 8, 2011) (''the Transport Rule''). That rule was recently stayed by the D.C. Circuit Court of Appeals. EPA's action on element 110(a)(2)(D)(i) will be addressed in a separate action.

[4] This requirement was inadvertently omitted from EPA's October 2, 2007, memorandum entitled ''Guidance on SIP Elements Required Under Section 110(a)(1) and (2) for the 1997 8-Hour Ozone and $PM_{2.5}$ National Ambient Air Quality Standards,'' and the September 25, 2009, memorandum entitled ''Guidance on SIP Elements Required Under Section 110(a)(1) and (2) for the 2006 Fine Particle ($PM_{2.5}$) National Ambient Air Quality Standards,'' but as mentioned above is not relevant to today's proposed rulemaking.

[5] *See* Comments of Midwest Environmental Defense Center, dated May 31, 2011. Docket # EPA–R05–OAR–2007–1179 (adverse comments on proposals for three states in Region 5). EPA notes that these public comments on another proposal are not relevant to this rulemaking and do not have to be directly addressed in this rulemaking. EPA will respond to these comments in the appropriate rulemaking action to which they apply.

EPA's statements in those other proposals, however, we want to explain more fully the Agency's reasons for concluding that these four potential substantive issues in existing SIPs may be addressed separately from actions on infrastructure SIP submissions.

The requirement for the SIP submissions at issue arises out of CAA section 110(a)(1). That provision requires that states must make a SIP submission ''within 3 years (or such shorter period as the Administrator may prescribe) after the promulgation of a national primary ambient air quality standard (or any revision thereof)'' and that these SIPs are to provide for the ''implementation, maintenance, and enforcement'' of such NAAQS. Section 110(a)(2) includes a list of specific elements that ''[e]ach such plan'' submission must meet. EPA has historically referred to these particular submissions that states must make after the promulgation of a new or revised NAAQS as ''infrastructure SIPs.'' This specific term does not appear in the statute, but EPA uses the term to distinguish this particular type of SIP submission designed to address basic structural requirements of a SIP from other types of SIP submissions designed to address other different requirements, such as ''nonattainment SIP'' submissions required to address the nonattainment planning requirements of part D, ''regional haze SIP'' submissions required to address the visibility protection requirements of CAA section 169A, NSR permitting program submissions required to address the requirements of part D, and a host of other specific types of SIP submissions that address other specific matters.

Although section 110(a)(1) addresses the timing and general requirements for these infrastructure SIPs, and section 110(a)(2) provides more details concerning the required contents of these infrastructure SIPs, EPA believes that many of the specific statutory provisions are facially ambiguous. In particular, the list of required elements provided in section 110(a)(2) contains a wide variety of disparate provisions, some of which pertain to required legal authority, some of which pertain to required substantive provisions, and some of which pertain to requirements for both authority and substantive provisions.[6] Some of the elements of section 110(a)(2) are relatively straightforward, but others clearly require interpretation by EPA through rulemaking, or recommendations through guidance, in order to give specific meaning for a particular NAAQS.[7]

Notwithstanding that section 110(a)(2) provides that ''each'' SIP submission must meet the list of requirements therein, EPA has long noted that this literal reading of the statute is internally inconsistent, insofar as section 110(a)(2)(I) pertains to nonattainment SIP requirements that could not be met on the schedule provided for these SIP submissions in section 110(a)(1).[8] This illustrates that EPA must determine which provisions of section 110(a)(2) may be applicable for a given infrastructure SIP submission. Similarly, EPA has previously decided that it could take action on different parts of the larger, general ''infrastructure SIP'' for a given NAAQS without concurrent action on all subsections, such as section 110(a)(2)(D)(i), because the Agency bifurcated the action on these latter ''interstate transport'' provisions within section 110(a)(2) and worked with states to address each of the four prongs of section 110(a)(2)(D)(i) with substantive administrative actions proceeding on different tracks with different schedules.[9] This illustrates that EPA may conclude that subdividing the applicable requirements of section 110(a)(2) into separate SIP actions may sometimes be appropriate for a given NAAQS where a specific substantive action is necessitated, beyond a mere submission addressing basic structural aspects of the state's implementation plans. Finally, EPA notes that not every element of section 110(a)(2) would be relevant, or as relevant, or relevant in the same way, for each new or revised NAAQS and the attendant infrastructure SIP submission for that NAAQS. For example, the monitoring requirements that might be necessary for purposes of section 110(a)(2)(B) for one NAAQS could be very different than what might be necessary for a different pollutant. Thus, the content of an infrastructure SIP submission to meet this element from a state might be very different for an entirely new NAAQS, versus a minor revision to an existing NAAQS.[10]

Similarly, EPA notes that other types of SIP submissions required under the statute also must meet the requirements of section 110(a)(2), and this also demonstrates the need to identify the applicable elements for other SIP submissions. For example, nonattainment SIPs required by part D likewise have to meet the relevant subsections of section 110(a)(2) such as section 110(a)(2)(A) or (E). By contrast, it is clear that nonattainment SIPs would not need to meet the portion of section 110(a)(2)(C) that pertains to part C, *i.e.,* the PSD requirements applicable in attainment areas. Nonattainment SIPs required by part D also would not need to address the requirements of section 110(a)(2)(G) with respect to emergency episodes, as such requirements would not be limited to nonattainment areas. As this example illustrates, each type of SIP submission may implicate some subsections of section 110(a)(2) and not others.

Given the potential for ambiguity of the statutory language of section 110(a)(1) and (2), EPA believes that it is appropriate for EPA to interpret that language in the context of acting on the infrastructure SIPs for a given NAAQS. Because of the inherent ambiguity of the list of requirements in section 110(a)(2), EPA has adopted an approach in which it reviews infrastructure SIPs against this list of elements ''as applicable.'' In other words, EPA assumes that Congress could not have intended that each and every SIP submission, regardless of the purpose of the submission or the NAAQS in question, would meet each of the requirements, or meet each of them in the same way. EPA elected to use guidance to make recommendations for infrastructure SIPs for these ozone and $PM_{2.5}$ NAAQS.

[6] For example, section 110(a)(2)(E) provides that states must provide assurances that they have adequate legal authority under state and local law to carry out the SIP; section 110(a)(2)(C) provides that states must have a substantive program to address certain sources as required by part C of the CAA; section 110(a)(2)(G) provides that states must have both legal authority to address emergencies and substantive contingency plans in the event of such an emergency.

[7] For example, section 110(a)(2)(D)(i) requires EPA to be sure that each state's SIP contains adequate provisions to prevent significant contribution to nonattainment of the NAAQS in other states. This provision contains numerous terms that require substantial rulemaking by EPA in order to determine such basic points as what constitutes significant contribution. *See* ''Rule To Reduce Interstate Transport of Fine Particulate Matter and Ozone (Clean Air Interstate Rule); Revisions to Acid Rain Program; Revisions to the NO_X SIP Call; Final Rule,'' 70 FR 25162 (May 12, 2005) (defining, among other things, the phrase ''contribute significantly to nonattainment'').

[8] *See Id.,* 70 FR 25162, at 63–65 (May 12, 2005) (explaining relationship between timing requirement of section 110(a)(2)(D) versus section 110(a)(2)(I)).

[9] EPA issued separate guidance to states with respect to SIP submissions to meet section 110(a)(2)(D)(i) for the 1997 ozone and 1997 $PM_{2.5}$ NAAQS. *See* ''Guidance for State Implementation Plan (SIP) Submissions to Meet Current Outstanding Obligations Under Section 110(a)(2)(D)(i) for the 8-Hour Ozone and $PM_{2.5}$ National Ambient Air Quality Standards,'' from William T. Harnett, Director Air Quality Policy Division OAQPS, to Regional Air Division Director, Regions I–X, dated August 15, 2006.

[10] For example, implementation of the 1997 $PM_{2.5}$ NAAQS required the deployment of a system of new monitors to measure ambient levels of that new indicator species for the new NAAQS.

On October 2, 2007, EPA issued guidance making recommendations for the infrastructure SIP submissions for both the 1997 8-hour ozone NAAQS and the 1997 $PM_{2.5}$ NAAQS.[11] Within this guidance document, EPA described the duty of states to make these submissions to meet what the Agency characterized as the ''infrastructure'' elements for SIPs, which it further described as the ''basic SIP requirements, including emissions inventories, monitoring, and modeling to assure attainment and maintenance of the standards.'' [12] As further identification of these basic structural SIP requirements, ''attachment A'' to the guidance document included a short description of the various elements of section 110(a)(2) and additional information about the types of issues that EPA considered germane in the context of such infrastructure SIPs. EPA emphasized that the description of the basic requirements listed on attachment A was not intended ''to constitute an interpretation of'' the requirements, and was merely a ''brief description of the required elements.'' [13] EPA also stated its belief that with one exception, these requirements were ''relatively self explanatory, and past experience with SIPs for other NAAQS should enable States to meet these requirements with assistance from EPA Regions.'' [14] However, for the one exception to that general assumption (*i.e.,* how states should proceed with respect to the requirements of section 110(a)(2)(G) for the 1997 $PM_{2.5}$ NAAQS), EPA gave much more specific recommendations. But for other infrastructure SIP submittals, and for certain elements of the submittals for the 1997 $PM_{2.5}$ NAAQS, EPA assumed that each state would work with its corresponding EPA regional office to refine the scope of a state's submittal based on an assessment of how the requirements of section 110(a)(2) should reasonably apply to the basic structure of the state's implementation plans for the NAAQS in question.

On September 25, 2009, EPA issued guidance to make recommendations to states with respect to the infrastructure SIPs for the 2006 $PM_{2.5}$ NAAQS.[15] In the 2009 Guidance, EPA addressed a number of additional issues that were not germane to the infrastructure SIPs for the 1997 8-hour ozone and 1997 $PM_{2.5}$ NAAQS, but were germane to these SIP submissions for the 2006 $PM_{2.5}$ NAAQS (*e.g.,* the requirements of section 110(a)(2)(D)(i) that EPA had bifurcated from the other infrastructure elements for those specific 1997 ozone and $PM_{2.5}$ NAAQS). Significantly, neither the 2007 Guidance nor the 2009 Guidance explicitly referred to the SSM, director's discretion, minor source NSR, or NSR Reform issues as among specific substantive issues EPA expected states to address in the context of the infrastructure SIPs, nor did EPA give any more specific recommendations with respect to how states might address such issues even if they elected to do so. The SSM and director's discretion issues implicate section 110(a)(2)(A), and the minor source NSR and NSR Reform issues implicate section 110(a)(2)(C). In the 2007 Guidance and the 2009 Guidance, however, EPA did not indicate to states that it intended to interpret these provisions as requiring a substantive submission to address these specific issues in existing SIP provisions in the context of the infrastructure SIPs for these NAAQS. Instead, EPA's 2007 Guidance merely indicated its belief that the states should make submissions in which they established that they have the basic SIP structure necessary to implement, maintain, and enforce the NAAQS. EPA believes that states can establish that they have the basic SIP structure, notwithstanding that there may be potential deficiencies within the existing SIP. Thus, EPA's proposals for other states mentioned these issues not because the Agency considers them issues that must be addressed in the context of an infrastructure SIP as required by section 110(a)(1) and (2), but rather because EPA wanted to be clear that it considers these potential existing SIP problems as separate from the pending infrastructure SIP actions. The same holds true for this action on the infrastructure SIPs for Georgia.

EPA believes that this approach to the infrastructure SIP requirement is reasonable because it would not be feasible to read section 110(a)(1) and (2) to require a top to bottom, stem to stern, review of each and every provision of an existing SIP merely for purposes of assuring that the state in question has the basic structural elements for a functioning SIP for a new or revised NAAQS. Because SIPs have grown by accretion over the decades as statutory and regulatory requirements under the CAA have evolved, they may include some outmoded provisions and historical artifacts that, while not fully up to date, nevertheless may not pose a significant problem for the purposes of ''implementation, maintenance, and enforcement'' of a new or revised NAAQS when EPA considers the overall effectiveness of the SIP. To the contrary, EPA believes that a better approach is for EPA to determine which specific SIP elements from section 110(a)(2) are applicable to an infrastructure SIP for a given NAAQS, and to focus attention on those elements that are most likely to need a specific SIP revision in light of the new or revised NAAQS. Thus, for example, EPA's 2007 Guidance specifically directed states to focus on the requirements of section 110(a)(2)(G) for the 1997 $PM_{2.5}$ NAAQS because of the absence of underlying EPA regulations for emergency episodes for this NAAQS and an anticipated absence of relevant provisions in existing SIPs.

Finally, EPA believes that its approach is a reasonable reading of section 110(a)(1) and (2) because the statute provides other avenues and mechanisms to address specific substantive deficiencies in existing SIPs. These other statutory tools allow the Agency to take appropriate tailored action, depending upon the nature and severity of the alleged SIP deficiency. Section 110(k)(5) authorizes EPA to issue a ''SIP call'' whenever the Agency determines that a state's SIP is substantially inadequate to attain or maintain the NAAQS, to mitigate interstate transport, or otherwise to comply with the CAA.[16] Section 110(k)(6) authorizes EPA to correct errors in past actions, such as past approvals of SIP submissions.[17]

[11] *See* ''Guidance on SIP Elements Required Under Section 110(a)(1) and (2) for the 1997 8-hour Ozone and $PM_{2.5}$ National Ambient Air Quality Standards,'' from William T. Harnett, Director Air Quality Policy Division, to Air Division Directors, Regions I–X, dated October 2, 2007 (the ''2007 Guidance'').

[12] *Id.,* at page 2.

[13] *Id.,* at attachment A, page 1.

[14] *Id.,* at page 4. In retrospect, the concerns raised by commenters with respect to EPA's approach to some substantive issues indicates that the statute is not so ''self explanatory,'' and indeed is sufficiently ambiguous that EPA needs to interpret it in order to explain why these substantive issues do not need to be addressed in the context of infrastructure SIPs and may be addressed at other times and by other means.

[15] *See* ''Guidance on SIP Elements Required Under Sections 110(a)(1) and (2) for the 2006 24-Hour Fine Particle ($PM_{2.5}$) National Ambient Air Quality Standards (NAAQS),'' from William T, Harnett, Director Air Quality Policy Division, to Regional Air Division Directors, Regions I–X, dated September 25, 2009 (the ''2009 Guidance'').

[16] EPA has recently issued a SIP call to rectify a specific SIP deficiency related to the SSM issue. *See,* ''Finding of Substantial Inadequacy of Implementation Plan; Call for Utah State Implementation Plan Revision,'' 74 FR 21639 (April 18, 2011).

[17] EPA has recently utilized this authority to correct errors in past actions on SIP submissions related to PSD programs. *See* ''Limitation of Approval of Prevention of Significant Deterioration Provisions Concerning Greenhouse Gas Emitting-Sources in State Implementation Plans; Final Rule,'' 75 FR 82536 (December 30, 2010). EPA has

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Significantly, EPA's determination that an action on the infrastructure SIP is not the appropriate time and place to address all potential existing SIP problems does not preclude the Agency's subsequent reliance on provisions in section 110(a)(2) as part of the basis for action at a later time. For example, although it may not be appropriate to require a state to eliminate all existing inappropriate director's discretion provisions in the course of acting on the infrastructure SIP, EPA believes that section 110(a)(2)(A) may be among the statutory bases that the Agency cites in the course of addressing the issue in a subsequent action.[18]

IV. What is EPA's analysis of how Georgia addressed the elements of sections 110(a)(1) and (2) ''Infrastructure'' provisions?

Georgia's infrastructure submission addresses the provisions of sections 110(a)(1) and (2) as described below.

1. 110(a)(2)(A): *Emission limits and other control measures:* Georgia's infrastructure submissions provide an overview of the provisions of Georgia's Air Pollution Control Requirements relevant to air quality control regulations. The regulations listed below have been federally approved into the Georgia SIP and include enforceable emission limitations and other control measures. Regulations 391–3–1–.02(2), *Emissions Standards,* and 391–3–1–.02(4), *Ambient Air Standards,* establish emission limits for PM and address the required control measures, means and techniques for compliance with the $PM_{2.5}$ NAAQS respectively. EPA has made the preliminary determination that the provisions contained in these chapters and Georgia's practices are adequate to protect the $PM_{2.5}$ annual and 24-hour NAAQS in the State.

In this action, EPA is not proposing to approve or disapprove any existing state provisions with regard to excess emissions during SSM of operations at a facility. EPA believes that a number of states have SSM provisions which are contrary to the CAA and existing EPA guidance, ''State Implementation Plans: Policy Regarding Excess Emissions During Malfunctions, Startup, and Shutdown'' (September 20, 1999), and the Agency plans to address such state regulations in the future. In the meantime, EPA encourages any state having deficient SSM provisions to take steps to correct it as soon as possible.

Additionally, in this action, EPA is not proposing to approve or disapprove any existing state rules with regard to director's discretion or variance provisions. EPA believes that a number of states have such provisions which are contrary to the CAA and existing EPA guidance (52 FR 45109 (November 24, 1987)), and the Agency plans to take action in the future to address such state regulations. In the meantime, EPA encourages any state having a director's discretion or variance provision which is contrary to the CAA and EPA guidance to take steps to correct the deficiency as soon as possible.

2. 110(a)(2)(B) *Ambient air quality monitoring/data system:* Georgia's Regulations 391–3–1–.02(3), *Sampling,* and 391–3–1–.02(6), *Source Monitoring,* along with the Georgia Network Description and Ambient Air Monitoring Network Plan provides for an ambient air quality monitoring system in the State. Annually, EPA approves the ambient air monitoring network plan for the state agencies. In August 2011, Georgia submitted its monitoring network plan to EPA, and on October 21, 2011, EPA approved Georgia's monitoring network plan. Georgia's approved monitoring network plan can be accessed at *www.regulations.gov* using Docket ID No. EPA–R04–OAR–2010–1012. EPA has made the preliminary determination that Georgia's SIP and practices are adequate for the ambient air quality monitoring and data systems related to the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS.

3. 110(a)(2)(C) *Program for enforcement of control measures including review of proposed new sources:* Regulation 391–3–1–.02(7), *Prevention of Significant Deterioration of Air Quality,* of the Georgia SIP pertains to the construction or modification of any major stationary source in areas designated as attainment or unclassifiable. On October 31, 2006, and March 5, 2007, EPD submitted revisions to their PSD/NSR regulations for EPA approval. In the October 31, 2006, and March 5, 2007, SIP revisions, Georgia included revisions to rules in Regulation 391–3–1–.02(7) which address infrastructure requirements C and J.

In this action, EPA is proposing to approve Georgia's infrastructure SIP for the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS with respect to the general requirement in section 110(a)(2)(C) to include a program in the SIP that regulates the modification and construction of any stationary source as necessary to assure that the NAAQS are achieved. EPA is not proposing to approve or disapprove the State's existing minor NSR program itself to the extent that it is inconsistent with EPA's regulations governing this program. EPA believes that a number of states may have minor NSR provisions that are contrary to the existing EPA regulations for this program. EPA intends to work with states to reconcile state minor NSR programs with EPA's regulatory provisions for the program. The statutory requirements of section 110(a)(2)(C) provide for considerable flexibility in designing minor NSR programs, and EPA believes it may be time to revisit the regulatory requirements for this program to give the states an appropriate level of flexibility to design a program that meets their particular air quality concerns, while assuring reasonable consistency across the country in protecting the NAAQS with respect to new and modified minor sources.

EPA has made the preliminary determination that Georgia's SIP and practices are adequate for program enforcement of control measures including review of proposed new sources related to the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS.

4. 110(a)(2)(D)(ii) *Interstate and International transport provisions:* Regulation 391–3–1–.02(7), *Prevention of Significant Deterioration of Air Quality,* of the Georgia SIP provides that Georgia will notify neighboring states of potential impacts from new or modified sources Georgia does not have any pending obligation under sections 115 and 126 of the CAA. EPA has made the preliminary determination that Georgia's SIP and practices are adequate for insuring compliance with the applicable requirements relating to interstate and international pollution abatement for the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS.

5. 110(a)(2)(E) *Adequate resources:* Section 110(a)(2)(E) requires that each implementation plan provide (i) Necessary assurances that the State will have adequate personnel, funding, and authority under state law to carry out its implementation plan, (ii) that the State comply with the requirements respecting State Boards pursuant to

previously used its authority under CAA 110(k)(6) to remove numerous other SIP provisions that the Agency determined it had approved in error. *See* 61 FR 38664 (July 25, 1996) and 62 FR 34641 (June 27, 1997) (corrections to American Samoa, Arizona, California, Hawaii, and Nevada SIPs); 69 FR 67062 (November 16, 2004) (corrections to California SIP); and 74 FR 57051 (November 3, 2009) (corrections to Arizona and Nevada SIPs).

[18] EPA has recently disapproved a SIP submission from Colorado on the grounds that it would have included a director's discretion provision inconsistent with CAA requirements, including section 110(a)(2)(A). *See* 75 FR 42342, 42344 (July 21, 2010) (proposed disapproval of director's discretion provisions); 76 FR 4540 (January 26, 2011) (final disapproval of such provisions).

section 128 of the Act, and (iii) necessary assurances that, where the State has relied on a local or regional government, agency, or instrumentality for the implementation of any plan provision, the State has responsibility for ensuring adequate implementation of such plan provisions. In support of EPA's proposal to approve elements 110(a)(2)(E)(i and iii), EPD's legal authority to establish SIPs and implement related plans, in general, is prescribed in Official Code of Georgia Annotated (O.C.G.A.) Section 12–9–1, *et seq.,* as amended, also referred to as the ''Georgia Air Quality Act.'' As with the remainder of the infrastructure elements addressed by this notice, EPD is responsible for promulgating rules and regulations for the NAAQS, emissions standards general policies, a system of permits, and fee schedules for the review of plans, and other planning needs. In addition, the requirements of 110(a)(2)(E)(i and iii) are met when EPA performs a completeness determination for each SIP submittal. This ensures that each submittal provides evidence that adequate personnel, funding, and legal authority under State Law has been use to carry out the state's implementation plan and related issues. This information is included in all prehearings and final SIP submittal packages for approval by EPA.

Annually, states update grant commitments based on current SIP requirements, air quality planning, and applicable requirements related to the NAAQS, including 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS. As evidence of the adequacy of EPD's resources, EPA submitted a letter to Georgia on March 23, 2012, outlining 105 grant commitments and the current status of these commitments for fiscal year 2011. There were no outstanding issues concerning the SIP, therefore Georgia's grants were finalized and closed out. The letter EPA submitted to Georgia can be accessed at *http://www.regulations.gov* using Docket ID No. EPA–R04–OAR–2010–1012.

Section 110(a)(2)(E)(ii) requires that the state comply with section 128 of the CAA. Section 128 requires that: (1) The majority of members of the state body which approves permits or enforcement orders represent the public interest and do not derive any significant portion of their income from persons subject to permitting or enforcement orders under the CAA; and (2) any potential conflicts of interest by such body or the head of an executive agency exercising similar authority be adequately disclosed. On August 26, 1976, EPA approved into the Georgia SIP administration and enforcement provisions as prescribed in the O.C.G.A. Section 12–9–1, *et seq.,* as amended. Specifically, O.C.G.A. Section 12–9–5 provides the Powers and duties of Board of Natural Resources as to air quality. Section 12–9–5(a) states:

> Any hearing officer appointed by the Board of Natural Resources, and all members of five-member committees of the Board of Natural Resources, shall, and at least a majority of members of the entire Board of Natural Resources shall, represent the public interest and shall not derive any significant portion of their income from persons subject to permits or enforcement orders under this article. All potential conflicts of interest shall be adequately disclosed.

EPA has made the preliminary determination that Georgia has adequate resources for implementation of the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS.

6. 110(a)(2)(F) *Stationary source monitoring system:* Georgia's infrastructure submission describes how the State establishes requirements for emissions compliance testing and utilizes emissions sampling and analysis. It further describes how the State ensures the quality of its data through observing emissions and monitoring operations. Georgia EPD uses these data to track progress toward maintaining the NAAQS, develop control and maintenance strategies, identify sources and general emission levels, and determine compliance with emission regulations and additional EPA requirements. These requirements are provided in Regulation 391–3–1–.02(6), *Source Monitoring;* Regulation 391–3–1–.02(11), *Compliance Monitoring;* and *Regulation* 391–3–.02(3), *Sampling.*

Additionally, Georgia is required to submit emissions data to EPA for purposes of the National Emissions Inventory (NEI). The NEI is EPA's central repository for air emissions data. EPA published the Air Emissions Reporting Rule (AERR) on December 5, 2008, which modified the requirements for collecting and reporting air emissions data (73 FR 76539). The AERR shortened the time states had to report emissions data from 17 to 12 months, giving states one calendar year to submit emissions data. All states are required to submit a comprehensive emissions inventory every three years and report emissions for certain larger sources annually through EPA's online Emissions Inventory System (EIS). States report emissions data for the six criteria pollutants and the precursors that form them—nitrogen oxides, sulfur dioxide, ammonia, lead, carbon monoxide, particulate matter, and volatile organic compounds. Many states also voluntarily report emissions of hazardous air pollutants. Georgia made its latest update to the NEI on December 20, 2011. EPA compiles the emissions data, supplementing it where necessary, and releases it to the general public through the Web site *http://www.epa.gov/ttn/chief/eiinformation.html.* EPA has made the preliminary determination that Georgia's SIP and practices are adequate for the stationary source monitoring systems related to the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS.

7. 110(a)(2)(G) *Emergency power:* Georgia Regulation 391–3–1–.04, *Air Pollution Episodes,* of the Georgia SIP identifies air pollution emergency episodes and preplanned abatement strategies. These criteria have previously been approved by EPA. On September 9, 2008, EPD submitted a letter to EPA to clarify that Georgia does have authority to implement emergency powers for the 1997 annual and 2006 24-hour $PM_{2.5}$ standards and confirmed that EPA had previously approved these provisions in the SIP. The September 9, 2008, letter EPD sent to EPA can be accessed at *http://www.regulations.gov* using Docket ID No. EPA–R04–OAR–2010–1012. Following this clarification, EPA has made the preliminary determination that Georgia's SIP and practices are adequate for emergency powers related to the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS.

8. 110(a)(2)(H) *Future SIP revisions:* As previously discussed, Georgia EPD is responsible for adopting air quality rules and revising SIPs as needed to attain or maintain the NAAQS. Georgia has the ability and authority to respond to calls for SIP revisions, and has provided a number of SIP revisions over the years for implementation of the PM NAAQS. Specific to the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS, Georgia's submissions have included:

- October 31, 2006, SIP Revision—(EPA approval, 74 FR 62249, November 27, 2009) NSR Reform;
- March 2, 2007, SIP Revision—(EPA approval, 74 FR 62249, November 27, 2009) NSR/PSD Revisions;
- August 17, 2009, SIP Revision—Macon $PM_{2.5}$ Attainment Demonstration;
- October 27, 2009, SIP Revision—Floyd County $PM_{2.5}$ Attainment Demonstration; and
- July 6, 2010, SIP Revision—Atlanta $PM_{2.5}$ Attainment Demonstration.

EPA has made the preliminary determination that Georgia's SIP and practices adequately demonstrate a commitment to provide future SIP revisions related to the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS when necessary.

9. 110(a)(2)(J) (121 consultation) *Consultation with government officials:* Georgia Regulation 391–3–1–.03, *Permits,* as well as Georgia's Regional Haze Implementation Plan (which allows for consultation between appropriate state, local, and tribal air pollution control agencies as well as the corresponding Federal Land Managers), provide for consultation with government officials whose jurisdictions might be affected by SIP development activities. More specifically, Georgia adopted state-wide consultation procedures for the implementation of transportation conformity which includes the consideration of the development of mobile inventories for SIP development. Required partners covered by Georgia's consultation procedures include federal, state and local transportation and air quality agency officials. EPA approved Georgia's consultation procedures on April 7, 2000 (*See* 65 FR 18245). EPA has made the preliminary determination that Georgia's SIP and practices adequately demonstrate consultation with government officials related to the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS when necessary.

10. 110(a)(2)(J) (127 public notification) *Public notification:* EPD has public notice mechanisms in place to notify the public of PM and other pollutant forecasting, including an air quality monitoring Web site, *http://www.georgiaair.org/smogforecast/.* Georgia Regulation 391–3–1–.04, *Air Pollution Episodes,* requires that EPD notify the public of any air pollution episode or NAAQS violation. EPA has made the preliminary determination that that Georgia's SIP and practices adequately demonstrate the State's ability to provide public notification related to the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS when necessary.

11. 110(a)(2)(J) (PSD) *PSD and visibility protection:* Georgia's authority to regulate new and modified sources of $PM_{2.5}$ precursors to assist in the protection of air quality in attainment and unclassifiable areas is provided for in Regulation 391–3–1–.02(7), *Prevention of Significant Deterioration of Air Quality* of the Georgia SIP. On March 5, 2007, EPD submitted a revision to its PSD/NSR regulations (including Regulation 391–3–1–.02(7), *Prevention of Significant Deterioration of Air Quality*) that addresses the infrastructure requirements C and J. The revision modified Georgia's PSD and Nonattainment New Source Review permitting rules in the SIP to address changes to the federal NSR regulations, which were promulgated by EPA on December 31, 2002, and reconsidered with minor changes on November 7, 2003. In a November 22, 2010, final rulemaking action, EPA approved Georgia's March 5, 2007, SIP revision. *See* 75 FR 71018.

With regard to the applicable requirements for visibility protection, EPA recognizes that states are subject to visibility and regional haze program requirements under part C of the Act (which includes sections 169A and 169B). In the event of the establishment of a new NAAQS, however, the visibility and regional haze program requirements under part C do not change. Thus, EPA finds that there is no new visibility obligation ''triggered'' under section 110(a)(2)(J) when a new NAAQS becomes effective. This would be the case even in the event a secondary $PM_{2.5}$ NAAQS for visibility is established, because this NAAQS would not affect visibility requirements under part C. Georgia has submitted SIP revisions for approval to satisfy the requirements of the CAA Section 169A and the regional haze and best available retrofit technology rules contained in 40 CFR 51.308. These revisions are currently under review and will be acted on in a separate action. EPA has made the preliminary determination that Georgia's SIP and practices adequately demonstrate the State's ability to implement PSD programs and to provide for visibility protection related to the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS when necessary.

12. 110(a)(2)(K) *Air quality and modeling/data:* Georgia Regulation 391–3–1–.02(7)(b)(8), *Prevention of Significant Deterioration of Air Quality*—Air Quality Models, incorporates by reference 40 CFR 52.21(l), which specifies that air modeling be conducted in accordance with 40 CFR part 51, Appendix W ''Guideline on Air Quality Models.'' These regulations demonstrate that Georgia has the authority to provide relevant data for the purpose of predicting the effect on ambient air quality of the $PM_{2.5}$ NAAQS. Additionally, Georgia supports a regional effort to coordinate the development of emissions inventories and conduct regional modeling for several NAAQS, including the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS, for the Southeastern states. Taken as a whole, Georgia's air quality regulations demonstrate that EPD has the authority to provide relevant data for the purpose of predicting the effect on ambient air quality of the $PM_{2.5}$ NAAQS. EPA has made the preliminary determination that Georgia's SIP and practices adequately demonstrate the State's ability to provide for air quality and modeling, along with analysis of the associated data, related to the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS when necessary.

13. 110(a)(2)(L) *Permitting fees:* Georgia addresses the review of construction permits as previously discussed in 110(a)(2)(C). Permitting fees in Georgia are collected through the State's federally-approved title V fees program, according to Georgia Regulation 391–3–1–.03(9), *Permit Fees.* EPA has made the preliminary determination that Georgia's SIP and practices adequately provide for permitting fees related to the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS when necessary.

14. 110(a)(2)(M) *Consultation/participation by affected local entities:* Georgia Regulation 391–3–1–.03(11)(a)(2), *Permit by Rule—General Requirements,* requires that EPD notify the public of an application, preliminary determination, the activity or activities involved in a permit action, any emissions associated with a permit modification, and the opportunity for comment prior to making a final permitting decision. Furthermore, EPD has demonstrated consultation with, and participation by, affected local entities through its work with local political subdivisions during the developing of its Transportation Conformity SIP, Regional Haze Implementation Plan, and Early Action Compacts. EPA has made the preliminary determination that Georgia's SIP and practices adequately demonstrate consultation with affected local entities when necessary.

V. Proposed Action

As described above, EPD has addressed the elements of the CAA 110(a)(1) and (2) pursuant to EPA's October 2, 2007, and September 25, 2009, guidance to ensure that the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS are implemented, enforced, and maintained in Georgia. EPA is proposing to approve Georgia's infrastructure submission for the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS because its July 23, 2008, and October 21, 2009, submissions are consistent with section 110 of the CAA.

VI. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable federal regulations. *See* 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of

the CAA. Accordingly, this proposed action merely approves state law as meeting federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this proposed rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Nitrogen dioxide, Particulate matter, Reporting and recordkeeping requirements, Volatile organic compounds.

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

Dated: May 29, 2012.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

[FR Doc. 2012–14591 Filed 6–14–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2010–0969; FRL–9686–8]

Approval and Promulgation of Implementation Plans; Revisions to the Georgia State Implementation Plan

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a State Implementation Plan (SIP) revision submitted by the State of Georgia, through the Department of Natural Resources, Environmental Protection Division on November 16, 2010. This revision consists of transportation conformity criteria and procedures related to interagency consultation and enforceability of certain transportation-related control measures and mitigation measures. The intended effect is to update the transportation conformity criteria and procedures in the Georgia SIP. This action is being taken pursuant to section 110 of the Clean Air Act.

In the Final Rules Section of this **Federal Register**, EPA is approving the State's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this rule, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this document. Any parties interested in commenting on this document should do so at this time.

DATES: Written comments must be received on or before July 16, 2012.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R04–OAR–2010–0969, by one of the following methods:

1. *www.regulations.gov:* Follow the on-line instructions for submitting comments.
2. *Email:* *somerville.amanetta@epa.gov.*
3. *Fax:* (404) 562–9019.
4. *Mail:* ''EPA–R04–OAR–2010–0969,'' Air Quality Modeling and Transportation Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960.
5. *Hand Delivery or Courier:* Amanetta Somerville, Air Quality Modeling and Transportation Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding federal holidays.

Please see the direct final rule which is located in the Rules section of this **Federal Register** for detailed instructions on how to submit comments.

FOR FURTHER INFORMATION CONTACT: Amanetta Somerville of the Air Quality Modeling and Transportation Section at the Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. Ms. Somerville's telephone number is 404–562–9025. She can also be reached via electronic mail at *somerville.amanetta@epa.gov.*

SUPPLEMENTARY INFORMATION: For additional information see the direct final rule which is published in the Rules Section of this **Federal Register**.

Dated: June 1, 2012.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

[FR Doc. 2012–14594 Filed 6–14–12; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Parts 405 and 411

[CMS–6047–ANPRM]

RIN 0938–AR43

Medicare Program; Medicare Secondary Payer and ''Future Medicals''

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

ACTION: Advance notice of proposed rulemaking.

SUMMARY: This advance notice of proposed rulemaking solicits comment on standardized options that we are considering making available to beneficiaries and their representatives to clarify how they can meet their obligations to protect Medicare's interest with respect to Medicare Secondary Payer (MSP) claims involving automobile and liability insurance (including self-insurance), no-fault insurance, and workers' compensation when future medical care is claimed or the settlement, judgment, award, or other payment releases (or has the effect of releasing) claims for future medical care.

DATES: To be assured consideration, comments must be received at one of the addresses provided below, no later than 5 p.m. on August 14, 2012.

ADDRESSES: In commenting, please refer to file code CMS–6047–ANPRM. Because of staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission.

You may submit comments in one of four ways (please choose only one of the ways listed).

1. *Electronically.* You may submit electronic comments on this regulation to *http://www.regulations.gov.* Follow the instructions under the ''More Search Options'' tab.

2. *By regular mail.* You may mail written comments to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–6047–ANPRM P.O. Box 8013, Baltimore, MD 21244–8013.

Please allow sufficient time for mailed comments to be received before the close of the comment period.

3. *By express or overnight mail.* You may send written comments to the following address only: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–6047–ANPRM, Mail Stop C4–26–05, 7500 Security Boulevard, Baltimore, MD 21244–1850.

4. *By hand or courier.* If you prefer, you may deliver (by hand or courier) your written comments before the close of the comment period to either of the following addresses: a. For delivery in Washington, DC—Centers for Medicare & Medicaid Services, Department of Health and Human Services, Room 445–G, Hubert H. Humphrey Building, 200 Independence Avenue SW., Washington, DC 20201.

(Because access to the interior of the Hubert H. Humphrey Building is not readily available to persons without Federal government identification, commenters are encouraged to leave their comments in the CMS drop slots located in the main lobby of the building. A stamp-in clock is available for persons wishing to retain a proof of filing by stamping in and retaining an extra copy of the comments being filed.)

b. For delivery in Baltimore, MD—Centers for Medicare & Medicaid Services, Department of Health and Human Services, 7500 Security Boulevard, Baltimore, MD 21244–1850.

If you intend to deliver your comments to the Baltimore address, please call telephone number (410) 786–1066 in advance to schedule your arrival with one of our staff members.

Comments mailed to the addresses indicated as appropriate for hand or courier delivery may be delayed and received after the comment period.

Submission of comments on paperwork requirements. You may submit comments on this document's paperwork requirements by following the instructions at the end of the ''Collection of Information Requirements'' section in this document.

For information on viewing public comments, see the beginning of the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Suzanne Kalwa, (410) 786–2536.

SUPPLEMENTARY INFORMATION: *Inspection of Public Comments:* All comments received before the close of the comment period are available for viewing by the public, including any personally identifiable or confidential business information that is included in a comment. We post all comments received before the close of the comment period on the following Web site as soon as possible after they have been received: *http://regulations.gov.* Follow the search instructions on that Web site to view public comments.

Comments received timely will be also available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, at the headquarters of the Centers for Medicare & Medicaid Services, 7500 Security Boulevard Baltimore, Maryland 21244, Monday through Friday of each week from 8:30 a.m. to 4 p.m. To schedule an appointment to view public comments, please phone 1–800–743–3951.

I. Overview and Background

We are issuing this advance notice of proposed rulemaking (ANPRM) to solicit public comments on standardized options that beneficiaries and their attorneys or other representatives will be able to use to resolve MSP obligations related to settlements, judgments, awards, or other payments (hereinafter, for ease of reference in this document and unless otherwise indicated, ''settlement(s)'') involving future medical care while protecting Medicare's interest.

When the Medicare program was enacted in 1965, Medicare was the primary payer for all services, with the exception of those covered and payable by workers' compensation. In 1980, the Congress enacted the first of a series of provisions that made Medicare the secondary payer to certain additional primary plans. These provisions are known as the Medicare Secondary Payer (MSP) provisions and are found in section 1862(b) of the Social Security Act (the Act).

When specific conditions are met, these provisions in part prohibit Medicare from making payment if payment has been made or can reasonably be expected to be made by a workers' compensation law or plan, automobile and liability insurance (including self-insurance), or no-fault insurance. If payment has not been made or cannot reasonably be expected to be made promptly, Medicare is permitted to make conditional payments (that is, Medicare pays for medical claims with the expectation that it will be repaid if the beneficiary obtains a ''settlement''). This is because, if Medicare makes conditional payments, the MSP statute imposes an obligation on the Secretary to recover those conditional payments, once it is established that another individual or entity is responsible for primary payment.

Primary payment responsibility on the part of workers' compensation, liability insurance (including self-insurance), and no-fault insurance is generally demonstrated by settlements, judgments, awards, or other payments. When a ''settlement'' occurs, the ''settlement'' is subject to the MSP statute because a ''payment has been made'' with respect to medical care related to that ''settlement.'' By law, Medicare is subrogated to any right of an individual or any other entity to payment for items or services under a primary plan, to the extent of Medicare's payments for such medical items and services. Moreover, section 1862(b)(2)(B)(iii) of the Act provides a direct right of action to recover Medicare's conditional payments. This direct right of action, which is separate and independent from Medicare's statutory subrogation rights, may be brought to recover conditional payments

against any or all entities that are or were responsible for making payment for the items and services under a primary plan. The government may also recover under the direct right of action from any entity that has received payment from a primary plan or the proceeds of a primary plan's payment to any entity.

Under its rights of subrogation and direct right of action, Medicare recovers for conditional payments related to the ''settlement,'' regardless of when the items and services are provided. Further, Medicare is prohibited from making payment when payment has been made (that is, if the beneficiary obtains a ''settlement''). Medicare remains the secondary payer until the ''settlement'' proceeds are appropriately exhausted. It is important to note that the designation future medical care (''future medicals'') is a term specifically used to reference medical items and services provided after the date of ''settlement.''

II. Provisions of the Advanced Notice of Proposed Rulemaking

The primary purpose of this ANPRM is to respond to affected parties' requests for guidance on ''future medicals'' MSP obligations, specifically, how individuals/beneficiaries can satisfy those obligations effectively and efficiently. Section 111 of the Medicare, Medicaid, and SCHIP Extension Act of 2007 (MMSEA), established mandatory MSP reporting obligations. Liability insurance (including self-insurance), no-fault insurance, and workers' compensation laws or plans are required to submit information, as specified by the Secretary, to Medicare related to claims resolved through ''settlements,'' regardless of whether or not there is a determination or admission of liability (see 42 U.S.C. 1395y(b)(8)). While the topic of this ANPRM does not relate to the section 111 of the MMSEA reporting obligations directly, Medicare's ongoing section 111 of the MMSEA implementation efforts, as well as industry efforts to ensure compliance with section 111 of the MMSEA, have sensitized affected parties to other MSP obligations, specifically reimbursement obligations that have been long ignored or overlooked. As a result, affected parties are requesting clarity regarding ''future medicals'' MSP obligations and how to resolve them.

Currently, individuals involved in certain workers' compensation situations are able to use Medicare's formal, yet voluntary, Medicare Set-Aside Arrangement (MSA) review process in order to determine if a proposed set-aside amount is sufficient to meet their MSP obligations related to ''future medicals.'' To date, Medicare has not established a similar process for individuals/beneficiaries to use to meet their MSP obligations with respect to ''future medicals'' in liability insurance (including self-insurance) situations. We are soliciting comment on whether and how Medicare should implement such a similar process in liability insurance situations, as well as comment on the proposed definitions and additional options outlined later in this section. We are further soliciting suggestions on options we have not included later in this section. We are most interested in the feasibility and usability of the outlined options and whether implementation of these options would provide affected parties with sufficient guidance. We want to ensure that the process related to ''future medicals'' is understandable, efficient, and reflects industry practice, while protecting beneficiaries and the Medicare Trust Funds.

A. CMS Proposed General Rule

If an individual or Medicare beneficiary obtains a ''settlement'' and has received, reasonably anticipates receiving, or should have reasonably anticipated receiving Medicare covered and otherwise reimbursable items and services after the date of ''settlement,'' he or she is required to satisfy Medicare's interest with respect to ''future medicals'' related to his or her ''settlement'' using any one of the following options outlined later in this ANPRM.

B. Proposed Definitions

Several proposed definitions have been developed for use in conjunction with the options Medicare is considering. All definitions have been considered and/or developed for the purposes of this document. We request comment on the definitions of ''chronic illness/condition,'' ''physical trauma,'' and ''major trauma,'' specifically, whether they are accurate and usable in terms of the presumption that future medical care will be required.

We also solicit specific comment on the utility of the definition of ''major trauma.'' The Injury Severity Score (ISS) is one of several methods used to measure the severity of injuries when individuals have sustained more than one traumatic injury. It is generally used in predictive modeling and risk assessments to predict and evaluate emergent care required by an injured individual. We are interested in whether this type of approach is useful in guiding a determination as to whether future medical care will be required and if other approaches are available.

- *Chronic Illness/Condition:* means that the illness/condition persists over a long period of time. The term is generally applied when the course of a disease or condition lasts for more than 3 months. If the individual/beneficiary alleges an injury that is a chronic illness/condition, it is presumed that future medical care will be required. Examples of chronic diseases include, but are not limited to: Chronic airflow limitation, including asthma and chronic bronchitis; cancer, diabetes; quadriplegia; and nephrogenic systemic fibrosis.
- *Date of Care Completion:* means the date the individual/beneficiary completed treatment related to his or her ''settlement.'' The individual/beneficiary's treating physician must be able to attest that the individual/beneficiary has completed treatment and that no further medical care related to the ''settlement'' will be required.
- *Future Medical Care (''future medicals''):* means Medicare covered and otherwise reimbursable items and services that the individual/beneficiary received after the Date of ''Settlement.'' This definition specifically applies to items and services related to the individual/beneficiary's settlement, judgment, award, or other payment.
- *Physical Trauma:* refers to an injury (as a wound) to living tissue caused by an extrinsic agent. This also includes blunt trauma, which refers to injury caused by a blunt object or collision with a blunt surface (as in a vehicle accident or fall from a building)
- *Major Trauma:* major trauma means serious injury to two or more Injury Severity Score (ISS) body regions or an ISS greater than 15. The ISS body regions include the following:
  - Head or neck.
  - Face.
  - Chest.
  - Abdomen.
  - Extremities.
  - External.

C. Proposed Options

Medicare is considering the options listed in this section of the document for developing efficient and effective means for addressing ''future medicals.'' Options 1 through 4 would be available to Medicare beneficiaries as well as to individuals who are not yet beneficiaries. Options 5 through 7 would be available to beneficiaries only. We request comment on the feasibility and usability of all of the options. We also request proposals for additional options for consideration.

Option 1. The *individual/beneficiary* pays for all related future medical care until his/her settlement is exhausted and documents it accordingly.

The beneficiary may choose to govern his/her use of his/her settlement proceeds himself/herself. Under this option, he/she would be required to pay for all related care out of his/her settlement proceeds, until those proceeds are appropriately exhausted. As a routine matter, Medicare would not review documentation in conjunction with this option, but may occasionally request documentation from beneficiaries selected at random as part of Medicare's program integrity efforts.

Option 2. Medicare would not pursue ''future medicals'' if the *individual/beneficiary's* case fits all of the conditions under either of the following headings:

a. The amount of liability insurance (including self-insurance) ''settlement'' is a *defined amount* or less and the following criteria are met:

- The accident, incident, illness, or injury occurred one year or more before the date of ''settlement;''
- The underlying claim did not involve a chronic illness/condition or major trauma;
- The beneficiary does not receive additional ''settlements;'' and
- There is no corresponding workers' compensation or no-fault insurance claim.

b. The amount of liability insurance (including self-insurance) ''settlement'' is a *defined amount* or less and all of the following criteria are met:

- The individual is not a beneficiary as of the date of ''settlement;''
- The individual does not expect to become a beneficiary within 30 months of the date of ''settlement;''
- The underlying claim did not involve a chronic illness/condition or major trauma;
- The beneficiary does not receive additional ''settlements;'' and
- There is no corresponding workers' compensation or no-fault insurance claim.

We request comment on the appropriate defined amounts to use in Options 2a and 2b, as well as comment on the efficacy of this approach.

Option 3. The *individual/beneficiary* acquires/provides an attestation regarding the Date of Care Completion from his/her treating physician.

a. Before Settlement—When the individual/beneficiary obtains a physician attestation regarding the Date of Care Completion from his or her treating physician, and the Date of Care Completion is before the ''settlement,'' Medicare's recovery claim would be limited to conditional payments it made for Medicare covered and otherwise reimbursable items and services provided from the Date of Incident through and including the Date of Care Completion. As a result, Medicare's interest with respect to ''future medicals'' would be satisfied. The physician must attest to the Date of Care Completion and attest that the individual/beneficiary would not require additional care related to his/her ''settlement.''

b. After Settlement—When the individual/beneficiary obtains a physician attestation from his or her treating physician after settlement regarding the Date of Care Completion, Medicare would pursue recovery for related conditional payments it made from the date of incident through and including the date of ''settlement.'' Further, Medicare's interest with respect to future medical care would be limited to Medicare covered and otherwise reimbursable items and/or services provided from the date of ''settlement'' through and including the Date of Care Completion. The physician must attest to the Date of Care Completion and attest that the individual/beneficiary would not require additional care related to his/her ''settlement.'' We request comment on the efficacy and feasibility of this option.

Option 4. The *Individual/Beneficiary* Submits Proposed Medicare Set-Aside Arrangement (MSA) Amounts for CMS' Review and Obtains Approval.

Currently, we have a formal process to review proposed MSA amounts in certain workers' compensation situations. Recently we have received a high volume of requests for official review of proposed liability insurance (including self-insurance) MSA amounts. This has prompted us to consider whether we should implement a formal review process for proposed liability insurance (including self-insurance) MSA amounts. For more information related to workers' compensation MSA process, please visit *http://www.cms.hhs.gov/Medicare/Coordination-of-Benefits/WorkersCompAgencyServices/wcsetaside.html.* We specifically solicit comment on how a liability MSA amount review process could be structured, including whether it should be the same as or similar to the process used in the workers' compensation arena, whether review thresholds should be imposed, etc.

Option 5. The *beneficiary* participates in one of Medicare's recovery options.

Recently, we implemented three options with respect to resolving Medicare's recovery claim in more streamlined and efficient manners. Before we issue a demand letter, the beneficiary or his/her representative may participate in one of three recovery options, which allows the beneficiary to obtain Medicare's final conditional payment amount before settlement. The three recovery options are as follows:

- $300 Threshold—If a beneficiary alleges a physical trauma-based injury, obtains a liability insurance (including self-insurance) ''settlement'' of $300 or less, and does not receive or expect to receive additional ''settlements'' related to the incident, Medicare will not pursue recovery against that particular ''settlement.''
- Fixed Payment Option—When a beneficiary alleges a physical trauma-based injury, obtains a liability insurance (including self-insurance) ''settlement'' of $5,000 or less, and does not receive or expect to receive additional ''settlements'' related to the incident, the beneficiary may elect to resolve Medicare's recovery claim by paying 25 percent of the gross ''settlement'' amount.
- Self-Calculated Conditional Payment Option—When a beneficiary alleges a physical trauma-based injury that occurred at least 6 months prior to electing the option, anticipates obtaining a liability insurance (including self-insurance) ''settlement'' of $25,000 or less, demonstrates that care has been completed, and has not received nor expects to receive additional ''settlements'' related to the incident, the beneficiary may self-calculate Medicare's recovery claim. Medicare would review the beneficiary's self-calculated amount and provide confirmation of Medicare's final conditional payment amount.

Each of the options is employed in such a way that Medicare's interest with respect to future medicals is, in effect, satisfied for the specified ''settlement.'' Therefore, when a beneficiary participates in any one of these recovery options, the beneficiary has also met his/her obligation with respect to future medicals. We solicit comment on proposed expansions of these options and the justification for that proposed expansion, as well as any suggestions about how to improve the three options we recently implemented.

Option 6. The *Beneficiary* Makes an Upfront Payment.

We are currently considering two variations of an ''upfront payment option.''

a. If Ongoing Responsibility For Medicals was imposed, demonstrated or accepted and medicals are calculated through the life of the beneficiary or the life of the injury.

If ongoing responsibility for medicals was imposed, demonstrated or accepted from the date of ''settlement'' through the life of the beneficiary or life of the injury, we may review and approve a proposed amount to be paid as an upfront lump sum payment for the full amount of the calculated cost for all related future medical care. This option would generally apply in workers' compensation, no-fault insurance situations or when life-time medicals are imposed by law. In effect, this option may be used in place of administering a MSA if we have reviewed and approved a proposed MSA amount. We solicit comment on how to develop this process, the efficacy of it, and whether it would be utilized.

b. If Ongoing Responsibility for Medicals was Not Imposed, Demonstrated or Accepted.

If a beneficiary obtains a ''settlement,'' our general rule stated previously applies to the ''settlement,'' and ongoing responsibility for medicals has not been imposed on, demonstrated by or accepted by the defendant, the beneficiary may elect to make an upfront payment to Medicare in the amount of a specified percentage of ''beneficiary proceeds.'' This option would most often apply in liability insurance (including self-insurance situations, primarily due to policy caps. For the purposes of this option, the term ''beneficiary proceeds'' would be calculated by subtracting from the total ''settlement'' amount attorney fees and procurement costs borne by the beneficiary, Medicare's demand amount (for conditional payments made by Medicare), and certain additional medical expenses the beneficiary paid out of pocket. Such additional medical expenses are specifically limited to items and services listed in 26 U.S.C. 213(d)(1)(A) through (C) and 26 U.S.C. 213(d)(2). The calculation of beneficiary proceeds does not include medical expenses paid by, or that are the responsibility of, a source other than the beneficiary. We specifically solicit comment on how to develop this process, its efficacy, and whether it would be utilized. We further request comment on the calculation of beneficiary proceeds, the appropriate percentage(s) to be used, and how the percentage(s) is/are justified.

Option 7. The Beneficiary Obtains a Compromise or Waiver of Recovery.

If the beneficiary obtains either a compromise or a waiver of recovery, Medicare would have the discretion to not pursue future medicals related to the specific ''settlement'' where the compromise or waiver of recovery was granted. If the beneficiary obtains additional ''settlements,'' Medicare would review the conditional payments it made and adjust its claim for past and future medicals accordingly. We specifically solicit comment on whether this approach is practical and usable, as it relates to ''future medicals.''

Again, we also solicit comment on additional options we may consider in order to provide workable solutions for beneficiaries with respect to resolving ''future medicals'' obligations.

IV. Collection of Information Requirements

This document does not impose information collection and recordkeeping requirements. Consequently, it need not be reviewed by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1995.

V. Response to Comments

Because of the large number of public comments we normally receive on **Federal Register** documents, we are not able to acknowledge or respond to them individually. We will consider all comments we receive by the date and time specified in the **DATES** section of this preamble, and, when we proceed with a subsequent document, we will respond to the comments in the preamble to that document.

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: April 24, 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. 2012–14678 Filed 6–14–12; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 211, 212, 218, 246, 252 and Appendix F to Chapter 2

RIN 0750–AH64

Defense Federal Acquisition Regulation Supplement: Item Unique Identifier Update (DFARS Case 2011–D055)

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Proposed rule.

SUMMARY: DoD is proposing to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to update and clarify requirements for unique identification and valuation of items delivered under DoD contracts. The proposed rule revises the applicable prescription and contract clause to reflect the current requirements.

DATES: *Comment Date:* Comments on the proposed rule should be submitted in writing to the address shown below on or before August 14, 2012, to be considered in the formation of a final rule.

ADDRESSES: Submit comments identified by DFARS Case 2011–D055, using any of the following methods:

○ *Regulations.gov: http://www.regulations.gov.* Submit comments via the Federal eRulemaking portal by inputting ''DFARS Case 2011–D055'' under the heading ''Enter keyword or ID'' and selecting ''Search.'' Select the link ''Submit a Comment'' that corresponds with ''DFARS Case 2011–D055.'' Follow the instructions provided at the ''Submit a Comment'' screen. Please include your name, company name (if any), and ''DFARS Case 2011–D055'' on your attached document.

○ *Email: dfars@osd.mil.* Include DFARS Case 2011–D055 in the subject line of the message.

○ *Fax:* 571–372–6094.

○ *Mail:* Defense Acquisition Regulations System, Attn: Mr. Dustin Pitsch, OUSD (AT&L) DPAP/DARS, Room 3B855, 3060 Defense Pentagon, Washington, DC 20301–3060.

Comments received generally will be posted without change to *http://www.regulations.gov,* including any personal information provided. To confirm receipt of your comment(s), please check *www.regulations.gov,* approximately two to three days after submission to verify posting (except allow 30 days for posting of comments submitted by mail).

FOR FURTHER INFORMATION CONTACT: Mr. Dustin Pitsch, telephone 571–372–6090.

SUPPLEMENTARY INFORMATION:

I. Background

The contract clause at DFARS 252.211–7003, Item Identification and Valuation, requires unique identification for all delivered items for which the Government's unit acquisition cost is $5,000 or more and for other items designated by the Government. In addition, the clause requires identification of the Government's unit acquisition cost for all delivered items, and provides

instructions to contractors regarding the identification and valuation processes.

This proposed rule revises the prescription and the clause at DFARS 252.211–7003 to update and clarify instructions for the identification and valuation processes. The changes include—

- Adding definitions for data matrix and type designation;
- Specifically addressing item unique identification requirements for items with warranty requirements; DoD serially managed items, and special tooling or special test equipment;
- Clarifying of data submission requirements for a Major Defense Acquisition Program; and,
- Adding an alternative data submission method using either hard copy or a wide-area-workflow attachment.

II. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 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). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

III. Regulatory Flexibility Act

DoD does not expect this proposed rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.,* because the changes being made do not increase the burden of the item unique identification requirements, nor do they cause the requirement to be applicable to any additional small businesses. However, an initial regulatory flexibility analysis has been performed and is summarized as follows:

The proposed changes are being made to refine the language of the regulations and update the clause and prescription to comply with existing item unique identification policy. This DFARS case also adds reporting requirements for special tooling and special test equipment, warranty, and type designation, updates text to describe the reason for the policy, clears up language that has been confusing in practice, and adds an alternative method of data submission using either hard copy or a wide-area-workflow attachment. It also eliminates Alternate I of DFARS 252.211–7003, which cites reporting requirements covered by other mechanisms.

This rule will apply to small businesses involved in manufacturing. There are currently 1,495 small businesses registered in the Item Unique Identification Registry, out of 2,431 total companies registered. The changes made by this rule will not affect the number of businesses required to be registered in the Item Unique Identification Registry.

This rule does not add any new information collection requirements as it only clarifies existing requirements.

The rule does not duplicate, overlap, or conflict with any other Federal rules.

No alternatives were determined that will accomplish the objectives of the rule.

DoD invites comments from small business concerns and other interested parties on the expected impact of this rule on small entities.

DoD will also consider comments from small entities concerning the existing regulations in subparts affected by this rule in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 610 (DFARS Case 2011–D055), in correspondence.

IV. Paperwork Reduction Act

This rule does not add any new information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35) beyond those already covered by OMB Control Numbers 0704–0246 and 0704–0248. OMB Control Number 0704–0246, titled ''Defense Federal Acquisition Regulations Supplement (DFARS) Part 245, Government Property, related clauses in DFARS 252, and related forms in DFARS 253,'' which includes information collection requirements for DFARS subpart 211.274. OMB Control Number 0704–0248, titled ''Defense Federal Acquisition Regulations Supplement (DFARS) Appendix F, Material Inspection and Receiving Report and related forms,'' which covers all information submitted through the Wide Area Workflow system.

List of Subjects in 48 CFR Parts 211, 212, 218, 246, 252 and Appendix F

Government procurement.

Mary Overstreet,

Editor, Defense Acquisition Regulations System.

Therefore 48 CFR parts 211, 212, 218, 246, 252, and Appendix F are amended as follows:

1. The authority citation for 48 CFR parts 211, 218, and 246 is revised to read as follows:

Authority: 41 U.S.C. 1303 and 48 CFR chapter 1.

PART 211—DESCRIBING AGENCY NEEDS

2. The section heading for section 211.274 is revised to read as follows:

211.274 Item unique identification and valuation requirements.

3. Revise section 211.274–1 to read as follows:

211.274–1 General.

Item unique identification and valuation is a system of marking, valuing, and tracking items delivered to DoD that enhances logistics, contracting, and financial business transactions supporting the United States and coalition troops. Through item unique identification policy, which capitalizes on leading practices and embraces open standards, DoD—

(a) Achieves lower life-cycle cost of item management and improve life-cycle property management;

(b) Improves operational readiness;

(c) Provides reliable accountability of property and asset visibility throughout the life cycle;

(d) Reduces the burden on the workforce through increased productivity and efficiency; and

(e) Ensures item level traceability throughout lifecycle to strengthen supply chain integrity, enhance cyber security and combat counterfeiting.

4. Section 211.274–2 is amended by—

a. Revising the section heading;

b. Revising paragraph (a);

c. Revising paragraph (b) introductory text;

d. Revising paragraph (b)(2) introductory text; and

e. Revising paragraph (b)(2)(ii).

The revisions read as follows:

211.274–2 Policy for item unique identification.

(a) It is DoD policy that DoD item unique identification, or a DoD recognized unique identification equivalent, is required for all delivered items, including items of contractor-acquired property delivered on contract

line items (see PGI 245.402–71 for guidance when delivery of contractor acquired property is required)—

(1) For which the Government's unit acquisition cost is $5,000 or more;

(2) For which the Government's unit acquisition cost is less than $5,000, when identified by the requiring activity as serially managed;

(3) For mission essential, controlled inventory, or other items when the Government's unit acquisition cost is less than $5,000, and the requiring activity determines that permanent identification is required; or

(4) Regardless of value for any—

(i) DoD serially managed subassembly, component, or part embedded within a subassembly, component, or part;

(ii) Parent item (as defined in 252.211–7003(a)) that contains the embedded subassembly, component, or part;

(iii) Warranted serialized item;

(iv) Item of special tooling or special test equipment as defined at FAR 2.101 for a major defense acquisition program that is designated for preservation and storage in accordance with the requirements of section 815 of the National Defense Authorization Act for Fiscal Year 2009 (Pub. L. 110–417);

(v) DoD serially managed item (reparable or nonreparable); and

(vi) High risk item identified by the requiring activity as vulnerable to supply chain threat, a target of cyber threats, or counterfeiting.

(b) *Exceptions.* The Contractor will not be required to provide DoD item unique item identification if—

(1) * * *

(2) A determination and findings has been executed concluding that it is more cost effective for the Government requiring activity to assign, mark, and register the unique item identifier after delivery, and the item is acquired from a small business concern, or is a commercial item acquired under FAR part 12 or part 8.

(i) * * *

(ii) Send a signed copy of the determination and findings required by paragraph (b)(2)(i) of this subsection to DPAP, PDI, 3060 Defense Pentagon, 3E1044, Washington, DC 20301–3060; or by email to *DPAP_PDI@osd.mil.*

5. Section 211.274–3 is amended by—

a. Revising paragraph (a); and

b. Amending paragraph (c) by removing the word ''need'' and adding in its place the word ''shall''.

211.274–3 Policy for valuation.

(a) It is DoD policy that contractors shall be required to identify the Government's unit acquisition cost for all deliverable end items to which item unique identification applies.

* * * * *

6. Section 211.274–4 is amended by—

a. Revising the section heading;

b. Revising the introductory text;

c. Removing paragraphs (a), (b), and (c);

d. Redesignating paragraphs (d) through (h) as paragraphs (a) through (e); and

e. In the newly redesignated paragraph (a), removing the word ''Part'' and adding in its place the word ''part''.

The revisions read as follows:

211.274–4 Policy for reporting of Government-furnished property.

It is DoD policy that Government-furnished property be recorded in the DoD Item Unique Identification Registry, except for—

* * * * *

7. Amend section 211.274–6 by—

a. Revising paragraph (a); and

b. Amending paragraph (c)(1) to remove the words ''252.211–7003, Item Identification and Valuation'' and insert in its place the words ''252.211–7003, Item Unique Identification and Valuation''.

The revisions read as follows:

211.274–6 Contract clauses.

(a)(1) Use the clause at 252.211–7003, Item Unique Identification and Valuation, in solicitations and contracts—

(i) For supplies, unless the conditions in 211.274–2(b) apply;

(ii) For services that involve the furnishing of supplies, unless the conditions in 211.274–2(b) apply;

(iii) That contain the clause at FAR 52.245–1; or

(iv) That contain the clause at 252.211–7007.

(2) Complete paragraph (c)(1)(i) of the clause with the contract line, subline, or exhibit line item numbers of any line items excluded from coverage in accordance with 211.274–2(b)(3).

(3) Identify in paragraph (c)(1)(ii) of the clause the contract line, subline, or exhibit line item number and description of any item(s) below $5,000 in unit acquisition cost for which DoD item unique identification or a DoD recognized unique identification equivalent is required in accordance with 211.274–2(a)(2) or (3).

(4) Identify in paragraph (c)(1)(iii) of the clause the applicable attachment number, when DoD item unique identification or a DoD recognized unique identification equivalent is required in accordance with 211.274–2(a)(4) (i) through (vi).

* * * * *

PART 212—ACQUISITION OF COMMERCIAL ITEMS

8. The authority citation for 48 CFR part 212 continues to read as follows:

Authority: 41 U.S.C. 1303 and 48 CFR chapter 1.

212.301 [Amended]

9. Section 212.301(f)(iv)(D) is amended by—

a. Removing the words ''252.211–7003, Item Identification and Valuation'' and adding in its place the words ''252.211–7003, Item Unique Identification and Valuation''; and

b. Removing ''211.274–4'' and adding in its place ''211.274–6(a)''.

PART 218—EMERGENCY ACQUISITIONS

10. Section 218.201(2) is revised to read as follows:

218.201 Contingency operation.

* * * * *

(2) *Policy for item unique identification.* Contractors will not be required to provide DoD item unique identification if the items, as determined by the head of the agency, are to be used to support a contingency operation. See 211.274–2(b).

* * * * *

PART 246—QUALITY ASSURANCE

246.710 [Amended]

11. Section 246.710(5)(i) is amended by removing ''252.211–7003, Item Identification and Valuation'' and adding in its place ''252.211–7003, Item Unique Identification and Valuation''.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

12. The authority citation for 48 CFR part 252 continues to read as follows:

Authority: 41 U.S.C. 1303 and 48 CFR chapter 1.

13. Section 252.211–7003 is amended by—

a. Revising the section heading;

b. Revising the clause heading;

c. Removing from the clause heading ''(JUN 2011)'' and adding in its place ''(DATE)'';

d. Amending paragraph (a) definitions by—

(i) Adding, in alphabetical order, definitions for ''Data matrix'' and ''Type designation'';

(ii) Removing the definition title ''DoD unique item identification'' and adding in its place ''DoD item unique identification''.

e. Revising paragraph (c);

f. Amending paragraph (d) by—

i. Revising the introductory text; and

ii. Adding subparagraphs (12), (13), and (14).

g. Amending paragraph (e) by revising the introductory text;

h. Revising paragraph (f); and

i. Removing Alternate I of the basic clause.

The additions and revisions read as follows:

252.211–7003 Item Unique Identification and Valuation.

As prescribed in 211.274–6(a), use the following clause:

ITEM UNIQUE IDENTIFICATION AND VALUATION (DATE)

(a) * * *

''Data matrix'' means a two-dimensional matrix symbology, which is made up of square modules arranged within a perimeter finder pattern and uses the Error Checking and Correction 200 (Reed-Solomon error correction algorithm). * * *

''Type designation'' means a combination of letters and numerals assigned by the Government to a complete item, such as a major end item, assembly or subassembly, as appropriate, to provide a convenient means of differentiating between items having the same basic name and to indicate modifications and changes thereto.

* * * * *

(c) *Unique item identifier.*

(1) The Contractor shall provide a unique item identifier for the following:

(i) Delivered items for which the Government's unit acquisition cost is $5,000 or more, except for the following line items:

Contract Line, Subline, or
Exhibit Line Item Number
Item Description

_____

_____

_____

(ii) Items for which the Government's unit acquisition cost is less than $5,000 that are identified in the Schedule or the following table:

Contract Line, Subline, or
Exhibit Line Item Number
Item Description

_____

_____

(If items are identified in the Schedule, insert ''See Schedule'' in this table.)

(iii) Subassemblies, components, and parts embedded within delivered items, items with warranty requirements, DoD serially managed reparables and DoD serially managed nonreparables as specified in Attachment Number ____.

(iv) Any item of special tooling or special test equipment as defined in FAR 2.101 that have been designated for preservation and storage for a Major Defense Acquisition Program as specified in Attachment Number ____.

(v) Any item not included in (i), (ii), (iii), and (iv) for which the contractor, at its own expense, creates and marks a unique item identifier for traceability.

(2) The unique item identifier assignment and component data element combination shall not be duplicated on any other item marked by the contractor.

(3) The unique item identifier component data elements shall be marked on an item using two dimensional data matrix symbology that complies with ISO/IEC International Standard 16022, Information technology—International symbology specification—Data matrix.

(4) *Data syntax and semantics of unique item identifiers.* The Contractor shall ensure that—

(i) The data elements (except issuing agency code) of the unique item identifier are encoded within the data matrix symbol that is marked on the item using one of the following three types of data qualifiers, as determined by the Contractor:

(A) Application Identifiers (AIs) (Format Indicator 05 of ISO/IEC International Standard 15434), in accordance with ISO/IEC International Standard 15418, Information Technology—EAN/UCC Application Identifiers and Fact Data Identifiers and Maintenance and ANSI MH 10.8.2 Data Identifier and Application Identifier Standard.

(B) Data Identifiers (DIs) (Format Indicator 06 of ISO/IEC International Standard 15434), in accordance with ISO/IEC International Standard 15418, Information Technology—EAN/UCC Application Identifiers and Fact Data Identifiers and Maintenance and ANSI MH 10.8.2 Data Identifier and Application Identifier Standard.

(C) Text Element Identifiers (TEIs) (Format Indicator 12 of ISO/IEC International Standard 15434), in accordance with the Air Transport Association Common Support Data Dictionary; and

(ii) The encoded data elements of the unique item identifier conform to the transfer structure, syntax, and coding of messages and data formats specified for Format Indicators 05, 06, and 12 in ISO/IEC International Standard 15434, Information Technology—Transfer Syntax for High Capacity Automatic Data Capture Media.

(5) *Unique item identifier.*

(i) The Contractor shall—

(A) Determine whether to—

(1) Serialize within the enterprise identifier;

(2) Serialize within the part, lot, or batch number; or

(3) Use a DoD recognized unique identification equivalent (e.g. Vehicle Identification Number); and

(B) Place the data elements of the unique item identifier (enterprise identifier; serial number; DoD recognized unique identification equivalent; and for serialization within the part, lot, or batch number only: original part, lot, or batch number) on items requiring marking by paragraph (c)(1) of this clause, based on the criteria provided in MIL–STD–130, Identification Marking of U.S. Military Property, latest version.

(C) Label shipments and storage containers and packages that contain uniquely identified items in accordance with the requirements of MIL–STD–129, Military Marking for Shipment and Storage, latest version.

(D) Verify that the marks on items, shipments and storage containers and packages are machine readable and conform to the applicable standards.

(ii) The issuing agency code—

(A) Shall not be placed on the item; and

(B) Shall be derived from the data qualifier for the enterprise identifier.

(d) For each item that requires item unique identification under paragraph (c)(1)(i), (ii) or (iv) of this clause or when item unique identification is provided under paragraph (c)(1)(v) in addition to the information provided as part of the Material Inspection and Receiving Report specified elsewhere in this contract, the Contractor shall report at the time of delivery, as part of the Material Inspection and Receiving Report, the following information:

* * * * *

(12) Type designation of the item as specified in the contract specifications, if any.

(13) Whether the item is an item of Special Tooling or Special Test Equipment.

(14) Whether the item is covered by a warranty.

(e) For embedded subassemblies, components, and parts that require DoD item unique identification under paragraph (c)(1)(iii) of this clause or when item unique identification is provided under paragraph (c)(1)(v), the Contractor shall report as part of the Material Inspection and Receiving Report specified elsewhere in this contract, the following information:

* * * * *

(f) The Contractor shall submit the information required by paragraphs (d) and (e) of this clause as follows:

(1) End items shall be reported using the receiving report capability in WAWF in accordance with the clause at 252.232–7003. If WAWF is not required by this contract, follow the procedures at *http://www.acq.osd.mil/dpap/pdi/uid/data_submission_information.html.*

(2) Embedded items shall be reported by one of the following methods—

(i) Use of the embedded items capability in WAWF;

(ii) Direct data submission to the IUID Registry following the procedures and formats at *http://www.acq.osd.mil/dpap/pdi/uid/data_submission_information.html;* or

(iii) Via WAWF as a deliverable attachment for exhibit line item ____ Unique Item Identifier Report for Embedded Items, Contract Data Requirements List, DD Form 1423.

* * * * *

(End of clause)

14. Amend section 252.225–7039 by—

a. Removing from the clause heading ''(AUG 2011)'' and adding in its place ''(DATE)''; and

b. Revising paragraph (b)(1)(ii)(B) to read as follows.

252.225–7039 Contractors Performing Private Security Functions.

* * * * *

(b) * * *

(B) In addition, all weapons that are Government-furnished property must be assigned a unique identifier in accordance with the clauses at DFARS 252.211–7003, Item Unique Identification and Valuation, and DFARS 252.245–7001, Tagging, Labeling, and Marking of Government-Furnished Property, and physically marked in accordance with MIL–STD 130 (current version) and DoD directives and instructions. The items must be registered in the DoD Item Unique Identification (IUID) Registry (*https://www.bpn.gov/iuid/*);

* * * * *

Appendix F: Material Inspection And Receiving Report

F–103 [Amended]

F–301 [Amended]

15. The authority citation for 48 CFR chapter 2 appendix F continues to read as follows:

Authority: 41 U.S.C. 1303 and 48 CFR chapter 1.

16. Section F–103, paragraph (e)(1) is amended by removing ''DFARS 252.211–7003, Item Identification and Valuation'' and adding in its place ''DFARS 252.211–7003, Item Unique Identification and Evaluation''.

17. Section F–301, paragraph (18)(i) is amended by removing ''DFARS 252.211–7003, Item Identification and Valuation'' and adding in its place ''DFARS 252.211–7003, Item Unique Identification and Evaluation''.

* * * * *

[FR Doc. 2012–14289 Filed 6–14–12; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 120416007–2150–01]

RIN 0648–BB67

Fisheries of the Exclusive Economic Zone Off Alaska; Monitoring and Enforcement Requirements in the Bering Sea and Aleutian Islands Freezer Longline Fleet

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS issues a proposed rule that would modify equipment and operational requirements for freezer longliners (catcher/processors) named on License Limitation Program (LLP) licenses endorsed to catch and process Pacific cod at sea with hook-and-line gear in the Bering Sea and Aleutian Islands Management Area (BSAI). If approved, the proposed regulations would require vessel owners to select between two monitoring options: carry two observers so that all catch can be sampled, or carry one observer and use a motion-compensated scale to weigh Pacific cod before it is processed. The selected monitoring option would be required to be used when the vessel is operating in either the BSAI or Gulf of Alaska groundfish fisheries when directed fishing for Pacific cod is open in the BSAI, or while the vessel is fishing for groundfish under the Western Alaska Community Development Quota (CDQ) Program. A vessel owner who notifies NMFS that the vessel will not be used to conduct directed fishing for Pacific cod in the BSAI or to conduct groundfish CDQ fishing at any time during a particular year would not be required to select one of the monitoring options and would continue to follow observer coverage and catch reporting requirements that apply to catcher/processors not subject to this proposed action. These regulatory amendments address the need for enhanced catch accounting, monitoring, and enforcement created by the formation of a voluntary cooperative by the BSAI longline catcher/processor subsector in 2010, and are necessary to improve the precision of the accounting for allocated quota species. This action is intended to promote the goals and objectives of the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area, the Fishery Management Plan for Groundfish of the Gulf of Alaska, the Magnuson-Stevens Fishery Conservation and Management Act, and other applicable laws.

DATES: Written comments must be received no later than 1700 hours, Alaska local time (A.L.T.) July 16, 2012.

ADDRESSES: You may submit comments, identified by FDMS Docket Number NOAA–NMFS–2011–0278, by any one of the following methods:

- *Electronic Submissions:* Submit all electronic public comments via the Federal eRulemaking Portal Web site at *http://www.regulations.gov.* To submit comments via the e-Rulemaking Portal, first click the ''Submit a Comment'' icon, then enter NOAA–NMFS–2011–0278 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:* Address written comments to Glenn Merrill, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region NMFS, Attn: Ellen Sebastian. Mail comments to P.O. Box 21668, Juneau, AK 99802–1668.
- *Fax:* Address written comments to Glenn Merrill, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region NMFS, Attn: Ellen Sebastian. Fax comments to 907–586–7557.
- *Hand delivery to the Federal Building:* Address written comments to Glenn Merrill, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region NMFS, Attn: Ellen Sebastian. Deliver comments to 709 West 9th Street, Room 420A, Juneau, AK.

Comments must be submitted by one of the above methods to ensure that they are received, documented, and considered by NMFS. 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 to *http://www.regulations.gov* without change. All Personal Identifying Information (e.g., name, address) voluntarily submitted by the commenter will be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information. NMFS will accept anonymous comments (enter N/A in the required fields, if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, WordPerfect, or Adobe portable document file (pdf) formats only.

Electronic copies of the Regulatory Impact Review and Environmental Assessment (RIR/EA) prepared for this action may be obtained from *http://www.regulations.gov* or from the NMFS Alaska Region Web site at *http://alaskafisheries.noaa.gov.*

Electronic copies of NOAA Technical Memorandum NMFS–F/AKR–10 ''Investigation of Weight Loss in Pacific cod (*Gadus macrocephalus*) Due to Exsanguination'' may be obtained at *http://docs.lib.noaa.gov/noaa_documents/NMFS/AlaskaRegionalOfc/TM-FAKR/NOAA-TM-FAKR-10.pdf.*

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this proposed

rule may be submitted to NMFS (see **ADDRESSES**) and by email to *OIRA_Submission@omb.eop.gov,* or by fax to 202–395–7285.

FOR FURTHER INFORMATION CONTACT: Jennifer Watson, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the U.S. groundfish fisheries of the exclusive economic zone off Alaska under the Fishery Management Plan for Groundfish of the Gulf of Alaska (GOA FMP) and the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (BSAI FMP). The FMPs were prepared by the North Pacific Fishery Management Council (Council) and approved by the Secretary of Commerce under authority of the Magnuson-Stevens Fishery Conservation and Management Act, 16 U.S.C. 1801 *et seq.* (Magnuson-Stevens Act). The FMPs are implemented by regulations at 50 CFR parts 679 and 680.

Background

NMFS proposes new monitoring and enforcement provisions applicable to vessels participating in the BSAI longline catcher/processor (C/P) subsector as a result of several pieces of legislation passed by Congress and recent changes to fishery management regulations. NMFS uses the term ''longline catcher/processor subsector'' in this proposed rule consistent with the term as used in section 219(a)(6) of the Department of Commerce and Related Agencies Appropriations Act, 2005 (Pub. L. 108–447, 118 Stat. 2887 (Dec. 8, 2004)), which is described later in the proposed rule. Specifically, the legislative and regulatory changes that necessitate this proposed action are (1) Legislation that created a defined class of participants in the BSAI longline C/P subsector, (2) regulatory amendments that allocated a specific quantity of Pacific cod resources in the BSAI to the defined class of longline C/P subsector participants, and (3) legislation that allowed BSAI longline C/P subsector participants to receive exclusive catch privileges. In combination, these changes create the opportunity for the BSAI longline C/P subsector to form a voluntary fishing cooperative whose members have a de facto catch share program because they control fishing for the longline C/P subsector's allocation of Pacific cod in the BSAI. For reasons described in more detail below, vessels fishing under a voluntary cooperative require a higher level of monitoring to ensure accurate reporting of the catch of species allocated to the subsector. The following sections describe the legislation and regulatory changes, how those changes create the need for the proposed action, and the specific measures proposed to improve NMFS' monitoring of catch by the BSAI longline C/P subsector.

The BSAI Longline C/P Subsector

Under the LLP, which was implemented by NMFS on January 1, 2000, an LLP license is required for all vessels directed fishing for groundfish in the BSAI. With limited exemptions for smaller vessels and vessels using a limited amount of jig gear, a vessel must be designated on an LLP license to directed fish for groundfish. For a vessel designated on an LLP license, the LLP license authorizes the type of fishing gear that may be used by the vessel, the maximum size of the vessel, and whether the vessel may catch and process fish at sea (C/P) or if it is limited to delivering catch without at-sea processing.

Until 2003, an LLP license carried gear and operational type (C/P or catcher vessel) endorsements, but did not carry a species endorsement. NMFS modified the LLP in 2003 to include a species endorsement for Pacific cod in the BSAI. A vessel can directed fish for Pacific cod in the BSAI only if the vessel is designated on an LLP license that has this specific endorsement. NMFS added Pacific cod endorsements to existing LLP licenses based on eligibility criteria, primarily whether the license or the vessel had been used to harvest Pacific cod. Additional detail on the development and rationale for the LLP and Pacific cod endorsements in the BSAI can be found in the final rule implementing the Pacific cod endorsement requirement (68 FR 44666, July 30, 2003) and is not repeated here.

The LLP Pacific cod endorsement requirement has, in effect, limited the number of vessels that are eligible to fish for Pacific cod in the BSAI. Congress further clarified the total number of eligible participants in the longline C/P subsector in section 219(a)(6) of Public Law 108–447, 118 Stat. 2887, Dec. 8, 2004, as holders of the license to catch and process Pacific cod at sea in the BSAI using hook-and-line gear. Hook-and-line gear is commonly known as longline gear.

Section 219(a)(6) defines the longline catcher processor subsector as follows:

> LONGLINE CATCHER PROCESSOR SUBSECTOR.—The term ''longline catcher processor subsector'' means the holders of an LLP license that is noninterim and transferable, or that is interim and subsequently becomes noninterim and transferable, and that is endorsed for Bering Sea or Aleutian Islands catcher processor fishing activity, C/P, Pcod, and hook and line gear.

There are 37 LLP licenses that meet the criteria for inclusion in the BSAI longline C/P subsector. A person cannot use a vessel to catch and process Pacific cod at sea in the BSAI unless it is assigned at least one of the 37 LLP licenses that comprise the longline C/P subsector. In 2011, 33 vessels actively fished under these LLPs. Vessels participating in the longline C/P subsector primarily target Pacific cod in the CDQ and non-CDQ fisheries in the BSAI, but many also participate in the Greenland turbot and sablefish fisheries, as well as in fisheries in the Gulf of Alaska (GOA).

Allocation of Pacific Cod to the Longline C/P Subsector

The Council and NMFS annually establish total allowable catch limits (TACs) for Pacific cod in the BSAI and GOA. TAC amounts are annual catch limits based on the scientifically determined acceptable biological catch and ensure the sustainability of the Pacific cod fishery. The TAC amounts are allocated among user groups as part of the annual specifications process. In the BSAI, Pacific cod is apportioned among allocations made to the CDQ Program and non-CDQ participants. Allocations to the CDQ Program are assigned as exclusive catch privileges to specific CDQ groups as defined by section 305(i) of the Magnuson-Stevens Act. The CDQ groups harvest almost all their Pacific cod allocations with vessels that are members of the longline C/P subsector.

In 2007, NMFS implemented Amendment 85 to the BSAI FMP (72 FR 50788, September 4, 2007). Regulations implementing Amendment 85 apportion 10.7 percent of the Pacific cod TAC to the CDQ reserve for use by the CDQ Program. The non-CDQ TAC is further apportioned between seasons, gear types, and processing modes. The longline C/P sector receives 48.7 percent of the non-CDQ allocation as two separate seasonal allowances. An A season allowance of 60 percent of the total allocation is made available on January 1 and a B season allowance of 40 percent is made available on June 20.

Because halibut is incidentally caught by vessels using longline gear, the longline C/P subsector is allocated a limited amount of halibut to be used as prohibited species catch (PSC) in the Pacific cod fishery. The halibut PSC allocation ensures that total incidental mortality of halibut does not exceed a specified limit while at the same time allowing participants to conduct their target fisheries. Prior to the

implementation of Amendment 85, halibut PSC was apportioned to the hook-and-line sector, but was not further apportioned between C/Ps and catcher vessels. Amendment 85 sub-apportioned the available hook-and-line halibut PSC between the catcher vessel and C/P sectors, which gave the longline C/P subsector a separate apportionment of halibut PSC.

Regulations at § 679.21(e)(2) and (4) specify that 760 metric tons of halibut mortality be made available to the BSAI longline C/P subsector. This halibut PSC may be further allocated seasonally through the annual specifications process.

Congress' definition of the longline C/P subsector and the allocation of Pacific cod and halibut PSC specifically to the longline C/P subsector created conditions that lead owners of longline C/P LLP licenses to form a voluntary cooperative and divide the Pacific cod catch and halibut PSC allocations among its members. Cooperatives allow multiple quota recipients to aggregate their annual quota amounts, coordinate their collective fishing operations, and benefit from the resulting efficiencies. Beginning with the 2010 B season, 100 percent of the owners of the eligible longline C/P subsector LLP licenses had joined the Freezer Longline Conservation Cooperative (FLCC). This voluntary cooperative has established private contractual arrangements that divide the sector's Pacific cod and halibut PSC allocations among the member vessels.

The allocation of exclusive catch privileges can be accomplished through regulation, or by private contractual arrangements, as is the case with the FLCC. The general term to describe programs that allocate exclusive catch privileges is ''catch share programs.'' Catch share programs assign specific catch privileges to specific fishery participants.

Catch share programs address many of the problems that occur when harvesters compete for catch and do not receive an exclusive catch privilege. Competition for fish creates economic inefficiencies and incentives to increase harvesting and processing capacity. For example, harvesters may increase the fishing capacity of their vessels and accelerate their rate of fishing to outcompete other vessels. High-paced fishing reduces the ability of harvesters to improve product quality and extract more value from the fishery by producing high-value products that require additional processing time. Catch share programs provide greater security to harvesters and result in a slower-paced fishery that enables the harvester to choose when to fish.

Longline C/P Cooperative Act

The Longline Catcher Processor Subsector Single Fishery Cooperative Act was enacted in 2010 (Pub. L. 111–335). Under this Act, NMFS must implement a single, mandatory cooperative with exclusive catch privileges for each BSAI LLP license holder if requested to do so by persons holding at least 80 percent of the LLP licenses eligible to participate in the Longline C/P subsector (i.e., at least 30 of the 37 LLP licenses). To date, NMFS has not received any such request. However, the fact that such a mandatory cooperative is explicitly authorized by Congress ensures that if the voluntary cooperative established by the FLCC is unable to continue, regulations to establish a mandatory cooperative with exclusive catch privileges could be implemented by NMFS upon request of a sufficient number of the members of the subsector.

Changes in Fishing Patterns in the Longline C/P Subsector and Background on Monitoring Provisions

The formation of a voluntary cooperative has resulted in a significant change in the operations of the non-CDQ longline C/P Pacific cod fishery in the BSAI. Between 2003 and 2009, the Pacific cod fishery was open an average of 116 days each year. Since the formation of the voluntary cooperative in August 2010, seasonal Pacific cod and halibut PSC limits have not been reached and the fishery has not been closed at all between January 1 and December 31.

While the formation of a voluntary cooperative has ended the race for fish and increased economic efficiency for the fleet, it has also created management challenges. Catch share programs create new demands for enhanced catch accounting, monitoring, and enforcement. They increase incentives for participants to misreport catch through unauthorized discards or inaccurate catch reports. If catch can be successfully misreported or underreported, the fishing season continues longer than it should, and the vessel owners and operators are able to catch more Pacific cod than are allocated to the subsector. The fact that the vessel owners and operators are fishing cooperatively under contract to maximize the harvest and value of the Pacific cod allocation for a given halibut PSC limit provides additional opportunities for them to communicate and cooperate to underreport catch.

Catch share programs require participants to cease fishing when their individual quota allocations are reached. In the case of the voluntary cooperative, NMFS retains the authority to issue a closure to directed fishing for Pacific cod by the BSAI longline C/P sector if its allocation is reached. However, because the cooperative has divided the Pacific cod and halibut PSC sector allocations among its members, industry participants need near-real time catch accounting data so they can closely monitor their catch and prevent fishing in excess of the allocation. For all catch share programs implemented since 1998, NMFS requires the use of observer data as the best available source of information about the catch of the allocated species. Observer data is used as the basis for NMFS's ''catch accounting system,'' and participants in the catch share programs access their vessel's observer data to monitor catch against their allocations on a daily basis. All concerned parties (NMFS, other management agencies, and fishery participants) must have access to a single, authoritative database that clearly and accurately details the amount of quota harvested. If NMFS makes corrections when reviewing observer data during the observer debriefing process, all parties must receive, or have access to, the edited data.

To meet the increased monitoring needs in other GOA and BSAI catch share programs, NMFS developed a suite of monitoring and enforcement measures designed to ensure accurate and near real-time catch accounting for allocated species. These measures include observer coverage requirements, observer sampling protocols, at-sea scale requirements, electronic reporting, and other measures to ensure that catch is accurately accounted for. Additional detail on the range of monitoring and enforcement measures generally applicable to catch share programs in the BSAI—and the rationale for those specific measures—can be found in the final rule implementing Amendment 80 to the BSAI FMP, a catch share program for several non-pollock trawl fisheries (72 FR 52668, September 14, 2007), and is not repeated here. NMFS proposes that monitoring and enforcement measures similar to those required in other catch share programs are necessary for the longline C/P subsector. However, as described in this proposed rule, longline C/Ps present unique challenges, so some of the monitoring and enforcement measures proposed in this action differ from those applied in the other catch share programs.

Increased observer coverage and equipment and operational requirements to improve catch accounting and monitoring were first implemented in 1994 for trawl C/Ps and motherships in the pollock CDQ fisheries (59 FR 25346; May 16, 1994). The CDQ allocations provided an exclusive harvest privilege to the six CDQ groups and represented the first catch share program implemented in Federal waters off Alaska. A significant expansion of catch monitoring requirements for the CDQ fisheries were implemented in 1999 when allocations to the program expanded to all groundfish and prohibited species (63 FR 30381; June 4 1998). Under the CDQ final rule, NMFS first implemented requirements to weigh catch at sea on trawl C/Ps and motherships, observer sampling stations on all C/Ps, two observers on C/Ps using longline gear, requirements for the observers to have prior experience and increased training (''level 2'' and ''lead level 2'') on all C/Ps and motherships, and the requirement that each set on C/Ps using hook-and-line gear be sampled by an observer for species composition. This was the first time that enhanced observer coverage and equipment and operational requirements were applied to longline C/Ps. NMFS determined that data collected by observers were the best estimates of catch for the longline C/Ps and that observer sampling stations and two observers to sample each set for species composition was necessary to provide catch and bycatch estimates needed to manage the CDQ allocations.

The 1998 final rule required motion-compensated scales to weigh total catch on trawl C/Ps and motherships because all the catch on these processing vessels could be made to pass through a single point on a conveyor belt in the factory before any sorting or processing was done. As described below, the operations on a longline C/P did not provide a single point where all catch could be weighed on a motion-compensated scale and, in 1998, the technology for weighing catch at sea on longline C/Ps was not well developed. Therefore, NMFS' enhanced catch monitoring requirements for longline C/Ps focused on improving observer data as much as was possible at the time. These monitoring requirements for longline catcher processors in the CDQ fisheries remained largely unchanged until the 2006 amendments to the Magnuson-Stevens Act, which are described below.

In the non-CDQ groundfish fisheries, longline C/Ps equal to or greater than 125 feet length overall (LOA) are required to carry an observer 100 percent of the time. Vessels less than 125 feet LOA must carry an observer 30 percent of the time. The observer estimates the total catch and species composition by sampling a portion of the longline sets. These data are extrapolated to give an estimate of catch for unsampled sets. The current sampling methodologies produce accurate catch estimates on a seasonal level, but they are not designed to give a precise estimate of the catch for each set of hook-and-line gear. In addition to the observer coverage requirements, vessel operators also must comply with specified recordkeeping and reporting requirements (R&R) in § 679.5 (primarily logbooks, daily electronic production reports, and product transfer reports) and with vessel monitoring system requirements (VMS). The R&R and VMS requirements also apply while these vessels are CDQ fishing.

In 2006, section 305(i)(1) of the Magnuson-Stevens Act was amended by the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act (Pub. L. 109–241). Section 305(i)(1)(B)(iv) requires that the harvest of CDQ allocations for fisheries with individual quotas or fishing cooperative shall be regulated no more restrictively than fisheries with individual quotas or fishing cooperatives. In a note to section 305, the term ''fishing cooperative'' is defined to include a voluntary fishing cooperative. More information about the ''CDQ regulation of harvest provision'' of the Magnuson-Stevens Act and how it applies to voluntary cooperatives is included in a final rule published on February 8, 2012 (77 FR 6492), and is not repeated here.

In April 2011, the Western Alaska Community Development Association notified NMFS of the formation of a voluntary cooperative in the longline C/P subsector and requested that NMFS apply the regulation of harvest provisions of the Magnuson-Stevens Act to these vessels while they were participating in the CDQ fisheries. NMFS agreed and suspended enforcement of the regulations in 50 CFR part 679 that were more restrictive on the longline C/Ps while they were CDQ fishing. Included in the regulations suspended were the requirements for two observers, level 2 and lead level 2 requirements, observer sampling station requirements, and the requirement that each set be sampled. Therefore, since May 31, 2011, the observer coverage and catch monitoring requirements have been the same for longline C/Ps fishing in the CDQ and non-CDQ groundfish fisheries in the BSAI. These requirements are observer coverage based on vessel length overall and the standard R&R and VMS requirements that apply to longline C/Ps in general.

In the meantime, the Council and NMFS have been working for many years to restructure the groundfish observer program and expand observer coverage to the halibut fleet. On April 18, 2012 (77 FR 23326), NMFS published a proposed rule to implement Amendment 86 to the BSAI FMP and Amendment 76 to the GOA FMP. If approved, Amendments 86 and 76 would require all C/Ps to carry at least one observer at all times (100 percent or full observer coverage). This would increase observer coverage for the longline C/Ps less than 125 feet LOA in both the CDQ and non-CDQ fisheries starting in 2013.

The Proposed Action

With the changes in the BSAI Pacific cod fishery and experience from the CDQ Program monitoring requirements, the BSAI longline C/P subsector members and NMFS recognized the need to develop an enhanced monitoring and catch accounting system. NMFS decided that the best approach for developing an effective monitoring and catch accounting system was through the Council process. At its October 2009 meeting, the Council requested that NMFS prepare a discussion paper on options for enhanced monitoring for the BSAI longline C/P subsector, including increased observer coverage and the use of motion-compensated scales in lieu of an additional observer. NMFS staff held a public workshop in Dutch Harbor on December 1, 2009, to learn about the vessels participating in the freezer longline fishery and how to monitor their Pacific cod harvest. Following this workshop, NMFS staff visited a representative group of 21 longline C/P vessels in Dutch Harbor, AK, and Seattle, WA, and discussed catch handling protocols and factory operations with vessel crew. In July 2010, NMFS staff accompanied the F/V *Bristol Leader* to observe the operation of a motion-compensated flow scale recently installed on the vessel. On May 10, 2011, NMFS staff and industry representatives met for a workshop on longline C/P vessel monitoring and enforcement in Seattle, WA. The results of the workshop are included in the draft RIR/EA for this proposed rule, which was provided to the Council for review and comment at its October 2011 meeting. NMFS informed the Council of the agency's intent to promulgate a regulatory amendment that, if approved by the Secretary, would be effective at

the beginning of 2013. The Council received public comment on NMFS' report but took no action to recommend changes or to explicitly endorse the proposed action.

This proposed action would apply to the owners and operators of any vessel named on an LLP license with a Pacific cod catcher-processor hook-and-line endorsement for the Bering Sea, Aleutian Islands, or both Bering Sea and Aleutian Islands. It would affect these vessels when they operate (1) in either the BSAI or GOA groundfish fisheries when directed fishing for Pacific cod is open in the BSAI, or (2) while the vessel is groundfish CDQ fishing.

Except for vessel owners that opt out of fisheries that are subject to the monitoring requirements, these requirements would apply to members of the longline C/P subsector while they fish in the GOA when directed fishing for Pacific cod is open in the BSAI. These vessels frequently move between the GOA and the BSAI without stopping to offload catch. Vessel owners and operators could find it difficult to comply with differing observer coverage and catch accounting requirements for the same trip. It would also be difficult for NOAA's Office of Law Enforcement to determine whether these vessels were complying with the correct observer coverage and catch monitoring requirements if the requirements differed for Pacific cod caught in the GOA versus the BSAI on the same trip. If directed fishing for Pacific cod in the BSAI by longline C/Ps continues to remain open all year, as it has since formation of the voluntary cooperative, these requirements would effectively apply all year to any longline C/P subject to the requirements.

The proposed requirements also would apply while the vessel is groundfish CDQ fishing, which is defined in § 679.2 to mean ''fishing that results in the retention of any groundfish CDQ species, but that does not meet the definition of pollock CDQ fishing, sablefish CDQ fishing, or halibut CDQ fishing.'' NMFS does not use directed fishing closures to control fishing effort in the CDQ fisheries unless the closures apply to species that are not allocated to the CDQ Program. CDQ groups are allocated multiple groundfish and PSC species, and are prohibited from exceeding any of these allocations.

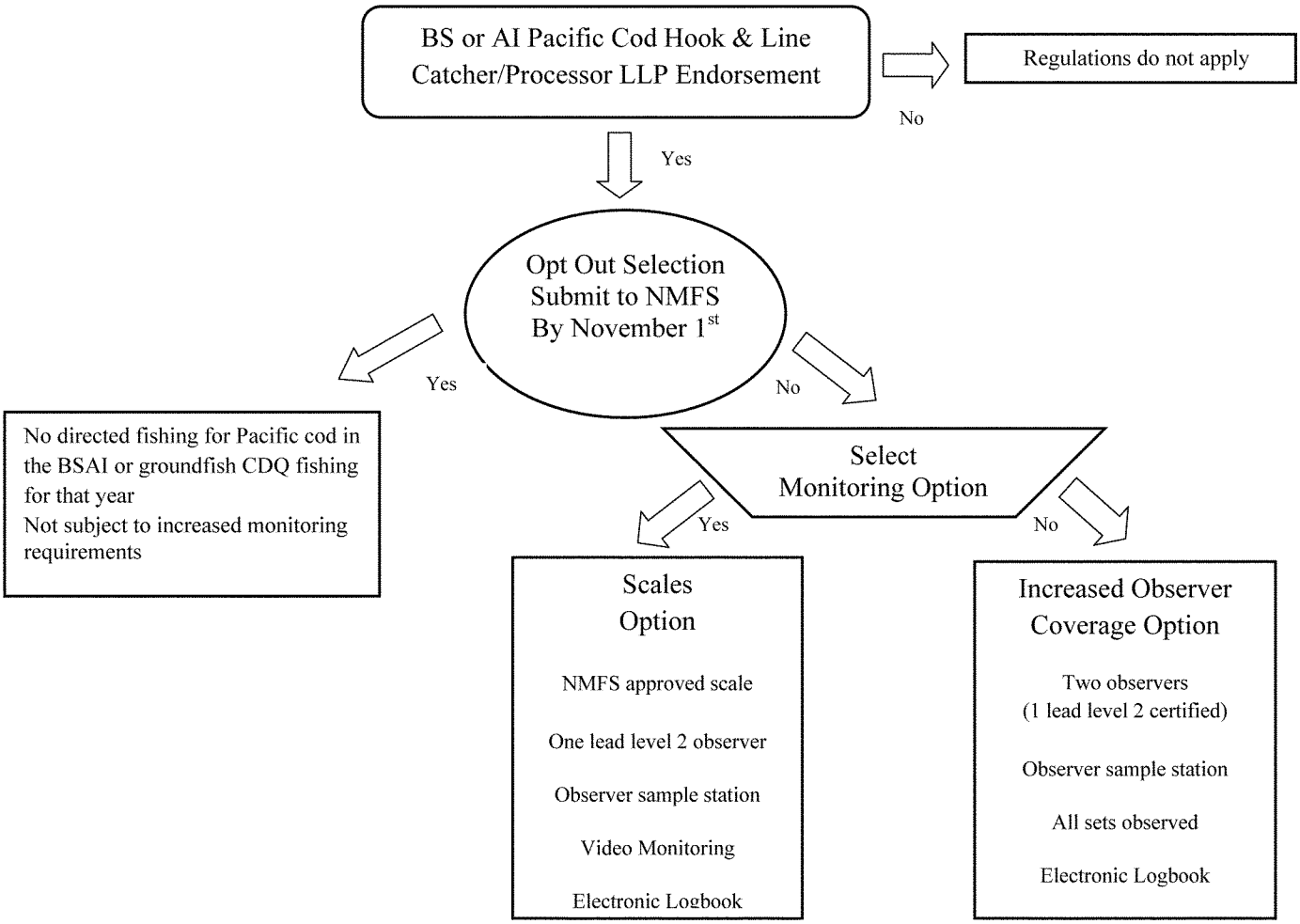
As noted earlier, the Magnuson-Stevens Act requires that the CDQ fisheries for species managed with individual quotas or cooperatives in the non-CDQ fisheries be regulated no more restrictively than those non-CDQ fisheries. Aligning the CDQ regulations with regulations governing the halibut and sablefish IFQ Program, the American Fisheries Act pollock fisheries (managed under cooperatives), and the ''Amendment 80'' trawl fisheries (managed under a cooperative) required NMFS to separately define halibut CDQ fishing, sablefish CDQ fishing, pollock CDQ fishing, and groundfish CDQ fishing (see definitions at § 679.2). Groundfish CDQ fishing refers to fishing under the CDQ Program for any groundfish other than pollock or sablefish. Therefore, groundfish CDQ fishing includes Pacific cod which is the primary target species of vessels in the longline C/P sector while they are participating in the CDQ fisheries.

As described earlier in this proposed rule, the voluntary cooperative and the CDQ Program present NMFS with similar monitoring and enforcement challenges. Therefore, this proposed action would apply the same requirements to the longline C/Ps in both the CDQ and non-CDQ fisheries. Currently, the same observer coverage and monitoring requirements apply to the longline C/Ps in the CDQ and non-CDQ fisheries for Pacific cod. Continuing to maintain the same monitoring measures under the proposed action would ensure consistent methods of catch accounting, avoid confusion for observers, and reduce the risk of data processing or catch accounting errors that may occur if monitoring provisions change onboard a vessel while fishing.

The proposed action would require owners of affected vessels to either annually opt out of the fisheries subject to the increased monitoring requirements, or select between two monitoring options: Increased observer coverage or scales. NMFS has examined both options and determined that either option would improve catch accounting on the longline C/Ps and provide the data needed to properly manage the Pacific cod and groundfish CDQ fisheries. Once a vessel owner makes a selection (opt out, increased observer coverage, or scales), the vessel would be required to operate under that option for the entire year. Except for the first year of implementation, NMFS proposes that a selected monitoring option must be used for an entire year to reduce the risk for data processing or catch accounting errors that may occur if monitoring options are changed during the season. Further rationale for this exception in the first year of implementation is provided in a later section of the proposed rule.

Figure 1 illustrates the proposed action.

Figure 1: Summary of Proposed Monitoring Options



Opt Out and Monitoring Option Provisions

Under this proposed action, each year, prior to November 1, each vessel owner in the longline C/P subsector would be required to opt out of the proposed monitoring program if that vessel owner does not intend to directed fish for Pacific cod in the BSAI or conduct groundfish CDQ fishing at any time during the following calendar year, or to select one of two monitoring options. The vessel owner would be required to submit a completed notification form for the opt out or one of the two monitoring options to NMFS by November 1 of the calendar year prior to fishing. NMFS proposes a November 1 deadline to provide NMFS adequate time to inspect all vessels to ensure proper installation of necessary equipment, and make necessary adjustments to the catch accounting system to properly track catch according to the monitoring option selected by vessel owners.

Vessel owners who opt out would be prohibited from using their vessel as a C/P to directed fish with hook-and-line gear for Pacific cod in the BSAI or to conduct groundfish CDQ fishing during the specified year. Vessel owners, however, could use their vessels to participate in directed fisheries in the GOA, the halibut or fixed gear sablefish CDQ fisheries, or BSAI-directed fisheries other than hook-and-line C/P Pacific cod. Some vessels in this subsector also have LLP endorsements for catcher vessel or pot gear, which enables these vessels to fish other sectors. NMFS proposes this opt out provision to allow vessel owners who are not actively fishing in the BSAI Pacific cod longline C/P or groundfish CDQ fishing to be exempted from the requirements and additional compliance costs applicable to these catch share programs if they are not active in those fisheries. Vessel owners that opt out from directed fishing for Pacific cod in the BSAI or groundfish CDQ fishing would continue to be subject to all other monitoring requirements when the vessels are used in other fisheries.

Vessel owners who intend to participate in groundfish CDQ or Pacific cod fisheries in the BSAI would be required to meet additional monitoring requirements. These requirements would apply (1) when the vessel is operating in either the BSAI or GOA groundfish fisheries when directed fishing for Pacific cod is open in the BSAI, or (2) while the vessel is groundfish CDQ fishing. Vessel owners would be allowed to select one of two monitoring options. An increased observer coverage option would require the vessel to carry two observers. As an alternative to increased observer coverage, vessel owners could select the scales option. Under the scales option, the vessel owner and operator would be required to ensure that all Pacific cod was weighed on a NMFS-approved scale

and to provide an electronic monitoring system that records all activities that take place on the vessel between the location where catch is first sorted or bled and the location where all Pacific cod have been sorted and weighed. Under both monitoring options, vessel operators would be required to use an electronic logbook (ELB) during the entire year for reporting catch, and provide a NMFS-approved observer sampling station. Vessels could not change monitoring options except prior to November 1 of the upcoming calendar year. The rationale for each of these proposed provisions is described below.

A vessel owner that failed to select a monitoring option or to opt out by November 1 of each year would be required to operate under the increased observer coverage option in the following year. NMFS proposes to assign vessels that do not select a monitoring option to the observer coverage option to ensure that adequate catch records are available. If a vessel owner does not apply by November 1 of each year, NMFS would not be able to assign that vessel to the scales option because NMFS would not be able to ensure that a scale could be purchased, installed, and inspected before the Pacific cod fishery opens on January 1 of the following year.

During the first year of the program, projected as 2013, NMFS proposes to allow vessel owners that chose the increased observer coverage option to make a one-time change to the scales option during the year. The change from the increased observer coverage option to the scales option would occur between the A and B seasons. Vessel owners would need to submit a monitoring option notification form by May 1, 2013, and must comply with the scales option requirements beginning on June 10, 2013, which would be the opening of the B season. NMFS proposes to allow this one-time change in monitoring options during the first year of implementation because NMFS expects that many vessel owners or operators will not be able to purchase, make factory modifications, install flow scales, and have those scales approved by NMFS in time for the beginning of the program on January 1, 2013. Additionally, NMFS expects that there may be a shortage of flow scales manufactured in time for the beginning of the program.

Increased Observer Coverage Option

Under the increased observer coverage option, NMFS would require observer coverage similar to other catch share programs. Vessel owners and operators would be required to provide two observers at all times (1) when the vessel is operating in either the BSAI or GOA groundfish fisheries when directed fishing for Pacific cod is open in the BSAI, or (2) while the vessel is groundfish CDQ fishing. One of those observers must have a lead level 2 certification. This additional experience and training requirement ensures that at least one observer deployed in this program has prior experience sampling in a longline or pot fishery.

In other catch share programs in Alaska, NMFS requires observers who have additional training and experience to ensure the highest quality data for debiting quota accounts. Regulations at § 679.50 provide for two levels of observers with additional experience: Level 2 and lead level 2.

To become a level 2 observer, an observer must be a prior observer in the groundfish fisheries off Alaska who has completed at least 60 days of data collection, has received an evaluation by NMFS for his or her most recent deployment that indicated that his or her performance met North Pacific Groundfish Observer Program (Observer Program) expectations for that deployment, and has successfully completed a NMFS-approved level 2 observer training as required by the Observer Program. Level 2 training is now included in the basic observer training.

To become a lead level 2 observer for nontrawl gear, an observer must have completed two observer cruises (contracts) of at least 10 days each and sampled at least 60 sets on a vessel using longline or pot gear. Additional detail on the lead level 2 requirement is provided later in this preamble in the section titled ''Elements Common to Both Monitoring Options.''

The level 2 requirement ensures that observers have experience at sea; the ''lead'' requirement ensures that they have had experience with longline or pot gear and that, having taken at least two cruises, they have experience with various fixed-gear operations. In other quota-based C/P fisheries, allocations are debited from applicable quota accounts based on observer data. Because the data collected by observers is directly used to debit quota accounts, the observer estimates are carefully reviewed and scrutinized by catch share participants. NMFS has found that observers with prior experience with a specific gear type are more likely to collect usable data for quota management.

Scales Option

Under the scales option, vessels would be required to use motion-compensated scales and electronic monitoring as an alternative to increased observer coverage. Vessels would be required to carry a single lead level 2 observer, but instead of a second observer, vessels would be required to weigh all Pacific cod on a NMFS-approved scale and provide an electronic monitoring system.

Motion-compensated flow or hopper scales are intended to provide an accurate record of catch. They are successfully used in the American Fisheries Act pollock, Central GOA rockfish, trawl CDQ, Crab Rationalization crab, and Amendment 80 catch share programs. As in other catch share programs, regulations would require that these scales be inspected and approved annually by NMFS and tested daily when in use. In C/P trawl fisheries, scales are used to weigh the total catch, and observer sampling is used to determine the fraction of that weight each species comprises. Because longline C/Ps do not bring all bycatch onboard the vessel and crew are required to release halibut as quickly as possible, it would be impractical to require vessel operators to obtain a scale weight of the total catch. Therefore, NMFS proposes that only the Pacific cod brought onboard the vessel be weighed. For the purpose of accounting for Pacific cod catch, NMFS would use the weight of all catch that passes over the scale. Observer data still would be used to estimate the weight of the catch of species other than Pacific cod and halibut PSC, and to estimate the weight of Pacific cod that was caught but did not enter the vessel.

In the longline C/P Pacific cod fishery, product quality is dependent on rapid bleeding of catch. On most vessels, Pacific cod are cut and bled almost immediately upon entering the vessel and then allowed to complete the bleeding process in a saltwater-filled tank. Because of the need to preserve product quality, NMFS has determined that it may not be feasible for all vessels to weigh Pacific cod prior to bleeding. NMFS uses a product recovery rate (PRR) for bled fish of .98 to estimate the original round weight of the catch. To determine the round weight equivalent of a fish, NMFS divides the weight of the product by the PRR. In this case, the weight of bled fish is divided by .98. However, the bled fish PRR is based on catch that has fully completed the bleeding and soaking process and is not necessarily applicable to catch that has been cut but not fully bled. Based on

research conducted by NMFS staff (see **ADDRESSES**), NMFS proposes to use a PRR that is designated for each vessel for catch accounting depending on the location where catch is weighed in relation to the location that cutting and bleeding occurs. These PRRs would be specific to vessels using the scales monitoring option under § 679.100 and would not be added to Table 3 to part 679. If Pacific cod are weighed prior to cutting, no PRR would be applied to the scale weights reported by the vessel operator in the ELB and 100 percent of the scale weight would be used to account for Pacific cod catch. If Pacific cod are weighed after cutting but before any bleeding holding area, a PRR of 0.99 would be applied to the reported scale weights and 101 percent of the scale weight would be used to account for Pacific cod catch. If Pacific cod are weighed after a bleeding holding area, the standard bled PRR of 0.98 would be applied to the scale weights and 102 percent of the scale weight would be used to account for Pacific cod catch. NMFS staff would determine the applicable PRR rate at the time of the annual scale inspection based on the location of the scale and bleeding holding area on a particular vessel. NMFS would notify each vessel owner and operator in writing of the PRR that would be applied to the scale weights from that vessel.

Because this option only requires a single observer, it would not be possible for an observer to be on site at all times when catch is being sorted and weighed. In order to ensure that all Pacific cod is accurately weighed, NMFS proposes to require that each vessel using this option be equipped with a NMFS-approved electronic monitoring system capable of recording crew activity. The system, consisting of cameras, a digital video recorder, and a monitor would be required to:

- Provide sufficient resolution and field of view to monitor all areas where Pacific cod are sorted from the catch, all fish passing over the motion-compensated scale, and all crew actions in these areas.
- Have sufficient data storage capacity to record all video data from an entire trip.
- Time/date stamp each frame of video in Alaska local time (A.l.t.).
- Include at least one external USB (1.1 or 2.0) port or other removable storage device approved by NMFS.
- Use commercially available software.
- Use color cameras that have at a minimum 470 TV lines of resolution, auto-iris capabilities, and output color video to the recording device with the ability to revert to black and white video output when light levels become too low for color recognition.
- Record at a speed of no less than 5 frames per second at all times when Pacific cod are being sorted or weighed.
- Provide a 16-bit or better color monitor that can display all cameras simultaneously.

Data from the system would have to be maintained on board for at least 120 days and made available to NMFS staff, or any individual authorized by NMFS, upon request. The system would be inspected and approved annually by NMFS to ensure that it meets the above standards. This type of electronic monitoring system has also been effectively used in other catch share programs, such as the Amendment 80 catch share program and the Amendment 91 BSAI Chinook salmon bycatch management measures.

Elements Common to Both Monitoring Options

Vessels would be required to carry a lead level 2 observer. NMFS would require at least one observer to be lead level 2 certified because NMFS needs the highest quality data available for catch share management in catch share programs, and observer experience is important to help reduce the potential for data loss. NMFS has consistently required lead level 2 observers in other catch share programs to ensure proper catch accounting. Data loss can occur when inexperienced observers suffer from sea sickness or conduct sampling incorrectly. Performance issues with new observers can impact NMFS' monitoring of scale performance, halibut catch estimates, halibut mortality estimates, and all discard estimates, including Pacific cod. All these factors are important to properly account for the voluntary cooperative's Pacific cod and halibut PSC allocations.

The presence of at least one observer with the experience and confidence associated with lead level 2 qualifications will be important under the two-observer approach, for several reasons: (1) It would follow the monitoring model used in catch share programs; (2) it would reduce the time required for observers to understand sampling techniques on a new longline vessel assignment; (3) it would help identify efforts to create misleading data and to stand up to challenges to observer-collected information; and (4) it would provide for better organization among the observers on the vessel, and allow for mentoring of the less experienced observer during a cruise.

Under the scales option, the sole observer aboard the vessel would be required to have a lead level 2 certification. While the scales would weigh retained Pacific cod, the single observer would be responsible for obtaining Pacific cod discard estimates and halibut PSC estimates for debiting the voluntary cooperatives quota accounts. Therefore, this proposed rule would require that the sole observer would be lead level 2 certified. A lead level 2 observer is more likely to have the skills necessary to deal with unexpected issues concerning sampling and data collection. Additional detail on the training, availability and costs of deploying lead level 2 observers for the longline C/P fleet is provided in section 1.3.4 of the RIR/EA (see **ADDRESSES**) and is not repeated here.

At the October 2011 Council meeting, observer provider companies expressed concerns about a shortage of lead level 2 observers available for this program. While NMFS does not believe that a shortage of lead level 2 observers is likely, NMFS proposes to reduce the required number of sampled sets on vessels using longline or pot gear for a lead level 2 endorsement from 60 sets to 30 sets. Based on section 1.3.4 of the RIR/EA (see **ADDRESSES**), NMFS predicts this change would increase the pool of available lead level 2 observers by approximately 20 percent. The requirement for 60 sampled sets was implemented in 1999 in the final rule for the CDQ Program (63 FR 30381, June 4, 1998). At that time, most observer experience was gained on longline C/P vessels that conducted multiple sets each day and made relatively long trips of up to 45 days. The majority of these trips were directed fishing for Pacific cod and there was little variability in the sets (length of set, soak time, species encounters). NMFS considered sixty sampled sets sufficient to ensure that observers were proficient in all the sampling duties and could adjust to changing circumstances aboard a fixed gear vessel. NMFS anticipates that future observers would qualify for a lead level 2 endorsement by deployment on smaller longline catcher vessels. Typically, these vessels deploy fewer sets per day. However, because of the small vessel size and diversity of fisheries, they create a more challenging sampling situation where an observer is likely to obtain diverse sampling experiences in a fewer number of sets.

Vessel owners and operators would be required to provide an observer sampling station where an observer can work safely and effectively. The same requirements that have applied since 1999 to longline C/Ps groundfish CDQ fishing would be extended to all vessels in the longline C/P subsector that do not

opt out under proposed new § 679.100(a). An observer sampling station would need to meet specifications for size and location and be equipped with an observer sampling station scale, a table, adequate lighting, floor grating, and running water. Details of the sampling station requirements are set forth at § 679.28(d). Each observer sampling station would be inspected and approved annually by NMFS. This proposed rule does not modify current observer sampling station inspection and approval regulations or processes.

Under both monitoring options, vessel operators would be required to use an ELB instead of a paper logbook during the entire year for reporting catch. This requirement would increase the speed and accuracy of data transmission to NMFS and would assist in accurate quota monitoring. Some C/Ps use longline as well as pot gear, during the year. Under this proposed rule, if an ELB is required when a vessel is operating as a C/P using longline gear, the requirement also would apply when that vessel is operating as a C/P using pot gear in the same year. Switching between electronic and paper logbooks during the same year would complicate both compliance and monitoring of logbook requirements. In addition, NMFS expects that vessel operators would prefer to use ELBs over the paper logbooks because the electronic features generally make completing the logbooks easier for vessel crew.

Removing CDQ Alternative Fishing Plan Regulations

This action would remove regulations at § 679.32(e)(3) that allow CDQ groups to propose to NMFS an alternative fishing plan to use only one observer where two are required, to sort and weigh catch by species on processors vessels, or to use larger sample sizes than those that can be collected by one observer. Since these regulations were implemented in 1999 (63 FR 30381, June 4, 1998), they have been used by the CDQ groups to obtain approval from NMFS for one lead level 2 observer on longline C/Ps rather than the two observers required in current regulations. The alternative fishing plan was required to ensure that each set was available to be sampled by a lead level 2 observer and that the single lead level 2 observer was not required to work more than 12 hours in a 24-hour period to complete all their duties. The CDQ groups have never used the alternative fishing plan for C/Ps using trawl gear, motherships, or catcher vessels of any kind. Apparent reasons for non-use of alternative fishing plans are that trawl C/Ps and motherships cannot conduct efficient CDQ fisheries with a single observer, and no catcher vessels participating in the CDQ fisheries are required to carry two observers. Therefore, the alternative fishing plans have been a viable option only for some of the longline C/Ps while CDQ fishing.

This proposed rule would standardize the observer coverage and catch monitoring options for longline C/Ps in both the CDQ and non-CDQ fisheries because the monitoring and enforcement challenges in these fisheries are similar. Each of the monitoring options for groundfish CDQ fishing under this proposed rule would require either two observers, one of whom must be a lead level 2 observer, or a lead level 2 observer and a motion compensated scale. With this standardization in observer coverage requirements between the CDQ and non-CDQ fisheries, the alternative fishing plan regulations would no longer be necessary. If operators of vessels groundfish CDQ fishing want to fish with one observer, they could continue to do so provided the vessel owner selects the scales option under § 679.100.

Classification

Pursuant to section 305(d) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this proposed rule is consistent with the FMPs, other provisions of the Magnuson-Stevens Act, and other applicable law, subject to further consideration after public comment.

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

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Council for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. As a result, an initial regulatory flexibility analysis is not required and none has been prepared.

Description and Estimate of the Number of Small Entities to Which the Rule Applies

This rule would directly regulate the activities of 33 vessels active in the longline C/P subsector fishing for a smaller number of separate entities. Although up to 37 LLP licenses comprise the longline C/P subsector, based on current trends of consolidation among vessel owners, NMFS anticipates that it is likely that 33 or fewer vessels will be active in the longline C/P sector. NMFS does not currently have data to precisely track ownership patterns in North Pacific fisheries. NMFS has reviewed vessel ownership, as recorded on the Web site of the FLCC. On the basis of this information, NMFS estimates that in 2011 these vessels were owned by no more than 13 separate for-profit entities.

For the purpose of this Regulatory Flexibility Act (RFA) analysis, NMFS believes that all of the directly regulated entities are large entities. According to the SBA size criteria, a business involved in fish harvesting is a small business if it is independently owned and operated and not dominant in its field of operation (including its affiliates) and if it has combined annual receipts not in excess of $4.0 million for all its affiliated operations worldwide. In 2010, the most recent year for which the necessary gross revenues information is available, 17 of 36 active vessels had less than $4 million in gross revenues from fishing for Pacific cod. Although the vessels target Pacific cod predominately and most of their revenues are from this source, some obtain revenues from other fisheries or fishery support activities, such as tendering or processing salmon in the summer. Thus, this analysis uses a conservative measure of vessel and entity revenues. Likewise, most of the entities operating vessels in this fishery have gross revenues in excess of $4 million. In 2009, fewer than 3 of an estimated 11 entities operating vessels in the fishery had gross revenues from fishing for Pacific cod less than the $4 million threshold. These estimates are based on data supplied by the Alaska Fisheries Information Network and evaluated by NMFS Alaska Region. Firm affiliations are estimated from lists created by the FLCC. Small and large business entity determinations under the RFA are based on entity revenues from all sources. In the present instance, where a clear determination can be made on the basis of Pacific cod revenues and known cooperative affiliations, additional information on total groundfish and other entity revenues was not collected.

Even though small numbers of directly regulated vessels and entities may be described as small with respect to their own gross revenues, when affiliations among entities are considered, as required under the RFA, there are no small entities in this fishery. As described in the RIR prepared for this action (see **ADDRESSES**), the directly regulated vessels in this fleet have formed a fisheries cooperative that effectively allocates to each vessel a share of the Pacific cod TAC, and of the available halibut PSC. These vessel-specific

individual quotas are enforced under a private contract among the entities. Therefore, for the purpose of this analysis, the directly regulated entities are all affiliated, with all the entities that would otherwise be characterized as small having affiliations with larger entities. Thus, there are no directly regulated small entities under this action.

Estimate of Economic Impact on Small Entities, by Entity Size and Industry

Since there are no directly regulated small entities under this action within the definition of small entities used in the RFA, there are no economic impacts from this action on small entities.

Criteria Used To Evaluate Whether the Rule Would Impose Impacts on ''a Substantial Number'' of Small Entities

This analysis uses the criteria described in the NMFS guidelines for economic reviews of regulatory actions:

The term ''substantial number'' has no specific statutory definition and the criterion does not lend itself to objective standards applicable across all regulatory actions. Rather, ''substantial number'' depends upon the context of the action, the problem to be addressed, and the structure of the regulated industry. The SBA casts ''substantial'' within the context of ''more than just a few'' or *de minimis* (''too few to care about'') criteria. In some cases consideration of ''substantial number'' may go beyond merely counting the number of regulated small entities that are impacted significantly. For example, a fishery may have a large number of participants, but only a few of them may account for the majority of landings. In such cases, a substantial number of small entities may be adjudged to be significantly impacted, even though there may be a large number of insignificantly impacted small entities.

Generally, a rule is determined to affect a substantial number of entities if it impacts more than just a few small entities. In a borderline case, the rules effect on the structure of the regulated industry or the controversiality of the rule might tip the balance in favor of determining that a substantial number of entities would be affected.

Criteria Used To Evaluate Whether the Rule Would Impose ''Significant Economic Impacts''

The two criteria recommended to determine significant economic impact are disproportionality and profitability of the action. Disproportionality relates to the potential for the regulations to place a substantial number of small entities at a significant competitive disadvantage to large entities. Profitability relates to the potential for the rule to significantly reduce profit for a substantial number of small entities. However, given the absence of small entities these criteria were not used for the certification decision.

Description of, and an Explanation of the Basis for, Assumptions Used

Catch and revenue information for the directly regulated entities was supplied by the Alaska Fisheries Information Network. Ownership of directly regulated vessels by different entities was estimated from information on the Web site of the FLCC.

The economic analysis contained in the RIR for this action (see **ADDRESSES**) further describes the regulatory and operational characteristics and history of this fishery, including the origins and operation of the fishery cooperative, the history of this action, and the details of the alternatives considered for this action, including the preferred alternative.

Collection-of-Information Requirements

This proposed rule contains collection-of-information requirements subject to review and approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (PRA). These requirements have been submitted to OMB for approval. The collections-of-information are presented below by OMB control number.

OMB Control No. 0648–0213

The reporting requirements for the C/P longline or pot gear daily cumulative logbook (DCPL) are removed for certain C/Ps with this proposed rule; the electronic logbook (see OMB 0648–0515) is used in place of the DCPL by freezer longliners (C/Ps) named on License Limitation Program licenses (LLPs) endorsed to catch and process Pacific cod at sea with hook-and-line gear in the BSAI.

OMB Control No. 0648–0318

The Observer Program requirements are mentioned in this proposed rule; however, the public reporting burden for this collection-of-information is not directly affected by this proposed rule.

OMB Control No. 0648–0330

Public reporting burden is estimated to average 30 minutes for Pacific Cod Monitoring Option or Opt-out Notification Form; 2 hours for Inspection Request for an Electronic Monitoring System; 6 minutes for At-Sea Scales Inspection Request; 2 minutes for notification to observers of at-sea scale tests; 45 minutes for Record of Daily Flow Scale Test; 1 minute for printed output from at-sea scale; and 2 hours for Observer Sampling Station Inspection Request.

OMB Control No. 0648–0334

LLP license requirements are mentioned in this proposed rule; however, the public reporting burden for this collection-of-information is not directly affected by this proposed rule.

OMB Control No. 0648–0515

Public reporting burden is estimated to average 15 minutes for eLogbook registration and 41 minutes per active response, and 5 minutes inactive response for the C/P longline and pot gear eLogbook.

These reporting burden estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Public comment is sought regarding: whether this proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the burden estimate; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information, including through the use of automated collection techniques or other forms of information technology. Send comments on these or any other aspects of the collection of information to NMFS at the **ADDRESSES** above, and by email to *OIRA_Submission@omb.eop.gov* or fax to (202) 395–7285.

Notwithstanding any other provision of the law, no person is required to respond to, and no person shall be subject to penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB control number.

List of Subjects in 50 CFR Part 679

Alaska, Fisheries, Recordkeeping and reporting requirements.

Dated: June 12, 2012.

Alan D. Risenhoover,

Acting Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 679 is proposed to be amended as follows:

PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

1. The authority citation for part 679 continues to read as follows:

Authority: 16 U.S.C. 773 *et seq.;* 1801 *et seq.;* 3631 *et seq.;* Pub. L. 108–447.

2. In § 679.5, revise paragraph (f)(1)(ii) and add paragraph (f)(1)(viii) to read as follows:

§ 679.5 Recordkeeping and reporting (R&R).

* * * * *

(f) * * *

(1) * * *

(ii) *Catcher/processor longline and pot gear ELB.* Except for catcher/processors subject to § 679.100(b), the operator of a catcher/processor using longline or pot gear may use a combination of a NMFS-approved catcher/processor longline and pot gear ELB and eLandings to record and report groundfish information. The operator may use a NMFS-approved catcher/processor longline and pot gear ELB to record daily processor identification information and catch-by-set information. In eLandings, the operator must record daily processor identification, groundfish production data, and groundfish and prohibited species discard or disposition data.

* * * * *

(viii) *Longline catcher/processor subsector.* The operator of a catcher/processor subject to § 679.100(b) must use a NMFS-approved catcher/processor longline and pot gear ELB to record processor identification information, catch-by-set information, and, if required to weigh Pacific cod on a NMFS-approved scale, the total Pacific cod weight from the scale for each set. This requirement applies for the entire year that the vessel is subject to § 679.100(b) and operating as a catcher/processor using either longline or pot gear.

* * * * *

3. In § 679.7, add paragraph (c)(1) to read as follows:

§ 679.7 Prohibitions.

* * * * *

(c) * * *

(1) For vessel owners and operators subject to § 679.100(a), to use the vessel as a catcher/processor to conduct directed fishing for Pacific cod with hook-and-line gear in the BSAI or to conduct groundfish CDQ fishing.

* * * * *

4. In § 679.28, add paragraph (k) to read as follows:

§ 679.28 Equipment and operational requirements.

* * * * *

(k) *Electronic monitoring in the longline catcher/processor subsector.* The owner and operator of a catcher/processor subject to § 679.100(b)(2) must provide and maintain a NMFS-approved electronic monitoring system at all times when the vessel is operating in either the BSAI or GOA groundfish fisheries when directed fishing for Pacific cod is open in the BSAI, or while the vessel is groundfish CDQ fishing.

(1) In order to be approved by NMFS, the vessel owner and operator must provide an electronic monitoring system that include cameras, a monitor, and a digital video recorder that must—

(i) Provide sufficient resolution and field of view to monitor all areas where Pacific cod are sorted from the catch, all fish passing over the motion-compensated scale, and all crew actions in these areas.

(ii) Have sufficient data storage capacity to record all video data from an entire trip. Each frame of stored video data must record a time/date stamp in Alaska local time (A.l.t.).

(iii) Include at least one external USB (1.1 or 2.0) port or other removable storage device approved by NMFS.

(iv) Use commercially available software.

(v) Use color cameras, with a minimum of 470 TV lines of resolution, auto-iris capabilities, and output color video to the recording device with the ability to revert to black and white video output when light levels become too low for color recognition.

(vi) Record at a speed of no less than 5 frames per second at all times when Pacific cod are being sorted or weighed.

(2) NMFS staff, or any individual authorized by NMFS, must be able to view any footage from any point in the trip using a 16-bit or better color monitor that can display all cameras simultaneously and must be assisted by crew knowledgeable in the operation of the system.

(3) The vessel owner and operator must maintain the video data and make the data available to NMFS staff or any individual authorized by NMFS, upon request. The data must be retained onboard the vessel for no less than 120 days after the date the video is recorded, unless NMFS has notified the vessel owner in writing that the video data may be retained for less than this 120-day period.

(4) The vessel owner or operator must arrange for NMFS to inspect the electronic monitoring system and maintain a current NMFS-issued electronic monitoring system inspection report onboard the vessel at all times when the vessel is required to provide an approved electronic monitoring system.

(5) The vessel owner or operator must submit an Inspection Request for an Electronic Monitoring System to NMFS with all information fields accurately filled in. The application form is available on the NMFS Alaska Region Web site (*http://alaskafisheries.noaa.gov/*). NMFS will coordinate with the vessel owner to schedule the inspection no later than 10 working days after NMFS receives a complete request form.

(6) *Additional information required for an electronic monitoring system inspection.* (i) A diagram drawn to scale showing all sorting locations, the location of the motion-compensated scale, the location of each camera and its coverage area, and the location of any additional video equipment must be submitted with the Inspection Request for an Electronic Monitoring System form.

(ii) Any additional information requested by the Regional Administrator.

(7) Any change to the electronic monitoring system that would affect the system's functionality or ability to meet the requirements described at paragraph (k)(1) of this section must be submitted to, and approved by, NMFS in writing before that change is made.

(8) Inspections will be conducted on vessels tied to docks at Dutch Harbor, Alaska; Kodiak, Alaska; and in the Puget Sound area of Washington State.

(9) After an inspection, NMFS will issue an electronic monitoring system inspection report to the vessel owner, if the electronic monitoring system meets the requirements of paragraph (k) of this section. The electronic monitoring system report is valid for 12 months from the date it is issued by NMFS. The electronic monitoring system inspection report must be made available to the observer, NMFS personnel, or to an authorized officer upon request.

5. In § 679.32, revise paragraph (c)(3)(i)(E) introductory text and paragraph (c)(3)(i)(E)(*1*), and remove paragraph (c)(3)(ii)(G) to read as follows:

§ 679.32 CDQ fisheries monitoring and catch accounting.

* * * * *

(c) * * *

(3) * * *

(i) * * *

(E) *Catcher/processors using nontrawl gear.* Operators of catcher/processors using hook-and-line gear must comply with § 679.100. Operators of catcher/processors using pot gear must comply with the following requirements:

(1) Each CDQ set on a catcher/processor using pot gear must be sampled by an observer for species composition and weight.

* * * * *

6. § 679.51, as proposed to be added at 77 FR 23326, April 18, 2012, is proposed to be further amended to

remove and reserve paragraph (a)(2)(vi)(A)(*3*) and add paragraph (a)(2)(vi)(E) to read as follows:

§ 679.51 Observer requirements for vessels and plants.

* * * * *

(a) * * *

(2) * * *

(vi) * * *

(E) *Longline catcher/processor subsector.* The owner and operator of a catcher/processor subject to § 679.100(b) must comply with the following observer coverage requirements:

(*1*) *Increased observer coverage option.* If the vessel owner selects the increased observer coverage option under § 679.100(b)(1), at least two observers must be aboard the vessel at all times when the vessel is operating in either the BSAI or GOA groundfish fisheries when directed fishing for Pacific cod is open in the BSAI, or while the vessel is groundfish CDQ fishing. At least one of the observers must be certified as a lead level 2 observer as described at § 679.53(a)(5)(v)(C). More than two observers are required if the observer workload restriction at paragraph (a)(2)(iii) of this section would otherwise preclude sampling as required under § 679.100(b)(1)(iv).

(*2*) *Scales option.* If the vessel owner selects the scales option under § 679.100(b)(2), one lead level 2 observer as described at § 679.53(a)(5)(v)(C) must be aboard the vessel at all times when the vessel is operating in either the BSAI or GOA groundfish fisheries when directed fishing for Pacific cod is open in the BSAI, or while the vessel is groundfish CDQ fishing.

* * * * *

7. § 679.53, as proposed to be added at 77 FR 23326, April 18, 2012, is proposed to be further amended to revise paragraph (a)(5)(v)(C) to read as follows:

§ 679.53 Observer certification and responsibilities.

(a) * * *

(5) * * *

(v) * * *

(C) A ''lead'' level 2 observer on a vessel using nontrawl gear must have completed two observer cruises (contracts) of at least 10 days each and sampled at least 30 sets on a vessel using nontrawl gear.

* * * * *

8. Under part 679, add subpart I to read as follows:

Subpart I—Equipment and Operational Requirements for the Longline Catcher/Processor Subsector

Sec.

679.100 Applicability.

§ 679.100 Applicability.

The owner and operator of a vessel named on an LLP license with a Pacific cod catcher-processor hook-and-line endorsement for the Bering Sea, Aleutian Islands or both the Bering Sea and Aleutian Islands must comply with the requirements of this subpart.

(a) *Opt out selection.* Each year, the owner of a vessel subject to this subpart who does not intend to directed fish for Pacific cod in the BSAI or conduct groundfish CDQ fishing at any time during a year may, by November 1 of the year prior to fishing, submit to NMFS a completed notification form to opt out of directed fishing for Pacific cod in the BSAI and groundfish CDQ fishing in the upcoming year. The notification form is available on the NMFS Alaska Region Web site (*http://alaskafisheries.noaa.gov/*). Once the vessel owner has selected to opt out, the owner must ensure that the vessel is not used as a catcher/processor to conduct directed fishing for Pacific cod with hook-and-line gear in the BSAI or to conduct groundfish CDQ fishing during the specified year.

(b) *Monitoring option selection.* Each year, the owner of a vessel subject to this subpart that does not opt out under paragraph (a) of this section must, by November 1 of the year prior to fishing, submit a completed notification form for one of two monitoring options to NMFS. The notification form is available on the NMFS Alaska Region Web site (*http://alaskafisheries.noaa.gov/*). The vessel owner must comply with the selected monitoring option at all times when the vessel is operating in either the BSAI or GOA groundfish fisheries when directed fishing for Pacific cod is open in the BSAI, or while the vessel is groundfish CDQ fishing for the entire upcoming calendar year. If NMFS does not receive a notification to opt out or a notification for one of the two monitoring options by November 1 of the year prior to fishing, NMFS will assign that vessel to the increased observer coverage option under paragraph (b)(1) of this section for the upcoming calendar year.

(1) *Increased observer coverage option.* Under this option, the vessel owner and operator must ensure that—

(i) The vessel is in compliance with observer coverage requirements described at § 679.51(a)(2)(vi)(E)(*1*).

(ii) The vessel is in compliance with observer workload requirements described at § 679.51(a)(2)(iii).

(iii) An observer sampling station meeting the requirements at § 679.28(d) is available at all times, unless otherwise approved by NMFS.

(iv) All sets are made available for sampling by an observer.

(2) *Scales option.* Under this option—

(i) The vessel owner and operator must ensure that—

(A) The vessel is in compliance with observer coverage requirements described at § 679.51(a)(2)(vi)(E)(*2*).

(B) All Pacific cod brought onboard the vessel is weighed on a NMFS-approved scale in compliance with the scale requirements at § 679.28(b), and that each set is weighed and recorded separately.

(C) An observer sampling station meeting the requirements at § 679.28(d) is available at all times, unless otherwise approved by NMFS.

(D) The vessel is in compliance with the electronic monitoring requirements described at § 679.28(k).

(ii) NMFS will use the weight of all catch that passes over the scale for the purposes of accounting for Pacific cod catch.

(iii) At the time NMFS approves the scale used to weigh Pacific cod, NMFS will provide the vessel owner or operator with one of the following designations on the scale inspection report that will be used for catch accounting of Pacific cod for the duration of the approval period:

(A) *Scale prior to bleeding.* If the scale is located before the location where Pacific cod are bled, a PRR of 1.00 will be applied to all catch weighed on the motion-compensated scale.

(B) *Scale between bleeding and holding area.* If Pacific cod are bled before being weighed and prior to the bleeding holding area, a PRR of 0.99 will be applied to all catch weighed on the scale.

(C) *Scale after holding area.* If Pacific cod are bled and placed in a bleeding holding area before being weighed, a PRR of 0.98 will be applied to all catch weighed on the scale.

(c) *Electronic logbooks.* The operator of a vessel subject to paragraph (b) of this section at any time during a year must comply with the requirements for electronic logbooks at § 679.5(f) at all times during that year.

(d) During 2013, the vessel owner that has selected the increased observer coverage option under paragraph (b)(1) of this section may make a one-time change to the scales option as described under paragraph (b)(2) of this section. The owner must submit a completed

notification form no later than May 1 to change monitoring options. The change in monitoring options will become effective June 10 and will remain effective until December 31.

[FR Doc. 2012–14681 Filed 6–14–12; 8:45 am]

BILLING CODE 3510–22–P

Notices

Federal Register
Vol. 77, No. 116
Friday, June 15, 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

June 11, 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: Conservation Reserve Program (CRP) North Dakota (ND) and South Dakota (SD) Hunter Expenditure & Valuation Survey.

OMB Control Number: 0560–NEW.

Summary of Collection: The North Dakota (ND) and South Dakota (SD) Hunter Expenditure & Valuation Survey is being developed to comply with the regulations of 6 U.S.C. 3831 as specified in the ''Study on Economic Effects'' section and Food, Conservation, Energy Act of 2008 (Farm Bill Pub. L. 110–246). The Farm Service Agency (FSA) has determined that the only way to get the economic impact and valuation of hunter use of lands enrolled in CRP is by surveying licensed deer, upland game bird and waterfowl hunters. Hunting is a major component of recreational use of CRP. Furthermore, FSA is providing the services to the landowners under the CRP to help them conserve and improve soil, water, and wildlife resources on their lands.

Need and Use of the Information: The ND and SD Hunter Expenditure and Valuation Survey will be mailed to licensed deer, upland game bird and waterfowl hunter in ND and SD. The survey is needed to estimate the amount of hunting, hunter expenditures, and the value of the hunting that is occurring on CRP lands. Collection of date is necessary to evaluate and improve CRP lands selection criteria and program implementation. The results will be used to estimate the income, employment and net economic value of enhanced wildlife populations on CRP lands to hunters in ND and SD to evaluate the benefits of the CRP program. Without data on hunter use and expenditures, the economic contribution generated by the federal investment in CRP cannot be reliability estimated.

Description of Respondents: Individuals or households.

Number of Respondents: 3,000.

Frequency of Responses: Reporting: Other (one-time).

Total Burden Hours: 990.

Ruth Brown,
Departmental Information Collection Clearance Officer.

[FR Doc. 2012–14604 Filed 6–14–12; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF COMMERCE

International Trade Administration

Proposed Information Collection; Comment Request; Interim Procedures for Considering Requests Under the Commercial Availability Provision of the United States-Colombia Trade Promotion Agreement (U.S.-Colombia TPA)

AGENCY: International Trade Administration, 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 August 14, 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 and instructions should be directed to Laurie Mease, Office of Textiles and Apparel, Telephone: 202–482–3400, Fax: 202–482–2331, Email: *Laurie.Mease@trade.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

Title II, Section 203(o) of the United States-Colombia Trade Promotion Agreement Implementation Act (the ''Act'') [Pub. L. 112–42] implements the commercial availability provision provided for in Article 3.3 of the United States-Colombia Trade Promotion Agreement (the ''Agreement''). The Agreement entered into force on May

15, 2012. Subject to the rules of origin in Annex 4.1 of the Agreement, pursuant to the textile provisions of the Agreement, fabric, yarn, and fiber produced in Colombia or the United States and traded between the two countries are entitled to duty-free tariff treatment. Annex 3–B of the Agreement also lists specific fabrics, yarns, and fibers that the two countries agreed are not available in commercial quantities in a timely manner from producers in Colombia or the United States. The fabrics listed are commercially unavailable fabrics, yarns, and fibers, which are also entitled to duty-free treatment despite not being produced in Colombia or the United States.

The list of commercially unavailable fabrics, yarns, and fibers may be changed pursuant to the commercial availability provision in Chapter 3, Article 3.3, Paragraphs 5–7 of the Agreement. Under this provision, interested entities from Colombia or the United States have the right to request that a specific fabric, yarn, or fiber be added to, or removed from, the list of commercially unavailable fabrics, yarns, and fibers in Annex 3–B of the Agreement.

Chapter 3, Article 3.3, paragraph 7 of the Agreement requires that the President ''promptly'' publish procedures for parties to exercise the right to make these requests. Section 203(o)(4) of the Act authorizes the President to establish procedures to modify the list of fabrics, yarns, or fibers not available in commercial quantities in a timely manner in either the United States or Colombia as set out in Annex 3–B of the Agreement. The President delegated the responsibility for publishing the procedures and administering commercial availability requests to the Committee for the Implementation of Textile Agreements (''CITA''), which issues procedures and acts on requests through the U.S. Department of Commerce, Office of Textiles and Apparel (''OTEXA'') (See Proclamation No. 8818, 77 FR 29519, May 18, 2012).

The intent of the U.S.-Colombia TPA Commercial Availability Procedures is to foster the use of U.S. and regional products by implementing procedures that allow products to be placed on or removed from a product list, on a timely basis, and in a manner that is consistent with normal business practice. The procedures are intended to facilitate the transmission of requests; allow the market to indicate the availability of the supply of products that are the subject of requests; make available promptly, to interested entities and the public, information regarding the requests for products and offers received for those products; ensure wide participation by interested entities and parties; allow for careful review and consideration of information provided to substantiate requests, responses and rebuttals; and provide timely public dissemination of information used by CITA in making commercial availability determinations.

CITA must collect certain information about fabric, yarn, or fiber technical specifications and the production capabilities of Colombian and U.S. textile producers to determine whether certain fabrics, yarns, or fibers are available in commercial quantities in a timely manner in the United States or Colombia, subject to Section 203(o) of the Act.

II. Method of Collection

Participants in a commercial availability proceeding must submit public versions of their Requests, Responses or Rebuttals electronically (via email) for posting on OTEXA's Web site. Confidential versions of those submissions which contain business confidential information must be delivered in hard copy to OTEXA at the U.S. Department of Commerce.

III. Data

OMB Control Number: None.

Form Number(s): None.

Type of Review: Regular submission (new information collection).

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 16.

Estimated Time per Response: 8 hours per Request, 2 hours per Response, and 1 hour per Rebuttal.

Estimated Total Annual Burden Hours: 89.

Estimated Total Annual Cost to Public: $5,340.

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: June 12, 2012.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2012–14677 Filed 6–14–12; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–891]

Hand Trucks From the People's Republic of China: Notice of Court Decision Not in Harmony With Final Results and Notice of Amended Final Results

SUMMARY: On June 4, 2012, the United States Court of Appeals for the Federal Circuit (''CAFC'') issued its mandate in *Qingdao Taifa Group Co.* v. *United States,* 780 F. Supp. 2d 1342 (Fed. Cir. 2012), affirming the Court of International Trade's (''CIT'') or (''Court'') decision in *Qingdao Taifa Group Co., Ltd.* v. *United States,* Court No. 08–00245, Slip Op. 11–83 (CIT 2011) sustaining the Department of Commerce's (''the Department'') final results of its third redetermination pursuant to the CIT's remand order in *Qingdao Taifa Group Co. Ltd.* v. *United States,* Court No. 08–00245, Slip Op. 10–126 (CIT 2010) (''*Remand III*'').[1]

Consistent with the decision of the CAFC in *Timken Co.* v. *United States,* 893 F.2d 337 (Fed. Cir. 1990) (''*Timken*''), as clarified by *Diamond Sawblades Mfrs. Coalition* v. *United States,* 626 F.3d 1374 (Fed. Cir. 2010) (''*Diamond Sawblades*''), the Department is notifying the public that the final judgment in this case is not in harmony with the Department's final results and is amending the final results of the 2005–2006 administrative review of hand trucks from the People's Republic of China (''PRC'') with respect to the margin assigned to Qingdao Taifa Group Co. Ltd. (''Taifa'') covering the period of review (''POR'') December 1, 2005, through November 30, 2006.

EFFECTIVE DATE: June 14, 2012.

FOR FURTHER INFORMATION CONTACT: Brooke Kennedy, Office 8, Import Administration, International Trade Administration, U.S. Department of

[1] *See* Final Results of Redetermination Pursuant To Court Remand, Court No. 08–00245, dated March 17, 2011, available at: *http://www.ia.ita.doc.gov/remands/index.html* (''Redetermination III'').

Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–3818.

SUPPLEMENTARY INFORMATION: In the *Final Results*,[2] the Department applied total adverse facts available (''AFA'') to Taifa because we found that Taifa withheld information that had been requested, significantly impeded the proceeding and provided information that could not be verified. Additionally, the Department found evidence at verification which indicated local government ownership over Taifa, and contradicted Taifa's submitted questionnaire responses. As such, the Department determined that Taifa failed to fully explain the ownership interests in the company and because of this, Taifa failed to demonstrate entitlement to a separate rate. Accordingly, the Department applied the PRC-wide rate of 383.60 percent to Taifa for the POR. On August 11, 2009, the CIT remanded the *Final Results* to the Department in *Remand I*.[3] The Court sustained the Department's decision to apply AFA to Taifa, however, the Court remanded the matter to the Department to determine whether the local government ownership resulted in *de facto* control such that the Department could treat Taifa as part of the PRC-wide entity. Further, the Court held that because the PRC-wide entity rate presumes government control, the Department is not permitted to select the PRC-wide rate as the AFA rate without first making a determination about the presence or absence of *de facto* government control over Taifa.[4]

On January 22, 2010, the Department issued a hand trucks redetermination, Redetermination I.[5] Pursuant to *Remand I,* we determined that the record did not contain affirmative evidence that a government entity exercised *de facto* control over Taifa, so we granted Taifa a separate rate and assigned an AFA margin based on a control number-specific margin from the most recently completed segment of the proceeding in which Taifa participated as a mandatory respondent. Specifically, the margin was calculated from Taifa's own reported information and data from the investigation. The Department's redetermination resulted in changing Taifa's margin from 383.60 percent to 227.73 percent.

On May 12, 2010, the CIT remanded the matter a second time in *Remand II,* finding that the Department had failed to meaningfully investigate the question of government control.[6] The CIT declined to decide whether the 227.73 percent rate provided by the Department was supported, but required the Department to make a decision supported by substantial evidence about Taifa's independence from or control by the Chinese government.[7]

On July 27, 2010, the Department issued its second redetermination, Redetermination II,[8] in which we found that because the information provided by Taifa regarding its ownership was unreliable, the Department was unable to conclude based on substantial evidence that Taifa was *de facto* free of government control and thus entitled to a separate rate. Therefore the Department assigned Taifa the PRC-entity rate of 383.60 percent.

The CIT ruled on Redetermination II on November 12, 2010, and once again remanded back to the Department *Remand III* ordering that we either explain why substantial record evidence supports a finding of central government control thereby justifying imposition of the PRC-wide entity rate, or that we grant Taifa a separate rate ''grounded in the realities of the industry.'' [9]

Pursuant to *Remand III,* on March 27, 2011, the Department issued its third redetermination, Redetermination III, this time granting Taifa a separate rate, concluding after re-weighing the evidence that there was not substantial record evidence that the central government controlled Taifa's business decisions.[10] The Department assigned a rate of 145.90 percent based on 36 percent of Taifa's total sales by quantity from the prior segment of the proceeding when Taifa was a cooperative respondent. The CIT sustained Redetermination III on July 12, 2011, holding that the Department corroborated the rate to the extent practicable, the rate was not punitive nor so out of touch with Taifa's practice as to be aberrational, and the Department used a reasonable methodology to calculate the rate.[11] After hearing the issue on appeal, on June 4, 2012, the CAFC affirmed the CIT's July 12, 2011 opinion, sustaining Redetermination III.[12]

Timken Notice

In its decision in *Timken,* as clarified by *Diamond Sawblades,* the CAFC has held that, pursuant to section 516A(c) of the Tariff Act of 1930, as amended (''the Act''), the Department must publish a notice of a court decision that is not ''in harmony'' with a Department determination and must suspend liquidation of entries pending a ''conclusive'' court decision. The CAFC's decision sustaining the Department's remand redetermination with respect to Taifa constitutes a final decision of that court that is not in harmony with the Department's *Final Results.* This notice is published in fulfillment of the publication requirements of *Timken.* Accordingly, the Department will continue the suspension of liquidation of the subject merchandise pending the expiration of the time for application for a *writ of certiorari,* or if a *writ of certiorari* is granted, pending a final and conclusive court decision.

Amended Final Results

Because there is now a final court decision, we are amending the *Final Results* to reflect the results of the litigation. The revised weighted-average dumping margin is as follows:

Exporter	Percent margin
Qingdao Taifa Group Co., Ltd	145.90

Accordingly, if there is no *writ of certiorari* granted in this case, the Department will instruct U.S. Customs and Border Protection to assess antidumping duties on entries of the subject merchandise exported by Taifa during the POR at 145.90 percent. Additionally, because Taifa has not participated in any administrative reviews since the December 1, 2005, through November 30, 2006 administrative review, Taifa's cash deposit rate will be 145.90 percent, effective June 14, 2012 (*i.e.,* 10 days after the issuance of the CAFC mandate).

[2] *See Hand Trucks and Certain Parts Thereof from the People's Republic of China: Final Results of 2005–2006 Administrative Review,* 73 FR 43684 (July 28, 2008) (''*Final Results*'').

[3] *See Qingdao Taifa Group Co., Ltd.* v. *United States,* 637 F. Supp. 2d 1231, 1244 (CIT 2009) (''*Remand I*'').

[4] *See id.*

[5] *See* Final Results of Redetermination Pursuant To Court Remand, Court No. 08–00245, dated January 22, 2010, (''Redetermination I'') available at: *http://www.ia.ita.doc.gov/remands/index.html.*

[6] *Qingdao Taifa Group Co., Ltd.* v. *United States,* 710 F. Supp. 2d 1352, 1357 (CIT 2012) (''*Remand II*'').

[7] *See id.* at 1358.

[8] *See* Final Results of Redetermination Pursuant To Court Remand, Court No. 08–00245, dated July 27, 2010, (''Redetermination II'') available at: *http://www.ia.ita.doc.gov/remands/index.html.*

[9] *See id.,* at 1385, 1386.

[10] *See* Final Results of Redetermination Pursuant To Court Remand, Court No. 08–00245, dated March 27, 2011, available at: *http://www.ia.ita.doc.gov/remands/index.html* (''Redetermination III'').

[11] *Qingdao Taifa Group Co., Ltd.* v. *United States,* Court No. 08–00245, Slip Op. 11–83 (CIT Jul. 12, 2011).

[12] *Qingdao Taifa Group Co.* v. *United States,* 2012 U.S. App. LEXIS 7281 (Fed. Cir. Apr. 11, 2012).

This notice is issued and published in accordance with sections 516A(c)(1), 735(d) and 777(i)(1) of the Act.

Dated: June 13, 2012.

Paul Piquado,

Assistant Secretary for Import Administration.

[FR Doc. 2012–14795 Filed 6–14–12; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Environmental Technologies Trade Advisory Committee Public Meeting

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of Federal advisory committee meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a meeting of the Environmental Technologies Trade Advisory Committee (ETTAC).

DATES: The meeting is scheduled for Friday, July 20, 2012, at 9 a.m. Eastern Daylight Time (EDT).

ADDRESSES: The meeting will be held in Room 1412 at the U.S. Department of Commerce, Herbert Clark Hoover Building, 1401 Constitution Avenue NW., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Mr. Todd DeLelle, Office of Energy & Environmental Industries (OEEI), International Trade Administration, Room 4053, 1401 Constitution Avenue NW., Washington, DC 20230. (Phone: 202–482–4877; Fax: 202–482–5665; email: *todd.delelle@trade.gov*). This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to OEEI at (202) 482–5225 no less than one week prior to the meeting.

SUPPLEMENTARY INFORMATION: The meeting will take place from 9:00 a.m. to 3:30 p.m. EDT. This meeting is open to the public and time will be permitted for public comment from 3:00–3:30 p.m. EDT. Written comments concerning ETTAC affairs are welcome any time before or after the meeting. Minutes will be available within 30 days of this meeting.

Topics To Be Considered

The agenda for the July 20, 2011 ETTAC meeting will include discussion of various issues and policies that affect environmental trade. These subjects will encompass the harmonization of global environmental regulations, standards, and certification programs; analysis of existing environmental goods and services data sources; development of trade promotion programs; and issues related to innovation in the environmental technology sector.

Background: The ETTAC is mandated by Public Law 103–392. It was created to advise the U.S. government on environmental trade policies and programs, and to help it to focus its resources on increasing the exports of the U.S. environmental industry. ETTAC operates as an advisory committee to the Secretary of Commerce and the Trade Promotion Coordinating Committee (TPCC). ETTAC was originally chartered in May of 1994. It was most recently re-chartered until October 2012.

Edward A. O'Malley,

Director, Office of Energy and Environmental Industries.

[FR Doc. 2012–14511 Filed 6–14–12; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

National Telecommunications and Information Administration

Commerce Spectrum Management Advisory Committee Meeting

AGENCY: National Telecommunications and Information Administration, U.S. Department of Commerce.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a public meeting of the Commerce Spectrum Management Advisory Committee (Committee). The Committee provides advice to the Assistant Secretary of Commerce for Communications and Information on spectrum management policy matters.

DATES: The meeting will be held on July 24, 2012, from 1:30 p.m. to 5:30 p.m., Mountain Daylight Savings Time.

ADDRESSES: The meeting will be held at the Institute for Telecommunication Sciences, Conference Room 1107, 325 Broadway, Boulder, CO 80305–3328. Public comments may be mailed to Commerce Spectrum Management Advisory Committee, National Telecommunications and Information Administration, 1401 Constitution Avenue NW., Room 4099, Washington, DC 20230 or emailed to *spectrumadvisory@ntia.doc.gov.*

FOR FURTHER INFORMATION CONTACT: Bruce M. Washington, Designated Federal Officer, at (202) 482–6415 or *BWashington@ntia.doc.gov;* and/or visit NTIA's Web site at *http://www.ntia.doc.gov/advisory/spectrum.*

SUPPLEMENTARY INFORMATION:

Background: The Committee provides advice to the Assistant Secretary of Commerce for Communications and Information on needed reforms to domestic spectrum policies and management in order to: license radio frequencies in a way that maximize their public benefits; keep wireless networks open to innovation as possible; and make wireless services available to all Americans (*See* charter, at *http://www.ntia.doc.gov/advisory/spectrum/csmac_charter.html*). This Committee is subject to the Federal Advisory Committee Act (FACA), 5 U.S.C. App. 2, and is consistent with the National Telecommunications and Information Administration Act, 47 U.S.C. 904(b). The Committee functions solely as an advisory body in compliance with the FACA. For more information about the Committee visit: *http://www.ntia.doc.gov/advisory/spectrum.*

Matters To Be Considered: The Committee will receive recommendations from subcommittees on matters related to the accomplishment of the President's ten-year goal of identifying 500 megahertz of radio spectrum for wireless broadband. The Sharing, Unlicensed, and Spectrum Management Improvements Subcommittees will report on the status of their determinations and findings and facilitate discussion on recommended next steps. In addition, the Committee will receive reports from designated committee members on the progress of the following five working groups to repurpose the 1695–1710 MHz and 1755–1850 MHz bands for wireless broadband:

1. WG1 1695–1710 MHz Weather Satellite Receive Earth Stations,
2. WG2 1755–1850 MHz Law Enforcement Surveillance and other short-range fixed,
3. WG3 1755–1850 MHz Satellite Control Links and Electronic Warfare,
4. WG4 1755–1850 MHz Fixed Point-to-Point and Tactical Radio Relay, and
5. WG5 1755–1850 MHz Airborne Operations.

NTIA will post a detailed agenda on its Web site, *http://www.ntia.doc.gov*, prior to the meeting. To the extent that the meeting time and agenda permit, any member of the public may speak to or otherwise address the advisory committee regarding agenda items. During the portion of the meeting when the public may make an oral presentation, speakers may address only

matters the subject of which are on the agenda.

Time and Date: The meeting will be held on July 24, 2012, from 1:30 p.m. to 5:30 p.m., Mountain Daylight Savings Time. The times and the agenda topics are subject to change. The meeting may be webcast or made available via audio link. Please refer to NTIA's web site, *http://www.ntia.doc.gov*, for the most up-to-date meeting agenda and access information.

Place: The meeting will be held at the Institute for Telecommunication Sciences, Conference Room 1107, 325 Broadway, Boulder, CO 80305–3328. The meeting will be open to the public and press on a first-come, first-served basis. Space is limited. The public meeting is physically accessible to people with disabilities. Individuals requiring accommodations, such as sign language interpretation or other ancillary aids, are asked to notify Mr. Washington, at (202) 482–6415 or *BWashington@ntia.doc.gov*, at least seven (7) business days before the meeting. In order to gain access to the site (ITS), all attendees are required to have two forms of identification (one MUST include a photo). Details regarding access to the facility are available at *http://www.boulder.nist.gov/police/Foreign_Nationals.html.*

Status: Interested parties are invited to attend and to submit written comments to the Committee at any time before or after the meeting. Parties wishing to submit written comments for consideration by the Committee in advance of this meeting must send them to NTIA's Washington, DC office at the above-listed address and comments must be received by close of business on July 17, 2012, to provide sufficient time for review. Comments received after July 17, 2011, will be distributed to the Committee, but may not be reviewed prior to the meeting. Paper submissions must also include a compact disc (CD) in HTML, ASCII, Word or WordPerfect format. CDs must be labeled with the name and organizational affiliation of the filer, and the specified name of the word processing program and version used to create the document. Alternatively, comments may be submitted electronically to *spectrumadvisory@ntia.doc.gov.* Comments provided via electronic mail also may be submitted in one or more of the formats specified above.

Records: NTIA maintains records of all Committee proceedings. Committee records are available for public inspection at the U.S. Department of Commerce, National Telecommunications and Information Administration, 1401 Constitution Avenue NW., Washington, DC 20230. Documents including the Committee's charter, membership list, agendas, minutes, and any reports are available on NTIA's Committee Web page at *http://www.ntia.doc.gov/advisory/spectrum.*

Dated: June 12, 2012.

Kathy D. Smith,

Chief Counsel, National Telecommunications and Information Administration.

[FR Doc. 2012–14659 Filed 6–14–12; 8:45 am]

BILLING CODE 3510–06–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed Additions to the Procurement List.

SUMMARY: The Committee is proposing to add products and services to the Procurement List that will be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

DATES: *Comments Must be Received on or Before:* 7/16/2012.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway Arlington, Virginia, 22202–3259.

FOR FURTHER INFORMATION OR TO SUBMIT COMMENTS CONTACT: Patricia Briscoe, Telephone: (703) 603–7740, Fax: (703) 603–0655, or email *CMTEFedReg@AbilityOne.gov*.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 8503 (a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the proposed actions.

Additions

If the Committee approves the proposed additions, the entities of the Federal Government identified in this notice will be required to procure the products and services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. If approved, the action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the products and services to the Government.

2. If approved, the action will result in authorizing small entities to furnish the products and services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 8501–8506) in connection with the products and services proposed for addition to the Procurement List.

Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

End of Certification

The following products and services are proposed for addition to Procurement List for production by the nonprofit agencies listed:

Products

Hose, Fire, Orange

NSN: 4210–01–131–0247—2½″ x 50″
NSN: 4210–01–131–0249—1½″ x 50″
NSN: 4210–01–220–6648—4″ x 50″
NSN: 4210–01–264–3871—1½″ x 25″
NPA: NewView Oklahoma, Inc., Oklahoma City, OK
Contracting Activity: Defense Logistics Agency Troop Support, Philadelphia, Pa.
Coverage: C–List for 100% of the requirement of the U.S. Navy, as aggregated by the Defense Logistics Agency Troop Support, Philadelphia, PA.

NSN: MR 1026—Broom, Tilt Angle
NSN: MR 1030—Set, Upright Broom and Dustpan
NPA: Industries for the Blind, Inc., West Allis, WI
Contracting Activity: Military Resale-Defense Commissary Agency, Fort Lee, VA.
Coverage: C–List for the requirements of military commissaries and exchanges as aggregated by the Defense Commissary Agency.

Eyewear

NSN: 6650–00–NIB–0009—Single Vision, Plastic, Clear
NSN: 6650–00–NIB–0010—Flat Top 28, Bifocal, Plastic, Clear
NSN: 6650–00–NIB–0011—Flat Top 35, Bifocal, Plastic, Clear
NSN: 6650–00–NIB–0012—Round 25, Round 28 Bifocal, Plastic, Clear
NSN: 6650–00–NIB–0013—Flat Top 7x28, Trifocal, Plastic, Clear
NSN: 6650–00–NIB–0014—Flat Top 8x35, Trifocal, Plastic, Clear
NSN: 6650–00–NIB–0015—Progressives,

Plastic, Clear
NSN: 6650–00–NIB–0016—SV, Aspheric, Lenticular, Plastic, Clear
NSN: 6650–00–NIB–0017—FT/Round, Aspheric, Lenticular, Plastic, Clear
NSN: 6650–00–NIB–0018—Bifocal, Executive, Plastic, Clear
NSN: 6650–00–NIB–0019—Single Vision, Glass, Clear
NSN: 6650–00–NIB–0020—Flat Top 28, Bifocal, Glass, Clear
NSN: 6650–00–NIB–0021—Flat Top 35, Bifocal, Glass, Clear
NSN: 6650–00–NIB–0022—Flat Top 7x28, Trifocal, Glass, Clear
NSN: 6650–00–NIB–0023—Flat Top 8x35, Trifocal, Glass, Clear
NSN: 6650–00–NIB–0024—Progressives, Glass, Clear
NSN: 6650–00–NIB–0025—Executive, Bifocal, Glass, Clear
NSN: 6650–00–NIB–0026—Single Vision, Polycarbonate, Clear
NSN: 6650–00–NIB–0027—Flat Top 28, Bifocal, Polycarbonate, Clear
NSN: 6650–00–NIB–0028—Flat Top 35, Bifocal, Polycarbonate, Clear
NSN: 6650–00–NIB–0029—Flat Top 7x28, Trifocal, Polycarbonate, Clear
NSN: 6650–00–NIB–0030—Flat Top 8x35, Trifocal, Polycarbonate, Clear
NSN: 6650–00–NIB–0031—Progressives (VIP, Adaptar, Freedom, Image), Polycarbonate
NSN: 6650–00–NIB–0032—Single Vision, Plastic, Clear
NSN: 6650–00–NIB–0033—Flat Top 28, Bifocal, Plastic, Clear
NSN: 6650–00–NIB–0034—Flat Top 35, Bifocal, Plastic, Clear
NSN: 6650–00–NIB–0035—Round 25 and 28, Bifocal, Plastic, Clear
NSN: 6650–00–NIB–0036—Flat Top 7x28, Trifocal, Plastic, Clear
NSN: 6650–00–NIB–0037—Flat Top 8x35, Trifocal, Plastic, Clear
NSN: 6650–00–NIB–0038—Progressives, Plastic, Clear
NSN: 6650–00–NIB–0039—SV, Aspheric, Lenticular, Plastic, Clear
NSN: 6650–00–NIB–0040—FT or round aspheric lenticular, Plastic, Clear
NSN: 6650–00–NIB–0041—Bifocal, Executive, Plastic, Clear
NSN: 6650–00–NIB–0042—Single Vision, Glass, Clear
NSN: 6650–00–NIB–0043—Flat Top 28, Bifocal, Glass, Clear
NSN: 6650–00–NIB–0044—Flat Top 35, Bifocal, Glass, Clear
NSN: 6650–00–NIB–0045—Flat Top 7x28, Trifocal, Glass, Clear
NSN: 6650–00–NIB–0046—Flat Top 8x35, Trifocal, Glass, Clear
NSN: 6650–00–NIB–0047—Progressives (VIP, Adaptar, Freedom), Glass, Clear
NSN: 6650–00–NIB–0048—Bifocal, Executive, Glass, Clear
NSN: 6650–00–NIB–0049—Single Vision, Polycarbonate, Clear
NSN: 6650–00–NIB–0050—Flat Top 28, Polycarbonate, Clear
NSN: 6650–00–NIB–0051—Flat Top 35, Bifocal, Polycarbonate, Clear
NSN: 6650–00–NIB–0052—Flat Top 7x28, Trifocal, Polycarbonate, Clear
NSN: 6650–00–NIB–0053—Flat Top 8x35, Trifocal, Polycarbonate, Clear
NSN: 6650–00–NIB–0054—Lenses, Progressives (VIP, Adaptar, Freedom, Image), Polycarbonate
NSN: 6650–00–NIB–0055—Transition, Plastic, CR–39
NSN: 6650–00–NIB–0056—Photochromatic/Transition, (Polycarbonate Material)
NSN: 6650–00–NIB–0057—Photogrey (glass only)
NSN: 6650–00–NIB–0058—High Index transition (CR 39)
NSN: 6650–00–NIB–0059—Anti-reflective Coating (CR 39 and polycarbonate)
NSN: 6650–00–NIB–0060—Ultraviolet Coating (CR 39)
NSN: 6650–00–NIB–0061—Polarized Lenses (CR 39)
NSN: 6650–00–NIB–0062—Slab-off (polycarbonate, CR 39: trifocal and bifocal
NSN: 6650–00–NIB–0063—High Index (CR–39)
NSN: 6650–00–NIB–0064—Prism (up to 6 diopters no charge) > 6 diopters/diopter
NSN: 6650–00–NIB–0065—Diopter + or—9.0 and above
NSN: 6650–00–NIB–0066—Lenses, oversize eye, greater than 58, excluding progressive.
NSN: 6650–00–NIB–0067—Hyper 3 drop SV, jultifocal (CR 39)
NSN: 6650–00–NIB–0068—Add powers over 4.0
NSN: 6650–00–NIB–0069—Plastic or Metal
NPA: Winston Salem Industries for the Blind, Winston Salem, NC.
Contracting Activity: Service Area Office East, Veterans Health Administration, Department of Veterans Affairs, Pittsburgh, PA.
Coverage: C-List for 100% of the requirements of Veterans Integrated Service Networks 1, 3, 4, 5, 6, 7, and 8 as aggregated by the Service Area Office East, Veterans Health Administration, Department of Veterans Affairs, Pittsburgh PA.

Services

Service Type/Location: Custodial Service, U.S. Military Academy (USMA), Warrior Transition Unit, Building #624, West Point, NY.
NPA: Occupations, Inc., Middletown, NY.
Contracting Activity: Dept of the Army, W6QM MICC–West Point, West Point, NY.

Service Type/Location: Custodial Service, MSG Roy P. Benavidez Memorial, U.S. Army Reserve Center (USARC), 6400 Dryer Street, El Paso, TX.
NPA: Let's Go To Work, El Paso, TX.
Contracting Activity: Dept of the Army, W6QM MICC–FT Hunter (RC–W), Presidio of Monterey, CA.

Service Type/Location: Mailroom Service, National Labor Relations Board, HQ, 1099 14th Street NW., Washington, DC.
NPA: Linden Resources, Inc., Arlington, VA.
Contracting Activity: National Labor Relations Board, Washington, DC.

Service Type/Location: Janitorial Service, U.S. Army Corps of Engineers (USACE) Kansas City District, Building 234, 750 West Warehouse Road, Fort Leavenworth, KS.
NPA: The Helping Hand of Goodwill Industries Extended Employment SWS, Kansas City, MO.
Contracting Activity: Dept of the Army, W071 ENDIST Kansas City, Kansas City, MO.

Service Type/Location: Custodial and Landscaping Services, Ft. Pierce U.S. Federal Courthouse, 101 South U.S. Highway 1, Ft. Pierce, FL.
NPA: Goodwill Industries of South Florida, Inc., Miami, FL.
Contracting Activity: General Services Administration, Public Buildings Service, Atlanta, GA.
Service Type/Location: Grounds Maintenance, U.S. Department of Agriculture (USDA) Animal and Plant Health Inspection Service (APHIS), Plant Protection and Quarantine (PPQ), 6302 NW 36th Street, Miami, FL.
NPA: Goodwill Industries of South Florida, Inc., Miami, FL.
Contracting Activity: Dept. of Agriculture, Animal and Plant Health Inspection Service, Minneapolis, MN.

Service Type/Locations: Custodial and Grounds Services,
Anderson Federal Building-Courthouse, 315 South McDuffie Street, Anderson, SC.
Donald A. Russell Federal Building-Courthouse, 201 Magnolia Street, Spartanburg, SC.
NPA: SC Vocations & Individual Advancement, Inc., Greenville, SC.
Contracting Activity: General Services Administration, Public Buildings Service, Atlanta, GA.
Service Type/Location: Administrative Services, Housing and Urban Development (HUD)—Atlanta Field Office, 40 Marietta Street, Atlanta, GA.
NPA: Nobis Enterprises, Inc., Marietta, GA.
Contracting Activity: Dept. of Housing and Urban Development, Chicago Regional Office, RCO, Chicago, IL.
Service Type/Locations: Warehouse & Supply Support Services,
Naval Amphibious Base Little Creek, Building 1558, 2425 Stalwart Drive, Norfolk, VA.
Norfolk Naval Base, 1837 Morris Street, Building Z133, Aircraft Tow Way, Building V53, Norfolk, VA.
St. Juliens Creek Annex, Building 174 ''E'' Street, Buildings 59 & 79 Magazine Road, Portsmouth, VA.
Washington Navy Yard, 1325 10th Street SE., Washington, DC
NPA: Goodwill Services, Inc., Richmond, VA.
Contracting Activity: Dept. of the Navy, SPAWAR Systems Center Atlantic, North Charleston, SC.
Service Type/Location: Grounds Maintenance, Corpus Christi Resident Office, U.S. Army Corps of Engineers (USACE), Southern Area Office (SAO), 1920 N. Chaparral St., Corpus Christi, TX.
NPA: Training, Rehabilitation, & Development Institute, Inc., San Antonio, TX

Contracting Activity: Dept. of the Army, W076 ENDIST Galveston, Galveston, TX.

Patricia Briscoe,

Deputy Director, Business Operations, Pricing and Information Management.

[FR Doc. 2012–14671 Filed 6–14–12; 8:45 am]

BILLING CODE 6353–01–P

COMMODITY FUTURES TRADING COMMISSION

Renewal of the Global Markets Advisory Committee

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of Federal Advisory Committee Renewal.

SUMMARY: The Commodity Futures Trading Commission has determined to renew the charter of its Global Markets Advisory Committee.

FOR FURTHER INFORMATION CONTACT: Gail B. Scott, Committee Management Officer, at 202–418–5139. Written comments should be submitted to David A. Stawick, Secretary, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW., Washington, DC 20581. Electronic comments may be submitted to *dstawick@cftc.gov.*

Comments may also be submitted by any of the following methods:

The agency's Web site, at *http://comments.cftc.gov.* Follow the instructions for submitting comments through the Web site.

Hand Delivery/Courier: Same as mail above.

Please submit your comments using only one method and identity that it is for the renewal of the Global Markets Advisory Committee.

All comments must be submitted in English, or if not, accompanied by an English translation. Comments will be posted as received to *www.cftc.gov.* You should submit only information that you wish to make available publicly. If you wish the Commission to consider information that you believe is exempt from disclosure under the Freedom of Information Act, a petition for confidential treatment of the exempt information may be submitted according to the procedures established in § 145.9 of the Commission's regulations.[1]

SUPPLEMENTARY INFORMATION: The Commodity Futures Trading Commission (''Commission'') has determined to renew its Global Markets Advisory Committee. The Commission has determined that renewing the advisory committee is in the public interest in connection with the duties imposed on the Commission by the Commodity Exchange Act, 7 U.S.C. 1–26, as amended. The Global Markets Advisory Committee will operate for two years from the date of renewal unless, before the expiration of that time period, its charter is renewed in accordance with section 14(a)(2) of the Federal Advisory Committee Act, or the Chairman of the Commission, with the concurrence of the other Commissioners, shall direct that the advisory committee terminate on an earlier date.

The purpose of the Global Markets Advisory Committee is to conduct public meetings and to submit reports and recommendations on matters of public concern to the exchanges, firms, market users, and the Commission regarding the regulatory challenges of a global marketplace. The advisory committee will help the Commission determine how it can avoid unnecessary regulatory or operational impediments to global business while still preserving core protections for customers and other market participants. The advisory committee will also make recommendations for appropriate international standards for regulating futures, swaps, options, and derivatives markets, as well as intermediaries. Additionally, the advisory committee will assist the Commission in identifying methods to improve both domestic and international regulatory structures while continuing to allow U.S. markets and firms to remain competitive in the global market. These duties will allow the Commission to better promote its mission of protecting market users and the public from abusive practices, and help to foster open, competitive, and financially sound futures and options markets.

Meetings of the Global Markets Advisory Committee are open to the public.

The Global Markets Advisory Committee will be renewed with the publication of this notice and the concurrent filing of a renewal charter with the Commission; the Senate Committee on Agriculture, Nutrition and Forestry; the House Committee on Agriculture; the Library of Congress; and the General Services Administration's Committee Management Secretariat. A copy of the renewal charter also will be posted on the Commission's Web site at *www.cftc.gov.*

Issued in Washington, DC, on June 11, 2012, by the Commission.

David A. Stawick,

Secretary of the Commission.

[FR Doc. 2012–14708 Filed 6–14–12; 8:45 am]

BILLING CODE P

[1] *See* 17 CFR 145.9.

COMMODITY FUTURES TRADING COMMISSION

Notice of Sunshine Act Meetings

AGENCY: Commodity Futures Trading Commission.

TIME AND DATE: 10:00 a.m., Friday, July 27, 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. 2012–14747 Filed 6–13–12; 11:15 am]

BILLING CODE 6351–01–P

COMMODITY FUTURES TRADING COMMISSION

Notice of Sunshine Act Meetings

AGENCY: Commodity Futures Trading Commission.

TIME AND DATE: 10:00 a.m., Friday, July 6, 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. 2012–14751 Filed 6–13–12; 11:15 am]

BILLING CODE 6351–01–P

COMMODITY FUTURES TRADING COMMISSION

Notice of Sunshine Act Meetings

AGENCY: Commodity Futures Trading Commission.

TIME AND DATE: 10:00 a.m., Friday, July 13, 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. 2012–14753 Filed 6–13–12; 11:15 am]

BILLING CODE 6351–01–P

COMMODITY FUTURES TRADING COMMISSION

Notice of Sunshine Act Meetings

AGENCY: Commodity Futures Trading Commission.

TIME AND DATE: 10:00 a.m., Friday, July 20, 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. 2012–14749 Filed 6–13–12; 11:15 am]

BILLING CODE 6351–01–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DOD–2012–OS–0067]

Privacy Act of 1974; System of Records

AGENCY: Defense Logistics Agency, DoD.

ACTION: Notice To Amend a system of records.

SUMMARY: The Defense Logistics Agency is proposing to amend 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: The proposed action will be effective on July 16, 2012 unless comments are received which result in a contrary determination.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

- *Federal Rulemaking Portal: http://www.regulations.gov.*

Follow the instructions for submitting comments.

- *Mail:* Federal Docket Management System Office, 4800 Mark Center Drive, East Tower, 2nd Floor, Suite 02G09, Alexandria, VA 22350–3100.

Instructions: All submissions received must include the agency name and docket number for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Ms. Jody Sinkler, DLA FOIA/Privacy Act Office, Headquarters, Defense Logistics Agency, ATTN: DGA, 8725 John J. Kingman Road, Suite 1644, Fort Belvoir, VA 22060–6221, or by phone at (703) 767–5045.

SUPPLEMENTARY INFORMATION: The Defense Logistics Agency's system of record 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 changes to the record system being amended are set forth below. The proposed amendment is not within the purview of subsection (r) of the Privacy Act of 1974 (5 U.S.C. 552a), as amended, which requires the submission of new or altered systems reports.

Dated: June 12, 2012.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

S434.87

SYSTEM NAME:

Debt Records for Individuals (March 1, 2010, 75 FR 9185).

CHANGES:

* * * * *

CATEGORIES OF RECORDS IN THE SYSTEM:

Within fourth paragraph, replace ''Accounting'' with ''Accountability.''

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

After 10 U.S.C. 136 add ''Under Secretary of Defense for Personnel and Readiness.''

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Replace last paragraph with ''The DoD ''Blanket Routine Uses'' may apply to this system of records.''

NOTIFICATION PROCEDURE:

Replace first paragraph with ''Individuals seeking to determine whether information about themselves is contained in this system of records should address written inquiries to the DLA FOIA/Privacy Act Office, Headquarters, Defense Logistics Agency, ATTN: DGA, 8725 John J. Kingman Road, Suite 1644, Fort Belvoir, VA 22060–6221.''

RECORD ACCESS PROCEDURES:

Replace first paragraph with ''Individuals seeking access to information about themselves contained in this system of records should address written inquiries to the DLA FOIA/Privacy Act Office, Headquarters, Defense Logistics Agency, ATTN: DGA, 8725 John J. Kingman Road, Suite 1644, Fort Belvoir, VA 22060–6221.''

CONTESTING RECORD PROCEDURES:

Delete entry and replace with ''The DLA rules for accessing records, for contesting contents, and appealing initial agency determinations are contained in 32 CFR part 323, or may be obtained from the DLA FOIA/Privacy Act Office, Headquarters, Defense Logistics Agency, ATTN: DGA, 8725 John J. Kingman Road, Suite 1644, Fort Belvoir, VA 22060–6221.''

* * * * *

[FR Doc. 2012–14636 Filed 6–14–12; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID DOD–2012–OS–0068]

Privacy Act of 1974; System of Records

AGENCY: Defense Logistics Agency, DoD.

ACTION: Notice to amend a system of records.

SUMMARY: The Defense Logistics Agency is proposing to amend 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: The proposed action will be effective on July 16, 2012 unless comments are received which result in a contrary determination.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

- *Federal Rulemaking Portal:* http://www.regulations.gov. Follow the instructions for submitting comments.
- *Mail:* Federal Docket Management System Office, 4800 Mark Center Drive, East Tower, 2nd Floor, Suite 02G09, Alexandria, VA 22350–3100.

Instructions: All submissions received must include the agency name and docket number for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Ms. Jody Sinkler, DLA FOIA/Privacy Act Office, Headquarters, Defense Logistics Agency, ATTN: DGA, 8725 John J. Kingman Road, Suite 1644, Fort Belvoir, VA 22060–6221, or by phone at (703) 767–5045.

SUPPLEMENTARY INFORMATION: The Defense Logistics Agency's system of record 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 changes to the record system being amended are set forth below. The proposed amendment is not within the purview of subsection (r) of the Privacy Act of 1974 (5 U.S.C. 552a), as amended, which requires the submission of new or altered systems reports.

Dated: June 12, 2012.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

S352.10

SYSTEM NAME:

Suggestion Files (March 8, 2010, 75 FR 10473).

CHANGES:

* * * * *

SYSTEM LOCATION:

Replace ''ATTN: DHRC–P'' with ''ATTN: J14.''

* * * * *

CATEGORIES OF RECORDS IN THE SYSTEM:

Replace ''home'' with ''work.''

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Replace last paragraph with ''The DoD ''Blanket Routine Uses'' may also apply to this system of records.''

* * * * *

STORAGE:

Replace entry with ''Records are maintained on paper.''

RETRIEVABILITY:

Replace entry with ''Records are retrieved by record subject's name, and/or suggestion number.''

SAFEGUARDS:

Replace entry with ''Access is limited to those individuals who require access to the records to perform official, assigned duties. Physical access is limited through the use of locks, guards, card swipe, and other administrative procedures. Individuals granted access to the system of records receive Annual Information Assurance and Privacy training.''

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Replace ''ATTN: DHRC–P'' with ''ATTN: J14.''

NOTIFICATION PROCEDURE:

Replace entry with ''Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the DLA FOIA/Privacy Act Office, Headquarters, Defense Logistics Agency, ATTN: DGA, 8725 John J. Kingman Road, Suite 1644, Fort Belvoir, VA 22060–6221.

Inquiry should contain the record subject's full name, work address, type of award, suggestion description, and activity at which nomination or suggestion was submitted.''

RECORD ACCESS PROCEDURES:

Replace entry with ''Individuals seeking access to information about themselves contained in this system should address written inquiries to the DLA FOIA/Privacy Act Office, Headquarters, Defense Logistics Agency, ATTN: DGA, 8725 John J. Kingman Road, Suite 1644, Fort Belvoir, VA 22060–6221.

Inquiry should contain the record subject's full name, work address, type of award, suggestion description, and activity at which nomination or suggestion was submitted.''

CONTESTING RECORD PROCEDURES:

Replace address within entry with ''DLA FOIA/Privacy Act Office, Headquarters, Defense Logistics Agency, ATTN: DGA, 8725 John J. Kingman Road, Suite 1644, Fort Belvoir, VA 22060–6221.''

* * * * *

[FR Doc. 2012–14638 Filed 6–14–12; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

Notice of Availability for the Final Environmental Impact Statement/Environmental Impact Report for Proposed Berths 302–306 American President Lines (APL) Container Terminal Project, Port of Los Angeles, Los Angeles County, CA

AGENCY: Department of the Army—U.S. Army Corps of Engineers, DoD.

ACTION: Notice of Availability.

SUMMARY: The U.S. Army Corps of Engineers, Los Angeles District Regulatory Division (Corps), in coordination with the Los Angeles Harbor Department/Port of Los Angeles, has completed a Final Environmental Impact Statement/Environmental Impact Report (EIS/EIR) for the Berths 302–306 American Presidents Line (APL) Container Terminal Project. This Notice serves as the 30-day Notice of Availability for the Final EIS/EIR for the project, which will conclude on July 16, 2012.

Berths 302–305 are currently operational and encompass approximately 291 acres of land and water including 12 container cranes, a 4,000-foot-long wharf, utility infrastructure, truck gates, intermodal rail, and terminal buildings to support operations. The Project would result in

an additional 12 container cranes distributed among Berths 302–306 with eight new cranes proposed at Berth 306, a new 1,250-foot-long wharf at Berth 306, and development of 41 acres of backlands for container storage and distribution, including installation of utility infrastructure to support future automation at Berth 306 and the 41 acre backland. The Project would result in an approximately 347-acre marine container terminal, and would include the following construction and operational elements: Dredging, wharf construction, additional container cranes; expanded container yard and associated structures and utilities; modification of truck gates, associated structures, and roadwork.

The Port of Los Angeles (Port) requires authorization pursuant to Section 10 of the Rivers and Harbors Act, and Section 103 of the Marine Protection, Research, and Sanctuaries Act, to implement regulated activities in and over waters of the U.S. associated with expanding the existing APL container terminal. The Corps and the Port as the state lead agency prepared an EIS/EIR in order to optimize efficiency and avoid duplication. The EIS/EIR is intended to be sufficient in scope to address federal, state, and local requirements and environmental issues concerning the proposed activities and permit approvals. The following proposed activities require authorization from the Corps: (1) Construction of a new 1,250-foot-long concrete pile-supported wharf at Berth 306 which is immediately adjacent to the existing 4,000-foot-long wharf at Berths 302–305, (2) installation of 12 new gantry cranes between Berths 302–306 with at least eight (8) new cranes at Berth 306 associated with development and operation of the 41-acre backlands at Berth 306, (3) dredging of approximately 20,000 cubic yards (cy) of sediment from Berth 306 to increase the depth to −55 feet mean lower low water (MLLW) plus an additional two feet of overdepth dredging to −57 feet MLLW, and (4) disposal of dredged material in Berth 243–245 confined disposal facility (CDF), the Cabrillo Shallow Water Habitat Area, or at LA–2 (unconfined ocean disposal).

FOR FURTHER INFORMATION CONTACT: Copies of the Corps Public Notice are available at: *http://www.spl.usace.army.mil/regulatory/.* Copies of the EIS/EIR are available at *http://www.portoflosangeles.org,* and at the following locations:

- Port of Los Angeles Administration Building
- Los Angeles City Library, San Pedro Branch
- Los Angeles City Library, Wilmington Branch
- Los Angeles Public Library, Central Branch

Questions or requests concerning the Final EIS/EIR should be directed to: Theresa Stevens, Ph.D., U.S. Army Corps of Engineers, Los Angeles District-Regulatory Division, North Coast Branch, 2151 Alessandro Drive, Suite 110, Ventura, California 93001, (805) 585–2146 or via email to *theresa.stevens@usace.army.mil.*

SUPPLEMENTARY INFORMATION: None.

David J. Castanon,

Chief, Regulatory Division.

[FR Doc. 2012–14711 Filed 6–14–12; 8:45 am]

BILLING CODE 3720–58–P

DEPARTMENT OF EDUCATION

Applications for New Awards; Arts in Education National Program

AGENCY: Office of Innovation and Improvement, Department of Education.

ACTION: Notice.

Overview Information; Arts in Education National Program; Notice inviting applications for new awards for fiscal year (FY) 2012.

Catalog of Federal Domestic Assistance (CFDA) Number: 84.351F.

Dates: Applications Available: June 15, 2012.

Deadline for Transmittal of Applications: July 30, 2012.

Deadline for Intergovernmental Review: September 28, 2012.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The Arts in Education National Program (AENP) supports national-level high-quality arts education activities and services for children and youth, with special emphasis on serving children from low-income families (as defined in this notice) and children with disabilities (as defined in this notice).

Priorities: This notice includes one absolute priority and four competitive preference priorities.

The absolute priority is from the notice of final priority, requirements, definitions, and selection criteria for this program, published elsewhere in this issue of the **Federal Register**.

Absolute Priority: For FY 2012 and any subsequent year in which we make awards from the list of unfunded applicants from this competition, this priority is an absolute priority. Under 34 CFR 75.105(c)(3) we consider only applications that meet this priority.

This priority is:

Model Projects.

One or more high-quality projects that are designed to develop and implement, or expand, initiatives in arts education and arts integration (as defined in this notice) on a national level for pre-kindergarten-through-grade-12 children and youth, with special emphasis on serving children from low-income families (as defined in this notice) and children with disabilities (as defined in this notice). In order to meet this priority, an applicant must demonstrate that the project for which it seeks funding will provide services and develop initiatives in multiple schools and school districts throughout the country, including in at least one urban, at least one rural, and at least one high-need community (as defined in this notice).

Competitive Preference Priorities: These four priorities are from the notice of final supplemental priorities and definitions for discretionary grant programs, published in the **Federal Register** on December 15, 2010 (75 FR 78486), and corrected on May 12, 2011 (76 FR 27637). For FY 2012 and any subsequent year in which we make awards from the list of unfunded applicants from this competition, these priorities are competitive preference priorities. Applicants may choose to address one or more of these competitive preference priorities. Under 34 CFR 75.105(c)(2)(i), we award up to an additional 20 points to an application, depending on how well the application meets one or more of these priorities.

These priorities are:

Turning Around Persistently Lowest-Achieving Schools (up to an additional 5 points).

Projects that are designed to address one or more of the following priority areas:

(a) Improving student achievement (as defined in this notice) in persistently lowest-achieving schools (as defined in this notice).

(b) Providing services to students enrolled in persistently lowest-achieving schools (as defined in this notice).

Note: For the purposes of this priority, the Department considers schools that are identified as Tier I or Tier II schools under the School Improvement Grants Program (see 75 FR 66363) as part of a State's approved FY 2009 or FY 2010 applications to be persistently lowest-achieving schools. A list of these Tier I and Tier II schools can be found on the Department's Web site at *http://www2.ed.gov/programs/sif/index.html.*

Technology (up to an additional 5 points).

Projects that are designed to improve student achievement (as defined in this notice) or teacher effectiveness through the use of high-quality digital tools or materials, which may include preparing teachers to use the technology to improve instruction, as well as developing, implementing, or evaluating digital tools or materials.

Note: Section 504 of the Rehabilitation Act of 1973, and the Department's regulations implementing Section 504 at 34 CFR part 104, prohibit discrimination on the basis of disability in programs and activities that receive Federal financial assistance from the Department. They require recipients to provide an equal opportunity to individuals with disabilities to participate in, and receive the benefits of, the educational program, and to provide accommodations or modifications when necessary to ensure equal treatment. In particular, they apply to a recipient's use of technology, including digital tools and equipment. For additional information regarding their application to technology, please refer to the May 26, 2011, Dear Colleague Letter available at *http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201105-ese.pdf*, and attached Frequently Asked Questions about the June 26, 2010, Dear Colleague Letter available at *http://www2.ed.gov/about/offices/list/ocr/docs/dcl-ebook-faq-201105.pdf.*

Enabling More Data-Based Decision-Making (up to an additional 5 points).

Projects that are designed to collect (or obtain), analyze, and use high-quality and timely data, including data on program participant outcomes, in accordance with privacy requirements (as defined in this notice) in one or more of the following priority areas:

(a) Improving instructional practices, policies, and child outcomes in early learning settings.

(b) Improving instructional practices, policies, and student outcomes in elementary or secondary schools.

(c) Providing reliable and comprehensive information on the implementation of Department of Education programs, and participant outcomes in these programs, by using data from State longitudinal data systems or by obtaining data from reliable third-party sources.

Building Evidence of Effectiveness (up to an additional 5 points).

Projects that propose evaluation plans that are likely to produce valid and reliable evidence in one or more of the following priority areas:

(a) Improving project design and implementation or designing more effective future projects to improve outcomes.

(b) Identifying and improving practices, strategies, and policies that may contribute to improving outcomes. Under this priority, at a minimum, the outcome of interest is to be measured multiple times before and after the treatment for project participants and, where feasible, for a comparison group of non-participants.

Application Requirements:

The following eligibility and application requirements are from the AENP notice of final priority, requirements, definitions, and selection criteria, published elsewhere in this issue of the **Federal Register**, and apply to this competition. We may use one or more of these requirements in any year in which we award grants for the AENP.

1. To be eligible for an award, an applicant must be a national nonprofit arts education organization (as defined in this notice).

2. An applicant must describe in its application how it would serve children from low-income families (as defined in this notice) and children with disabilities (as defined in this notice).

3. An applicant must describe in its application how it would implement the following activities and services at the national level:

(i) Professional development based on State or national standards for pre-kindergarten-through-grade-12 arts educators (as defined in this notice).

Note: *National standards* are the arts standards developed by the Consortium of National Arts Education Associations or another, comparable set of national arts standards. The standards developed by the Consortium outline what students should know and be able to do in the arts. These are not Department standards. To view the standards, please go to *www.menc.org/resources/view/the-national-standards-for-arts-education-a-brief-history*.

(ii) Development and dissemination of instructional materials, including online resources, in music, dance, theater, media arts, and visual arts, including folk arts, for arts educators (as defined in this notice).

(iii) Arts-based educational programming in music, dance, theater, media arts, and visual arts, including folk arts, for pre-kindergarten-through-grade-12 students and arts educators (as defined in this notice).

(iv) Community and national outreach activities and services that strengthen and expand partnerships among schools, school districts, and communities throughout the country.

Definitions:

All of the definitions, except the definitions of ''persistently lowest-achieving schools,'' ''privacy requirements,'' and ''student achievement'' are from the notice of final priority, requirements, definitions, and selection criteria for this program, published elsewhere in this issue of the **Federal Register**. The definitions of ''persistently lowest-achieving schools,'' ''privacy requirements,'' and ''student achievement'' are from the notice of final supplemental priorities and definitions for discretionary grant programs, published in the **Federal Register** on December 15, 2010 (75 FR 78486), and corrected on May 12, 2011 (76 FR 27637). We may use one or more of these definitions in any year in which we award grants for the AENP.

Arts means music, dance, theater, media arts, and visual arts, including folk arts.

Arts educator means a teacher or other instructional staffer who works in music, dance, theater, media arts, or visual arts, including folk arts.

Arts integration means (i) using high-quality arts instruction within other academic content areas, and (ii) strengthening the arts as a core academic subject in the school curriculum.

Child from low-income family means a child who is determined by a State educational agency or local educational agency to be a child, in pre-kindergarten through grade 12, from a low-income family, on the basis of (a) The child's eligibility for free or reduced-price lunches under the Richard B. Russell National School Lunch Act, (b) the child's eligibility for medical assistance under the Medicaid program under title XIX of the Social Security Act, (c) the family having an income that meets the poverty criteria established by the U.S Department of Commerce, or (d) the family's receipt of assistance under Part A of title IV of the Social Security Act.

Children with disabilities means children who meet the definition of ''individual with a disability'' applicable to Section 504 of the Rehabilitation Act of 1973, as amended, which definition is set out at 29 U.S.C. 705(20)(B).

High-need community means (i) a political subdivision of a State or portion of a political subdivision of a State, in which at least 50 percent of the children are from low-income families; or (ii) a political subdivision of a State that is among the 10 percent of political subdivisions of the State having the greatest numbers of such children. For the purposes of determining if a community meets this definition, the term ''low-income families'' means families that have an income that meets the poverty criteria established by the U.S. Department of Commerce for the most recent fiscal year for which satisfactory data are available.

National non-profit arts education organization means an organization of national scope that is supported by staff or affiliates at the State and local levels and that has a demonstrated history of advancing high-quality arts education and arts integration for arts educators, education leaders, artists, and students through professional development, partnerships, educational programming, and supporting systemic school reform.

Persistently lowest-achieving schools means, as determined by the State: (i) Any Title I school in improvement, corrective action, or restructuring that (a) Is among the lowest-achieving five percent of Title I schools in improvement, corrective action, or restructuring or the lowest-achieving five Title I schools in improvement, corrective action, or restructuring in the State, whichever number of schools is greater; or (b) is a high school that has had a graduation rate as defined in 34 CFR 200.19(b) that is less than 60 percent over a number of years; and (ii) any secondary school that is eligible for, but does not receive, Title I funds that: (a) Is among the lowest-achieving five percent of secondary schools or the lowest-achieving five secondary schools in the State that are eligible for, but do not receive, Title I funds, whichever number of schools is greater; or (b) is a high school that has had a graduation rate as defined in 34 CFR 200.19(b) that is less than 60 percent over a number of years.

To identify the persistently lowest-achieving schools, a State must take into account both: (i) The academic achievement of the ''all students'' group in a school in terms of proficiency on the State's assessments under section 1111(b)(3) of the Elementary and Secondary Education Act of 1965, as amended (ESEA), in reading/language arts and mathematics combined; and (ii) the school's lack of progress on those assessments over a number of years in the ''all students'' group.

Privacy requirements means the requirements of the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. 1232g, and its implementing regulations in 34 CFR part 99, the Privacy Act, 5 U.S.C. 552a, as well as all applicable Federal, State and local requirements regarding privacy.

Student achievement means—

(a) For tested grades and subjects: (1) A student's score on the State's assessments under the ESEA; and, as appropriate, (2) other measures of student learning, such as those described in paragraph (b) of this definition, provided they are rigorous and comparable across schools.

(b) For non-tested grades and subjects: Alternative measures of student learning and performance, such as student scores on pre-tests and end-of-course tests; student performance on English language proficiency assessments; and other measures of student achievement that are rigorous and comparable across schools.

Program Authority: 20 U.S.C. 7271.

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.

(c) The notice of final priority, requirements, definitions, and selection criteria for this program, published elsewhere in this **Federal Register**.

(d) The notice of final supplemental priorities and definitions for discretionary grant programs, published in the **Federal Register** on December 15, 2010 (75 FR 78486), and corrected on May 12, 2011 (76 FR 27637).

Note: The regulations in 34 CFR part 79 apply to all applicants except federally recognized Indian tribes.

Note: The regulations in 34 CFR part 86 apply to institutions of higher education only.

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds: $6,640,000.

Estimated Number of Awards: 1–2.

Note: The Department is not bound by any estimates in this notice.

Budget Period: 12 months.

Project Period: Up to 36 months (subject to availability of funds).

III. Eligibility Information

1. *Eligible Applicants:* A national non-profit arts education organization (as defined in this notice).

2.a. *Cost Sharing or Matching:* This program does not require cost sharing or matching.

b. *Supplement-Not-Supplant:* This program involves supplement-not-supplant funding requirements. Under section 5551(f)(2) of the ESEA, the Secretary requires that assistance provided under this program be used only to supplement, and not to supplant, any other assistance or funds made available from non-Federal sources for the activities assisted under the program.

c. *Coordination Requirement:* Under section 5551(f)(1) of the ESEA, the Secretary requires that each entity funded under this program coordinate, to the extent practicable, each project or program carried out with funds awarded under this program with appropriate activities of public or private cultural agencies, institutions, and organizations, including museums, arts education associations, libraries, and theaters.

IV. Application and Submission Information

1. *Address to Request Application Package:* Diane Austin, U.S. Department of Education, 400 Maryland Avenue SW., room 4W245, Washington, DC 20202–5950. Telephone: (202) 260–1280 or by email: *artsdemo@ed.gov.*

If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

Individuals with disabilities can obtain a copy of the application package in an accessible format (e.g., braille, large print, audiotape, or compact disc) by contacting the program contact person listed in this section.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this competition.

Page Limit: The application narrative (Part III of the application) is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. We suggest you limit the application narrative (Part III) to no more than 50 pages, using the following standards:

- A ''page'' is 8.5″ × 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.

3. *Submission Dates and Times:*

Applications Available: June 15, 2012.

Deadline for Transmittal of Applications: July 30, 2012.

Applications for grants under this competition must be submitted electronically using the Grants.gov site (Grants.gov). For information (including dates and times) about how to submit your application electronically, or in

paper format by mail or hand delivery if you qualify for an exception to the electronic submission requirement, please refer to section IV. 7. *Other Submission Requirements* of this notice.

We do not consider an application that does not comply with the deadline requirements.

Individuals with disabilities who need an accommodation or auxiliary aid in connection with the application process should contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice. If the Department provides an accommodation or auxiliary aid to an individual with a disability in connection with the application process, the individual's application remains subject to all other requirements and limitations in this notice.

Deadline for Intergovernmental Review: September 28, 2012.

4. *Intergovernmental Review:* This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this competition.

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), the Government's primary registrant database;

c. Provide your DUNS number and TIN on your application; and

d. Maintain an active CCR registration with current information while your application is under review by the Department and, if you are awarded a grant, during the project period.

You can obtain a DUNS number from Dun and Bradstreet. A DUNS number can be created within one business day.

If you are a corporate entity, agency, institution, or organization, you can obtain a TIN from the Internal Revenue Service. If you are an individual, you can obtain a TIN from the Internal Revenue Service or the Social Security Administration. If you need a new TIN, please allow 2–5 weeks for your TIN to become active.

The CCR registration process may take five or more business days to complete. If you are currently registered with the CCR, you may not need to make any changes. However, please make certain that the TIN associated with your DUNS number is correct. Also note that you will need to update your registration annually. This may take three or more business days to complete.

In addition, if you are submitting your application via Grants.gov, you must (1) be designated by your organization as an Authorized Organization Representative (AOR); and (2) register yourself with Grants.gov as an AOR. Details on these steps are outlined at the following Grants.gov Web page: *www.grants.gov/applicants/get_registered.jsp.*

7. *Other Submission Requirements:*

Applications for grants under this program 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 Arts in Education National Program, CFDA number 84.351F, must be submitted electronically using the Governmentwide Grants.gov Apply site at *www.Grants.gov.* Through this site, you will be able to download a copy of the application package, complete it offline, and then upload and submit your application. You may not email an electronic copy of a grant application to us.

We will reject your application if you submit it in paper format unless, as described elsewhere in this section, you qualify for one of the exceptions to the electronic submission requirement *and* submit, no later than two weeks before the application deadline date, a written statement to the Department that you qualify for one of these exceptions. Further information regarding calculation of the date that is two weeks before the application deadline date is provided later in this section under *Exception to Electronic Submission Requirement.*

You may access the electronic grant application for the Arts in Education National Program at *www.Grants.gov.* You must search for the downloadable application package for this program by the CFDA number. Do not include the CFDA number's alpha suffix in your search (e.g., search for 84.351, not 84.351F).

Please note the following:

- When you enter the Grants.gov site, you will find information about submitting an application electronically through the site, as well as the hours of operation.
- Applications received by Grants.gov are date and time stamped. Your application must be fully uploaded and submitted and must be date and time stamped by the Grants.gov system no later than 4:30:00 p.m., Washington, DC time, on the application deadline date. Except as otherwise noted in this section, we will not accept your application if it is received—that is, date and time stamped by the Grants.gov system—after 4:30:00 p.m., Washington, DC time, on the application deadline date. We do not consider an application that does not comply with the deadline requirements. When we retrieve your application from Grants.gov, we will notify you if we are rejecting your application because it was date and time stamped by the Grants.gov system after 4:30:00 p.m., Washington, DC time, on the application deadline date.
- The amount of time it can take to upload an application will vary depending on a variety of factors, including the size of the application and the speed of your Internet connection. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the submission process through Grants.gov.
- You should review and follow the Education Submission Procedures for submitting an application through Grants.gov that are included in the application package for this program to ensure that you submit your application in a timely manner to the Grants.gov system. You can also find the Education Submission Procedures pertaining to Grants.gov under News and Events on the Department's G5 system home page at *www.G5.gov.*
- You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you qualify for an exception to the electronic submission requirement, as described elsewhere in this section, and submit your application in paper format.
- You must submit all documents electronically, including all information you typically provide on the following forms: The Application for Federal Assistance (SF 424), the Department of Education Supplemental Information for SF 424, Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications.
- You must upload any narrative sections and all other attachments to your application as files in a PDF (Portable Document) read-only, non-modifiable format. Do not upload an interactive or fillable PDF file. If you upload a file type other than a read-only, non-modifiable PDF or submit a

password-protected file, we will not review that material.

• Your electronic application must comply with any page-limit requirements described in this notice.

• After you electronically submit your application, you will receive from Grants.gov an automatic notification of receipt that contains a Grants.gov tracking number. (This notification indicates receipt by Grants.gov only, not receipt by the Department). The Department then will retrieve your application from Grants.gov and send a second notification to you by email. This second notification indicates that the Department has received your application and has assigned your application a PR/Award number (an ED-specified identifying number unique to your application).

• We may request that you provide us original signatures on forms at a later date.

Application Deadline Date Extension in Case of Technical Issues with the Grants.gov System: If you are experiencing problems submitting your application through Grants.gov, please contact the Grants.gov Support Desk, toll free, at 1–800–518–4726. You must obtain a Grants.gov Support Desk Case Number and must keep a record of it.

If you are prevented from electronically submitting your application on the application deadline date because of technical problems with the Grants.gov system, we will grant you an extension until 4:30:00 p.m., Washington, DC time, the following business day to enable you to transmit your application electronically or by hand delivery. You also may mail your application by following the mailing instructions described elsewhere in this notice.

If you submit an application after 4:30:00 p.m., Washington, DC time, on the application deadline date, please contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice and provide an explanation of the technical problem you experienced with Grants.gov, along with the Grants.gov Support Desk Case Number. We will accept your application if we can confirm that a technical problem occurred with the Grants.gov system and that that problem affected your ability to submit your application by 4:30:00 p.m., Washington, DC time, on the application deadline date. The Department will contact you after a determination is made on whether your application will be accepted.

Note: The extensions to which we refer in this section apply only to the unavailability of, or technical problems with, the Grants.gov system. We will not grant you an extension if you failed to fully register to submit your application to Grants.gov before the application deadline date and time or if the technical problem you experienced is unrelated to the Grants.gov system.

Exception to Electronic Submission Requirement: You qualify for an exception to the electronic submission requirement, and may submit your application in paper format, if you are unable to submit an application through the Grants.gov system because—

• You do not have access to the Internet; or

• You do not have the capacity to upload large documents to the Grants.gov system; *and*

• No later than two weeks before the application deadline date (14 calendar days or, if the fourteenth calendar day before the application deadline date falls on a Federal holiday, the next business day following the Federal holiday), you mail or fax a written statement to the Department, explaining which of the two grounds for an exception prevent you from using the Internet to submit your application.

If you mail your written statement to the Department, it must be postmarked no later than two weeks before the application deadline date. If you fax your written statement to the Department, we must receive the faxed statement no later than two weeks before the application deadline date.

Address and mail or fax your statement to: Diane Austin, U.S. Department of Education, 400 Maryland Avenue SW., Room 4W245, Washington, DC 20202–5950. Fax: (202) 205–5630.

Your paper application must be submitted in accordance with the mail or hand delivery instructions described in this notice.

b. *Submission of Paper Applications by Mail.*

If you qualify for an exception to the electronic submission requirement, you may mail (through the U.S. Postal Service or a commercial carrier) your application to the Department. You must mail the original and two copies of your application, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.351F), 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: (84.351F), 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 four selection criteria to evaluate applications for this competition. Selection criteria (1) *Significance,* (2) *Quality of the project design,* and (3) *Quality of project services* are established in the notice of final priority, requirements, definitions, and selection criteria for this program,

published elsewhere in this issue of the **Federal Register**. Selection criterion (4) *Quality of the project evaluation* is from 34 CFR 75.210.

The maximum score for each criterion is indicated in parentheses. The maximum score for all of the selection criteria is 100 points. The total maximum score of an application is 120 points (up to 100 points under the selection criteria and up to an additional 20 points under the competitive preference priorities in this notice). Each criterion also includes the factors that the reviewers will consider in determining how well an application meets the criterion. The notes following the selection criteria are provided as guidance to help applicants in preparing their applications, and are not required by statute or regulations.

The selection criteria are as follows:

(1) *Significance* (20 points). The Secretary reviews each application to determine the extent to which—

(a) The proposed project is likely to build State and local capacity to provide, improve, or expand arts education and arts integration that address the needs of children and youth, with special emphasis on serving children from low-income families and children with disabilities; and

(b) The applicant has a history of three or more years of demonstrated excellence in the areas of arts education and arts integration on a national scale.

(2) *Quality of the project design* (40 points). The Secretary reviews each application to determine the extent to which—

(a) The design of the proposed project is appropriate to, and will successfully address, the arts education needs of pre-kindergarten-through-grade-12 children and youth, with special emphasis on children from low-income families and children with disabilities;

(b) The proposed project will provide high-quality professional development for pre-kindergarten-through-grade-12 arts educators who provide instruction in music, dance, drama, media arts, or visual arts, including folk arts;

(c) The proposed project will develop and disseminate instructional materials, including online resources, in multiple arts disciplines for arts educators and other instructional staff;

(d) The proposed project will support arts-based educational programming; and

(e) The proposed project will provide community and national outreach that strengthens and expands partnerships among schools, school districts, and communities throughout the country.

(3) *Quality of project services* (20 points). In determining the quality of the services to be provided by the proposed project, the Secretary considers the extent to which—

(a) The services to be provided by the proposed project involve the collaboration of appropriate partners in order to maximize the effectiveness of project services; and

(b) The proposed project will provide services and initiatives that will reach students and arts educators in multiple schools and school districts in urban, rural, and high-need communities throughout the country.

(4) *Quality of the project evaluation* (20 points). The Secretary considers the quality of the evaluation to be conducted of the proposed project. In determining the quality of the evaluation, the Secretary considers one or more of the following factors:

(a) The extent to which the methods of evaluation include the use of objective performance measures that are clearly related to the intended outcomes of the project and will produce quantitative and qualitative data to the extent possible.

(b) The extent to which the methods of evaluation will provide performance feedback and permit periodic assessment of progress toward achieving intended outcomes.

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).

(b) At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multi-year award, you must submit an annual performance report that provides the most current performance and financial expenditure information as directed by the Secretary under 34 CFR 75.118. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to *www.ed.gov/fund/grant/apply/appforms/appforms.html.*

4. *Performance Measures:* Under the Government Performance and Results Act of 1993 (GPRA), the Secretary has established four performance measures to assess the effectiveness of this program. Projects funded under this competition will be expected to collect and report to the Department data related to these measures. Applications should, but are not required to, discuss in the application narrative how they propose to collect these data. The four GPRA performance measures are: (1) The total number of students who participate in standards-based arts education sponsored by the grantee; (2) the number of teachers participating in the grantee's program who receive professional development that is

sustained and intensive; (3) the total number of students from low-income families who participate in standards-based arts education sponsored by the grantee; and (4) the total number of students with disabilities who participate in standards-based arts education sponsored by the grantee.

5. *Continuation Awards:* In making a continuation award, the Secretary may consider, under 34 CFR 75.253, the extent to which a grantee has made ''substantial progress toward meeting the objectives in its approved application.'' This consideration includes the review of a grantee's progress in meeting the targets and projected outcomes in its approved application, and whether the grantee has expended funds in a manner that is consistent with its approved application and budget. In making a continuation 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: Diane Austin, U.S. Department of Education, 400 Maryland Avenue SW., Room 4W245, Washington, DC 20202–5950. Telephone: (202) 260–1280 or by email: *artsdemo@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.

Dated: June 12, 2012.

James H. Shelton, III,

Assistant Deputy Secretary for Innovation and Improvement.

[FR Doc. 2012–14732 Filed 6–14–12; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[CFDA Number 84.351F]

Arts in Education National Program; Final Priority, Requirements, Definitions, and Selection Criteria

AGENCY: Office of Innovation and Improvement, Department of Education.

ACTION: Notice.

SUMMARY: The Assistant Deputy Secretary for Innovation and Improvement announces the final priority, requirements, definitions, and selection criteria under the Arts in Education National Program (AENP). The Assistant Secretary may use this priority and these requirements, definitions and selection criteria for competitions in fiscal year (FY) 2012 and later years. We take this action to encourage and expand national-level high-quality arts education activities and services for children and youth, with special emphasis on serving children from low-income families and children with disabilities.

DATES: *Effective Dates:* This priority and these requirements, definitions, and selection criteria are effective July 16, 2012.

FOR FURTHER INFORMATION CONTACT: Diane Austin, U.S. Department of Education, 400 Maryland Avenue SW., Room 4W245, Washington, DC 20202–5950. Telephone: (202) 260–1280 or by email: *artsdemo@ed.gov.*

If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

Purpose of Program: The purpose of the AENP is to support national-level high-quality arts education activities and services for children and youth, with special emphasis on serving children from low-income families and children with disabilities.

Program Authority: 20 U.S.C. 7271.

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 debarment and suspension regulations in 2 CFR part 3485.

We published a notice of proposed priority, requirements, definitions, and selection criteria for this program in the **Federal Register** on February 2, 2012 (77 FR 5243). That notice contained background information and our reasons for proposing the particular priority, requirements, definitions, and selection criteria.

Except for minor editorial revisions, there are no differences between the proposed priority, requirements, and selection criteria and this final priority, requirements, and selection criteria. There are minor editorial changes in the definitions section. These changes are fully explained in the *Analysis of Comments and Changes* section elsewhere in this notice.

Public Comment: In response to our invitation in the notice of the proposed priority, requirements, definitions, and selection criteria, four parties submitted comments on the proposed priority, requirements, definitions, and selection criteria.

Generally, we do not address technical and other minor changes, or suggested changes the law does not authorize us to make. In addition, we do not address general comments that raised concerns not directly related to the proposed priority, requirements, definitions, or selection criteria.

Analysis of Comments and Changes: An analysis of the comments and of any changes in the priority, requirements, definitions, and selection criteria since publication of the notice of proposed priority, requirements, definitions, and selection criteria follows.

Comment: One commenter inquired as to whether the Department intended to provide a higher priority to applicants that propose to serve younger learners.

Discussion: The Department is not proposing that a particular age group be given priority. Because the AENP is a national program, we expect that the age groups to be targeted and the types of proposed programming will vary across the country. We believe that applicants should have the flexibility to plan and carry out activities and services that best address the specific needs of the students they serve.

Changes: None.

Comment: One commenter suggested that the Department broaden the language for both the professional development requirement and the development and dissemination of

instructional materials requirement to specifically include general classroom teachers who use the arts in their classrooms. The commenter stated that general classroom teachers have had little, if any, professional development either in teaching about the arts or integrating the arts with other curricula. The commenter further stated that general classroom teachers should have access to online instructional materials so they can effectively use the arts in their classrooms.

Discussion: The Department agrees that general classroom teachers who use arts in their classroom should receive the necessary professional development and instructional materials in order to provide quality instruction in the arts. In fact, the definition for ''arts educator'' on page 5244 of the February 2, 2012, proposed notice is ''a teacher or other instructional staffer who works in music, dance, theater, media arts or visual arts, including folk arts.'' Therefore, general classroom teachers who use arts in their classroom, as well as other educators who instruct children in the arts, meet the definition included in this notice and may benefit from professional development, instructional materials, and other services provided under the AENP.

Changes: None.

Comment: The same commenter suggested that the Department provide a definition for the term ''child with disabilities'' as that term is used in the notice.

Discussion: We agree.

Changes: We are including a definition of ''children with disabilities.'' For purposes of this program, ''children with disabilities'' means children who meet the definition of ''individual with a disability'' applicable to Section 504 of the Rehabilitation Act of 1973, as amended, which is set out at 29 U.S.C. 705(20)(B).

Comment: The same commenter raised concerns about the language under Executive Order 13563(4) on page 5245 of the February 2, 2012, notice of proposed priority, requirements, definitions, and selection criteria. The commenter stated that performance objectives would not provide for the kind of rigorous evaluation that should be part of AENP and recommended that the evaluation requirements be strengthened. The commenter further stated that a well-tailored research and evaluation platform would assist the grantee in knowing which programs worked, what made them successful, how they affected the target group, and provide qualified examples for others.

Discussion: In the 2012 AENP notice inviting applications for new awards, published elsewhere in this issue of the **Federal Register**, we are including selection criteria from the Education Department General Administrative Requirements (EDGAR) on the quality of the project evaluation, which address the commenter's concerns.

Changes: We have added selection criteria on evaluation under the heading ''Quality of the project evaluation'' in the notice inviting applications.

Comment: One commenter recommended that the art-based educational programming requirement be modified to emphasize the importance of sequential, standards-based teaching that is unique to music education. The commenter added that it would be beneficial for the Department to acknowledge the importance of such student engagement, particularly among children from low-income families (as defined in this notice).

Discussion: The Department believes that the commenter's concern is addressed by the professional development requirement. Applicants are required to describe in their applications how professional development in all of the arts, including music, will be aligned with State and national standards. In addition, the quality and depth of an applicant's professional development plan and the potential impact on teachers, and ultimately their students, will be evaluated by peer reviewers. This includes the impact of the professional development on children from low-income families and on children with disabilities. The Department is not giving any particular discipline a priority.

Changes: None.

Comment: One commenter suggested that the Department fund multiple projects and organizations under AENP in order to more significantly affect students by supporting diversified approaches to teaching and learning through the arts.

Discussion: The funds available for this program will likely not be sufficient to support more than one grant, particularly given the national-level requirement of the projects. Applicants are free to request sufficient funding to address the scope and cost of the services to be provided up to the maximum level of funding available. If the requested budget of the highest ranked application does not reach the maximum funding available, and if sufficient funding remains, an additional applicant could receive funding.

Changes: None.

Final Priority:

One or more high-quality projects that are designed to develop and implement, or expand, initiatives in arts education and arts integration (as defined in this notice) on a national level for pre-kindergarten-through-grade-12 children and youth, with special emphasis on serving children from low-income families (as defined in this notice) and children with disabilities (as defined in this notice). In order to meet this priority, an applicant must demonstrate that the project for which it seeks funding will provide services and develop initiatives in multiple schools and school districts throughout the country, including in at least one urban, at least one rural, and at least one high-need community (as defined in this notice).

Types of Priorities:

When inviting applications for a competition using one or more priorities, we designate the type of each priority as absolute, competitive preference, or invitational through a notice in the **Federal Register**. The effect of each type of priority follows:

Absolute priority: Under an absolute priority, we consider only applications that meet the priority (34 CFR 75.105(c)(3)).

Competitive preference priority: Under a competitive preference priority, we give competitive preference to an application by (1) awarding additional points, depending on the extent to which the application meets the priority (34 CFR 75.105(c)(2)(i)); or (2) selecting an application that meets the priority over an application of comparable merit that does not meet the priority (34 CFR 75.105(c)(2)(ii)).

Invitational priority: Under an invitational priority, we are particularly interested in applications that meet the priority. However, we do not give an application that meets the priority a preference over other applications (34 CFR 75.105(c)(1)).

Final Eligibility and Application Requirements:

The Assistant Deputy Secretary establishes the following eligibility and application requirements for this program. We may use one or more of these requirements in any year in which we award grants for the AENP.

1. To be eligible for an award, an applicant must be a national nonprofit arts education organization (as defined in this notice).

2. An applicant must describe in its application how it would serve children from low-income families (as defined in this notice) and children with disabilities.

3. An applicant must describe in its application how it would implement the

following activities and services at the national level:

(i) Professional development based on State or national standards for pre-kindergarten-through-grade-12 arts educators.

Note: *National standards* are the arts standards developed by the Consortium of National Arts Education Associations or another comparable set of national arts standards. The standards developed by the Consortium outline what students should know and be able to do in the arts. These are not Department standards. To view the standards, please go to *www.menc.org/resources/view/the-national-standards-for-arts-education-a-brief-history.*

(ii) Development and dissemination of instructional materials, including online resources, in music, dance, theater, media arts, and visual arts, including folk arts, for arts educators.

(iii) Arts-based educational programming in music, dance, theater, media arts, and visual arts, including folk arts, for pre-kindergarten-through-grade-12 students and arts educators.

(iv) Community and national outreach activities and services that strengthen and expand partnerships among schools, school districts, and communities throughout the country.

Final Definitions:

The Assistant Deputy Secretary establishes the following definitions for this program. We may use one or more of these definitions in any year in which we award grants for the AENP.

Arts means music, dance, theater, media arts, and visual arts, including folk arts.

Arts educator means a teacher or other instructional staffer who works in music, dance, theater, media arts, or visual arts, including folk arts.

Arts integration means (i) using high-quality arts instruction within other academic content areas, and (ii) strengthening the arts as a core academic subject in the school curriculum.

Child from low-income family means a child who is determined by a State educational agency or local educational agency to be a child, in pre-kindergarten through grade 12, from a low-income family, on the basis of (a) The child's eligibility for free or reduced-price lunches under the Richard B. Russell National School Lunch Act, (b) the child's eligibility for medical assistance under the Medicaid program under title XIX of the Social Security Act, (c) the family having an income that meets the poverty criteria established by the U.S Department of Commerce, or (d) the family's receipt of assistance under Part A of title IV of the Social Security Act.

Children with disabilities means children who meet the definition of ''individual with a disability'' applicable to Section 504 of the Rehabilitation Act of 1973, as amended, which definition is set out at 29 U.S.C. 705(20)(B).

High-need community means (i) a political subdivision of a State or portion of a political subdivision of a State, in which at least 50 percent of the children are from low-income families; or (ii) a political subdivision of a State that is among the 10 percent of political subdivisions of the State having the greatest numbers of such children. For the purposes of determining if a community meets this definition, the term ''low-income families'' means families that have an income that meets the poverty criteria established by the U.S. Department of Commerce for the most recent fiscal year for which satisfactory data are available.

National non-profit arts education organization means an organization of national scope that is supported by staff or affiliates at the State and local levels and that has a demonstrated history of advancing high-quality arts education and arts integration for arts educators, education leaders, artists, and students through professional development, partnerships, educational programming, and supporting systemic school reform.

Final Selection Criteria:

The Assistant Deputy Secretary establishes the following selection criteria for evaluating an application under this program. We may apply one or more of these criteria, as well as criteria from the Education Department General Administrative Regulations in 34.CFR 75.210, in any year in which this program is in effect. We will announce the maximum possible points assigned to each criterion in the notice inviting applications, or the application package, or both.

(1) *Significance.* The Secretary reviews each application to determine the extent to which—

(a) The proposed project is likely to build State and local capacity to provide, improve, or expand arts education and arts integration that address the needs of children and youth, with special emphasis on serving children from low-income families and children with disabilities; and

(b) The applicant has a history of three or more years of demonstrated excellence in the areas of arts education and arts integration on a national scale.

(2) *Quality of the project design.* The Secretary reviews each application to determine the extent to which—

(a) The design of the proposed project is appropriate to, and will successfully address, the arts education needs of pre-kindergarten-through-grade-12 children and youth, with special emphasis on children from low-income families and children with disabilities;

(b) The proposed project will provide high-quality professional development for pre-kindergarten-through-grade-12 arts educators who provide instruction in music, dance, drama, media arts, or visual arts, including folk arts;

(c) The proposed project will develop and disseminate instructional materials, including online resources, in multiple arts disciplines for arts educators and other instructional staff;

(d) The proposed project will support arts-based educational programming; and

(e) The proposed project will provide community and national outreach that strengthens and expands partnerships among schools, school districts, and communities throughout the country.

(3) *Quality of project services.* In determining the quality of the services to be provided by the proposed project, the Secretary considers the extent to which—

(a) The services to be provided by the proposed project involve the collaboration of appropriate partners in order to maximize the effectiveness of project services; and

(b) The proposed project will provide services and initiatives that will reach students and arts educators in multiple schools and school districts in urban, rural, and high-need communities throughout the country.

This notice does not preclude us from proposing additional priorities, requirements, definitions, or selection criteria, subject to meeting applicable rulemaking requirements.

Note: This notice does *not* solicit applications. In any year in which we choose to use this priority, requirements, definitions, and selection criteria, we invite applications through a notice in the **Federal Register**.

Executive Orders 12866 and 13563

Regulatory Impact Analysis

Under Executive Order 12866, the Secretary must determine whether this regulatory action is ''significant'' and, therefore, subject to the requirements of the Executive order and subject to review by the Office of Management and Budget (OMB). Section 3(f) of Executive Order 12866 defines a ''significant regulatory action'' as an action likely to result in a rule that may—

(1) Have an annual effect on the economy of $100 million or more, or adversely affect a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or Tribal governments or communities in a material way (also

referred to as an ''economically significant'' rule);

(2) Create serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles stated in the Executive order.

This final regulatory action is not a significant regulatory action subject to review by OMB under section 3(f) of Executive Order 12866.

We have also reviewed this final regulatory action under Executive Order 13563, which supplements and explicitly reaffirms the principles, structures, and definitions governing regulatory review established in Executive Order 12866. To the extent permitted by law, Executive Order 13563 requires that an agency—

(1) Propose or adopt regulations only upon a reasoned determination that their benefits justify their costs (recognizing that some benefits and costs are difficult to quantify);

(2) Tailor its regulations to impose the least burden on society, consistent with obtaining regulatory objectives and taking into account—among other things and to the extent practicable—the costs of cumulative regulations;

(3) In choosing among alternative regulatory approaches, select those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity);

(4) To the extent feasible, specify performance objectives, rather than the behavior or manner of compliance a regulated entity must adopt; and

(5) Identify and assess available alternatives to direct regulation, including economic incentives—such as user fees or marketable permits—to encourage the desired behavior, or provide information that enables the public to make choices.

Executive Order 13563 also requires an agency ''to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible.'' The Office of Information and Regulatory Affairs of OMB has emphasized that these techniques may include ''identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes.''

We are issuing this final priority, requirements, definitions, and selection criteria only on a reasoned determination that their benefits justify their costs. In choosing among alternative regulatory approaches, we selected those approaches that maximize net benefits. Based on the analysis that follows, the Department believes that this regulatory action is consistent with the principles in Executive Order 13563.

We also have determined that this regulatory action does not unduly interfere with State, local, and tribal governments in the exercise of their governmental functions.

In accordance with both Executive orders, the Department has assessed the potential costs and benefits, both quantitative and qualitative, of this regulatory action. The potential costs are those resulting from statutory requirements and those we have determined as necessary for administering the Department's programs and activities.

Intergovernmental Review: This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. One of the objectives of the Executive order is to foster an intergovernmental partnership and a strengthened federalism. The Executive order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

This document provides early notification of our specific plans and actions for this program.

Accessible Format: Individuals with disabilities can obtain this document in an accessible format (e.g., braille, large print, audiotape, or compact disc) on request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available via the Federal Digital System at: *www.gpo.gov/fdsys.* At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at: *www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Dated: June 12, 2012.

James H. Shelton, III,

Assistant Deputy Secretary for Innovation and Improvement.

[FR Doc. 2012–14731 Filed 6–14–12; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project Nos. 1175–015; 1290–012]

Appalachian Power Company; Notice of Application Accepted for Filing, Soliciting Motions To Intervene and Protests, Ready for Environmental Analysis, and Soliciting Comments, Recommendations, Preliminary Terms and Conditions, and Preliminary Fishway Prescriptions

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

a. *Type of Application:* New Major Licenses.

b. *Project Nos.:* 1175–015 and 1290–012.

c. *Date filed:* January 31, 2012.

d. *Applicant:* Appalachian Power Company.

e. *Name of Project:* London-Marmet and Winfield Hydroelectric Projects.

f. *Location:* The existing projects are located on the Kanawha River. The London/Marmet Project is located in Fayette and Kanawha Counties, West Virginia, and the Winfield Project is located in Kanawha and Putnam Counties, West Virginia. The London/Marmet and Winfield Projects would occupy 11.71 and 8.25 acres, respectively, of federal land managed by the U.S. Army Corp of Engineers.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791 (a)–825(r).

h. *Applicant Contact:* Harold G. Slone, Manager, Appalachian Power Company, 40 Franklin Road, Roanoke, VA 24011; Telephone (540) 985–2861.

i. *FERC Contact:* Brandi Sangunett, (202) 502–8393 or *brandi.sangunett@ferc.gov.*

j. *Deadline for filing motions to intervene and protests, comments, recommendations, preliminary terms and conditions, and preliminary prescriptions:* 60 days from the issuance date of this notice; reply comments are due 105 days from the issuance date of this notice.

Motions to intervene, protests, comments, recommendations, preliminary terms and conditions, and preliminary fishway prescriptions 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.

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

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

l. *The existing project works consists of the following:*

The London-Marmet Project consists of two developments. The existing London Development utilizes the head created by the Army Corps of Engineers' (Corps) 26-foot-high London Dam located at river mile (RM) 82.8 on the Kanawha River and consists of: (1) A forebay area protected by a log boom; (2) screened intake structures; (3) a concrete powerhouse containing three turbine-generator units with a total installed capacity of 14.4 megawatts (MW); (4) a tailrace 420 feet long; (5) two 0.38-mile-long, 46-kilovolt (kV) transmission lines; and (6) other appurtenances. The development generates about 84,048 megawatt-hours (MWh) annually.

The existing Marmet Development utilizes the head created by the Corps' 34-foot-high Marmet Dam located at RM 67.7 on the Kanawha River and consists of: (1) A forebay area protected by a log boom; (2) screened intake structures; (3) a concrete powerhouse containing three turbine-generator units with a total installed capacity of 14.4 MW; (4) a tailrace 450 feet long (5) one 0.82-mile-long, 46-kV transmission line and one 0.98-mile-long, 46-kV transmission line; and (6) other appurtenances. The development generates about 82,302 MWh annually. The London/Marmet Project has a total installed capacity of 28.8 MW and generates about 166,350 MWh annually

The existing Winfield Project utilizes the head created by the Corps' 38-foot-high Winfield Dam located at RM 31.1 on the Kanawha River and consists of: (1) A forebay area protected by a 410-foot-long log boom; (2) screened intake structures; (3) a concrete powerhouse containing three turbine-generator units with a total installed capacity of 14.76 MW; (4) a tailrace 410 feet long; and (5) other appurtenances. The project generates about 114,090 MWh annually.

The above hydroelectric facilities' operation is synchronized with the operation of the Corps' locks at each dam. The developments at each of the two projects operate within allowable pool elevation limits as established by the Corps. The London pool elevation is allowed to fluctuate between 611.0 feet and 614.0 feet National Geodetic Vertical Datum 1929 (NGVD). The Marmet pool elevation is allowed to fluctuate between 589.7 feet and 590.0 feet NGVD. The Winfield pool elevation is allowed to fluctuate between 565.8 feet and 566.0 feet NGVD. All three pools can be drawn down at a maximum rate of 0.5 feet per hour. When stream flow exceeds the maximum turbine discharge, the responsibility for control of the pool elevations passes to the Corps' personnel and the projects operate in run-of-release mode. Appalachian is proposing to modify the maximum pool elevation limit at the London Development from 614.0 feet to 613.7 feet NGVD.

m. A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support. A copy is also available for inspection and reproduction at the address in item h above.

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

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

All filings must (1) Bear in all capital letters the title ''PROTEST'', ''MOTION TO INTERVENE'', ''COMMENTS,'' ''REPLY COMMENTS,'' ''RECOMMENDATIONS,'' ''PRELIMINARY TERMS AND CONDITIONS,'' or ''PRELIMINARY FISHWAY PRESCRIPTIONS;'' (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application. A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

o. *Procedural Schedule:*

The application will be processed according to the following revised Hydro Licensing Schedule. Revisions to the schedule may be made as appropriate.

Milestone	Target date
Notice of Ready for Environmental Analysis	June 8, 2012.
Filing of recommendations, preliminary terms and conditions, and fishway prescriptions	August 7, 2012.
Commission issues Non-Draft EA	October 21, 2012.

Milestone	Target date
Comments on EA	November 20, 2012.
Modified terms and conditions	January 19, 2013.

p. Final amendments to the application must be filed with the Commission no later than 30 days from the issuance date of this notice.

q. A license applicant must file no later than 60 days following the date of issuance of the notice of acceptance and ready for environmental analysis provided for in § 5.22: (1) A copy of the water quality certification; (2) a copy of the request for certification, including proof of the date on which the certifying agency received the request; or (3) evidence of waiver of water quality certification.

Dated: June 8, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–14616 Filed 6–14–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP12–469–000]

Northern Natural Gas Company; Notice of Application

Take notice that on May 30, 2012, Northern Natural Gas Company (Northern), 1111 South 103rd Street, Omaha, Nebraska 68124, filed in Docket No. CP12–469–000, a request for authority, pursuant to Part 157 of the Commission's regulations and section 7(b) of the Natural Gas Act, to abandon by sale to DKM Enterprises, LLC (DKM) certain pipeline facilities (A-line) in Ochiltree, Hansford, Hutchinson, and Carson Counties in Texas, Beaver County in Oklahoma, and Kiowa and Clark Counties in Kansas, all as more fully set forth in the application, which is on file with the Commission and open to public inspection. Specifically, Northern Natural Proposes to sell to DKM approximately 126 miles of 24-inch pipeline. Upon transfer of the facilities, DKM intends to dig up and reclaim most of the pipeline for salvage.

Any questions regarding this application should be directed to Michael T. Loeffler, Senior Director of Certificates and Exteernal Affairs for Northern, P.O. Box 3330, Omaha, Nebraska 68124, at telephone no. 402–398–7103, and email: *mike.loeffler@nngco.com*.

Pursuant to section 157.9 of the Commission's rules, 18 CFR 157.9, within 90 days of this Notice the Commission staff will either: Complete its environmental assessment (EA) and place it into the Commission's public record (eLibrary) for this proceeding; or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the final environmental impact statement (FEIS) or EA for this proposal. The filing of the EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify federal and state agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all federal authorizations within 90 days of the date of issuance of the Commission staff's FEIS or EA.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date stated below file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 7 copies of filings made in the proceeding with the Commission and must mail a copy to the applicant and to every other party. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commentors will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commentors will not be required to serve copies of filed documents on all other parties. However, the non-party commentors will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 7 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

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

Comment Date: June 29, 2012.

Dated: June 8, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–14617 Filed 6–14–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP12–468–000]

Atlas Pipeline Mid-Continent WestTex, LLC; Pioneer Natural Resources USA, Inc.; Notice of Application

Take notice that on May 30, 2012, Atlas Pipeline Mid-Continent WestTex, LLC (Atlas) and Pioneer Natural Resources USA, Inc. (Pioneer), filed in the above referenced docket a joint application pursuant to section 7(c) of the Natural Gas Act (NGA) and Part 157 of the Commission's regulations, for a limited jurisdiction certificate authorizing Atlas and Pioneer to construct and operate a jointly-owned 10.2-mile natural gas pipeline (the Driver Residue Pipeline) in Midland County, Texas, all as more fully set forth in the application which is on file with the Commission and open to public inspection. The pipeline will be used to transport natural gas from a natural gas processing plant (the Driver Plant), which Atlas and Pioneer are planning to construct to interconnections with three gas transmission pipeline systems. Atlas and Pioneer are the only parties that will transport gas on the proposed pipeline and therefore are seeking general waivers of the Commission's tariff and rate regulations. The filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

Any questions concerning this application may be directed for Atlas to James F. Bowe, Jr., King & Spalding, 1700 Pennsylvania Ave. NW., Suite 200, Washington, DC 20006, by telephone at (202) 737–0500 or by email at *jbowe@kslaw.com* and Gerald Shrader, Vice President and General Counsel, Atlas Pipeline Mid-Continent, LLC, 110 W. 7th Street, Suite 2300, Tulsa, OK 74119, by telephone at (918) 574–3851 or *jshrader@atlaspipeline.com* or for Pioneer to Bryan L. Clark, Senior Counsel, Pioneer Natural Resources USA, Inc., 5205 North O'Connor Blvd., Suite 200, Irving, TX 75039, by telephone at (972) 969–3765 or *bryan.clark@pxd.com*.

Pursuant to Section 157.9 of the Commission's rules, 18 CFR 157.9, within 90 days of this Notice the Commission staff will either: Complete its environmental assessment (EA) and place it into the Commission's public record (eLibrary) for this proceeding, or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the final environmental impact statement (FEIS) or EA for this proposal. The filing of the EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify federal and state agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all federal authorizations within 90 days of the date of issuance of the Commission staff's FEIS or EA.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date stated below file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made in the proceeding with the Commission and must mail a copy to the applicant and to every other party. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commentors will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commentors will not be required to serve copies of filed documents on all other parties. However, the non-party commentors will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

Motions to intervene, protests and comments may be filed electronically via the Internet in lieu of paper; see, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

Comment Date: June 29, 2012.

Dated: June 8, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–14619 Filed 6–14–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Commission Staff Attendance

The Federal Energy Regulatory Commission hereby gives notice that members of the Commission's staff may attend the following teleconference related to the transmission planning activities of the Southwest Power Pool, Inc. (SPP):

Seams FERC Order 1000 Task Force

June 11, 2012, 9 a.m.–11 p.m. CDT

The above-referenced teleconference is open to stakeholders.

Further information may be found at *www.spp.org*.

The discussions at the meetings described above may address matters at issue in the following proceedings:

Docket No. ER09–35–001, *Tallgrass Transmission, LLC*

Docket No. ER09–36–001, *Prairie Wind Transmission, LLC*

Docket No. ER09–548–001, *ITC Great Plains, LLC*

Docket No. ER11–4105–000, *Southwest Power Pool, Inc.*

Docket No. EL11–34–001, *Midwest Independent Transmission System Operator, Inc.*
Docket No. ER11–3967–002, *Southwest Power Pool, Inc.*
Docket No. ER11–3967–003, *Southwest Power Pool, Inc.*
Docket No. ER12–1179–000, *Southwest Power Pool, Inc.*
Docket No. ER12–1415–000, *Southwest Power Pool, Inc.*
Docket No. ER12–1460–000, *Southwest Power Pool, Inc.*
Docket No. ER12–1610–000, *Southwest Power Pool, Inc.*

For more information, contact Luciano Lima, Office of Energy Markets Regulation, Federal Energy Regulatory Commission at (202) 502–6210 or *luciano.lima@ferc.gov*.

Dated: June 8, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–14618 Filed 6–14–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 4306–035]

City of Hastings, MN; Notice of Application for Amendment of License and Soliciting Comments, Motions To Intervene, and Protests

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

a. *Type of Application:* Amendment of License.

b. *Project No.:* 4306–035.

c. *Date filed:* May 21, 2012.

d. *Applicant:* City of Hastings, Minnesota.

e. *Name of Project:* Mississippi River Lock and Dam No. 2.

f. *Location:* The project is located on the Mississippi River in the City of Hastings in Dakota County, Minnesota.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contacts:* Mr. Thomas Montgomery, P.E., Public Works Director, City of Hastings, Minnesota, 1225 Progress Drive, Hastings, MN 55033–1955, (651) 480–6188, and email *TMontgomery@ci.hastings.mn.us*, and Mr. Mark Stover, Hydro Green Energy, LLC, 900 Oakmont Lane, Suite 310, Westmont, IL 60559, (877) 556–6566 x 711, and email *mark@hgenergy.com*.

i. *FERC Contact:* Kelly Houff, (202) 502–6393, and email *Kelly.Houff@ferc.gov*.

j. *Deadline for filing comments, motions to intervene, and protests:* July 9, 2012.

All documents may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site *http://www.ferc.gov/docs-filing/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. 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.

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

k. *Description of the Application:* The City of Hastings, Minnesota proposes to delete the two hydrokinetic turbines from the Mississippi Lock and Dam No. 2 conventional hydropower project, which were authorized to be part of the conventional project in 2008. Only one of the hydrokinetic units was deployed, and the unit has been removed and out of service since mid-2010 due to potential flood waters. All components of the unit are no longer in service and the tailrace of the conventional hydropower project has been returned to its pre-hydrokinetic unit condition.

Therefore, the licensee proposes to amend the license to delete from the license: two hydrokinetic turbines rated at 35 kW each, suspended below a 68-foot-wide, 40-foot-long floating barge tethered to the existing dam structure and anchored for stability using anchors and spuds; two synchronous alternating current (AC) generating units that sit atop the barge; a 225-ampere molded case circuit breaker along with a 480-volt, three-phase feeder connecting the hydrokinetic units to the existing power plant distribution system; and appurtenant facilities. In addition, the licensee proposes to delete articles 57 through 70 of the license, and Exhibits F–7, F–8, and G–1 of the license as they pertain to the hydrokinetic units.

l. A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number (P–4306–035) excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support. A copy is also available for inspection and reproduction at the address in item h above.

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

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

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

Any filings must bear in all capital letters the title ''COMMENTS,'' ''PROTEST,'' or ''MOTION TO INTERVENE,'' as applicable, and the Project Number of the particular application to which the filing refers. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

o. *Agency Comments:* Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Dated: June 8, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–14615 Filed 6–14–12; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–9003–5]

Environmental Impacts Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–7146 or *http://www.epa.gov/compliance/nepa/.*

Weekly receipt of Environmental Impact Statements

Filed 06/04/2012 through 06/08/2012

Pursuant to 40 CFR 1506.9.

Notice

Section 309(a) of the Clean Air Act requires that EPA make public its comments on EISs issued by other Federal agencies. EPA's comment letters on EISs are available at: *http://www.epa.gov/compliance/nepa/eisdata.html.*

SUPPLEMENTARY INFORMATION: EPA is seeking agencies to participate in its e-NEPA electronic EIS submission pilot. Participating agencies can fulfill all requirements for EIS filing, eliminating the need to submit paper copies to EPA Headquarters, by filing documents online and providing feedback on the process. To participate in the pilot, register at: *https://cdx.epa.gov.*

EIS No. 20120182, Final EIS, BLM, NM, Alamogordo Regional Water Supply Project, Construction and Operation Groundwater Wells and Conveyance System, Right-of-Way Application, Otero County, NM, Review Period Ends: 07/16/2012, Contact: Douglas Haywood 575–525–4412.

EIS No. 20120183, Final EIS, USAF, 00, F–35A Training Basing, To Base a Pilot Training Center with the Beddown of F–35A Training Aircraft at four Alternative Bases, Boise AGS, Holloman AFD, Luke AFB, and Tucson AGS, ID, AZ, NM, Review Period Ends: 07/16/2012, Contact: Kim Fornof 210–652–1961.

EIS No. 20120184, Draft EIS, NOAA, 00, Issuing Annual Quotas to the Alaska Eskimo Whaling Commission (AEWC) for a Subsistence Hunt on Bowhead Whales for the Years 2013 through 2017/2018, Comment Period Ends: 08/14/2012, Contact: Ellen Sebastian 907–586–7247.

EIS No. 20120185, Draft EIS, VCT, NM, Valles Caldera National Preserve, Public Use and Access Plan, Implementation, Sandoval and Arriba Counties, NM, Comment Period Ends: 08/14/2012, Contact: Marie Rodriquez 505–660–3333.

EIS No. 20120186, Final EIS, BLM, AZ, Lower Sonoran and Sonoran Desert National Monument, Resource Management Plan, To Provide Guidance for Managing the Use of Public Lands and Provide a Framework for Future Land Management Actions, Maricopa, Pinal, Pima, Gila and Yuma Counties, AZ, Review Period Ends: 07/16/2012, Contact: Chris Horyza 623–580–5528.

EIS No. 20120187, Final EIS, USFS, CA, Pettijohn Late-Successional Reserve Habitat Improvement and Fuels Reduction Project, Implementation, Trinity River Management, Trinity Unit of the Shasta-Trinity National Recreation Area, Trinity County, CA, Review Period Ends: 07/16/2012, Contact: Keli McElroy 530–226–2354.

EIS No. 20120188, Draft EIS, USFS, SD, Calumet Project Area, Multiple Resource Management Actions, Implementation, Pennington County, SD, Comment Period Ends: 07/30/2012, Contact: Lou Conroy 605–343–1567.

EIS No. 20120189, Final EIS, USACE, CA, Berths 302–306 American Presidents Line (APL) Container Terminal Project, Construction and Operation, US Army COE Section 10 and Section 103 of the Marine Protection Research and Sanctuaries Act, Los Angeles County, CA, Review Period Ends: 07/16/2012, Contact: Theresa Stevens 805–585–2146.

EIS No. 20120190, Draft EIS, NOAA, 00, Harvest Specifications and Management Measures for the 2013–2014 Pacific Coast Groundfish Fishery and Amendment 21–2 to the Pacific Coast Fishery Management Plan, Implementation, off the Coast of WA, OR, and CA, Comment Period Ends: 07/30/2012, Contact: Becky Renko 206–526–6110.

EIS No. 20120191, Draft EIS, USACE, CO, Chatfield Reservoir Storage Reallocation, To Reallocate 20,600 acre-feet of Storage from the Exclusive Flood Control Pool to the Conservation Pool, Funding, Adams/Weld County Line, CO, Comment Period Ends: 08/14/2012, Contact: Gwyn Jarrett 402–995–2717.

Amended Notices

EIS No. 20120180, Final EIS, USN, HI, Basing of MV–22 and H–1 Aircraft in Support of III Marine Expeditionary Force (MEF) Elements, Construction and Renovation of Facilities to Accommodate and Maintain the Squadrons, HI, Review Period Ends: 07/11/2012, Contact: 808–472–1196.

Revision of FR Notice Published 06/8/2012; Correction to Comment Period Ends 07/11/2012.

Dated: June 12, 2012.

Cliff Rader,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 2012–14721 Filed 6–14–12; 8:45 am]

BILLING CODE 6560–50–P

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Sunshine Act Meeting Notice

AGENCY: Equal Employment Opportunity Commission.

DATE AND TIME: Wednesday, June 20, 2012, 9:30 a.m. Eastern Time.

PLACE: Commission Meeting Room on the First Floor of the EEOC Office Building, 131 ''M'' Street NE., Washington, DC 20507.

STATUS: The meeting will be closed to the public.

Matters To Be Considered

Closed Session

Review of select pending charges, investigations and litigation.

Note: Any matter not discussed or concluded may be carried over to a later meeting. (In addition to publishing notices on EEOC Commission meetings in the **Federal Register**, the Commission also provides a recorded announcement a full week in advance on future Commission sessions.)

Please telephone (202) 663–7100 (voice) and (202) 663–4074 (TTY) at any time for information.

FOR FURTHER INFORMATION CONTACT: Bernadette B. Wilson, Acting Executive Officer on (202) 663–4077.

Dated: June 13, 2012.

Bernadette B. Wilson,

Acting Executive Officer, Executive Secretariat.

[FR Doc. 2012–14755 Filed 6–13–12; 11:15 am]

BILLING CODE 6570–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Approved by the Office of Management and Budget

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: The Federal Communications Commission (Commission) has received

Office of Management and Budget (OMB) approval for the following public information collection(s) pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. sections 3501–3520). An agency may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number, and no person is required to respond to a collection of information unless it displays a currently valid OMB control number.

FOR FURTHER INFORMATION CONTACT: Judith Boley-Herman, Office of Managing Director, (202) 418–0214 or email *PRA@fcc.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–1122.

OMB Approval Date: May 17, 2012.

Expiration Date: May 31, 2015.

Title: Preparation of Annual Reports to Congress for the Collection & Expenditure of Fees or Charges for Enhanced 911 (E911) Services Under the NET 911 Improvement Act of 2008.

Form No.: Not applicable.

Estimated Annual Burden: 56 responses; 50 hours per response; 2800 hours total per year.

Obligation to Respond: Voluntary.

Nature and Extent of Confidentiality: There is no need for confidentiality.

Needs and Uses: This information collection enables the Federal Communications Commission (Commission) to fulfill its continuing obligations under the New and Emerging Technologies 911 Improvement Act of 2008, Public Law 110–283, 122 Stat. 2620 (2008) (NET 911 Act) to submit an annual ''Fee Accountability Report'' to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Energy and Commerce of the House of Representatives ''detailing the status in each State of the collection and distribution [of] fees or charges'' for ''the support or implementation of 911 or enhanced 911 services,'' including ''findings on the amount of revenues obligated or expended by each State or political subdivision thereof for any purpose other than the purpose for which any such fees or charges are specified.'' (NET 911 Act, 122 Stat. at 2622) The statute directs the Commission to submit annual reports.

The Commission is now revising this information collection in order to collect more detailed information regarding how states, territories, and other reporting jurisdictions collect and expend 911/E911 fees. Given this express Congressional concern with the appropriate use of collected fees, the Bureau believes that future reports to Congress should contain more detailed information about how states and other reporting jurisdictions determine what activities, programs, and organizations qualify as being ''in support of 9–1–1 and enhanced 9–1–1 services, or enhancements of such services,'' for purposes of qualifying to receive collected 911/E911 funds.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 2012–14601 Filed 6–14–12; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[PS Docket No. 11–15; FCC 12–53]

Utilizing Rapidly Deployable Aerial Communications Architecture in Response to an Emergency

AGENCY: Federal Communications Commission.

ACTION: Notice of inquiry.

SUMMARY: In this document, the Commission seeks comment on the role of deployable aerial communications architecture (DACA) in facilitating emergency response by rapidly restoring communications capabilities in the immediate aftermath of a catastrophic event. The Notice of Inquiry explores the technologies that are or will be available, including innovative DACA technologies that are still in development. It also examines technical and operational issues associated with the use of DACA technologies, including interference and coordination issues, that must be addressed to enable their use, in order to increase the capabilities of emergency responders and provide the public with connectivity when it is needed the most.

DATES: Comments are due on or before July 25, 2012 and reply comments are due on or before August 14, 2012.

ADDRESSES: Comments and reply comments may be filed using: (1) The Commission's Electronic Comment Filing System (ECFS), (2) the Federal Government's eRulemaking Portal, or (3) by filing paper copies.

Comments and reply comments may be filed electronically using the Internet by accessing the ECFS: *http://fjallfoss.fcc.gov/ecfs2/* or the Federal eRulemaking Portal: *http://www.regulations.gov.*

Parties who choose to file by paper can submit filings by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission. All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th Street SW., Room TW–A325, Washington, DC 20554. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of *before* entering the building.

Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street SW., Washington, DC 20554. Parties who choose to file by paper must file an original and four copies of each filing.

Parties wishing to file materials with a claim of confidentiality should follow the procedures set forth in § 0.459 of the Commission's rules. Confidential submissions may not be filed via ECFS but rather should be filed with the Secretary's Office following the procedures set forth in 47 CFR 0.459. Redacted versions of confidential submissions may be filed via ECFS.

FOR FURTHER INFORMATION CONTACT: Jennifer Manner, Federal Communications Commission, Public Safety and Homeland Security Bureau, at (202) 418–3619.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Inquiry (NOI or Notice) in PS Docket No. 11–15, FCC 12–53, adopted and released on May 24, 2012. The complete text of this document is available for inspection and copying during normal business hours in the FCC Reference Information Center, Portals II, 445 12th Street SW., Room CY–A257, Washington, DC 20554. This document may also be purchased from the Commission's duplicating contractor Best Copy and Printing, Inc., Portals II, 445 12th Street SW., Room CY–B402, Washington, DC 20554, telephone (800) 378–3160 or (202) 488–5300, facsimile (202) 488–5563, or via email at *fcc@bcpiweb.com.* It is also available on the Commission's Web site at *http://transition.fcc.gov/Daily_Releases/Daily_Business/2012/db0524/FCC-12-53A1.pdf.* To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an email to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (tty).

Synopsis of the Notice of Inquiry

This Notice of Inquiry further examines the potential for DACA technologies to provide communications when terrestrial communications infrastructures are disrupted or disabled due to a catastrophic event. To that end we seek comment on the role of DACA, the communication service architecture and various DACA platform technologies that are currently available or in development, and the scope of their use in the aftermath of a catastrophic event, as well as how to best coordinate operations and spectrum availability and authorization matters. We also seek comment on system performance of DACA technologies to include coverage, capacity, interference, power consumption, and the interoperability of DACA technologies with existing communications services and infrastructure, among other issues.

A. DACA Technologies

Several promising DACA technology platforms that could be deployed shortly after a disaster to support communications without requiring deployment of any special user devices include unmanned aerial vehicles, weather balloons, and suitcase based systems. Additional DACA technologies also can provide critical communications as either a standalone aerial platform or an add-on payload. We seek comment on the ability of various DACA technologies to deliver critical communications immediately after a catastrophic event. We also seek comment on each DACA technology's ability to support existing communication services and devices. Are there other technological solutions similar to DACA that are ground based that would be equally adept at restoring commercial and public safety communications to an area?

We seek comment on DACA technologies used within the U.S. Armed Forces. For instance, what DACA technologies are the United States military currently using and in what situations are they used? What lessons can we learn from the military's use of these technologies? Are there relevant differences between military use and civilian use that should be taken into account?

We seek comment on the availability and cost of DACA technology platforms. For instance, are these technologies commercially available today? What are the capital costs of DACA platforms, either as standalone aerial systems, add-on technologies, or alternative ground based solutions? What are the operational costs of these platforms?

We seek comment on the capabilities of each DACA technology to support commercial and public safety communications services. We note that other participants in the DACA workshop addressed the cost-effectiveness of unmanned aerial vehicles, weather balloons, and high altitude platforms. How does the cost compare for each system?

AT&T and AeroVironment have stated that weight may be a limiting factor in how many communications payloads DACA technology can support at a time. We seek comment on this observation.

We also seek comment on whether DACA technologies are being used in other countries. What has been the experience with these technologies abroad?

B. Scope of DACA Usage and Coordination of Operations

We seek comment on the appropriate emergency response coordination necessary to successfully deploy DACA solutions in the aftermath of a catastrophic event to establish emergency communications. For instance, how can an Incident Command System make use of DACA solutions?

We also seek comment on real-time coordination during emergency response efforts when using DACA solutions. For instance, should any agency of the federal government, or a combination of agencies, be responsible for coordinating the deployment and use of DACA technologies and solutions during emergencies?

We next seek comment on ensuring that DACA usage complies with the regulations and operational constraints of the U.S. national airspace system. How should DACA system usage be coordinated with other government agencies that have a role with regard to emergency response and air traffic control, in particular the Federal Aviation Administration (FAA)?

AT&T states that DACA technologies should only be utilized as a last resort, where other existing terrestrial options for restoring service are inadequate to address the circumstances, to avoid impeding the restoration efforts that carriers typically bring to bear in these types of emergency situations. We seek comment on this approach.

We seek comment on appropriate protocols or procedures to coordinate both civilian and military emergency response activities involving the use of DACA solutions. More specifically, we request comment on how to resolve critical issues that will straddle jurisdictional lines, such as determining priorities between military and commercial use of DACA systems, and deciding whether to establish guidelines for the use of DACA technologies to promote interoperability.

We seek comment on how the control over and operation of DACA transmitters would fit into the current framework of the Communications Act and our rules, and how the regulatory authority of other agencies (*e.g.,* NTIA) will play into their operations.

We next seek more specific comment on the range of authorization mechanisms that may be appropriate for various circumstances in which DACA solutions may be deployed. To the extent DACA operations are conducted by FCC licensees, what type of adjustments would need to be made in our rules? To the extent that third parties own and operate DACA solutions that operate over spectrum allocated for Non-Federal use, we seek comment on how their operations should be authorized.

C. System Performance

1. Coverage

We seek comment on how to delineate the affected area for which a DACA solution is deployed. We seek comment on how to best achieve as much coverage of an affected area as possible. One possibility is to deploy DACA platforms in stages, and at multiple altitudes, to quickly serve and restore communications. We seek comment on this approach. We also seek comment on the ability of DACA technologies to provide geographic coverage over all geographies and terrains.

2. Frequency Planning and Minimizing the Potential for Harmful Interference

We seek comment on the frequency bands that are most suitable for DACA use. On which frequency bands should DACA technologies be permitted to operate? Would use of DACA on certain bands interfere with public safety or other services? If so, in which bands and what solutions are available to minimize interference?

AT&T suggests that some of its interference concerns can be minimized if DACA technologies do not employ the commercial frequency bands and instead are limited to those bands used for unlicensed operations and other non-cellular-based technologies. We seek comment on this observation.

We seek comment on whether the Commission should authorize a third party to develop and maintain frequency assignments and or a

database(s) to manage the use of DACA solutions to limit the interference potential among and between DACA and terrestrial uses. Comsearch suggests that ''a centralized database approach offers several merits including: standardized data structures and format, efficiency in data provisioning, ease of maintenance, high accuracy and reliability, and streamlined interaction.'' We seek comment on this ''centralized database'' approach.

To ensure that frequency reuse does not cause interference, wireless providers must ensure that they coordinate the transmitters in their network and coordinate with providers operating in adjacent markets on the same frequencies. We seek comment on whether similar procedures should be adopted for DACA technologies and, if so, what they should include.

Moreover, other than allocating dedicated spectrum for the use of DACA technologies, are there methods to ensure that frequency reuse does not cause interference or to minimize any such interference?

Several comments raised the concern that the use of DACA technologies during emergencies could overlap with the restoration of terrestrial services, potentially creating interference. We seek comment on ways to avoid this problem.

We also seek comment on DACA signal propagation.

We also seek comment on directional antennas and any other products that can help to mitigate or reduce interference.

AT&T suggests that the use of tethered aerostats, *i.e.,* aerostats tethered to the ground, would minimize interference concerns and propagate a more predictable signal, especially if equipped with stabilizers to minimize movement of the aerostat that accompanies the use of DACA technology. We seek comment on the suitability of tethered platforms.

3. Interoperability

Interoperability is a central requirement of emergency response communications between multiple disciplines and agencies. If DACA technologies are used for emergency communications, it is critical to ensure that they preserve interoperability for emergency responders. How can existing public safety network services be accessed using DACA solutions while preserving interoperability?

C. Prioritization of Service and Access

DACA systems may have limitations in terms of the aggregate volume of traffic that can be supported by an aerial platform, due to factors such as the size, weight, and power of DACA technologies. Such limitations may create a need to examine priorities among the various communications services that DACA systems might help restore. We seek comment on the issue of prioritizing certain communications services immediately following a catastrophic event.

D. International Considerations

We recognize that radio transmissions, including from DACA transmitters, do not recognize political boundaries. Could DACA technologies operate in a way that would comply with the signal strength limits set forth in these agreements? If DACA technologies are unable to comply with technical criteria detailed in existing agreements with Canada and Mexico, we seek comment on what types of agreement would need to be reached with each country to permit DACA operations along the border.

E. Conclusion

1. Ensuring that communications are available immediately following a catastrophic event is critical to emergency response. DACA brings the promise of a new tool that can be rapidly deployed and utilized when terrestrial infrastructure is not available, potentially facilitating the use of day-to-day commercial and public safety devices. This capability could save lives. We intend for the record generated by this proceeding to provide the opportunity for a thorough discussion of DACA technologies and solutions that address system performance, service prioritization, and governance issues.

Accordingly, it is ordered that, pursuant to sections 1, 4(i), 4(j), 4(o), 7(b), 301, 316 and 403 of the Communications Act of 1934, 47 U.S.C. 151, 154(i)–(j) & (o), 157(b), 301, 316 and 403, and § 1.430 of the Commission's rules, 47 CFR 1.430, this Notice of Inquiry is adopted.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 2012–14602 Filed 6–14–12; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Sunshine Act Meeting

Pursuant to the provisions of the ''Government in the Sunshine Act'' (5 U.S.C. 552b), notice is hereby given that at 11:17 a.m. on Tuesday, June 12, 2012, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider matters related to the Corporation's supervision, corporate, and resolution activities.

In calling the meeting, the Board determined, on motion of Director Thomas J. Curry (Comptroller of the Currency), seconded by Director Jeremiah O. Norton (Appointive), concurred in by Director Richard Cordray (Director, Consumer Financial Protection Bureau), Director Thomas M. Hoenig (Appointive), and Acting Chairman Martin J. Gruenberg, that Corporation business required its consideration of the matters which were to be the subject of this meeting on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10) of the ''Government in the Sunshine Act'' (5 U.S.C. 552b(c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10)).

The meeting was held in the Board Room of the FDIC Building located at 550-17th Street NW., Washington, DC.

Dated: June 12, 2012.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 2012–14702 Filed 6–13–12; 11:15 am]

BILLING CODE P

FEDERAL DEPOSIT INSURANCE CORPORATION

Update to Notice of Financial Institutions for Which the Federal Deposit Insurance Corporation Has Been Appointed Either Receiver, Liquidator, or Manager

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Update Listing of Financial Institutions in Liquidation.

SUMMARY: Notice is hereby given that the Federal Deposit Insurance Corporation (Corporation) has been appointed the sole receiver for the following financial institutions effective as of the Date Closed as indicated in the listing. This list (as updated from time to time in the **Federal Register**) may be relied upon as ''of record'' notice that the Corporation has been appointed receiver for purposes of the statement of policy published in the July 2, 1992 issue of the **Federal Register** (57 FR 29491). For further information

concerning the identification of any institutions which have been placed in liquidation, please visit the Corporation Web site at *www.fdic.gov/bank/individual/failed/banklist.html* or contact the Manager of Receivership Oversight in the appropriate service center.

Dated: June 11, 2012.

Federal Deposit Insurance Corporation.

Pamela Johnson,

Regulatory Editing Specialist.

INSTITUTIONS IN LIQUIDATION

[In alphabetical order]

FDIC Ref. No.	Bank name	City	State	Date Closed
10441	Carolina Federal Savings Bank	Charleston	SC	6/8/2012
10442	Farmers' Bank and Traders' State	Shabbona	IL	6/8/2012
10443	First Capital Bank	Kingfisher	OK	6/8/2012
10444	Waccamaw Bank	Whiteville	NC	6/8/2012

[FR Doc. 2012–14676 Filed 6–14–12; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL HOUSING FINANCE AGENCY

[No. 2012–N–05]

Federal Home Loan Bank Members Selected for Community Support Review

AGENCY: Federal Housing Finance Agency.

ACTION: Notice.

SUMMARY: The Federal Housing Finance Agency (FHFA) is announcing the Federal Home Loan Bank (Bank) members it has selected for the 2010 sixth round review cycle under the FHFA's community support requirements regulation. This notice also prescribes the deadline by which Bank members selected for review must submit Community Support Statements to FHFA.

DATES: Bank members selected for the review cycle under the FHFA's community support requirements regulation must submit completed Community Support Statements to FHFA on or before July 30, 2012.

ADDRESSES: Bank members selected for the 2010 sixth round review cycle under the FHFA's community support requirements regulation must submit completed Community Support Statements to FHFA either by hard-copy mail at the Federal Housing Finance Agency, Ninth Floor, Housing Mission and Goals (DHMG), 400 Seventh Street, SW., Washington, DC 20024, or by electronic mail at *hmgcommunitysupportprogram@fhfa.gov.*

FOR FURTHER INFORMATION CONTACT: Rona Richardson, Administrative Office Manager, Housing Mission and Goals (DHMG), Federal Housing Finance Agency, by telephone at 202–649–3224, by electronic mail at *Rona.Richardson@FHFA.gov,* or by hard-copy mail at the Federal Housing Finance Agency, Ninth Floor, 400 Seventh Street SW., Washington, DC 20024.

SUPPLEMENTARY INFORMATION:

I. Selection for Community Support Review

Section 10(g)(1) of the Federal Home Loan Bank Act (Bank Act) requires FHFA to promulgate regulations establishing standards of community investment or service Bank members must meet in order to maintain access to long-term advances. *See* 12 U.S.C. 1430(g)(1). The regulations promulgated by FHFA must take into account factors such as the Bank member's performance under the Community Reinvestment Act of 1977 (CRA), 12 U.S.C. 2901 *et seq.,* and record of lending to first-time homebuyers. *See* 12 U.S.C. 1430(g)(2). Pursuant to section 10(g) of the Bank Act, FHFA has promulgated a community support requirements regulation that establishes standards a Bank member must meet in order to maintain access to long-term advances, and review criteria FHFA must apply in evaluating a member's community support performance. *See* 12 CFR part 1290. The regulation includes standards and criteria for the two statutory factors—CRA performance and record of lending to first-time homebuyers. 12 CFR 1290.3. Only members subject to the CRA must meet the CRA standard. 12 CFR 1290.3(b). All members, including those not subject to CRA, must meet the first-time homebuyer standard. 12 CFR 1290.3(c).

Under the rule, FHFA selects approximately one-eighth of the members in each Bank district for community support review each calendar quarter. 12 CFR 1290.2(a). FHFA will not review an institution's community support performance until it has been a Bank member for at least one year. Selection for review is not, nor should it be construed as, any indication of either the financial condition or the community support performance of the member.

Each Bank member selected for review must complete a Community Support Statement and submit it to FHFA by the July 30, 2012 deadline prescribed in this notice. 12 CFR 1290.2(b)(1)(ii) and (c). On or before June 29, 2012, each Bank will notify the members in its district that have been selected for the 2010 sixth round community support review cycle that they must complete and submit to FHFA by the deadline a Community Support Statement. 12 CFR 1290.2(b)(2)(i). The member's Bank will provide a blank Community Support Statement Form (OMB No. 2590–0005), which also is available on the FHFA's Web site: *http://www.fhfa.gov/webfiles/2924/FHFAForm060.pdf.* Upon request, the member's Bank also will provide assistance in completing the Community Support Statement.

FHFA has selected the following members for the 2010 sixth round community support review cycle:

Federal Home Loan Bank of Boston—District 1

The Community's Bank	Bridgeport	Connecticut.
Charter Oak Federal Credit Union	Groton	Connecticut.
Salisbury Bank & Trust Company	Lakeville	Connecticut.
Bank of New Canaan	New Canaan	Connecticut.
The Bank of Southern Connecticut	New Haven	Connecticut.

Chelsea Groton Bank	Norwich	Connecticut.
United Business & Industry Federal Credit Union	Plainville	Connecticut.
Thomaston Savings Bank	Thomaston	Connecticut.
Wilton Bank	Wilton	Connecticut.
Kennebec Savings Bank	Augusta	Maine.
Bath Savings Institution	Bath	Maine.
Five County Credit Union	Bath	Maine.
The County Federal Credit Union	Caribou	Maine.
Maine Highlands Federal Credit Union	Dexter	Maine.
Casco Federal Credit Union	Gorham	Maine.
Maine Savings Federal Credit Union	Hampden	Maine.
Penobscot Federal Credit Union	Old Town	Maine.
Saco & Biddeford Savings Institution	Saco	Maine.
Trademark Federal Credit Union	Scarborough	Maine.
Coast Line Credit Union	South Portland	Maine.
Town & Country Federal Credit Union	South Portland	Maine.
Leader Bank, National Association	Arlington	Massachusetts.
Medical Area Federal Credit Union	Brookline	Massachusetts.
Mercantile Bank and Trust Company	Boston	Massachusetts.
Easthampton Savings Bank	Easthampton	Massachusetts.
Martha's Vineyard Savings Bank	Edgartown	Massachusetts.
GFA Federal Credit Union	Gardner	Massachusetts.
BankGloucester	Gloucester	Massachusetts.
Avidia Bank	Hudson	Massachusetts.
Merrimack Valley Federal Credit Union	Lawrence	Massachusetts.
Lowell Five Cents Savings Bank	Lowell	Massachusetts.
Washington Savings Bank	Lowell	Massachusetts.
Community Credit Union of Lynn	Lynn	Massachusetts.
Eastern Bank	Lynn	Massachusetts.
River Works Credit Union	Lynn	Massachusetts.
St. Jean's Credit Union	Lynn	Massachusetts.
National Grand Bank of Marblehead	Marblehead	Massachusetts.
Middlesex Savings Bank	Natick	Massachusetts.
North Easton Savings Bank	North Easton	Massachusetts.
Seamen's Bank	Provincetown	Massachusetts.
Granite Savings Bank	Rockport	Massachusetts.
Rockport National Bank	Rockport	Massachusetts.
Randolph Savings Bank	Stoughton	Massachusetts.
Walpole Co-Operative Bank	Walpole	Massachusetts.
Watertown Savings Bank	Watertown	Massachusetts.
Northern Bank and Trust Company	Woburn	Massachusetts.
First Colebrook Bank	Colebrook	New Hampshire.
Merrimack County Savings Bank	Concord	New Hampshire.
New Hampshire Federal Credit Union	Concord	New Hampshire.
Bank of New Hampshire	Laconia	New Hampshire.
Mascoma Savings Bank, FSB	Lebanon	New Hampshire.
Bank of New England	Windham	New Hampshire.
Freedom National Bank	Greenville	Rhode Island.
Navigant Credit Union	Smithfield	Rhode Island.
Home Loan Investment Bank, FSB	Warwick	Rhode Island.
NorthCountry Federal Credit Union	South Burlington	Vermont.

Federal Home Loan Bank of New York—District 2.

Hudson Valley Bank, National Association	Stamford	Connecticut.
BCB Community Bank	Bayonne	New Jersey.
Somerset Hills Bank	Bernardsville	New Jersey.
Mariner's Bank	Edgewater	New Jersey.
Two River Community Bank	Middletown	New Jersey.
Millville Savings & Loan Association	Millville	New Jersey.
Cornerstone Bank	Moorestown	New Jersey.
New Millennium Bank	New Brunswick	New Jersey.
Crown Bank	Ocean City	New Jersey.
Hopewell Valley Community Bank	Pennington	New Jersey.
Rumson-Fair Haven Bank & Trust Company	Rumson	New Jersey.
First Financial Federal Credit Union	Toms River	New Jersey.
Llewellyn-Edison Savings Bank, FSB	West Orange	New Jersey.
State Employees Federal Credit Union	Albany	New York.
Bank of Greene County	Catskill	New York.
Bank of Cattaraugus	Cattaraugus	New York.
Flushing Savings Bank, FSB	Flushing	New York.
Gouverneur Savings and Loan Association	Gouverneur	New York.
Sunnyside Federal Savings & Loan Association	Irvington	New York.
Community Mutual Savings Bank	Mount Vernon	New York.
Alpine Capital Bank	New York	New York.
BPD International Bank	New York	New York.

Signature Bank	New York	New York.
Woori America Bank	New York	New York.
Intervest National Bank	New York	New York.
TEG Federal Credit Union	Poughkeepsie	New York.
Quorum Federal Credit Union	Purchase	New York.
Northeastern Engineers Federal Credit Union	Richmond Hill	New York.
Summit Federal Credit Union	Rochester	New York.
Sunmark Federal Credit Union	Schenectady	New York.
Sidney Federal Credit Union	Sidney	New York.
Victory State Bank	Staten Island	New York.
Watertown Savings Bank	Watertown	New York.
Community Federal Savings Bank	Woodhaven	New York.
Banco Popular De Puerto Rico	Hato Rey	Puerto Rico.
FirstBank of Puerto Rico	Santurce	Puerto Rico.

Federal Home Loan Bank of Pittsburgh—District 3

The Bancorp Bank	Wilmington	Delaware.
Lehigh Valley Educators Credit Union	Allentown	Pennsylvania.
Enterprise Bank	Allison Park	Pennsylvania.
Apollo Trust Company	Apollo	Pennsylvania.
Sun East Federal Credit Union	Aston	Pennsylvania.
Fidelity Savings & Loan Association of Bucks County	Bristol	Pennsylvania.
Integrity Bank	Camp Hill	Pennsylvania.
The Farmers and Merchants Trust Company	Chambersburg	Pennsylvania.
DNB First, National Association	Downingtown	Pennsylvania.
Elderton State Bank	Elderton	Pennsylvania.
Fleetwood Bank	Fleetwood	Pennsylvania.
The First National Bank of Fredericksburg	Fredericksburg	Pennsylvania.
PeoplesBank, a Codorus Valley Company	Glen Rock	Pennsylvania.
The Gratz National Bank	Gratz	Pennsylvania.
Harleysville Savings Bank	Harleysville	Pennsylvania.
S & T Bank	Indiana	Pennsylvania.
First Cornerstone Bank	King Of Prussia	Pennsylvania.
Reliance Federal Credit Union	King Of Prussia	Pennsylvania.
Bank of Landisburg	Landisburg	Pennsylvania.
Liverpool Community Bank	Liverpool	Pennsylvania.
Juniata Valley Bank	Mifflintown	Pennsylvania.
Mid Penn Bank	Millersburg	Pennsylvania.
Union National Bank of Mount Carmel	Mount Carmel	Pennsylvania.
Citizens Savings Bank	Mount Pocono	Pennsylvania.
New Tripoli Bank	New Tripoli	Pennsylvania.
Orrstown Bank	Orrstown	Pennsylvania.
Police And Fire Federal Credit Union	Philadelphia	Pennsylvania.
Diamond Credit Union	Pottstown	Pennsylvania.
Apex Community Federal Credit Union	Stowe	Pennsylvania.
The Turbotville National Bank	Turbotville	Pennsylvania.
Woodlands Bank	Williamsport	Pennsylvania.
York Traditions Bank	York	Pennsylvania.
Freedom Bank, Inc	Belington	West Virginia.
Clear Mountain Bank	Bruceton Mill	West Virginia.
First Bank of Charleston	Charleston	West Virginia.
Summit Community Bank, Inc	Charleston	West Virginia.
Fairmont Federal Credit Union	Fairmont	West Virginia.
First Exchange Bank	Mannington	West Virginia.
Northern Hancock Bank & Trust Company	Newell	West Virginia.
FNB Bank, Inc	Romney	West Virginia.
West Union Bank	West Union	West Virginia.
Main Street Bank Corporation	Wheeling	West Virginia.

Federal Home Loan Bank of Atlanta—District 4

Compass Bank	Birmingham	Alabama.
Traditions Bank	Cullman	Alabama.
BankSouth	Dothan	Alabama.
First Southern Bank	Florence	Alabama.
First National Bank of Baldwin County	Foley	Alabama.
First State Bank of Dekalb County	Fort Payne	Alabama.
Citizens Bank & Trust	Guntersville	Alabama.
Merchants Bank of Alabama	Hanceville	Alabama.
Redstone Federal Credit Union	Huntsville	Alabama.
Corporate America Credit Union	Irondale	Alabama.
Citizens Bank & Savings Company	Russellville	Alabama.
The North Jackson Bank	Stevenson	Alabama.
First State Bank of the South, Inc	Sulligent	Alabama.
Troy Bank & Trust Company	Troy	Alabama.

First Community Bank of Central Alabama	Wetumpka	Alabama.
IDB–IIC Federal Credit Union	Washington	District of Columbia.
Gibraltar Bank, FSB	Coral Gables	Florida.
Floridian Community Bank, Inc	Davie	Florida.
Florida Gulf Bank	Fort Myers	Florida.
FNBT.COM Bank	Fort Walton Beach	Florida.
Florida Credit Union	Gainesville	Florida.
Merchants and Southern Bank	Gainesville	Florida.
Peoples Bank of Graceville	Graceville	Florida.
CenterBank of Jacksonville, National Association	Jacksonville	Florida.
Peoples State Bank	Lake City	Florida.
Sunstate Bank	Miami	Florida.
Union Credit Bank	Miami	Florida.
University Credit Union	Miami	Florida.
Royal Palm Bank of Florida	Naples	Florida.
Insight Financial Credit Union	Orlando	Florida.
Southbank, A Federal Savings Bank	Palm Beach	Florida.
Gulf Coast Community Bank	Pensacola	Florida.
Hillsboro Bank	Plant City	Florida.
Sanibel Captiva Community Bank	Sanibel	Florida.
Bank of Commerce	Sarasota	Florida.
Sunshine Savings Bank	Tallahassee	Florida.
Century Bank of Florida	Tampa	Florida.
Palm Bank	Tampa	Florida.
Suncoast Schools Federal Credit Union	Tampa	Florida.
The Bank of Tampa	Tampa	Florida.
Commerce National Bank & Trust	Winter Park	Florida.
United Legacy Bank	Winter Park	Florida.
First American Bank and Trust Company	Athens	Georgia.
CDC Federal Credit Union	Atlanta	Georgia.
Georgia Commerce Bank	Atlanta	Georgia.
Century Bank of Georgia	Cartersville	Georgia.
Citizens Bank of Cochran	Cochran	Georgia.
State Bank of Cochran	Cochran	Georgia.
First State Bank of Randolph County	Cuthbert	Georgia.
First Intercontinental Bank	Doraville	Georgia.
Douglas National Bank	Douglas	Georgia.
Gwinnett Community Bank	Duluth	Georgia.
Citizens Bank and Trust Company	Eastman	Georgia.
Glennville Bank	Glennville	Georgia.
Citizens Community Bank	Hahira	Georgia.
Bank of Hazlehurst	Hazlehurst	Georgia.
Heritage Bank	Hinesville	Georgia.
Farmers and Merchants Bank	Lakeland	Georgia.
Brand Banking Company	Lawrenceville	Georgia.
Associated Credit Union	Norcross	Georgia.
The Patterson Bank	Patterson	Georgia.
Pelham Banking Company	Pelham	Georgia.
The Bank of Perry	Perry	Georgia.
Heritage First Bank	Rome	Georgia.
Carver State Bank	Savannah	Georgia.
First Chatham Bank	Savannah	Georgia.
The Savannah Bank, National Association	Savannah	Georgia.
Bank of Soperton	Soperton	Georgia.
Citizens Bank of Swainsboro	Swainsboro	Georgia.
Bank of Upson	Thomaston	Georgia.
Thomasville National Bank	Thomasville	Georgia.
The Park Avenue Bank	Valdosta	Georgia.
Oconee State Bank	Watkinsville	Georgia.
Atlantic Coast Bank	Waycross	Georgia.
The First National Bank of Waynesboro	Waynesboro	Georgia.
First Mariner Bank	Baltimore	Maryland.
Kosciuszko Federal Savings Bank	Baltimore	Maryland.
Midstate Federal Savings and Loan	Baltimore	Maryland.
The John Hopkins Federal Credit Union	Baltimore	Maryland.
The Washington Savings Bank, FSB	Bowie	Maryland.
Chesapeake Bank and Trust Company	Chestertown	Maryland.
The Columbia Bank	Columbia	Maryland.
The Bank of Glen Burnie	Glen Burnie	Maryland.
Tower Federal Credit Union	Laurel	Maryland.
Sandy Spring Bank	Olney	Maryland.
Cedar Point Federal Credit Union	Patuxent River	Maryland.
Prince George's Federal Savings Bank	Upper Marlboro	Maryland.
Belmont Federal Savings & Loan Association	Belmont	North Carolina.
Black Mountain Savings Bank, S.S.B	Black Mountain	North Carolina.
Harrington Bank, FSB	Chapel Hill	North Carolina.

HomeTrust Bank	Clyde	North Carolina.
Cabarrus Bank & Trust Company	Concord	North Carolina.
Self-help Credit Union	Durham	North Carolina.
Citizens South Bank	Gastonia	North Carolina.
First Carolina Corporate Credit Union	Greensboro	North Carolina.
First Flight Federal Credit Union	Havelock	North Carolina.
Carolina Trust Bank	Lincolnton	North Carolina.
Bank of Oak Ridge	Oak Ridge	North Carolina.
Coastal Federal Credit Union	Raleigh	North Carolina.
First National Bank of Shelby	Shelby	North Carolina.
Bank of North Carolina	Thomasville	North Carolina.
WNC Community Credit Union	Waynesville	North Carolina.
Allegacy Federal Credit Union	Winston-Salem	North Carolina.
Members Credit Union	Winston-Salem	North Carolina.
Clover Community Bank	Clover	South Carolina.
Palmetto Citizens Federal Credit Union	Columbia	South Carolina.
Cornerstone National Bank	Easley	South Carolina.
Sharonview Federal Credit Union	Fort Mill	South Carolina.
Carolina First Bank	Greenville	South Carolina.
SPC Cooperative Credit Union	Hartsville	South Carolina.
Farmers and Merchants Bank	Holly Hill	South Carolina.
Carolina Trust Federal Credit Union	Myrtle Beach	South Carolina.
Arthur State Bank	Union	South Carolina.
Pentagon Federal Credit Union	Alexandria	Virginia.
Shiloh of Alexandria Federal Credit Union	Alexandria	Virginia.
United States Senate Federal Credit Union	Alexandria	Virginia.
Justice Federal Credit Union	Chantilly	Virginia.
American National Bank & Trust Company	Danville	Virginia.
Fairfax County Federal Credit Union	Fairfax	Virginia.
United Bank	Fairfax	Virginia.
The Bank of Fincastle	Fincastle	Virginia.
First Capital Bank	Glen Allen	Virginia.
Franklin Federal Savings & Loan Association of Richmond	Glen Allen	Virginia.
New Peoples Bank	Honaker	Virginia.
The Bank of McKenney	McKenney	Virginia.
The Middleburg Bank	Middleburg	Virginia.
1st Advantage Federal Credit Union	Newport News	Virginia.
Dupont Fibers Federal Credit Union	Richmond	Virginia.
Virginia Credit Union, Inc	Richmond	Virginia.
Freedom First Federal Credit Union	Roanoke	Virginia.
Shenandoah Life Insurance Company	Roanoke	Virginia.
Franklin Community Bank, National Association	Rocky Mount	Virginia.
Farmers and Merchants Bank	Timberville	Virginia.
Baylands Federal Credit Union	West Point	Virginia.
Citizens and Farmers Bank	West Point	Virginia.

Federal Home Loan Bank of Cincinnati—District 5

South Central Bank of Bowling Green, Inc	Bowling Green	Kentucky.
Taylor County Bank	Campbellsville	Kentucky.
The Cecilian Bank	Cecilia	Kentucky.
First Federal Savings Bank of Elizabethtown	Elizabethtown	Kentucky.
Victory Community Bank	Fort Mitchell	Kentucky.
Edmonton State Bank	Glasgow	Kentucky.
South Central Bank, Inc	Glasgow	Kentucky.
Bank of Harlan	Harlan	Kentucky.
Commonwealth Community Bank	Hartford	Kentucky.
The Citizens Bank	Hickman	Kentucky.
Bank of Hindman	Hindman	Kentucky.
The First State Bank	Irvington	Kentucky.
The Farmers National Bank of Lebanon	Lebanon	Kentucky.
First National Bank of Lexington	Lexington	Kentucky.
GTKY Credit Union	Lexington	Kentucky.
Members Heritage Federal Credit Union	Lexington	Kentucky.
Whitaker Bank	Lexington	Kentucky.
Cumberland Valley NB&T Company	London	Kentucky.
Jefferson County Federal Credit Union	Louisville	Kentucky.
Park Community Federal Credit Union	Louisville	Kentucky.
PBI Bank	Louisville	Kentucky.
Rural Cooperatives Credit Union	Louisville	Kentucky.
Magnolia Bank, Inc	Magnolia	Kentucky.
The First National Bank of Manchester	Manchester	Kentucky.
First Kentucky Bank, Inc	Mayfield	Kentucky.
United Community Bank of West Kentucky, Inc	Morganfield	Kentucky.
Citizens National Bank of Paintsville	Paintsville	Kentucky.
West Point Bank	Radcliff	Kentucky.

Peoples Bank	Taylorsville	Kentucky.
Bank of McCreary County	Whitley City	Kentucky.
Grant County Deposit Bank	Williamstown	Kentucky.
Firestone Federal Credit Union	Akron	Ohio.
FirstMerit Bank, National Association	Akron	Ohio.
GenFed Federal Credit Union	Akron	Ohio.
The Farmers & Merchants State Bank	Archbold	Ohio.
The Citizens Bank of Ashville	Ashville	Ohio.
Century Federal Credit Union	Cleveland	Ohio.
The Pioneer Savings Bank	Cleveland	Ohio.
Clyde-Findlay Area Credit Union	Clyde	Ohio.
CME Federal Credit Union	Columbus	Ohio.
Corporate One Federal Credit Union	Columbus	Ohio.
OhioHealth Federal Credit Union	Columbus	Ohio.
Dayton Firefighters Federal Credit Union	Dayton	Ohio.
First Federal Savings & Loan Association	Delta	Ohio.
BMI Federal Credit Union	Dublin	Ohio.
Wright-Patt Credit Union, Inc	Fairborn	Ohio.
Community First Bank, National Association	Forest	Ohio.
The Croghan Colonial Bank	Fremont	Ohio.
Ohio Catholic Federal Credit Union	Garfield Heights	Ohio.
Harvest Federal Credit Union	Heath	Ohio.
Hopewell Federal Credit Union	Heath	Ohio.
The Killbuck Savings Bank, Co	Killbuck	Ohio.
Superior Federal Credit Union	Lima	Ohio.
CenterBank	Milford	Ohio.
RiverHills Bank	New Richmond	Ohio.
Bay Area Credit Union, Inc	Oregon	Ohio.
Home National Bank	Racine	Ohio.
Park View Federal Savings Bank	Solon	Ohio.
The Old Fort Banking Company	Tiffin	Ohio.
Signature Bank, National Association	Toledo	Ohio.
First State Bank of Adams County	Winchester	Ohio.
Ohio Legacy Bank, National Association	Wooster	Ohio.
Wayne Savings Community Bank	Wooster	Ohio.
Dollar Bank, FSB	Pittsburgh	Pennsylvania.
SouthEast Bank & Trust	Athens	Tennessee.
Insouth Bank	Brownsville	Tennessee.
Citizens Bank	Carthage	Tennessee.
First Volunteer Bank	Chattanooga	Tennessee.
Tennessee Valley Federal Credit Union	Chattanooga	Tennessee.
Cumberland Bank & Trust Company	Clarksville	Tennessee.
First Federal Savings Bank	Clarksville	Tennessee.
Peoples Bank	Clifton	Tennessee.
Community National Bank	Dayton	Tennessee.
Bank of Dickson	Dickson	Tennessee.
Gates Banking and Trust Company	Gates	Tennessee.
Bank of Gleason	Gleason	Tennessee.
American Patriot Bank	Greeneville	Tennessee.
Greeneville Federal Bank, FSB	Greeneville	Tennessee.
Citizens Bank	Hartsville	Tennessee.
Holston Valley Credit Union	Kingsport	Tennessee.
Clayton Bank and Trust	Knoxville	Tennessee.
Citizens Bank of Blount County	Maryville	Tennessee.
FEDEX Employees Credit Association	Memphis	Tennessee.
The Bank of Milan	Milan	Tennessee.
Patriot Bank	Millington	Tennessee.
Security Bank	Newbern	Tennessee.
ORNL Federal Credit Union	Oak Ridge	Tennessee.
Tennessee Members 1st Federal Credit Union	Oak Ridge	Tennessee.
Y–12 Federal Credit Union	Oak Ridge	Tennessee.
Volunteer State Bank	Portland	Tennessee.
Mountain National Bank	Sevierville	Tennessee.
First Bank of Tennessee	Spring City	Tennessee.
Merchants and Planters Bank	Toone	Tennessee.

Federal Home Loan Bank of Indianapolis—District 6

Centra Credit Union	Columbus	Indiana.
Crane Federal Credit Union	Crane	Indiana.
CSB Bank	Cynthiana	Indiana.
Three Rivers Federal Credit Union	Fort Wayne	Indiana.
Heartland Community Bank	Franklin	Indiana.
Grabill Bank	Grabill	Indiana.
Greenfield Banking Company	Greenfield	Indiana.
Indiana Members Credit Union	Indianapolis	Indiana.

Community First Bank Howard County	Kokomo	Indiana.
Solidarity Community Federal Credit Union	Kokomo	Indiana.
Dearborn Savings Bank	Lawrenceburg	Indiana.
State Bank of Lizton	Lizton	Indiana.
Ball State Federal Credit Union	Muncie	Indiana.
WGE Federal Credit Union	Muncie	Indiana.
The Napoleon State Bank	Napoleon	Indiana.
Heritage Federal Credit Union	Newburgh	Indiana.
North Salem Savings Bank	North Salem	Indiana.
Central Bank, FSB	Nicholasville	Kentucky.
FirstBank of Alma	Alma	Michigan.
Bank of Alpena	Alpena	Michigan.
University Bank	Ann Arbor	Michigan.
Kellogg Community Federal Credit Union	Battle Creek	Michigan.
Clarkston State Bank	Clarkston	Michigan.
Michigan Schools and Government Credit Union	Clinton Towns	Michigan.
Motor City Co-op Credit Union	Clinton Towns	Michigan.
Auto Club Trust, FSB	Dearborn	Michigan.
Summit Community Bank	East Lansing	Michigan.
Credit Union One	Ferndale	Michigan.
Financial Plus Federal Credit Union	Flint	Michigan.
Hillsdale County National Bank	Hillsdale	Michigan.
Macatawa Bank	Holland	Michigan.
CP Federal Credit Union	Jackson	Michigan.
Consumers Credit Union	Kalamazoo	Michigan.
Educational Community Credit Union	Kalamazoo	Michigan.
Keystone Community Bank	Kalamazoo	Michigan.
Community Choice Credit Union	Livonia	Michigan.
Co-op Services Credit Union	Livonia	Michigan.
Marshall Community Credit Union	Marshall	Michigan.
Members First Credit Union	Midland	Michigan.
Monroe County Community Credit Union	Monroe	Michigan.
Christian Financial Credit Union	Roseville	Michigan.
United Financial Credit Union	Saginaw	Michigan.
United Federal Credit Union	Saint Joseph	Michigan.
Seaway Community Bank	Saint Clair	Michigan.
First Catholic Federal Credit Union	Taylor	Michigan.
Members Credit Union	Traverse City	Michigan.
TBA Education Credit Union	Traverse City	Michigan.

Federal Home Loan Bank of Chicago—District 7

Apple River State Bank	Apple River	Illinois.
First National Bank of Barry	Barry	Illinois.
Bank of Bourbonnais	Bourbonnais	Illinois.
Casey State Bank	Casey	Illinois.
State Bank Cerro Gordo	Cerro Gordo	Illinois.
BankChampaign, National Association	Champaign	Illinois.
Citizens Bank of Chatsworth	Chatsworth	Illinois.
First Nations Bank	Chicago	Illinois.
Marquette Bank	Chicago	Illinois.
Metropolitan Bank & Trust Company	Chicago	Illinois.
North Community Bank	Chicago	Illinois.
Inland Bank and Trust	Countryside	Illinois.
Resource Bank, National Association	DeKalb	Illinois.
Dewey State Bank	Dewey	Illinois.
PNA Bank	Downers Grove	Illinois.
Du Quoin State Bank	Du Quoin	Illinois.
First Clover Leaf Bank, FSB	Edwardsville	Illinois.
Crossroads Bank	Effingham	Illinois.
Farmer City State Bank	Farmer City	Illinois.
The Fisher National Bank	Fisher	Illinois.
Flanagan State Bank	Flanagan	Illinois.
Cornerstone Credit Union	Freeport	Illinois.
Midwest Community Bank	Freeport	Illinois.
Galena State Bank & Trust Company	Galena	Illinois.
First Southern Bank	Grand Tower	Illinois.
State Bank of Graymont	Graymont	Illinois.
Henry State Bank	Henry	Illinois.
Ipava State Bank	Ipava	Illinois.
Commonwealth Credit Union	Kankakee	Illinois.
Citizens State Bank	Lena	Illinois.
Brickyard Bank	Lincolnwood	Illinois.
Bank & Trust Company	Litchfield	Illinois.
Mazon State Bank	Mazon	Illinois.
First National Bank of McHenry	McHenry	Illinois.

First National Bank of Nokomis	Nokomis	Illinois.
Nokomis Savings Bank	Nokomis	Illinois.
Northbrook Bank & Trust Company	Northbrook	Illinois.
First National Bank of Pana	Pana	Illinois.
Vermilion Valley Bank	Piper City	Illinois.
Lincoln State Bank, SB	Rochelle	Illinois.
MWABank	Rock Island	Illinois.
Spring Valley City Bank	Spring Valley	Illinois.
First National Bank in Staunton	Staunton	Illinois.
Table Grove State Bank	Table Grove	Illinois.
Capaha Bank, SB	Tamms	Illinois.
Community Bank of Trenton	Trenton	Illinois.
First Community Bank, Xenia-Flora	Xenia	Illinois.
American National Bank—Fox Cities	Appleton	Wisconsin.
State Bank of Arcadia	Arcadia	Wisconsin.
First National Bank and Trust	Barron	Wisconsin.
Blackhawk State Bank	Beloit	Wisconsin.
First National Bank of Berlin	Berlin	Wisconsin.
First Business Bank—Milwaukee	Brookfield	Wisconsin.
State Bank of Chilton	Chilton	Wisconsin.
Northwestern Bank	Chippewa Falls	Wisconsin.
Cleveland State Bank	Cleveland	Wisconsin.
DMB Community Bank	De Forest	Wisconsin.
Peoples Bank	Elkhorn	Wisconsin.
American Bank	Fond du Lac	Wisconsin.
Peoples Bank of Wisconsin	Hayward	Wisconsin.
Horicon State Bank	Horicon	Wisconsin.
Blackhawk Credit Union	Janesville	Wisconsin.
Farmers State Bank	Markesan	Wisconsin.
Mid-Wisconsin Bank	Medford	Wisconsin.
Empower Credit Union	Milwaukee	Wisconsin.
Mitchell Bank	Milwaukee	Wisconsin.
Bank of Monticello	Monticello	Wisconsin.
The Bank of New Glarus	New Glarus	Wisconsin.
First National Community Bank	New Richmond	Wisconsin.
CitizensFirst Credit Union	Oshkosh	Wisconsin.
Palmyra State Bank	Palmyra	Wisconsin.
Bank of Poynette	Poynette	Wisconsin.
Johnson Bank	Racine	Wisconsin.
Shell Lake State Bank	Shell Lake	Wisconsin.
Eagle Valley Bank, National Association	Saint Croix Falls	Wisconsin.
Superior Bank	Superior	Wisconsin.
Shoreline Credit Union	Two Rivers	Wisconsin.
InvestorsBank	Waukesha	Wisconsin.
Sunset Bank & Savings	Waukesha	Wisconsin.
Bank of Wausau	Wausau	Wisconsin.
The Equitable Bank, S.S.B	Wauwatosa	Wisconsin.
Guardian Credit Union	West Allis	Wisconsin.
Westby Co-op Credit Union	Westby	Wisconsin.

Federal Home Loan Bank of Des Moines—District 8

Ackley State Bank	Ackley	Iowa.
Exchange State Bank	Adair	Iowa.
Farmers State Bank	Algona	Iowa.
First State Bank	Belmond	Iowa.
Ascentra Credit Union	Bettendorf	Iowa.
1st Gateway Credit Union	Camanche	Iowa.
Iowa Community Credit Union	Cedar Falls	Iowa.
Bankers Trust Company	Cedar Rapids	Iowa.
Cedar Rapids Bank and Trust Company	Cedar Rapids	Iowa.
Collins Community Credit Union	Cedar Rapids	Iowa.
Columbus Junction State Bank	Columbus Junction	Iowa.
Freedom Security Bank	Coralville	Iowa.
Iowa State Savings Bank	Creston	Iowa.
Decorah Bank & Trust Company	Decorah	Iowa.
Dupaco Community Credit Union	Dubuque	Iowa.
GNB Bank	Grundy Center	Iowa.
Hampton State Bank	Hampton	Iowa.
Hartwick State Bank	Hartwick	Iowa.
Hiawatha Bank & Trust Company	Hiawatha	Iowa.
Community Bank	Indianola	Iowa.
Green Belt Bank & Trust	Iowa Falls	Iowa.
Farmers State Bank	Lake View	Iowa.
United Bank & Trust, National Association	Marshalltown	Iowa.
Interstate Federal Savings and Loan Association	McGregor	Iowa.

First National Bank of Muscatine	Muscatine	Iowa.
State Bank & Trust Company	New Hampton	Iowa.
Community 1st Credit Union	Ottumwa	Iowa.
Liberty National Bank	Sioux City	Iowa.
The Security National Bank of Sioux City, Iowa	Sioux City	Iowa.
Heartland Bank	Somers	Iowa.
Farmers Trust and Savings Bank	Spencer	Iowa.
State Bank	Spencer	Iowa.
The Citizens First National Bank of Storm Lake	Storm Lake	Iowa.
Templeton Savings Bank	Templeton	Iowa.
Titonka Savings Bank	Titonka	Iowa.
Walker State Bank	Walker	Iowa.
West Chester Savings Bank	Washington	Iowa.
Community National Bank	Waterloo	Iowa.
First National Bank	Waverly	Iowa.
Peoples Savings Bank	Wellsburg	Iowa.
Farmers Savings Bank	Wever	Iowa.
Neighborhood National Bank	Alexandria	Minnesota.
1st Regents Bank	Andover	Minnesota.
Arlington State Bank	Arlington	Minnesota.
Atwater State Bank	Atwater	Minnesota.
First Commercial Bank	Bloomington	Minnesota.
First Farmers & Merchants State Bank	Brownsdale	Minnesota.
Eitzen State Bank	Caledonia	Minnesota.
Cambridge State Bank	Cambridge	Minnesota.
Peoples Bank of Commerce	Cambridge	Minnesota.
First National Bank	Chisholm	Minnesota.
Clinton State Bank	Clinton	Minnesota.
Crookston National Bank	Crookston	Minnesota.
North Shore Bank of Commerce	Duluth	Minnesota.
Park State Bank	Duluth	Minnesota.
State Bank of Easton	Easton	Minnesota.
First Farmers & Merchants National Bank	Fairmont	Minnesota.
Premier Bank Minnesota	Farmington	Minnesota.
First State Bank of Fountain	Fountain	Minnesota.
Citizens State Bank of Glenville	Glenville	Minnesota.
First Farmers & Merchants State Bank of Grand Meadow	Grand Meadow	Minnesota.
First Security Bank-Hendricks	Hendricks	Minnesota.
Community Pride Bank	Isanti	Minnesota.
Landmark Community Bank, National Association	Isanti	Minnesota.
Jackson Federal Savings and Loan Association	Jackson	Minnesota.
Janesville State Bank	Janesville	Minnesota.
Security State Bank of Kenyon	Kenyon	Minnesota.
First Farmers & Merchants National Bank	Le Sueur	Minnesota.
Lake Community Bank	Long Lake	Minnesota.
Frandsen Bank and Trust	Lonsdale	Minnesota.
21st Century Bank	Loretto	Minnesota.
Eagle Community Bank	Maple Grove	Minnesota.
Bank of Maple Plain	Maple Plain	Minnesota.
Private Bank Minnesota	Minneapolis	Minnesota.
Peoples National Bank of Mora	Mora	Minnesota.
Citizens Bank Minnesota	New Ulm	Minnesota.
Community Resource Bank	Northfield	Minnesota.
Community Development Bank, FSB	Ogema	Minnesota.
The First National Bank of Henning	Ottertail	Minnesota.
Pine River State Bank	Pine River	Minnesota.
Unity Bank North	Red Lake Falls	Minnesota.
North American Banking Company	Roseville	Minnesota.
American Bank of Saint Paul	Saint Paul	Minnesota.
Anchor Bank, National Association	Saint Paul	Minnesota.
Drake Bank	Saint Paul	Minnesota.
Western Bank	Saint Paul	Minnesota.
Mills Resolute Bank	Sanborn	Minnesota.
Citizens State Bank of Shakopee	Shakopee	Minnesota.
Americana Community Bank	Sleepy Eye	Minnesota.
First National Bank at Saint James	Saint James	Minnesota.
Saint Martin National Bank	Saint Martin	Minnesota.
City & County Credit Union	Saint Paul	Minnesota.
Hiway Federal Credit Union	Saint Paul	Minnesota.
State Bank of Taunton	Taunton	Minnesota.
Profinium Financial, Inc	Truman	Minnesota.
Vermillion State Bank	Vermillion	Minnesota.
Northern State Bank of Virginia, Minnesota	Virginia	Minnesota.
First State Bank of Wabasha	Wabasha	Minnesota.
Farmers State Bank of West Concord	West Concord	Minnesota.
Heritage Bank, National Association	Spicer	Minnesota.

Merchants Bank, National Association	Winona	Minnesota.
First State Bank of Wyoming	Wyoming	Minnesota.
Bank of Zumbrota	Zumbrota	Minnesota.
Bank of Belton	Belton	Missouri.
America's Community Bank	Blue Springs	Missouri.
Citizens Bank of Blythedale	Blythedale	Missouri.
Flowers National Bank	Cainsville	Missouri.
Mississippi County Savings & Loan Association	Charleston	Missouri.
The Business Bank of Saint Louis	Clayton	Missouri.
The Boone County National Bank of Columbia	Columbia	Missouri.
The Citizens Bank of Edina	Edina	Missouri.
Commercial Trust Company of Fayette	Fayette	Missouri.
Farmers Bank of Green City	Green City	Missouri.
Home Exchange Bank	Jamesport	Missouri.
Peoples Bank of Moniteau County	Jamestown	Missouri.
Jefferson Bank of Missouri	Jefferson City	Missouri.
Peoples Bank of Wyaconda	Kahoka	Missouri.
Central Bank of Kansas City	Kansas City	Missouri.
CommunityAmerica Credit Union	Kansas City	Missouri.
Kearney Trust Company	Kearney	Missouri.
Goppert Financial Bank	Lathrop	Missouri.
Lawson Bank	Lawson	Missouri.
United State Bank	Lewistown	Missouri.
The Mercantile Bank of Louisiana, Missouri	Louisiana	Missouri.
City Bank and Trust Company of Moberly	Moberly	Missouri.
Bank of Old Monroe	Old Monroe	Missouri.
First Missouri State Bank	Poplar Bluff	Missouri.
First State Bank of Purdy	Purdy	Missouri.
Community Bank of Missouri	Richmond	Missouri.
The Seymour Bank	Seymour	Missouri.
State Bank of Slater	Slater	Missouri.
Metropolitan National Bank	Springfield	Missouri.
Commercial Bank	Saint Louis	Missouri.
Safety National Casualty Corporation	Saint Louis	Missouri.
Stifel Bank & Trust	Saint Louis	Missouri.
Farmers Bank of Northern Missouri	Unionville	Missouri.
American Bank of Missouri	Wellsville	Missouri.
VUE Community Credit Union	Bismarck	North Dakota.
State Bank of Bottineau	Bottineau	North Dakota.
Heartland State Bank	Edgeley	North Dakota.
Bremer Bank, National Association	Grand Forks	North Dakota.
Unison Bank	Jamestown	North Dakota.
North Country Bank, National Association	McClusky	North Dakota.
First United Bank	Park River	North Dakota.
Northland Financial	Steele	North Dakota.
Peoples State Bank	Westhope	North Dakota.
Security State Bank	Wishek	North Dakota.
Dakota State Bank	Blunt	South Dakota.
Merchants State Bank	Freeman	South Dakota.
First National Bank in Philip	Philip	South Dakota.
BankWest, Inc	Pierre	South Dakota.
Dakota Prairie Bank	Presho	South Dakota.
First Dakota National Bank	Yankton	South Dakota.

Federal Home Loan Bank of Dallas—District 9

Pinnacle Bank	Bentonville	Arkansas.
Bank of Cave City	Cave City	Arkansas.
DeWitt Bank & Trust Company	DeWitt	Arkansas.
Simmons First Bank of El Dorado, National Association	El Dorado	Arkansas.
Twin Lakes Community Bank	Flippin	Arkansas.
First Federal Bank	Harrison	Arkansas.
Simmons First Bank of Northeast Arkansas	Jonesboro	Arkansas.
Little River Bank	Lepanto	Arkansas.
First National Bank of McGehee	McGehee	Arkansas.
Merchants & Planters Bank	Newport	Arkansas.
Piggott State Bank	Piggott	Arkansas.
Simmons First Bank	Russellville	Arkansas.
Security Bank	Stephens	Arkansas.
First National Bank of Lawrence County	Walnut Ridge	Arkansas.
First State Bank of Warren	Warren	Arkansas.
Mississippi River Bank	Belle Chasse	Louisiana.
Citizens Savings Bank	Bogalusa	Louisiana.
Homeland Federal Savings Bank	Columbia	Louisiana.
American Bank & Trust Company	Covington	Louisiana.
Commercial Capital Bank	Delhi	Louisiana.

State Bank & Trust Company	Golden Meadow	Louisiana.
First Community Bank	Hammond	Louisiana.
First National Bank of Jeanerette	Jeanerette	Louisiana.
Peoples State Bank	Many	Louisiana.
City Bank & Trust Company	Natchitoches	Louisiana.
First Bank & Trust	New Orleans	Louisiana.
West Carroll Community Bank	Oak Grove	Louisiana.
Dow Louisiana Federal Credit Union	Plaquemine	Louisiana.
Aneca Federal Credit Union	Shreveport	Louisiana.
Carter Federal Credit Union	Springhill	Louisiana.
Louisiana Delta Bank	Vidalia	Louisiana.
Winnsboro State Bank & Trust Company	Winnsboro	Louisiana.
Community Bank, North Mississippi	Amory	Mississippi.
Bank of Anguilla	Anguilla	Mississippi.
First Security Bank	Batesville	Mississippi.
Guaranty Bank & Trust Company	Belzoni	Mississippi.
Keesler Federal Credit Union	Biloxi	Mississippi.
Peoples Bank of the South	Bude	Mississippi.
Citizens Bank	Byhalia	Mississippi.
First National Bank of Clarksdale	Clarksdale	Mississippi.
Community Bank	Ellisville	Mississippi.
Bank of Forest	Forest	Mississippi.
Hancock Bank	Gulfport	Mississippi.
Merchants & Farmers Bank	Kosciusko	Mississippi.
PriorityOne Bank	Magee	Mississippi.
Oxford University Bank	Oxford	Mississippi.
New Mexico Educators Federal Credit Union	Albuquerque	New Mexico.
Sandia Area Federal Credit Union	Albuquerque	New Mexico.
My Bank	Belen	New Mexico.
Citizens Bank of Clovis	Clovis	New Mexico.
Four Corners Community Bank	Farmington	New Mexico.
The First National Bank of Albany	Albany	Texas.
First Community Bank	Alice	Texas.
Herring Bank	Amarillo	Texas.
Treaty Oak Bank	Austin	Texas.
The First National Bank of Bastrop	Bastrop	Texas.
Mobiloil Federal Credit Union	Beaumont	Texas.
Community National Bank	Bellaire	Texas.
Brady National Bank	Brady	Texas.
First State Bank of Brownsboro	Brownsboro	Texas.
Citizens State Bank	Buffalo	Texas.
Citizens Bank	Claude	Texas.
Texas Heritage National Bank	Daingerfield	Texas.
Grand Bank	Dallas	Texas.
Tolleson Private Bank	Dallas	Texas.
Farmers and Merchants Bank	De Leon	Texas.
Texas Financial Bank	Eden	Texas.
Ennis State Bank	Ennis	Texas.
Town North Bank, National Association	Farmers Branch	Texas.
Fayetteville Bank	Fayetteville	Texas.
Fort Davis State Bank	Fort Davis	Texas.
EECU	Fort Worth	Texas.
Texas Gulf Bank, National Association	Freeport	Texas.
First National Bank in Graham	Graham	Texas.
Graham Savings & Loan, SSB	Graham	Texas.
Grandview Bank	Grandview	Texas.
Bank of the West	Grapevine	Texas.
Peoples State Bank of Hallettsville	Hallettsville	Texas.
Chasewood Bank	Houston	Texas.
First Community Credit Union	Houston	Texas.
Independence Bank, National Association	Houston	Texas.
People's Trust Federal Credit Union	Houston	Texas.
First Financial Bank	Huntsville	Texas.
Independent Bank of Texas	Irving	Texas.
First National Bank of Jasper	Jasper	Texas.
Star Bank of Texas	Lake Worth	Texas.
Texana Bank, National Association	Linden	Texas.
First National Bank of Livingston	Livingston	Texas.
First Bank & Trust Of Memphis	Memphis	Texas.
Lone Star Bank, SSB	Moulton	Texas.
Muleshoe State Bank	Muleshoe	Texas.
Pearland State Bank	Pearland	Texas.
HCSB, a state banking association	Plainview	Texas.
Texas First State Bank	Riesel	Texas.
Lone Star Capital Bank, National Association	San Antonio	Texas.
United San Antonio Community Federal Credit	San Antonio	Texas.

First Community Bank, National Association	San Benito	Texas.
First State Bank	Smithville	Texas.
Community Bank of Snyder	Snyder	Texas.
Texas Savings Bank, SSB	Snyder	Texas.
First Financial Bank, National Association	Stephenville	Texas.
First Financial Bank, National Association	Sweetwater	Texas.
TEXAR Federal Credit Union	Texarkana	Texas.
Mainland Bank	Texas City	Texas.
Texas Community Bank, National Association	The Woodlands	Texas.
Randolph-Brooks Federal Credit Union	Universal City	Texas.
Waggoner National Bank of Vernon	Vernon	Texas.
Wellington State Bank	Wellington	Texas.
Citizens National Bank of Wills Point	Wills Point	Texas.

Federal Home Loan Bank of Topeka—District 10

Partner Colorado Credit Union	Arvada	Colorado.
Academy Bank, National Association	Colorado Springs	Colorado.
CoBiz Bank	Denver	Colorado.
Native American Bank, National Association	Denver	Colorado.
Versus Bank of Commerce	Fort Collins	Colorado.
Red Rocks Credit Union	Highlands Ranch	Colorado.
Solera National Bank	Lakewood	Colorado.
Champion Bank	Parker	Colorado.
Mountain View Bank of Commerce	Westminster	Colorado.
Stockgrowers State Bank of Ashland	Ashland	Kansas.
The Bendena State Bank	Bendena	Kansas.
The First National Bank of Cunningham	Cunningham	Kansas.
State Bank of Downs	Downs	Kansas.
Mid America Bank	Baldwin City	Kansas.
Garden City State Bank	Baldwin City	Kansas.
The First National Bank of Girard	Girard	Kansas.
Merit Bank	Goff	Kansas.
American State Bank & Trust Company	Great Bend	Kansas.
The Citizens National Bank	Greenleaf	Kansas.
The First State Bank of Healy	Healy	Kansas.
Farmers & Merchants Bank of Hill City	Hill City	Kansas.
Hillsboro State Bank	Hillsboro	Kansas.
First National Bank of Holcomb	Holcomb	Kansas.
Denison State Bank	Holton	Kansas.
The Howard State Bank	Howard	Kansas.
The Jamestown State Bank	Jamestown	Kansas.
The Nekoma State Bank	La Crosse	Kansas.
First State Bank & Trust Company	Larned	Kansas.
The Lawrence Bank	Lawrence	Kansas.
Mainstreet Credit Union	Lenexa	Kansas.
First National Bank of Liberal	Liberal	Kansas.
First Security Bank	Overbrook	Kansas.
The Baileyville State Bank	Seneca	Kansas.
The Solomon State Bank	Solomon	Kansas.
Bank of Kansas	South Hutchinson	Kansas.
Saint Marys State Bank	Saint Marys	Kansas.
RelianzBank	Wichita	Kansas.
Adams State Bank	Adams	Nebraska.
Heartland Community Bank	Bennet	Nebraska.
The First National Bank of Cambridge	Cambridge	Nebraska.
First National Bank of Chadron	Chadron	Nebraska.
Bank of Clarks	Clarks	Nebraska.
Farmers Bank of Cook	Cook	Nebraska.
Farmers State Bank	Dodge	Nebraska.
The First National Bank of Fairbury	Fairbury	Nebraska.
First National Bank and Trust Company	Falls City	Nebraska.
The First National Bank of Gordon	Gordon	Nebraska.
Bank of Hartington	Hartington	Nebraska.
Hastings State Bank	Hastings	Nebraska.
The First National Bank of Johnson	Johnson	Nebraska.
Security National Bank	Laurel	Nebraska.
Nebraska Bank of Commerce	Lincoln	Nebraska.
Security First Bank	Lincoln	Nebraska.
State Bank of Scotia	Scotia	Nebraska.
Valley Bank and Trust Company	Scottsbluff	Nebraska.
The Tilden Bank	Tilden	Nebraska.
Wahoo State Bank	Wahoo	Nebraska.
1st Bank and Trust	Broken Bow	Oklahoma.
The First State Bank	Canute	Oklahoma.
First Bank of Chandler	Chandler	Oklahoma.

Great Plains National Bank	Elk City	Oklahoma.
First Capital Bank	Guthrie	Oklahoma.
Bank of Locust Grove	Locust Grove	Oklahoma.
The Bank, National Association	McAlester	Oklahoma.
Grant County Bank	Medford	Oklahoma.
The First National Bank of Midwest City	Midwest City	Oklahoma.
All America Bank	Oklahoma City	Oklahoma.
First Liberty Bank	Oklahoma City	Oklahoma.
The Focus Federal Credit Union	Oklahoma City	Oklahoma.
The First National Bank & Trust Company	Okmulgee	Oklahoma.
The Community State Bank	Poteau	Oklahoma.
The Exchange Bank	Skiatook	Oklahoma.
The First National Bank of Stigler	Stigler	Oklahoma.
Stroud National Bank	Stroud	Oklahoma.
Security State Bank of Wewoka	Wewoka	Oklahoma.

Federal Home Loan Bank of San Francisco—District 11

Mohave State Bank	Lake Havasu City	Arizona.
Arizona Bank & Trust	Mesa	Arizona.
Credit Union West	Phoenix	Arizona.
Desert Schools Federal Credit Union	Phoenix	Arizona.
Tempe Schools Credit Union	Tempe	Arizona.
Bank of Tucson	Tucson	Arizona.
1st Bank Yuma	Yuma	Arizona.
Central Valley Community Bank	Clovis	California.
Clearinghouse CDFI	Lake Forest	California.
Community Commerce Bank	Los Angeles	California.
Community West Bank, National Association	Goleta	California.
Far East National Bank	Los Angeles	California.
First Commercial Bank (USA)	Alhambra	California.
GBC International Bank	Los Angeles	California.
Golden Valley Bank	Chico	California.
Partners Federal Credit Union	Anaheim	California.
Mission Bank	Bakersfield	California.
America's Christian Credit Union	Brea	California.
Merchants Bank of California, N.A	Carson	California.
Seacoast Commerce Bank	Chula Vista	California.
Redwood Capital Bank	Eureka	California.
Commerce National Bank	Fullerton	California.
Pacific Community Credit Union	Fullerton	California.
SCE Federal Credit Union	Irwindale	California.
Southland Credit Union	Los Alamitos	California.
1st Century Bank, National Association	Los Angeles	California.
Cathay Bank	Los Angeles	California.
Gilmore Bank	Los Angeles	California.
Pacific Commerce Bank	Los Angeles	California.
Saehan Bank	Los Angeles	California.
Water and Power Community Credit Union	Los Angeles	California.
Beach Business Bank	Manhattan Beach	California.
SRI Federal Credit Union	Menlo Park	California.
Orange County Business Bank	Newport Beach	California.
Community Bank of the Bay	Oakland	California.
Stanford Federal Credit Union	Palo Alto	California.
CBC Federal Credit Union	Port Hueneme	California.
First General Bank	Rowland Heights	California.
Pacific Valley Bank	Salinas	California.
Cabrillo Credit Union	San Diego	California.
California Coast Credit Union	San Diego	California.
Miramar Federal Credit Union	San Diego	California.
Security Business Bank of San Diego	San Diego	California.
Gateway Bank, FSB	San Francisco	California.
Technology Credit Union	San Jose	California.
Santa Barbara Bank & Trust, National Association	Santa Barbara	California.
Santa Cruz County Bank	Santa Cruz	California.
Exchange Bank	Santa Rosa	California.
First National Bank of Northern California	South San Francisco	California.
Mission Valley Bank	Sun Valley	California.
Honda Federal Credit Union	Torrance	California.
Visalia Community Bank	Visalia	California.
Bay Commercial Bank	Walnut Creek	California.
Charles Schwab Bank	Reno	Nevada.

Federal Home Loan Bank of Seattle—District 12

Denali State Bank	Fairbanks	Alaska.

Tongass Federal Credit Union	Ketchikan	Alaska.
Hawaii Federal Credit Union	Honolulu	Hawaii.
HawaiiUSA Federal Credit Union	Honolulu	Hawaii.
East Idaho Credit Union	Idaho Falls	Idaho.
Valley Bank of Kalispell	Kalispell	Montana.
West One Bank	Kalispell	Montana.
First Montana Bank	Libby	Montana.
Missoula Federal Credit Union	Missoula	Montana.
Willamette Community Bank	Albany	Oregon.
First Technology Federal Credit Union	Beaverton	Oregon.
Bank of the Cascades	Bend	Oregon.
First Community Credit Union	Coquille	Oregon.
Siuslaw Bank	Florence	Oregon.
Oregon Coast Bank	Newport	Oregon.
Capital Pacific Bank	Portland	Oregon.
Pacific NW Federal Credit Union	Portland	Oregon.
Umpqua Bank	Roseburg	Oregon.
Marion and Polk Schools Credit Union	Salem	Oregon.
Clackamas County Bank	Sandy	Oregon.
Republic Bank, Inc	Bountiful	Utah.
Bank of Utah	Ogden	Utah.
Goldenwest Credit Union	Ogden	Utah.
BMW Bank of North America	Salt Lake City	Utah.
Capmark Bank	Salt Lake City	Utah.
Celtic Bank Corporation	Salt Lake City	Utah.
Deseret First Credit Union	Salt Lake City	Utah.
Wright Express Financial Service Corporation	Salt Lake City	Utah.
Heritage Bank	Saint George	Utah.
Eastside Commercial Bank, National Association	Bellevue	Washington.
Industrial Credit Union of Whatcom County	Bellingham	Washington.
North Coast Credit Union	Bellingham	Washington.
Lacamas Community Credit Union	Camas	Washington.
Cashmere Valley Bank	Cashmere	Washington.
NorthWest Plus Credit Union	Everett	Washington.
Community First Bank	Kennewick	Washington.
Pacific International Bank	Seattle	Washington.
Regal Financial Bank	Seattle	Washington.
Seattle Metropolitan Credit Union	Seattle	Washington.
Verity Credit Union	Seattle	Washington.
AmericanWest Bank	Spokane	Washington.
Global Credit Union	Spokane	Washington.
Horizon Credit Union	Spokane	Washington.
Yakima National Bank	Yakima	Washington.
Cheyenne State Bank	Cheyenne	Wyoming.
First Federal Savings Bank	Sheridan	Wyoming.

II. Public Comments

To encourage the submission of public comments on the community support performance of Bank members, on or before June 29, 2012, each Bank will notify its Advisory Council and nonprofit housing developers, community groups, and other interested parties in its district of the members selected for community support review in the 2010 sixth round review cycle. 12 CFR 1290.2(b)(2)(ii). In reviewing a member for community support compliance, FHFA will consider any public comments it has received concerning the member. 12 CFR 1290.2(d). To ensure consideration by FHFA, comments concerning the community support performance of members selected for the 2010 sixth round review cycle must be delivered to FHFA, either by hard-copy mail at the Federal Housing Finance Agency, Ninth Floor, Housing Mission and Goals (DHMG), 400 Seventh Street SW., Washington, DC 20024, or by electronic mail to *hmgcommunitysupportprogram@fhfa.gov* on or before the July 30, 2012 deadline for submission of Community Support Statements.

Dated: June 8, 2012.

Edward J. DeMarco,

Acting Director, Federal Housing Finance Agency.

[FR Doc. 2012–14590 Filed 6–14–12; 8:45 am]

BILLING CODE 8070–01–P

FEDERAL TRADE COMMISSION

[File No. 111 0160]

Johnson & Johnson and Synthes, Inc.; Analysis of Agreement Containing Consent Orders to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before July 12, 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 ''Johnson & Johnson, File No. 111 0160'' on your comment, and file your comment online at *https://ftcpublic.commentworks.com/ftc/j&jsynthesconsent*, 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 D), 600 Pennsylvania Avenue NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Mark D. Seidman (202–326–3296), FTC, Bureau of Competition, 600 Pennsylvania Avenue NW., Washington, DC 20580.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46(f), and § 2.34 the Commission Rules of Practice, 16 CFR 2.34, notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for June 11, 2012), on the World Wide Web, at *http://www.ftc.gov/os/actions.shtm.* A paper copy can be obtained from the FTC Public Reference Room, Room 130–H, 600 Pennsylvania Avenue NW., Washington, DC 20580, either in person or by calling (202) 326–2222.

You can file a comment online or on paper. For the Commission to consider your comment, we must receive it on or before July 12, 2012. Write ''Johnson & Johnson, File No. 111 0160'' 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 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), 16 CFR 4.9(c).[1] 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/j&jsynthesconsent* 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 ''Jonhson & Johnson, File No. 111 0160'' 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 D), 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 *http://www.ftc.gov* 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 12, 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.*

[1] 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).

Analysis of Agreement Containing Consent Order to Aid Public Comment

I. Introduction

The Federal Trade Commission (''Commission'') has accepted, subject to final approval, an Agreement Containing Consent Orders (''Consent Agreement'') from Johnson & Johnson (''J&J''). The purpose of the proposed Consent Agreement is to remedy the anticompetitive effects that would otherwise result from J&J's acquisition of the volar distal radius plating system assets of Synthes, Inc. (''Synthes''). Under the terms of the proposed Consent Agreement, J&J is required to divest all assets (including intellectual property) related to its ''DVR'' volar distal radius plating system business to a third party, enabling that third party to make and sell the DVR for the treatment of distal radius wrist fractures.

The proposed Consent Agreement has been placed on the public record for thirty days to solicit comments from interested persons. Comments received during this period will become part of the public record. After thirty days, the Commission will again review the proposed Consent Agreement and the comments received, and will decide whether it should withdraw from the proposed Consent Agreement or make it final.

Pursuant to an Agreement and Plan of Merger dated April 26, 2011, J&J proposes to acquire Synthes in exchange for cash and voting securities in a transaction valued at approximately $21.3 billion. The Commission's complaint alleges that the proposed acquisition, if consummated, would violate Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45, by combining the two largest competitors in the U.S. market for volar distal radius plating systems. The proposed Consent Agreement would remedy the alleged violations by replacing the competition that otherwise would be lost in these markets as a result of the acquisition.

II. The Parties

J&J is a comprehensive and broad-based manufacturer of products related to all aspects of human health care. In 2011, J&J generated global sales of $65 billion and U.S. sales of $28.9 billion. J&J is divided into three business segments: Consumer, Pharmaceutical, and Medical Devices and Diagnostics. The products impacted by the proposed

transaction, volar distal radius plating systems, fall within J&J's Medical Devices and Diagnostics segment.

Synthes is a medical device company that manufactures products in five main product groups: trauma, spine, cranio-maxillofacial, biomaterials, and power tools. In 2011, Synthes generated global sales of $3.97 billion worldwide and U.S. sales of $2.14 billion. Synthes's volar distal radius plating system sales are part of its trauma unit.

III. Volar Distal Radius Plating Systems

Volar distal radius plates are internal fixation devices that are implanted surgically from the underside of the wrist to achieve and maintain proper alignment of the radius bone following a fracture. Distal radius fractures, which are fractures of the portion of the radius bone closest to the wrist, are among the most common fractures in the human body. Distal radius fractures generally occur as a result of an individual bracing for a fall, whether it is a routine slip and fall by an elderly patient with a weak bone structure or a high-energy fall by a young, active patient engaged in sporting activities.

Most patients who experience distal radius fractures do not require surgical intervention and can be treated with simple casting. If the radius bone is displaced, however, it is almost always necessary to realign the fracture surgically. Volar distal radius plating systems are the primary option for treating displaced distal radius fractures in the United States. They are favored by surgeons because they provide solid fracture alignment, are easy to implant, and enable greater patient post-surgical freedom of movement and shorter patient recovery times. Other options exist to treat displaced distal radius fractures, but those alternative methods are typically used only in specialized cases. For the large percentage of displaced distal radius fractures, the clinical benefits of volar distal radius plating systems cannot be matched by the alternative products available on the market, and doctors and their patients would not switch to using products other than volar distal radius plating systems in response to a small but significant increase in the price of these systems.

The U.S. market for volar distal radius plating systems is highly concentrated, with J&J and Synthes controlling over 70 percent of the market as measured by 2010 revenue. The design of the DVR incorporates unique, clinically relevant features that are protected by intellectual property rights. Many surgeons still consider the DVR to be the best volar distal radius plating system on the market, and it accounted for approximately 29 percent of U.S. volar distal radius sales in 2010. Synthes is the leading manufacturer of volar distal radius plating systems in the United States, and accounted for approximately 42 percent of the market by 2010 revenue. Synthes's success selling distal radius plating systems derives in part from its leading position and strong clinical reputation in the overall trauma field. The next closest competitors to J&J and Synthes—Stryker and Acumed—would each be less than one-sixth the size of the combined firm.

The relevant geographic market for volar distal radius plating systems is the United States. Volar distal radius plating systems are medical devices that are regulated by the United States Food and Drug Administration (''FDA''). Volar distal radius plating systems sold outside the United States, but not approved for sale in the United States, are not viable competitive alternatives for U.S. consumers and hence are not in the relevant market.

IV. Competitive Effects and Entry Conditions

The acquisition would cause significant competitive harm in the market for volar distal radius plating systems. J&J and Synthes are the leading suppliers of volar distal radius plating systems and each other's most significant competitors. J&J and Synthes have responded directly to competition from each other with lower prices and improved products. Although there are a number of other suppliers of volar distal radius plates, they have not gained significant traction among surgeons and have substantially smaller market shares than the merging parties. By eliminating its closest competitor, the acquisition would allow J&J to unilaterally raise prices in the market for volar distal radius plating systems.

Entry would not be timely, likely, or sufficient in magnitude, character, and scope to deter or counteract the anticompetitive effects of the acquisition. Both J&J and Synthes employ patented technology in their volar distal radius plating systems. The patents owned by the two companies have prevented competitors from developing products that surgeons consider to be equally effective. Manufacturer product reputation and effective distribution also are important to surgeons and hospitals. Many fringe competitors are limited by their lack of a strong distribution system, and it would take a significant amount of time for one or more current fringe competitors to develop a sufficient reputation for quality, service, and consistency. Therefore, timely and sufficient entry in response to a small but significant price increase is unlikely.

V. The Proposed Consent Agreement

The proposed Decision and Order resolves the competitive concerns raised by J&J's proposed acquisition of Synthes by requiring the divestiture of J&J's U.S. DVR assets to a qualified buyer no later than ten (10) days after the acquisition is consummated. The parties have selected Biomet, Inc. (''Biomet'') as the buyer for the assets to be divested. Although the Commission's competitive concerns are limited to the manufacture and sale of volar distal radius plating systems, the parties elected to divest the entire J&J trauma portfolio, including the volar distal radius plating systems, to Biomet. Biomet is a successful orthopedics company with a recognized brand name, an extensive nationwide sales force, and existing service relationships with surgeons and hospitals, but it currently has no meaningful presence in the volar distal radius plating or trauma product markets. Biomet is thus well positioned to replace the competition that will be eliminated as a result of the proposed transaction. A divestiture of J&J's volar distal radius assets will ensure that Biomet has a recognized high-quality volar distal radius plating system offering, enabling it to compete immediately with the merged entity.

The Commission's merger remedies are intended to maintain or to restore the competitive *status quo.* Based on the evidence gathered in the investigation, the Commission has determined that the divestiture of J&J's volar distal radius plating system assets to Biomet should replicate the competitive conditions for volar distal radius plating systems that existed prior to the proposed transaction between J&J and Synthes.

The proposed Consent Agreement contains a provision that allows the Commission to appoint an interim monitor to oversee J&J's compliance with all of its obligations and performance of its responsibilities pursuant to the Commission's Decision and Order. The interim monitor is required to file periodic reports with the Commission to ensure that the Commission remains informed about the status of the divestitures, about the efforts being made to accomplish the divestitures, and about the provision of services and assistance during the transition period to ensure the success of the DVR divestiture.

Finally, the proposed Consent Agreement contains provisions that allow the Commission to appoint a

divestiture trustee if any or all of the above remedies are not accomplished within the time frames required by the Consent Agreement.

The purpose of this analysis is to facilitate public comment on the proposed Consent Agreement, and it is not intended to constitute an official interpretation of the proposed Decision and Order or to modify its terms in any way.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 2012–14660 Filed 6–14–12; 8:45 am]

BILLING CODE 6750–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Notice of Intent To Award Affordable Care Act (ACA) Funding, HM10–1001

Notice of Intent to award Affordable Care Act (ACA) funding to the Association of Public Health Laboratories (APHL) to educate public health laboratories about the Environmental Public Tracking Network as a potential data tool for laboratories. This award was proposed in the grantee's Fiscal Year (FY) 2012 Non-Competing Continuation applications under funding opportunity Cooperative Agreement HM10–1001, *''APHL–CDC Partnership for Quality Laboratory Practice.''*

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: This notice provides public announcement of CDC's intent to award Affordable Care Act (ACA) appropriations to the Association of Public Health Laboratories. These activities are proposed by the above-mentioned grantee in their FY 2012 applications submitted under funding opportunity HM10–1001, *''APHL–CDC Partnership for Quality Laboratory Practice,''* Catalogue of Federal Domestic Assistance Number (CFDA): 93.065.

Approximately $20,076 in ACA funding will be awarded to the grantee for communication and education activities designed to raise awareness among public health laboratories about the Environmental Public Health Tracking Network. Funding is appropriated under the Affordable Care Act (Pub. L. 111–148), Section 4002 [42 U.S.C. 300u–11]; (Prevention and Public Health Fund).

Accordingly, CDC adds the following information to the previously published funding opportunity announcement of HM10–1001:

—*Authority:* Section 317(k)(2) of the Public Health Service Act, [42 U.S.C. 247b(k)(2)], as amended, and the Patient Protection and Affordable Care Act (ACA), Section 4002 [42 U.S.C. 300u–11].

—*CFDA #:* 93.538 Affordable Care Act—National Environmental Public Health Tracking Program-Network Implementation.

Award Information: Type of Award: Non-Competing Continuation Cooperative Agreement.

Approximate Total Current Fiscal Year ACA Funding: $20,076.

Anticipated Number of Awards: 1.

Fiscal Year Funds: 2012.

Anticipated Award Date: July 2, 2012.

Application Selection Process: Funding will be awarded to applicant based on results from the technical review recommendation.

Funding Authority: CDC will add the ACA Authority to that which is reflected in the published Funding Opportunity CDC–RFA–HM10–1001. The revised funding authority language will read:

—This program is authorized under Section 317(k)(2) of the Public Health Service Act, [42 U.S.C. 247b], as amended, and the Patient Protection and Affordable Care Act (ACA), Section 4002 [42 U.S.C. 300u–11].

DATES: The effective date for this action is the date of publication of this Notice and remains in effect until the expiration of the project period of the ACA funded applications.

FOR FURTHER INFORMATION CONTACT: Annie Harrison-Camacho, Centers for Disease Control and Prevention, 2920 Brandywine Road, Atlanta, GA 30341, telephone (770) 488–2098, email *Annie.HarrisonCamacho@cdc.gov.*

SUPPLEMENTARY INFORMATION: On March 23, 2010, the President signed into law the Affordable Care Act (ACA), Public Law 111–148. The ACA is designed to improve and expand the scope of health care coverage for Americans. Cost savings through disease prevention is an important element of this legislation and the ACA has established a Prevention and Public Health Fund (PPHF) for this purpose. Specifically, the legislation states in Section 4002 that the PPHF is to ''provide for expanded and sustained national investment in prevention and public health programs to improve health and help restrain the rate of growth in private and public sector health care costs.'' The ACA and the Prevention and Public Health Fund make improving public health a priority with investments to improve public health.

The PPHF states that the Secretary shall transfer amounts in the Fund to accounts within the Department of Health and Human Services to increase funding, over the fiscal year 2008 level, for programs authorized by the Public Health Service Act, for prevention, wellness and public health activities including prevention research and health screenings, such as the Community Transformation Grant Program, the Education and Outreach Campaign for Preventative Benefits, and Immunization Programs.

The ACA legislation affords an important opportunity to advance public health across the lifespan and to improve public health by supporting the Tracking Network. This network builds on ongoing efforts within the public health and environmental sectors to improve health tracking, hazard monitoring and response capacity. Therefore, increasing funding available to applicants under this FOA using the PPHF will allow them to expand and sustain their existing tracking networks, utilize tracking data available on networks for potential public health assessments which is consistent with the purpose of the PPHF, as stated above, and to provide for an expanded and sustained national investment in prevention and public health programs. Further, the Secretary allocated funds to CDC, pursuant to the PPHF, for the types of activities this FOA is designed to carry out.

Dated: June 6, 2012.

Alan A. Kotch,

Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 2012–14688 Filed 6–14–12; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier CMS–10028]

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:* Extension of a currently approved collection; *Title of Information Collection:* State Health Insurance Assistance Program (SHIP) Client Contact Form, Public and Media Activity Report Form, and Resource Report Form. *Use:* Section 4360(f) of the Omnibus Budget Reconciliation Act (OBRA) 1990 requires the Secretary to provide a series of reports to the U.S. Congress on the performance of the program and its impact on beneficiaries and to obtain important informational feedback from beneficiaries. Further, in response to requirements of the Balanced Budget Act of 1997, CMS launched a comprehensive five-year campaign, the National Medicare Education Program (NMEP), to raise awareness among beneficiaries about their Medicare health plan options and help them assess the advantages and disadvantages each choice holds for them. The Medicare Modernization Act (MMA) of 2003 required State Health Insurance Assistance Programs (SHIPs) to be actively engaged in the implementation of the Medicare Prescription Drug Program (Part D). MIPPA legislation and Affordable Care Act legislation required SHIPs to provide enrollment assistance for the Limited Income Subsidy (LIS) and Medicare Savings Program (MSP). The goal is to ensure that beneficiaries are making an informed choice, regardless of whether they stay in Original Medicare or choose new options. CMS is responsible to Congress for demonstrating improvement over time in the level of awareness and understanding beneficiaries have about health plan options. The SHIPs are an integral component of this initiative.

The information collected is used to fulfill the reporting requirements described in Section 4360(f) of OBRA 1990. The data will be accumulated and analyzed to measure SHIP performance in order to determine whether and to what extent the SHIPs have met the goals of improved CMS customer service to beneficiaries and better understanding by beneficiaries of their health insurance options. Further, the information will be used in the administration of the grants, to measure performance and appropriate use of the funds by the state grantees, to identify gaps in services and technical support needed by SHIPs, and to identify and share best practices.

The overall burden of hours and expected number of respondents increase is based on projected future service growth and projected future increases in staffing to accommodate the increased demand to utilize the SHIP network to raise awareness about new CMS policies, outreach initiatives, or both. *Form Number:* CMS–10028 (OCN: 0938–0850); *Frequency:* Occasionally; *Affected Public:* State, Local, or Tribal Governments; *Number of Respondents:* 17,838; *Total Annual Responses:* 2,346,465. *Total Annual Hours:* 195,642. (For policy questions regarding this collection contact Letticia Ramsey at 410–786–5262. 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 August 14, 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 CMS–10434, Room C4–26–05, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: June 12, 2012.

Martique Jones,

Director, Regulations Development Group, Division B, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2012–14674 Filed 6–14–12; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS–10221, CMS–855I and CMS–855R]

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:* Reinstatement without change of a previously approved collection; *Title of Information Collection:* Worksheet for Recording Results of Medicare Site Visits of Independent Diagnostic Testing Facilities (IDTFs); *Use:* The worksheet (form) was developed, approved through the Office of Management and Budget and implemented to allow for CMS to have a standard format to collect and verify information regarding the compliance of independent diagnostic testing facilities (IDTFs) with the performance standards found in 42 CFR 410.33(g). This previously approved form was allowed to expire in error. CMS is now seeking re-instatement of the use of this form.

The worksheet is used to collect and record information obtained on IDTF site visits; the data collected during site

visits facilitates the verification of the accuracy and completeness of the information the IDTF furnished on its CMS–855B enrollment application. The worksheet is completed by CMS or its contractors. Some of the answers to the questions/data elements on the worksheet are verbally furnished by the IDTF during the site visit; *Form Number:* CMS–10221 (OCN 0938–1029); *Frequency:* Occasionally; *Affected Public:* Private Sector (Business or other for-profits); *Number of Respondents:* 2,000; *Total Annual Responses:* 2,000; *Total Annual Hours:* 4,000. (For policy questions regarding this collection contact Michael Collett at 410–786–6121. For all other issues call 410–786–1326.)

2. *Type of Information Collection Request:* Revision of a currently approved collection. *Title of Information Collection:* Medicare Enrollment Application for Physician and Non-Physician Practitioners. *Use:* Health care practitioners who wish to enroll in the Medicare program must complete the CMS 855I enrollment application. It is submitted at the time the applicant first requests a Medicare billing number. The application is used by the Medicare Administrative Contractor (MAC), to collect data to assure the applicant has the necessary professional and/or business credentials to provide the health care services for which they intend to bill Medicare including information that allows the MAC to correctly price, process and pay the applicant's claims. It also gathers information that allows the MAC to ensure that the practitioner is not sanctioned from the Medicare program, or debarred, suspended or excluded from any other Federal agency or program. *Form Number:* CMS–855I (OCN: 0938–0685). *Frequency:* Once and Occasionally. *Affected Public:* Private Sector (Business or other for-profit and not-for-profit institutions). *Number of Respondents:* 345,000. *Total Annual Responses:* 345,000. *Total Annual Hours:* 824,000. (For policy questions regarding this collection contact Kimberly McPhillips at 410–786–5374. For all other issues call 410–786–1326.)

3. *Type of Information Collection Request:* New collection. *Title of Information Collection:* Medicare Enrollment Application—Reassignment of Medicare Benefits. *Use:* Health care practitioners who wish to reassign their benefits in the Medicare program must complete the CMS 855R enrollment application. It is submitted at the time the physician or non-physician practitioner first requests reassignment of his/her Medicare benefits to a group practice, as well as any subsequent reassignments or terminations of established reassignments as requested by the physician or non-physician practitioner. The application is used by the Medicare Administrative Contractor (MAC) to collect data to assure the applicant has the necessary information that allows the MAC to correctly establish or terminate the reassignment. *Form Number:* CMS–855R (OCN: 0938–New). *Frequency:* Occasionally. *Affected Public:* Private Sector (Business or other for-profit and not-for-profit institutions). *Number of Respondents:* 100,000. *Total Annual Responses:* 100,000. *Total Annual Hours:* 50,000. (For policy questions regarding this collection contact Kimberly McPhillips at 410–786–5374. 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 July 16, 2012.

OMB, Office of Information and Regulatory Affairs, Attention: CMS Desk Officer, Fax Number: (202) 395–6974, Email: *OIRA_submission@omb.eop.gov.*

Dated: June 12, 2012.

Martique Jones,

Director, Regulations Development Group, Division B, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2012–14673 Filed 6–14–12; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2012–N–0593]

Agency Information Collection Activities; Proposed Collection; Comment Request; Eye Tracking Experimental Studies To Explore Consumer Use of Food Labeling Information and Consumer Response to Online Surveys

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the Agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal Agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information and to allow 60 days for public comment in response to the notice. This notice solicits comments on a study entitled ''Eye Tracking Experimental Studies to Explore Consumer Use of Food Labeling Information and Consumer Response to Online Surveys.''

DATES: Submit either electronic or written comments on the collection of information by August 14, 2012.

ADDRESSES: Submit electronic comments on the collection of information to *http://www.regulations.gov.* Submit written comments on the collection of information to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Domini Bean, Office of Information Management, Food and Drug Administration, 1350 Piccard Dr., PI50–400T, Rockville, MD 20850, *domini.bean@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal Agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes Agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party.

Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal Agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Eye Tracking Experimental Studies To Explore Consumer Use of Food Labeling Information and Consumer Response to Online Surveys—(OMB Control Number 0910—NEW)

I. Background

Eye tracking is a consumer research technique often used to determine where a person is looking while interacting with a visual display, such as a product package and elements of information on the package. The technique collects eye movement data, i.e., fixations and saccades (jumps of the eye), which may be superimposed on the display image to reveal: (1) Which parts of the display captured the viewer's attention; (2) the order and path in which visual elements were seen; and (3) the length of time they were viewed. These data provide detailed information on what individuals pay attention to on product packages, how long they spend looking at different package elements, and how visual attention may be related to their reaction to the images (Refs. 1–4, 7). Data from eye-tracking studies can also help improve questionnaire design. Different respondents may pay differing degrees of attention to the elements of a survey question or response options. Eye tracking data can help to identify the need and strategies for improving the design (Refs. 5 and 6). Finally, eye tracking data can provide information on the decision strategies that individuals use under different levels of time pressure, which can help reveal the influence of time on busy individuals' food choices (Refs. 4 and 7).

As a public health agency, the FDA helps consumers make informed dietary decisions by regulating nutrition information on food labels, among other activities. An understanding of how visual elements (e.g., labeling statements such as claims, disclosure statements, logos, and Nutrition Facts label) influence consumers' perceptions and choices of products can assist the Agency in developing labeling information to help consumers make informed dietary decisions. In addition, FDA uses self-administered questionnaires in online experimental studies to assess consumer reactions to nutrition information on food packages. An understanding of how respondents react to survey materials that are presented visually will enhance the Agency's ability in collecting better consumer data to help it fulfill its missions.

The proposed data collection will use eye tracking research to examine consumers' eye movements to achieve three goals: (1) To better understand consumer reaction to specific food labeling information; (2) to better understand survey respondent reaction to specific survey questions related to nutrition and health; and (3) to better understand how time pressure influences the priority and quality of decision making and survey response. In order to observe consumers' eye movement in different types of settings, we propose to conduct two separate studies, one in each of two different settings. Study 1 is a laboratory study that will ask participants to view on a computer screen mockups of food labels and perform tasks as well as answer other survey questions. Study 2 is an in-store study that will record eye movement data from grocery shoppers while they shop for preselected product categories. The studies will use two different survey instruments. Study participants will come from two separate convenience samples.

A. Study 1 (Laboratory Study)

Study 1 is a controlled randomized experiment. It has two objectives. The first objective is to collect data on how consumers view and process label information. The data will be used to test the hypothesis that one or more label and information characteristics will cause variations in viewing and processing. Examples of these characteristics include: (1) The presence or absence of a specific component (e.g., a nutrition symbol); (2) the presence or absence of other labeling components on the panel (e.g., a ''Rich in Antioxidant Vitamins'' statement); (3) the degree of clutter on the panel (e.g., the number and prominence of pictorial images); (4) the relevance or irrelevance of the component (e.g., a ''cholesterol-free'' statement on a savory snack product versus the same statement on a vegetable oil product); and (5) the featured nutrient or health benefit (e.g., ''helps protect immune system'' versus ''supports a healthy cardiovascular system'').

Label images will be created to allow the study to focus on consumer reaction to specific components of information on a food label. All images will be mockups resembling food labels that may be found in the marketplace but without any real or fictitious brand name.

The second objective of Study 1 is to examine how time pressure affects information processing. The data will be used to test the hypothesis that time pressure will cause variations in participant reactions (notice, attention, use, perception, and intention) to information. To test this hypothesis, the study will expose participants to 5 randomly assigned time conditions, such as 5 seconds per question versus 10 seconds per question.

The study will also include certain questions selected from previous online research sponsored by the Agency in order to examine which part(s) of a question or which response options participants notice and pay attention to when they are asked to answer a question. Time conditions may also be applied to this part of the study to test the hypothesis that time pressure will cause variations in viewing patterns, response strategies, and quality of response.

In the study, we plan to collect data from 200 participants using a 15-minute computer-assisted self-administered questionnaire and a 5-minute debriefing questionnaire. Forty interviews are planned for each of 5 locations across the contiguous 48 States. Participants will be recruited from residents at each location, and the study will aim to have a reasonable degree of diversity in participant gender, age, and education. On a computer screen, participants will first view a series of label images and answer questions about their perceptions and behavioral intention in response to the label that they see. Then participants will view a set of previously administered survey questions and provide answers to the questions they see. Each participant will be randomly assigned to an experimental condition that differs

primarily in label components and time limit. To help understand the data, the study will also collect information on each participant's background, such as health status, label reading behavior, and dietary preferences.

B. Study 2 (In-Store Study)

In Study 2, we plan to collect observations of what information grocery shoppers notice and pay attention to while they do their shopping in the store. The study will gather eye-movement data to provide an indepth understanding of subconscious and conscious factors that influence food purchases. Specifically, the study will explore the role that the Principal Display Panel and other label information and components play in purchase decisions. The data will be used to test hypotheses such as whether product familiarity or personal needs will cause variations in information seeking and whether design elements (e.g., prominence, text vs. graphics) will cause variations in information seeking. To keep the study within a manageable scope, only shoppers who plan to shop for one or more of preselected product categories will be eligible to participate. Other than product categories, however, participants will not be restricted to which products they examine, what label information they view, or how much time they spend in completing any part of the study. To help understand the data, the study will also collect information on each participant's background, such as health status and shopping practices. Study 2 plans to collect data from 60 participants who will each spend an average of 45 minutes in the study, including a practice session, the shopping trip, and a debriefing. The study will be conducted in two different locations. Participants will be recruited at storefronts.

Both the laboratory study (Study 1) and the in-store study (Study 2) are part of the Agency's continuing effort to enable consumers to make informed dietary choices. The Agency will use the studies to assess consumer attention to and use of various pieces of information on food packages and the information's influence on product perceptions and choices. The assessment will provide the Agency background information to help identify and develop more effective labeling information and education in the future. In addition, the Agency will use Study 1 to assess consumer behaviors when they are asked to respond to a sample of questions used in the Agency's consumer research. The assessment will help enhance FDA's ability to conduct research that provides useful information. Wherever possible, the Agency will also attempt to compare findings from the two studies to assess how much results observed in the laboratory reflect actual behaviors in the market. For example, do laboratory and in-store participants pay attention to different labeling elements when they make a shopping choice? The results of the studies will neither be used to develop population estimates nor be directly used to inform policy.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN[1]

Activity	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
Laboratory Pretest Invitation	30	1	30	.033 (2 minutes)	1
Laboratory Pretest	15	1	15	1	15
Laboratory Study Invitation	500	1	500	0.033 (2 minutes)	17
Laboratory Study	200	1	200	0.333 (20 minutes)	67
In-store Study Invitation	300	1	300	0.083 (5 minutes)	25
In-store Study	60	1	60	0.75 (45 minutes)	45
Total					170

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

II. References

The following references are on display in the Division of Dockets Management (see **ADDRESSES**) and may be seen between 9 a.m. and 4 p.m., Monday through Friday.

1. Jones, G. and M. Richardson. An Objective Examination of Consumer Perception of Nutrition Information Based on Healthiness Ratings and Eye Movements. *Public Health Nutrition* 10: 238–244, 2007.
2. Bialkova, S. and H.C.M. van Trijp. What Determines Consumer Attention to Nutrition Labels? *Food Quality and Preference* 21: 1042–1051, 2010.
3. van Herpen, E. and H.C.M. van Trijp. Front-of-Pack Nutrition Labels, Their Effect on Attention and Choices When Consumers Have Varying Goals and Time Constraints. *Appetite* 57: 148–160, 2011.
4. Fox, R.J., D.M. Krugman, J.E. Fletcher, and P.M. Fischer. Adolescents' Attention to Beer and Cigarette Print Ads and Associated Product Warnings. *Journal of Advertising* 27: 57–68, 1998.
5. Galesic, M., R. Tourangeau, M.P. Couper, and F.G. Conrad. Eye-Tracking Data: New Insights on Response Order Effects and Other Cognitive Shortcuts in Survey Responding. *Public Opinion Quarterly* 72: 892–913, 2008.
6. Graesser, A.C., Z. Cai, M.M. Louwerse, and F. Daniel. Question Understanding Aid (QUAID): A Web Facility That Tests Question Comprehensibility. *Public Opinion Quarterly* 70: 3–22, 2006
7. Reutskaja, E., R. Nagel, C.F. Camerer, and A. Rangel. Search Dynamics in Consumer Choice under Time Pressure: An Eye-Tracking Study. *American Economic Review* 101: 900–926, 2011.

Dated: June 11, 2012.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2012–14631 Filed 6–14–12; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2012–N–0528]

Determination That PARAPLATIN (Carboplatin) Injection and SUSTIVA (Efavirenz) Capsules Were Not Withdrawn From Sale for Reasons of Safety or Effectiveness

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined that the two drug products listed in this document were not withdrawn from sale for reasons of safety or effectiveness. This determination means that FDA will not begin procedures to withdraw approval of abbreviated new

drug applications (ANDAs) that refer to the drug products, and it will allow FDA to continue to approve ANDAs that refer to the products as long as they meet relevant legal and regulatory requirements.

FOR FURTHER INFORMATION CONTACT: Mark Geanacopoulos, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6206, Silver Spring, MD 20993–0002, 301–796–6925.

SUPPLEMENTARY INFORMATION: In 1984, Congress enacted the Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) (the 1984 amendments), which authorized the approval of duplicate versions of drug products approved under an ANDA procedure. ANDA sponsors must, with certain exceptions, show that the drug for which they are seeking approval contains the same active ingredient in the same strength and dosage form as the ''listed drug,'' which is a version of the drug that was previously approved. Sponsors of ANDAs do not have to repeat the extensive clinical testing otherwise necessary to gain approval of a new drug application (NDA). The only clinical data required in an ANDA are data to show that the drug that is the subject of the ANDA is bioequivalent to the listed drug.

The 1984 amendments include what is now section 505(j)(7) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(j)(7)), which requires FDA to publish a list of all approved drugs. FDA publishes this list as part of the ''Approved Drug Products With Therapeutic Equivalence Evaluations,'' which is generally known as the ''Orange Book.'' Under FDA regulations, drugs are removed from the list if the Agency withdraws or suspends approval of the drug's NDA or ANDA for reasons of safety or effectiveness, or if FDA determines that the listed drug was withdrawn from sale for reasons of safety or effectiveness (21 CFR 314.162).

Under § 314.161(a) (21 CFR 314.161(a)), the Agency must determine whether a listed drug was withdrawn from sale for reasons of safety or effectiveness: (1) Before an ANDA that refers to that listed drug may be approved; (2) whenever a listed drug is voluntarily withdrawn from sale and ANDAs that refer to the listed drug have been approved; and (3) when a person petitions for such a determination under 21 CFR 10.25(a) and 10.30. Section 314.161(d) provides that if FDA determines that a listed drug was removed from sale for safety or effectiveness reasons, the Agency will initiate proceedings that could result in the withdrawal of approval of the ANDAs that refer to the listed drug.

FDA has become aware that the drug products listed in table 1 of this document are no longer being marketed.

TABLE 1—DRUG PRODUCTS NO LONGER BEING MARKETED

Application No.	Drug	Applicant
NDA 20–972	SUSTIVA (efavirenz) Capsule, 100 milligrams (mg)	Bristol Myers Squibb.
NDA 20–452	PARAPLATIN (carboplatin) Injection, 50 mg, 150 mg, 450 mg, and 600 mg	Do.

FDA has reviewed its records and, under § 314.161, has determined that the drug products listed in this document were not withdrawn from sale for reasons of safety or effectiveness. Accordingly, the Agency will continue to list the drug products listed in this document in the ''Discontinued Drug Product List'' section of the Orange Book. The ''Discontinued Drug Product List'' identifies, among other items, drug products that have been discontinued from marketing for reasons other than safety or effectiveness.

Approved ANDAs that refer to the NDAs listed in this document are unaffected by the discontinued marketing of the products subject to those NDAs. Additional ANDAs for the products may also be approved by the Agency if they comply with relevant legal and regulatory requirements. If FDA determines that labeling for these drug products should be revised to meet current standards, the Agency will advise ANDA applicants to submit such labeling.

Dated: June 11, 2012.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2012–14633 Filed 6–14–12; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2012–D–0544]

Guidance for Industry on Toll-Free Number Labeling and Related Requirements for Over-the-Counter and Prescription Drugs Marketed With Approved Applications; Small Entity Compliance Guide; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a guidance for small business entities entitled ''Toll-Free Number Labeling and Related Requirements for Over-the-Counter and Prescription Drugs Marketed With Approved Applications; Small Entity Compliance Guide.'' This guidance is intended to help small businesses understand and comply with the requirements of the final rule regarding labeling of drugs with a toll-free number for adverse event reporting, which was published in the **Federal Register** on October 28, 2008 (final rule). The guidance describes certain requirements of the final rule in plain language and provides answers to common questions on how to comply with the rule. FDA prepared this guidance in accordance with the Small Business Regulatory Fairness Act.

DATES: Submit either electronic or written comments on Agency guidances at any time.

ADDRESSES: Submit written requests for single copies of this guidance to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 2201, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

Submit electronic comments on the guidance to *http://www.regulations.gov.* Submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Alisea Crowley, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 5196, Silver Spring, MD 20993–0002, 301–796–3110.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a guidance for small business entities entitled ''Toll-Free Number Labeling and Related Requirements for Over-the-Counter and Prescription Drugs Marketed With Approved Applications; Small Entity Compliance Guide.''

This guidance summarizes the final rule published in the **Federal Register** of October 28, 2008 (73 FR 63886), which requires the labeling of each human drug product for which an application is approved under section 505 of the Federal Food, Drug, and Cosmetic Act (FD&C Act) to include: (1) The toll-free number maintained by FDA for the purpose of receiving reports of adverse events regarding drugs and (2) a statement that the number is to be used for reporting purposes only, and not to receive medical advice. The final rule requires that the toll-free number and reporting information be:

- Included in all FDA-approved Medication Guides for products approved under section 505,
- Provided to patients by authorized dispensers or pharmacies with each prescription drug product approved under section 505, and
- Included in the labeling of certain over-the-counter drugs approved under section 505.

FDA has previously issued a guidance for industry entitled ''Medication Guides—Adding a Toll-Free Number for Reporting Adverse Events'' (June 2009) to assist new drug application holders with revising FDA-approved Medication Guides to comply with the first of these requirements. This guidance is intended to assist small businesses and others with implementing the two other requirements in the final rule: Distribution of the toll-free number information to patients with each prescription (or refill) and adding the toll-free number information to the labeling of certain OTC drugs.

FDA is issuing this small entity compliance guide as level 2 guidance consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidance represents the Agency's current thinking on side effects statement requirements as set forth in the final rule. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

II. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) either electronic or written comments regarding this document. It is only necessary to send one set of comments. It is no longer necessary to send two copies of mailed comments. Identify comments with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

III. Electronic Access

Persons with access to the Internet may obtain the document at either *http://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/default.htm* or *http://www.regulations.gov.*

Dated: June 11, 2012.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2012–14632 Filed 6–14–12; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; 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 materials, 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 Neurological Disorders and Stroke Special Emphasis Panel; Center Core Grants.

Date: June 28, 2012.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Churchill Hotel, 1914 Connecticut Avenue NW., Washington, DC 20009.

Contact Person: Richard D. Crosland, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Research, NINDS/NIH, NSC, 6001 Executive Blvd., Suite 3208, MSC 9529, Bethesda, MD 20892, 301–594–0635, *Rc218u@nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing and limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS)

Dated: June 8, 2012.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–14605 Filed 6–14–12; 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: AIDS and Related Research Integrated Review Group; AIDS-associated Opportunistic Infections and Cancer Study Section.

Date: July 10, 2012.

Time: 10:00 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.

Contact Person: Eduardo A Montalvo, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5108, MSC 7852, Bethesda, MD 20892, (301) 435–1168, *montalve@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Oral Biology and Craniofacial Development.

Date: July 10, 2012.

Time: 1:00 p.m. to 3:00 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: Rajiv Kumar, Ph.D., Chief, MOSS IRG, Center for Scientific Review,

National Institutes of Health, 6701 Rockledge Drive, Room 4216, MSC 7802, Bethesda, MD 20892, 301–435–1212, *kumarra@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Fellowship: Cell Biology and Development.

Date: July 11–16, 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.

Contact Person: Kenneth Ryan, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3218, MSC 7717, Bethesda, MD 20892, 301–435–1789, *kenneth.ryan@nih.hhs.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: June 8, 2012,

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–14606 Filed 6–14–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Dental and Craniofacial Research; 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 Dental and Craniofacial Research Special Emphasis Panel.

Date: July 11, 2012.

Time: 10:00 a.m. to 12:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, One Democracy Plaza, 6701 Democracy Boulevard, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Victor Henriquez, PhD., Scientific Review Officer, DEA/SRB/NIDCR, 6701 Democracy Blvd., Room 668, Bethesda, MD 20892–4878, 301–451–2405, *henriquv@nidcr.nih.gov*.

Name of Committee: National Institute of Dental and Craniofacial Research Special Emphasis Panel.

Date: July 11, 2012.

Time: 1:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, One Democracy Plaza, 6701 Democracy Boulevard, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Victor Henriquez, PhD., Scientific Review Officer, DEA/SRB/NIDCR, 6701 Democracy Blvd., Room 668, Bethesda, MD 20892–4878, 301–451–2405, *henriquv@nidcr.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.121, Oral Diseases and Disorders Research, National Institutes of Health, HHS)

Dated: June 8, 2012.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–14608 Filed 6–14–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Dental and Craniofacial Research; 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 Dental and Craniofacial Research Special Emphasis Panel; NIDCR Clinical Trial Planning Grant (R34) and Cooperative Agreement (U01).

Date: July 26, 2012.

Time: 10:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: 6701 Democracy Blvd./RM 602, 6701 Democracy Blvd., Bethesda, MD 20892.

Contact Person: Raj K. Krishnaraju, Ph.D., MS, Scientific Review Officer, Scientific Review Branch, National Inst of Dental & Craniofacial Research, National Institutes of Health, 45 Center Dr., Rm 4AN 32J, Bethesda, MD 20892, 301–594–4864, *kkrishna@nidcr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.121, Oral Diseases and Disorders Research, National Institutes of Health, HHS)

Dated: June 8, 2012.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–14610 Filed 6–14–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Arthritis and Musculoskeletal and Skin Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Arthritis and Musculoskeletal and Skin Diseases Initial Review Group; Arthritis and Musculoskeletal and Skin Diseases Clinical Trials Review Committee.

Date: July 18, 2012.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Washington/Rockville, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Charles H Washabaugh, Ph.D., Scientific Review Officer, Scientific Review Branch, National Institute of Arthritis, Musculoskeletal and Skin Diseases, National Institutes of Heath, 6701 Democracy Blvd., Room 824, MSC 4872, Bethesda, MD 20817, (301) 496–9568, *washabac@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.846, Arthritis, Musculoskeletal and Skin Diseases Research, National Institutes of Health, HHS)

Dated: June 8, 2012.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–14706 Filed 6–14–12; 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; Review of T32 Applications.

Date: July 12, 2012.

Time: 2:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Room 3An12A, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Mona R. Trempe, Ph.D., Scientific Review Officer, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, 45 Center Drive, Room 3An12, Bethesda, MD 20892, 301–594–3998, *trempemo@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives, National Institutes of Health, HHS).

Dated: June 11, 2012.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–14700 Filed 6–14–12; 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 Initial Review Group; Minority Programs Review Subcommittee B.

Date: July 9, 2012.

Time: 8:30 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency-Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Rebecca H. Johnson, Ph.D., Scientific Review Officer, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, Natcher Building, Room 3AN18C, Bethesda, MD 20892, 301–594–2771, *johnsonrh@nigms.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives, National Institutes of Health, HHS)

Dated: June 11, 2012.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–14699 Filed 6–14–12; 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; Review of R01 Grant Applications.

Date: July 9, 2012.

Time: 8:30 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Garden Inn Washington DC/Bethesda, 7301 Waverly Street, Bethesda, MD 20814.

Contact Person: Saraswathy Seetharam, Ph.D., Scientific Review Officer, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, 45 Center Drive, Room 3An.12C, Bethesda, MD 20892–6200, 301–594–2763, *seetharams@nigms.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives, National Institutes of Health, HHS)

Dated: June 11, 2012.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–14697 Filed 6–14–12; 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; MBRS SCORE.

Date: July 9, 2012.

Time: 11:00 a.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Room 3An12F, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Helen R. Sunshine, Ph.D., Chief, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, 45 Center Drive, Room 3An12F, Bethesda, MD 20892, 301–594–2881, *sunshinh@nigms.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives, National Institutes of Health, HHS)

Dated: June 11, 2012.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–14694 Filed 6–14–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Deafness and Other Communication Disorders; 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 on Deafness and Other Communication Disorders Special Emphasis Panel; Investigator Initiated R01 Review.

Date: July 9, 2012.

Time: 11:00 a.m. to 12:15 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6120 Executive Blvd., Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Shiguang Yang, DVM, Ph.D., Scientific Review Officer, Division of Extramural Activities, NIDCD, NIH, 6120 Executive Blvd., Bethesda, MD 20892, 301–496–8683.

Name of Committee: National Institute on Deafness and Other Communication Disorders Special Emphasis Panel; Clinical Trial Review.

Date: July 11, 2012.

Time: 11:00 a.m. to 12:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6120 Executive Blvd., Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Shiguang Yang, DVM, Ph.D., Scientific Review Officer, Division of Extramural Activities, NIDCD, NIH, 6120 Executive Blvd., Bethesda, MD 20892, 301–496–8683.

(Catalogue of Federal Domestic Assistance Program Nos. 93.173, Biological Research Related to Deafness and Communicative Disorders, National Institutes of Health, HHS)

Dated: June 11, 2012.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–14691 Filed 6–14–12; 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 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: AIDS and Related Research Integrated Review Group; AIDS Discovery and Development of Therapeutics Study Section.

Date: July 10, 2012.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: The St. Regis Washington, DC, 923 16th Street NW., Washington, DC 20006.

Contact Person: Shiv A Prasad, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5220, MSC 7852, Bethesda, MD 20892, 301–443–5779, *prasads@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: June 11, 2012.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–14685 Filed 6–14–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Dental and Craniofacial Research; 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 Dental and Craniofacial Research Special Emphasis Panel; Molecular Characterization of Salivary Tumors RFA: R01 and R21 Review.

Date: June 27, 2012.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Washington/Rockville, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Jayalakshmi Raman, Ph.D., Scientific Review Officer, Scientific Review Branch, National Institute of Dental and Craniofacial Research, One Democracy Plaza, Room 670, Bethesda, MD 20892–4878, 301–594–2904, *ramanj@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.121, Oral Diseases and Disorders Research, National Institutes of Health, HHS)

Dated: June 8, 2012.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–14611 Filed 6–14–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Human Genome Research Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Inherited Disease Research Access Committee.

Date: July 12, 2012.

Time: 11:30 a.m. to 2:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 5635 Fishers Lane, Suite 4076, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Camilla E. Day, Ph.D., Scientific Review Officer, CIDR, National Human Genome Research Institute, National Institutes of Health, 5635 Fishers Lane, Suite 4075, Bethesda, MD 20892, 301–402–8837, *camilla.day@nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.172, Human Genome Research, National Institutes of Health, HHS)

Dated: June 8, 2012.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–14609 Filed 6–14–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Nursing Research; 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 Nursing Research Special Emphasis Panel; Early Detection and Prevention of Mild Cognitive Impairment.

Date: July 11, 2012.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott Suites, 6711 Democracy Boulevard, Bethesda, MD 20817.

Contact Person: Tamizchelvi Thyagarajan, Ph.D., Scientific Review Officer, National Institute of Nursing Research, National Institutes of Health, Bethesda, MD 20892, (301) 594–0343, *tamizchelvi.thyagarajan@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.361, Nursing Research, National Institutes of Health, HHS)

Dated: June 8, 2012.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–14607 Filed 6–14–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

Agency Information Collection Activities: Form I–829, Extension of an Existing Information Collection Request; Comment Request; Correction

ACTION: 30-Day Notice of Information Collection Under Review: Form I–829, Petition by Entrepreneur to Remove Conditions.

On June 7, 2012, the Department of Homeland Security (DHS), U.S. Citizenship and Immigration Services (USCIS) published an information collection notice in the **Federal Register** at 77 FR 33758 by error due to an incorrect submission. This document corrects and replaces the document that erroneously published on June 7, 2012, at 77 FR 33758.

DHS, USCIS will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act (PRA) of 1995. The information collection notice was previously published in the **Federal Register** on March 13, 2012, at 77 FR 14817, allowing for a 60-day public comment period. USCIS received two comments and acknowledges receipt of the comments in the supporting statement (item 8) posted at *www.Regulations.gov*.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until July 16, 2012. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to DHS, and to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), USCIS Desk Officer. Comments may be submitted to: Chief, Regulatory Coordination Division, Office of Policy and Strategy, USCIS, 20 Massachusetts Avenue NW., Washington, DC 20529–2020. Comments may also be submitted to DHS via email at *USCISFRComment@dhs.gov* or via the Federal eRulemaking Portal Web site at *http://www.Regulations.gov* under e-Docket number USCIS–2006–0009, and to the OMB USCIS Desk Officer via facsimile at 202–395–5806 or via *oira_submission@omb.eop.gov*. When submitting comments by email please make sure to add OMB Control Number 1615–0045 in the subject box.

Note: The address listed in this notice should only be used to submit comments concerning the extension of this information collection. Please do not submit requests for individual case status inquiries to this address. If you are seeking information about the status of your individual case, please check ''My Case Status'' online at: *https://egov.uscis.gov/cris/Dashboard.do*, or call the USCIS National Customer Service Center at 1–800–375–5283 (TTY 1–800–767–1833).

Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques, or

other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of an existing information collection.

(2) *Title of the Form/Collection:* Petition by Entrepreneur to Remove Conditions.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form I–829. U.S. Citizenship and Immigration Services.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals and households. This form is used by a conditional resident alien entrepreneur who obtained such status through a qualifying investment, to apply to remove conditions on his or her conditional residence, and on the conditional residence for his or her spouse and children.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 1,500 responses at 1.08 hours (65 minutes) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 1,620 annual burden hours.

If you need a copy of this information collection instrument, please visit the Federal eRulemaking Portal Web site at *http://www.Regulations.gov*. If additional information is required contact: USCIS, Regulatory Coordination Division, Office of Policy and Strategy, 20 Massachusetts Avenue NW., Washington, DC 20529–2020, telephone (202) 272–8377.

Dated: June 12, 2012.

Laura Dawkins,

Chief, Regulatory Coordination Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. 2012–14637 Filed 6–14–12; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Agency Information Collection Activities: User Fees

AGENCY: U.S. Customs and Border Protection (CBP), Department of Homeland Security.

ACTION: 60-Day Notice and request for comments; Extension of an existing collection of information.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, CBP invites the general public and other Federal agencies to comment on an information collection requirement concerning User Fees. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13).

DATES: Written comments should be received on or before August 14, 2012, to be assured of consideration.

ADDRESSES: Direct all written comments to U.S. Customs and Border Protection, Attn: Tracey Denning, Regulations and Rulings, Office of International Trade, 799 9th Street NW., 5th Floor, Washington, DC 20229–1177.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Tracey Denning, U.S. Customs and Border Protection, Regulations and Rulings, Office of International Trade, 799 9th Street NW., 5th Floor, Washington, DC 20229–1177, at 202–325–0265.

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3505(c)(2)). The comments should address: (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 estimates 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 including the use of automated collection techniques or the use of other forms of information technology; and (e) the annual costs burden to respondents or record keepers from the collection of information (a total capital/startup costs and operations and maintenance costs). The comments that are submitted will be summarized and included in the CBP request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document CBP is soliciting comments concerning the following information collection:

Title: User Fees.

OMB Number: 1651–0052.

Form Number: CBP Forms 339A, 339C and 339V.

Abstract: The Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA—Pub. L. 99–272; 19 U.S.C. 58c) authorizes the collection of user fees by CBP. The collection of these fees requires submission of information from the party remitting the fees to CBP. This information is submitted on three forms including the CBP Form 339A for aircraft at *http://forms.cbp.gov/pdf/cbp_form_339a.pdf;* CBP Form 339C for commercial vehicles at *http://forms.cbp.gov/pdf/cbp_form_339c.pdf;* and CBP Form 339V for vessels at *http://forms.cbp.gov/pdf/cbp_form_339v.pdf*. The information on these forms may also be filed electronically at *https://dtops.cbp.dhs.gov/*. This collection of information is provided for by 19 CFR 24.22.

In addition, CBP requires express consignment courier facilities (ECCFs) to file lists of couriers using the facility in accordance with 19 CFR 128.11. ECCFs are also required to file a quarterly report in accordance with 19 CFR 24.23(b)(4).

Current Actions: This submission is being made to extend the expiration date with a change to the burden hours to allow for a change in the number of ECCF's.

Type of Review: Extension (with change).

Affected Public: Businesses.

CBP Form 339A—Aircraft

Estimated Number of Respondents: 15,000.

Estimated Number of Annual Responses: 15,000.

Estimated Time per Response: 16 minutes.

Estimated Total Annual Burden Hours: 4,005.

CBP Form 339C—Vehicles

Estimated Number of Respondents: 50,000.

Estimated Number of Annual Responses: 50,000.

Estimated Time per Response: 20 minutes.

Estimated Total Annual Burden Hours: 16,500.

CBP Form 339V—Vessels

Estimated Number of Respondents: 10,000.

Estimated Number of Annual Responses: 10,000.

Estimated Time per Response: 16 minutes.

Estimated Total Annual Burden Hours: 2,670.

ECCF Quarterly Report

Estimated Number of Respondents: 18.

Estimated Number of Annual Responses: 72.

Estimated Time per Response: 2 hours.

Estimated Total Annual Burden Hours: 144.

ECCF Application and List of Couriers

Estimated Number of Respondents: 3.

Estimated Number of Annual Responses: 12.

Estimated Time per Response: 30 minutes.

Estimated Total Annual Burden Hours: 6.

Dated: June 12, 2012.

Tracey Denning,

Agency Clearance Officer, U.S. Customs and Border Protection.

[FR Doc. 2012–14682 Filed 6–14–12; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Agency Information Collection Activities: Cargo Container and Road Vehicle Certification for Transport Under Customs Seal

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: 30-Day notice and request for comments; Extension of an existing information collection.

SUMMARY: U.S. Customs and Border Protection (CBP) of the Department of Homeland Security will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act: Cargo Container and Road Vehicle for Transport under Customs Seal. This is a proposed extension of an information collection that was previously approved. CBP is proposing that this information collection be extended with no change to the burden hours. This document is published to obtain comments from the public and affected agencies. This information collection was previously published in the **Federal Register** (77 FR 21577) on April 10, 2012, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.10.

DATES: Written comments should be received on or before July 16, 2012.

ADDRESSES: Interested persons are invited to submit written comments on this information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the OMB Desk Officer for U.S. Customs and Border Protection, Department of Homeland Security, and sent via electronic mail to *oira_submission@omb.eop.gov* or faxed to (202) 395–5806.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Tracey Denning, U.S. Customs and Border Protection, Regulations and Rulings, Office of International Trade, 799 9th Street NW., 5th Floor, Washington, DC. 20229–1177, at 202–325–0265.

SUPPLEMENTARY INFORMATION: CBP invites the general public and affected Federal agencies to submit written comments and suggestions on proposed and/or continuing information collection requests pursuant to the Paperwork Reduction Act (Pub. L.104–13). Your comments should address one of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency/component, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies/components estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collections of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological techniques or other forms of information.

Title: Cargo Container and Road Vehicle for Transport under Customs Seal.

OMB Number: 1651–0124.

Form Number: None.

Abstract: The United States is a signatory to several international Customs conventions and is responsible for specifying the technical requirements that containers and road vehicles must meet to be acceptable for transport under Customs seal. Customs and Border Protection (CBP) has the responsibility of collecting information for the purpose of certifying containers and vehicles for international transport under Customs seal. A certification of compliance facilitates the movement of containers and road vehicles across international territories. The procedures for obtaining a certification of a container or vehicle are set forth in 19 CFR part 115.

Action: CBP proposes to extend the expiration date of this information collection with no change to the burden hours or to the information collected.

Type of Review: Extension (without change).

Affected Public: Businesses.

Estimated Number of Respondents: 25.

Estimated Number of Annual Responses per Respondent: 120.

Estimated Time per Response: 3.5 hours.

Estimated Total Annual Burden Hours: 10,500.

Dated: June 12, 2012.

Tracey Denning,

Agency Clearance Officer, U.S. Customs and Border Protection.

[FR Doc. 2012–14683 Filed 6–14–12; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5601–N–23]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for use to assist the homeless.

FOR FURTHER INFORMATION CONTACT: Juanita Perry, Department of Housing and Urban Development, 451 Seventh Street SW., Room 7266, Washington, DC 20410; telephone (202) 708–1234; TTY number for the hearing- and speech-impaired (202) 708–2565 (these telephone numbers are not toll-free), or call the toll-free Title V information line at 800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with 24 CFR part 581 and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this Notice to identify Federal buildings and other real property that HUD has reviewed for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property. This Notice is also

published in order to comply with the December 12, 1988 Court Order in *National Coalition for the Homeless* v. *Veterans Administration,* No. 88–2503–OG (D.D.C.).

Properties reviewed are listed in this Notice according to the following categories: Suitable/available, suitable/unavailable, suitable/to be excess, and unsuitable. The properties listed in the three suitable categories have been reviewed by the landholding agencies, and each agency has transmitted to HUD: (1) Its intention to make the property available for use to assist the homeless, (2) its intention to declare the property excess to the agency's needs, or (3) a statement of the reasons that the property cannot be declared excess or made available for use as facilities to assist the homeless.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days from the date of this Notice. Where property is described as for ''off-site use only'' recipients of the property will be required to relocate the building to their own site at their own expense. Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to Theresa Ritta, Division of Property Management, Program Support Center, HHS, room 5B–17, 5600 Fishers Lane, Rockville, MD 20857; (301) 443–2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 24 CFR part 581.

For properties listed as suitable/to be excess, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law, subject to screening for other Federal use. At the appropriate time, HUD will publish the property in a Notice showing it as either suitable/available or suitable/unavailable.

For properties listed as suitable/unavailable, the landholding agency has decided that the property cannot be declared excess or made available for use to assist the homeless, and the property will not be available.

Properties listed as unsuitable will not be made available for any other purpose for 20 days from the date of this Notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll free information line at 1–800–927–7588 for detailed instructions or write a letter to Mark Johnston at the address listed at the beginning of this Notice. Included in the request for review should be the property address (including zip code), the date of publication in the **Federal Register**, the landholding agency, and the property number.

For more information regarding particular properties identified in this Notice (i.e., acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: *Coast Guard:* Commandant, United States Coast Guard, Attn: Jennifer Stomber, 2100 Second St. SW., Stop 7901, Washington, DC 20593–0001; (202) 475–5609; *GSA:* Mr. John E.B. Smith, General Services Administration, Office of Real Property Utilization and Disposal, 1800 F Street NW., Room 7040 Washington, DC 20405; *Interior:* Mr. Michael Wright, Acquisition & Property Management, Department of the Interior, 1801 Pennsylvania Ave. NW., 4th Floor, Washington, DC 20006: (202) 208–5399 *Navy:* Mr. Steve Matteo, Department of the Navy, Asset Management Division, Naval Facilities Engineering Command, Washington Navy Yard, 1330 Patterson Ave. SW., Suite 1000, Washington, DC 20374; (202)685–9426 (202)501–0084; (This is not a toll-free number).

Dated: June 7, 2012.

Ann Marie Oliva,

Deputy Assistant Secretary for Special Needs (Acting).

TITLE V, FEDERAL SURPLUS PROPERTY PROGRAM FEDERAL REGISTER REPORT FOR 06/15/2012

Suitable/Available Properties

Building

Arkansas

Sulphur Rock Radio Station
N. Main Street
Sulphur Rock AR 72579
Landholding Agency: GSA
Property Number: 54201220008
Status: Excess
GSA Number: 7–B–AR–576–AA
Comments: building #1: 152 sf.; building #2:59 sf; radio tower

New York

Housing Unit
154 Lighthouse Dr.
Saugerties NY 23477
Landholding Agency: Coast Guard
Property Number: 88201220002
Status: Unutilized
Comments: off-site removal only; 1,610 sf.; housing; exposed to extensive flooding; severe mold issues; extensive repairs needed; secured area; prior approval needed to access property

Land

Louisiana

Almonaster
4300 Almonaster Ave.
New Orleans LA 70126
Landholding Agency: GSA
Property Number: 54201110014
Status: Surplus
GSA Number: 7–D–LA–0576
Comments: 9.215 acres

Suitable/Unavailable Properties

Building

Arkansas

99 Shore Court Structure
99 Shore Court
Hot Springs AR 71901
Landholding Agency: GSA
Property Number: 54201140010
Status: Surplus
GSA Number: 7–I–AR–0415–13
Comments: off-site removal only; 1,845 sq. ft.; current use: residential

132 Clubb Street Structure
132 Clubb Street
Hot Springs AR 71901
Landholding Agency: GSA
Property Number: 54201140014
Status: Surplus
GSA Number: 7–I–AR–0415–14
Comments: off-site removal only; 1,090 sq. ft.; current use: residential

California

Defense Fuel Support Pt.
Estero Bay Facility
Morro Bay CA 93442
Landholding Agency: GSA
Property Number: 54200810001
Status: Surplus
GSA Number: 9–N–CA–1606
Comments: former 10-acre fuel tank farm w/ associated bldgs/pipelines/equipment, possible asbestos/PCBs

District of Columbia

West Heating Plant
1051 29th St. NW
Washington DC 20007
Landholding Agency: GSA
Property Number: 54201140006
Status: Surplus
GSA Number: DC–497–1
Comments: REDETERMINATION: 1.97 acres; current use: industry; transferee is required to remediate significant contaminants which includes arsenic, PCBs, and benzo (a) pyrene

Idaho

Moscow Federal Bldg.
220 East 5th Street
Moscow ID 83843
Landholding Agency: GSA
Property Number: 54201140003
Status: Surplus
GSA Number: 9–G–ID–573
Comments: 11,000 sq. ft.; current use: office

Illinois

1LT A.J. Ellison
Army Reserve

Wood River IL 62095
Landholding Agency: GSA
Property Number: 54201110012
Status: Excess
GSA Number: 1–D–II–738
Comments: 17,199 sq. ft. for the Admin. Bldg., 3,713 sq. ft. for the garage, public space (roads and hwy) and utilities easements, asbestos and lead base paint identified, most current use: unknown

Iowa

U.S. Army Reserve
620 West 5th St.
Garner IA 50438
Landholding Agency: GSA
Property Number: 54200920017
Status: Excess
GSA Number: 7–D–IA–0510
Comments: 5,743 sq. ft., presence of lead paint, most recent use—offices/classrooms/storage, subject to existing easements

Maine

Columbia Falls Radar Site
Tibbetstown Road
Columbia Falls ME 04623
Landholding Agency: GSA
Property Number: 54201140001
Status: Excess
GSA Number: 1–D–ME–0687
Directions: Buildings 1, 2, 3, and 4
Comments: Four bldgs. totaling 20,375 sq.ft. each one-story; current use: varies among properties

Maryland

Appraisers Store
null
Baltimore MD 21202
Landholding Agency: GSA
Property Number: 54201030016
Status: Excess
GSA Number: 4–G–MD–0623
Comments: Redetermination: 169,801 sq. ft., most recent use—federal offices, listed in the Nat'l Register of Historic Places, use restrictions

Michigan

CPT George S. Crabbe USARC
2901 Webber Street
Saginaw MI
Landholding Agency: GSA
Property Number: 54201030018
Status: Excess
GSA Number: 1–D–MI–835
Comments: 3,891 sq. ft., 3-bay garage maintenance building

Beaver Island High Level Site
South End Road
Beaver Island MI 49782
Landholding Agency: GSA
Property Number: 54201140002
Status: Excess
GSA Number: 1–X–MI–664B
Comments: 89 sq. ft; current use: storage; non-friable asbestos and lead base paint present; currently under license to the CCE Central Dispatch Authority

Minnesota

Border Patrol Station
1412 Hwy 11–17 W
Intern'l Falls MN 56649
Landholding Agency: GSA
Property Number: 54201210001
Status: Excess
GSA Number: 1–X–MN–0595–AA
Comments: 2,368 SQ. FT.; current use: office, garage, cold storage; possible asbestos and lead base paint

Missouri

Whiteman-Annex No.3
312 Northern Hill Rd.
Warrensburg MO 64093
Landholding Agency: GSA
Property Number: 54201210003
Status: Surplus
GSA Number: 7–D–MO–0694
Comments: 120 sq. ft.; current use: support bldg. for radio tower; previously reported by AF (18201020001)

Montana

Boulder Admin. Site
12 Depot Hill Rd.
Boulder MT 59632
Landholding Agency: GSA
Property Number: 54201130016
Status: Excess
GSA Number: 7–A–MT–532–AA
Comments: 4,799 sq. ft.; recent use: office, repairs are needed

New Jersey

Camp Petricktown Sup. Facility
US Route 130
Pedricktown NJ 08067
Landholding Agency: GSA
Property Number: 54200740005
Status: Excess
GSA Number: 1–D–NJ–0662
Comments: 21 bldgs., need rehab, most recent use—barracks/mess hall/garages/quarters/admin., may be issues w/right of entry, utilities privately controlled, contaminants

North Carolina

Greenville Site
10000 Cherry Run Rd.
Greenville NC 27834
Landholding Agency: GSA
Property Number: 54201210002
Status: Unutilized
GSA Number: 4–2–NC–0753
Comments: 49,300 sq. ft.; current use: transmitter bldg.; possible PCB contamination; not available—existing Federal need

Ohio

Oxford USAR Facility
6557 Todd Road
Oxford OH 45056
Landholding Agency: GSA
Property Number: 54201010007
Status: Excess
GSA Number: 1–D–OH–833
Comments: office bldg./mess hall/barracks/simulator bldg./small support bldgs., structures range from good to needing major rehab

Belmont Cty Memorial USAR Ctr
5305 Guernsey St.
Bellaire OH 43906
Landholding Agency: GSA
Property Number: 54201020008
Status: Excess
GSA Number: 1–D–OH–837
Comments: 11,734 sq. ft.—office/drill hall; 2,519 sq. ft.—maint. shop

Army Reserve Center
5301 Hauserman Rd.
Parma OH 44130
Landholding Agency: GSA
Property Number: 54201020009
Status: Excess
GSA Number: I–D–OH–842
Comments: 29, 212, and 6,097 sq. ft.; most recent use: office, storage, classroom, and drill hall; water damage on 2nd floor; and wetland property

LTC Dwite Schaffner
U.S. Army Reserve Center
1011 Gorge Blvd.
Akron OH 44310
Landholding Agency: GSA
Property Number: 54201120006
Status: Excess
GSA Number: 1–D–OH–836
Comments: 25,039 sq. ft., most recent use: Office; in good condition

Oregon

3 Bldgs/Land
OTHR–B Radar
Cty Rd 514
Christmas Valley OR 97641
Landholding Agency: GSA
Property Number: 54200840003
Status: Excess
GSA Number: 9–D–OR–0768
Comments: 14000 sq. ft. each/2626 acres, most recent use—radar site, right-of-way

U.S. Customs House
220 NW 8th Ave.
Portland OR
Landholding Agency: GSA
Property Number: 54200840004
Status: Excess
GSA Number: 9–D–OR–0733
Comments: 100,698 sq. ft., historical property/National Register, most recent use—office, needs to be brought up to meet earthquake code and local bldg codes, presence of asbestos/lead paint

Rhode Island

FDA Davisville Site
113 Bruce Boyer Street
North Kingstown RI 02852
Landholding Agency: GSA
Property Number: 54201130008
Status: Excess
GSA Number: 1–F–RI–0520
Comments: 4,100 sq. ft.; recent use: storage; property currently has no heating (all repairs is the responsibility of owner)

South Carolina

Naval Health Clinic
3600 Rivers Ave.
Charleston SC 29405
Landholding Agency: GSA
Property Number: 54201040013
Status: Excess
GSA Number: 4–N–SC–0606
Comments: Redetermination: 399,836 sq. ft., most recent use: office

South Dakota

Main House
Lady C Ranch Rd.
Hot Springs SD 57747
Landholding Agency: GSA
Property Number: 54201130011
Status: Surplus
GSA Number: 7–A–0523–3–AE
Comments: Off-site removal only; The property is a 2-story structure with 1,024

sq. ft. per floor for a total of 2,048 sq. ft.; structure type: Log Cabin; recent use: residential

Main Garage
Lady C Ranch Rd.
Hot Springs SD 57747
Landholding Agency: GSA
Property Number: 54201130012
Status: Surplus
GSA Number: 7_A–SD–0523–3–AF
Comments: Off-site removal only; 567 sq. ft.; structure type: Log Frame; recent use: vehicle storage

Metal Machine/Work Bldg.
Lady C Ranch Rd.
Hot Springs SD 57747
Landholding Agency: GSA
Property Number: 54201130013
Status: Surplus
GSA Number: 7–A–SD–0523–3–AG
Comments: Off-site removal only; 3,280 sq. ft.; structure type: Post/Pole w/Metal Siding; recent use: utility shed

Mobile Home
Lady C Ranch Rd.
Hot Springs SD 57477
Landholding Agency: GSA
Property Number: 54201130014
Status: Surplus
GSA Number: 7–A–0523–3–AH
Comments: Off-site removal only; 1,152 sq. ft.; structure type: manufactured home/ double wide; recent use: residential

Mobile Home Garage
Lady C Ranch Rd.
Hot Springs SD 57747
Landholding Agency: GSA
Property Number: 54201130015
Status: Surplus
GSA Number: 7–A–SD–0523–3–AI
Comments: Off-site removal only; 729 sq. ft.; structure type: Post/Pole construction w/ metal side; recent use: storage

Tennessee

NOAA Admin. Bldg.
456 S. Illinois Ave.
Oak Ridge TN 38730
Landholding Agency: GSA
Property Number: 54200920015
Status: Excess
GSA Number: 4–B–TN–0664–AA
Comments: 15,955 sq. ft., most recent use—office/storage/lab

Texas

FAA RML Facility
11262 N. Houston Rosslyn Rd.
Houston TX 77086
Landholding Agency: GSA
Property Number: 54201110016
Status: Surplus
GSA Number: 7–U–TX–1129
Comments: 448 sq. ft., recent use: storage, asbestos has been identified in the floor

Virginia

Hampton Rds, Shore Patrol Bldg
811 East City Hall Ave
Norfolk VA 23510
Landholding Agency: GSA
Property Number: 54201120009
Status: Excess
GSA Number: 4–N–VA–758
Comments: 9,623 sq. ft.; current use: storage, residential

Wisconsin

Wausau Army Reserve Ctr.
1300 Sherman St.
Wausau WI 54401
Landholding Agency: GSA
Property Number: 54201210004
Status: Excess
GSA Number: 1–D–WI–610
Comments: bldg. 12,680 sq. ft.; garage 2,676 sq. ft.; current use: vacant; possible asbestos; remediation may be required; subjected to existing easements; Contact GSA for more detail

Land

Arizona

Land
95th Ave/Bethany Home Rd
Glendale AZ 85306
Landholding Agency: GSA
Property Number: 54201010014
Status: Surplus
GSA Number: 9–AZ–852
Comments: 0.29 acre, most recent use—irrigation canal

0.30 acre
Bethany Home Road
Glendale AZ 85306
Landholding Agency: GSA
Property Number: 54201030010
Status: Excess
GSA Number: 9–I–AZ–0859
Comments: 10 feet wide access road

California

Parcel F–2 Right of Way
null
Seal Beach CA 90740
Landholding Agency: GSA
Property Number: 54201030012
Status: Surplus
GSA Number: 9–N–CA–1508–AI
Comments: 6331.62 sq. ft., encroachment

Drill Site #3A
null
Ford City CA 93268
Landholding Agency: GSA
Property Number: 54201040004
Status: Surplus
GSA Number: 9–B–CA–1673–AG
Comments: 2.07 acres, mineral rights, utility easements

Drill Site #4
null
Ford City CA 93268
Landholding Agency: GSA
Property Number: 54201040005
Status: Surplus
GSA Number: 9–B–CA–1673–AB
Comments: 2.21 acres, mineral rights, utility easements

Drill Site #6
null
Ford City CA 93268
Landholding Agency: GSA
Property Number: 54201040006
Status: Surplus
GSA Number: 9–B–CA–1673–AC
Comments: 2.13 acres, mineral rights, utility easements

Drill Site #9
null
Ford City CA 93268
Landholding Agency: GSA
Property Number: 54201040007
Status: Surplus
GSA Number: 9–B–CA–1673–AH
Comments: 2.07 acres, mineral rights, utility easements

Drill Site #20
null
Ford City CA 93268
Landholding Agency: GSA
Property Number: 54201040008
Status: Surplus
GSA Number: 9–B–CA–1673–AD
Comments: 2.07 acres, mineral rights, utility easements

Drill Site #22
null
Ford City CA 93268
Landholding Agency: GSA
Property Number: 54201040009
Status: Surplus
GSA Number: 9–B–CA–1673–AF
Comments: 2.07 acres, mineral rights, utility easements

Drill Site #24
null
Ford City CA 93268
Landholding Agency: GSA
Property Number: 54201040010
Status: Surplus
GSA Number: 9–B–CA–1673–AE
Comments: 2.06 acres, mineral rights, utility easements

Drill Site #26
null
Ford City CA 93268
Landholding Agency: GSA
Property Number: 54201040011
Status: Surplus
GSA Number: 9–B–CA–1673–AA
Comments: 2.07 acres, mineral rights, utility easements

Seal Beach RR Right of Way
West 19th Street
Seal Beach CA 90740
Landholding Agency: GSA
Property Number: 54201140015
Status: Surplus
GSA Number: 9–N–CA–1508–AF
Comments: 8,036.82 sq. ft.; current use: vacant lot

Seal Beach RR Right of Way
East 17th Street
Seal Beach CA 90740
Landholding Agency: GSA
Property Number: 54201140016
Status: Surplus
GSA Number: 9–N–CA–1508–AB
Comments: 9,713.88 sq. ft.; current use: private home

Seal Beach RR Right of Way
East of 16th Street
Seal Beach CA 90740
Landholding Agency: GSA
Property Number: 54201140017
Status: Surplus
GSA Number: 9–N–CA–1508–AG
Comments: 6,834.56 sq. ft.; current use: vacant

Seal Beach RR Right of Way
West of Seal Beach Blvd.
Seal Beach CA 90740
Landholding Agency: GSA
Property Number: 54201140018
Status: Surplus
GSA Number: 9–N–CA–1508–AA

Comments: 10,493.60 sq. ft.; current use: vacant lot

Colorado

Common Pt. Shooting Rng.
Bureau of Reclamation
Drake CO 80515
Landholding Agency: GSA
Property Number: 54201120003
Status: Excess
GSA Number: 7–1–CO–0678
Comments: 35.88 acres; If the purchaser ceases using the property as a firing range they will be held to a higher standard of lead remediation by the local and Federal environmental protection agencies.

Massachusetts

FAA Site
Massasoit Bridge Rd.
Nantucket MA 02554
Landholding Agency: GSA
Property Number: 54200830026
Status: Surplus
GSA Number: MA–0895
Comments: approx 92 acres, entire parcel within MA Division of Fisheries & Wildlife Natural Heritage & Endangered Species Program

Nevada

RBG Water Project Site
Bureau of Reclamation
Henderson NV 89011
Landholding Agency: GSA
Property Number: 54201140004
Status: Surplus
GSA Number: 9–I–AZ–0562
Comments: water easement (will not affect conveyance); 22+/ − acres; current use: water sludge disposal site; lead from shotgun shells on <1 acre

North Dakota

Vacant Land of MSR Site
Stanley Mickelsen
Nekoma ND
Landholding Agency: GSA
Property Number: 54201130009
Status: Surplus
GSA Number: 7–D–ND–0499
Comments: 20.2 acres; recent use: unknown

Pennsylvania

Approx. 16.88
271 Sterrettania Rd.
Erie PA 16506
Landholding Agency: GSA
Property Number: 54200820011
Status: Surplus
GSA Number: 4–D–PA–0810
Comments: Vacant land

Marienville Lot
USDA Forest Service
Marienville PA
Landholding Agency: GSA
Property Number: 54201140005
Status: Excess
GSA Number: 4–A–PA–807AD
Comments: 2.42 acres; current use: unknown

South Carolina

Marine Corps Air Station
3481 TRASK Parkway
Beaufort SC 29904
Landholding Agency: GSA
Property Number: 54201140009
Status: Excess
GSA Number: 4–N–SC–0608AA
Comments: 18,987.60 sq. ft. (.44 acres); physical features: swamp, periodic flooding, 5 ft. off main road

Texas

Parcel 2
Camp Bowie
Brownwood TX 76801
Landholding Agency: GSA
Property Number: 54201130001
Status: Surplus
GSA Number: 7–D–TX–0589
Comments: 22.58 acres, two storage units on land approx. 600 sq. ft., recent use: storage, legal constraints: access easement, 10% of property in floodway

Unsuitable Properties

Building

California

2 Buildings
Naval Base Ventura Co.
Point Mugu CA 93042
Landholding Agency: Navy
Property Number: 77201220010
Status: Unutilized
Directions: PM 7–39 & PM 89
Comments: Located w/in a controlled perimeter of a DoD installation; public access denied & no alternative method to gain access w/out comprising nat'l security
Reasons: Secured Area

New Jersey

Stoll House
Delaware Water Gap Nat'l Rec. Area
Walpack NJ 07881
Landholding Agency: Interior
Property Number: 61201220007
Status: Excess
Directions: Including dormitory/sheds
Comments: Collapsed roofs; damage to exterior walls; structural/foundation damage; extensive water damage; off-site removal in not feasible b/c any movement will result in complete collapse
Reasons: Extensive deterioration

Land

Hawaii

Site 3
Marine Corps Base
Kaneohe HI
Landholding Agency: Navy
Property Number: 77201220011
Status: Underutilized
Comments: Access restricted to authorized military personnel only; public access denied & no alternative method to gain access w/out comprising nat'l security
Reasons: Secured Area

[FR Doc. 2012–14272 Filed 6–14–12; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Geological Survey

[GX12LC00BM3FD00]

Agency Information Collection Activities: Submitted for Office of Management and Budget (OMB) Review; Comment Request

AGENCY: U.S. Geological Survey (USGS), Interior.

ACTION: Notice of a request for an extension of a currently approved information collection (1028–0079).

SUMMARY: To comply with the Paperwork Reduction Act of 1995 (PRA), the U.S. Geological Survey (USGS) is inviting comments on an information collection request (ICR) that we have sent to the Office of Management and Budget (OMB) for review and approval. The ICR concerns the paperwork requirements for the ''North American Breeding Bird Survey.'' As required by the Paperwork Reduction Act (PRA) of 1995, and as part of our continuing efforts to reduce paperwork and respondent burden, we invite the general public and other Federal agencies to take this opportunity to comment on this ICR. This Information Collection is scheduled to expire on July 31, 2012.

DATES: Submit written comments by July 16, 2012.

ADDRESSES: Please submit comments on this information collection directly to the Office of Management and Budget (OMB), Office of Information and Regulatory Affairs, Attention: Desk Officer for the Department of the Interior via email: (*OIRA_DOCKET@omb.eop.gov*); or by fax (202) 395–5806; and identify your submission with #1028–0079. Please also submit a copy of your comments to Information Collection Clearance Officer, U.S. Geological Survey, 807 National Center, Reston, VA 20192 (mail); or *smbaloch@usgs.gov* (email). Please reference Information Collection 1028–0079.

FOR FURTHER INFORMATION CONTACT: Keith Pardieck at (301) 497–5843. Copies of the full Information Collection Request and the form can be obtained at no cost at *http://www.reginfo.gov.*

SUPPLEMENTARY INFORMATION:

Title: North American Breeding Bird Survey (BBS).

OMB Control Number: 1028–0079.

Bureau Form Number: None.

Type of Request: Extension of a currently approved collection.

Abstract: The BBS is a long-term, large-scale avian monitoring program to

track the status and trends of North American bird populations. Volunteers conduct avian point counts once per year during the breeding season (primarily June). Volunteers skilled in avian identification listen for 3 minutes at 50 stops along the route recording all birds seen or heard. Data are submitted electronically via the Internet or on hard copy. These data are used to estimate population trends and abundances at various geographic scales and assist with documenting species distribution.

Frequency: Annually.

Estimated Number and Description of Respondents: Approximately 2,500 volunteer respondents per year.

Estimated Number of Responses: 2,500.

Annual Burden Hours: 27,500.

Estimated Annual Reporting and Recordkeeping ''Hour'' Burden: We estimate the public reporting burden averages 11 hours per response. This includes the time for driving to/from the survey route locations and scouting route, 50 3-minute data collection periods (one at each sampling station along the route), data submission, and data verification.

Estimated Reporting and Recordkeeping ''Non-Hour Cost'' Burden: We estimate the total ''nonhour'' cost burden to be $127,500. This total includes costs of mileage for conducting the surveys.

Public Disclosure Statement: The PRA (44 U.S.C. 3501, *et seq.*) provides that an agency may not conduct or sponsor, and you are not required to respond to, a collection of information unless it displays a currently valid OMB control number. Until OMB approves a collection of information, you are not obligated to respond.

Comments: To comply with the public consultation process, on March 2, 2012, we published a **Federal Register** notice (77 FR 12871) announcing that we would submit this ICR to OMB for approval. The notice provided the required 60-day public comment period, which ended May 1, 2012. We received no comments germane to the collection. We again invite comments concerning this information collection on:

(1) Whether or not the collection of information is necessary, including whether or not the information will have practical utility;

(2) The accuracy of our estimate of the burden for this collection of information;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Ways to minimize the burden of the collection of information on respondents.

Please note that the comments submitted in response to this notice are a matter of public record. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment, including your personal identifying information, may be made publicly available at any time. While you can ask OMB in your comment to withhold your personal identifying information from public review, we cannot guarantee that it will be done.

Dated: May 29, 2012.

Anne Kinsinger,

Associate Director for Ecosystems.

[FR Doc. 2012–14704 Filed 6–14–12; 8:45 am]

BILLING CODE P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AA–10974, AA–12556, AA–12577; LLAK–965000–L14100000–HY0000–P]

Alaska Native Claims Selection

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of decision approving lands for conveyance.

SUMMARY: As required by 43 CFR 2650.7(d), notice is hereby given that the Bureau of Land Management (BLM) will issue an appealable decision to Chugach Alaska Corporation. The decision will approve conveyance of the surface and subsurface estates in certain lands pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601, *et seq).* The lands are located southeast of Whittier, Alaska, and contain 33.87 acres. Notice of the decision will also be published four times in the *Anchorage Daily News.*

DATES: Any party claiming a property interest in the lands affected by the decision may appeal the decision within the following time limits:

1. Unknown parties, parties unable to be located after reasonable efforts have been expended to locate, parties who fail or refuse to sign their return receipt, and parties who receive a copy of the decision by regular mail which is not certified, return receipt requested, shall have until July 16, 2012 to file an appeal.

2. Parties receiving service of the decision by certified mail shall have 30 days from the date of receipt to file an appeal.

3. Notices of appeal transmitted by electronic means, such as facsimile or email, will not be accepted as timely filed.

Parties who do not file an appeal in accordance with the requirements of 43 CFR part 4, subpart E, shall be deemed to have waived their rights.

ADDRESSES: A copy of the decision may be obtained from: Bureau of Land Management, Alaska State Office, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513–7504.

FOR FURTHER INFORMATION CONTACT: The BLM by phone at 907–271–5960 or by email at *ak.blm.conveyance@blm.gov.* Persons who use a Telecommunications Device for the Deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the BLM during normal business hours. In addition, the FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the BLM. The BLM will reply during normal business hours.

Dina L. Torres,

Land Transfer Resolution Specialist, Branch of Land Transfer Adjudication II.

[FR Doc. 2012–14690 Filed 6–14–12; 8:45 am]

BILLING CODE 4310–JA–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[F–14864–A and F–14864–A2; LLAK965000–L14100000–KC0000–P]

Alaska Native Claims Selection

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of decision approving lands for conveyance.

SUMMARY: As required by 43 CFR 2650.7(d), notice is hereby given that the Bureau of Land Management (BLM) will issue an appealable decision to Nunapiglluraq Corporation (Native Village of Hamilton). The decision approves the surface estate in the lands described below for conveyance pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601, *et seq*). The subsurface estate in these lands will be conveyed to Calista Corporation when the surface estate is conveyed to Nunapiglluraq Corporation. The lands are in the vicinity of Hamilton, Alaska, and are located in:

Seward Meridian, Alaska

T. 33 N., R. 77 W.,
Sec. 23.
Containing 3 acres.

T. 30 N., R. 78 W.,

Secs. 3 and 10.

Containing 509 acres.

T. 32 N., R. 79 W.,
Secs. 14 and 15.

Containing 40 acres.
Aggregating 552 acres.

Notice of the decision will also be published four times in the *Anchorage Daily News.*

DATES: Any party claiming a property interest in the lands affected by the decision may appeal the decision within the following time limits:

1. Unknown parties, parties unable to be located after reasonable efforts have been expended to locate, parties who fail or refuse to sign their return receipt, and parties who receive a copy of the decision by regular mail which is not certified, return receipt requested, shall have until July 16, 2012 to file an appeal.

2. Parties receiving service of the decision by certified mail shall have 30 days from the date of receipt to file an appeal.

3. Notices of appeal transmitted by electronic means, such as facsimile or email, will not be accepted as timely filed.

Parties who do not file an appeal in accordance with the requirements of 43 CFR part 4, subpart E, shall be deemed to have waived their rights.

ADDRESSES: A copy of the decision may be obtained from: Bureau of Land Management, Alaska State Office, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513–7504.

FOR FURTHER INFORMATION CONTACT: The BLM by phone at 907–271–5960 or by email at *ak.blm.conveyance@blm.gov.* Persons who use a Telecommunications Device for the Deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the BLM during normal business hours. In addition, the FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the BLM. The BLM will reply during normal business hours.

Judy A. Kelley,

Land Law Examiner, Land Transfer Adjudication II Branch.

[FR Doc. 2012–14687 Filed 6–14–12; 8:45 am]

BILLING CODE 4310–JA–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLAZP02000.L16100000.DQ0000. LXSS089A0000.241A]

Notice of Availability of the Proposed Resource Management Plan/Final Environmental Impact Statement for the Lower Sonoran and Sonoran Desert National Monument, Arizona

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Availability.

SUMMARY: In accordance with the National Environmental Policy Act of 1969 (NEPA), as amended, and the Federal Land Policy and Management Act of 1976, as amended, the Bureau of Land Management (BLM) has prepared a Proposed Resource Management Plan (RMP)/Final Environmental Impact Statement (EIS) for the Lower Sonoran (LS) and Sonoran Desert National Monument (SDNM), Arizona, and by this notice is announcing its availability.

DATES: BLM planning regulations state that any person who meets the conditions as described in the regulations may protest the BLM's Proposed RMP/Final EIS. A person who meets the conditions and files a protest must file the protest within 30 days of the date that the Environmental Protection Agency publishes its notice in the **Federal Register**.

ADDRESSES: The Lower Sonoran and Sonoran Desert National Monument Proposed RMP/Final EIS is only available in electronic format on compact disk (CD) or accessible on the Internet. CDs containing the Lower Sonoran and Sonoran Desert National Monument Proposed RMP/Final EIS have been sent to affected Federal, State, and local government agencies, tribal governments, and to other stakeholders. One hard copy of the Proposed RMP/Final EIS is available for public inspection at the BLM Phoenix District Office, 21605 North 7th Avenue, Phoenix, Arizona 85027. People interested in receiving a CD should contact the BLM Phoenix District. The Proposed RMP/Final EIS may also be reviewed at the following Web site: *http://www.blm.gov/az/st/en/prog/planning/son_des.html.* All protests must be in writing and mailed to one of the following addresses:

Regular Mail: BLM Director (210), Attention: Brenda Williams, P.O. Box 71383, Washington, DC 20024–1383

Overnight Mail: BLM Director (210), Attention: Brenda Williams, 20 M Street SE., Room 2134LM, Washington, DC 20003

FOR FURTHER INFORMATION CONTACT: Chris Horyza, RMP Project Manager, telephone: 623–580–5639; address: BLM Phoenix District Office, 21605 North 7th Avenue, Phoenix, Arizona 85027; email: *blm_az_ls_sdnm_plan@blm.gov.* Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: Compact disks of the LS–SDNM were sent to the following locations to be made available for public access:

- *http://www.blm.gov/az/st/en/prog/planning/son_des/reports.html.*
- BLM Arizona State Office, One North Central Avenue, Suite 800, Phoenix, Arizona 85004.
- Apache Junction Public Library, 1177 North Idaho Road, Apache Junction, Arizona 85219.
- Buckeye Public Library, 310 North 6th Street, Buckeye, Arizona 85326.
- Casa Grande Public Library, 449 North Dry Lake, Casa Grande, Arizona 85222.
- Gila Bend Public Library, 202 North Euclid Avenue, Gila Bend, Arizona 85337.
- Salazar-Ajo Branch Library, 33 Plaza, Ajo, Arizona 85321.

The LS–SDNM Planning Area includes approximately 8.9 million acres of public and private lands, approximately 1.4 million surface acres, and 3.9 million subsurface/mineral-split estate acres administered by the BLM. These include about 930,200 surface acres in the Lower Sonoran Field Office, referred to as the LS Decision Area, as well as 486,400 surface acres within the Monument, referred to as the SDNM Decision Area.

The BLM released the Lower Sonoran and Sonoran Desert National Monument Draft RMP/Draft EIS for public review and comment on August 26, 2011. The release initiated a 90-day public comment period, which concluded on November 25, 2011. The BLM made the Draft RMP/Draft EIS available to the public on the BLM Web site, as well as hard copies for review at several local libraries. The document was also available upon request from the BLM Phoenix District in hard copy and on CD. During the public comment period, the BLM held seven public meetings and received over 4,800 comment

submissions via email, mail, meetings, and fax. Each submission was carefully reviewed to identify substantive comments and substantive comments were considered and incorporated as appropriate in the Proposed RMP/Final EIS. The focus of public comment on the Draft RMP/Draft EIS reinforced the issues discovered during scoping.

Five alternatives are analyzed in the Proposed RMP/Final EIS. The ''no action'' alternative, Alternative A, represents the current management situation for both the LS and the SDNM decision areas and serves as a baseline for most resource and land-use allocations.

Alternative B identifies the greatest amount of public lands suitable for appropriate multiple uses, emphasizing opportunities for motorized and developed recreational uses while reducing opportunities for experiencing remote settings and non-motorized recreation.

Alternative C attempts to balance resource protection with human use and influence providing for a variety of uses that emphasize resource protection and conservation and propose a mix of natural processes and techniques for resource stabilization and restoration.

Alternative D places the greatest emphasis on minimizing human use/influence and maintaining primitive landscapes by focusing on natural processes and other unobtrusive methods for resource stabilization and restoration.

Alternative E, the Proposed Alternative, attempts to balance human use and influence with resource protection by incorporating elements from each of the other action alternatives. It provides long-term protection and conservation of resources.

Comments on the Draft RMP/Draft EIS pertained to a number of issues, including but not limited to the scope of the document, NEPA adequacy of the baseline data and impact analysis, information related to consultation and coordination on the action, and policies and guidance the BLM needed to follow. Comments were also received for the following resources and resource uses: Air quality, cultural resources, wildlife, livestock grazing, land use and special designations, minerals and energy, noise, national historic trails, recreation, socioeconomics, special status species, tribal interests, vegetation, visual resources, wilderness characteristics, and water resources. Due to review of public comments, coordination with cooperating agencies, and internal reviews of the Draft RMP/Draft EIS, several revisions have been made to this Proposed RMP/Final EIS. The BLM reviewed all new information and changes and determined it was not necessary to issue a supplemental EIS. The following is a summary of substantive changes made to the Proposed RMP/Final EIS.

There were several comments that the BLM had not complied with BLM Washington Office (WO) Instruction Memorandum (IM) No. 2011–154, Requirement to Conduct and Maintain Inventory Information for Wilderness Characteristics and to Consider Lands with Wilderness Characteristics in Land Use Plans. Commenters noted several geographic areas that were not addressed in the Draft EIS, including Sentinel Plain. In response, the BLM completed its inventory for wilderness characteristics on all BLM lands in the planning area and has included this new information in the Final EIS.

Commenters also noted that the BLM did not comply with the BLM WO IM No. 2011–004, Revised Recreation and Visitor Services Land Use Planning Guidance, Updated Checklist, and Three Land Use Planning Templates. In response, the BLM revised the recreation allocations to comply with the new guidance.

BLM received many comments regarding recreational target shooting that were both opposed to, and in favor of closure of the Monument to target shooting. Alternative E (the Proposed Plan) was revised to allow the Monument to remain open to recreational target shooting consistent with the No Action alternative, subject to restrictions, monitoring, and input from local stakeholders and the public to address the impacts of recreational shooting.

The document was also edited to correct minor inconsistencies (e.g., incorrect table references or titles), typos, and other technical issues.

The BLM responses to the comments are presented in the Proposed RMP/Final EIS in Chapter 6, Response to Comments on the Draft RMP/Draft EIS.

Instructions for filing a protest with the Director of the BLM regarding the Proposed RMP/Final EIS may be found in the ''Dear Reader Letter'' of the LS and SDNM Proposed RMP/Final EIS and at 43 CFR 1610.5–2. Emailed and faxed protests will not be accepted as valid protests unless the protesting party also provides the original letter by either regular or overnight mail postmarked by the close of the protest period. Under these conditions, the BLM will consider the emailed or faxed protest as an advance copy and it will receive full consideration. If you wish to provide the BLM with such advance notification, please direct faxed protests to the attention of the BLM protest coordinator at 202–912–7212, and emails to *Brenda_Hudgens-Williams@blm.gov.*

All protests, including the follow-up letter to emails or faxes, must be in writing and mailed to the appropriate address, as set forth in the **ADDRESSES** section above.

Before including your phone number, email address, or other personal identifying information in your protest, you should be aware that your entire protest—including your personal identifying information—may be made publicly available at any time. While you can ask us in your protest to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Authority: 40 CFR 1506.6 and 1506.10, 43 CFR 1610.2 and 1610.5.

Raymond Suazo,

Arizona State Director.

[FR Doc. 2012–14564 Filed 6–14–12; 8:45 am]

BILLING CODE 4310–32–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLAZ956000.L14200000.BJ0000.241A]

Notice of Filing of Plats of Survey; Arizona

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Filing of Plats of Survey; Arizona.

SUMMARY: The plats of survey of the described lands were officially filed in the Arizona State Office, Bureau of Land Management, Phoenix, Arizona, on dates indicated.

SUPPLEMENTARY INFORMATION:

The Gila and Salt River Meridian, Arizona

The supplemental plat representing the amended lottings in the SE 1/4 of section 36, Township 6 North, Range 6 West, accepted June 1, 2012, and officially filed June 4, 2012, for Group 9106, Arizona.

This plat was prepared at the request of the Bureau of Land Management.

A person or party who wishes to protest against any of these surveys must file a written protest with the Arizona State Director, Bureau of Land Management, stating that they wish to protest.

A statement of reasons for a protest may be filed with the notice of protest to the State Director, or the statement of reasons must be filed with the State

Director within thirty (30) days after the protest is filed.

FOR FURTHER INFORMATION CONTACT: These plats will be available for inspection in the Arizona State Office, Bureau of Land Management, One North Central Avenue, Suite 800, Phoenix, Arizona, 85004–4427. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

Stephen K. Hansen,

Chief Cadastral Surveyor of Arizona.

[FR Doc. 2012–14686 Filed 6–14–12; 8:45 am]

BILLING CODE 4310–32–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Draft Report Assessing Rural Water Activities and Related Programs

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of availability.

SUMMARY: The draft Rural Water Assessment Report reviews the status of the Bureau of Reclamation's rural potable water projects and its plan for completing projects authorized before enactment of the Rural Water Supply Act and including a description of the proposed prioritization criteria as an appendix. It also describes Federal Programs supporting development and management of water supplies in rural communities in the 17 western states and describes Reclamation's plans to coordinate the Rural Water Supply Program with similar programs managed by other agencies.

DATES: Submit written comments by August 14, 2012.

ADDRESSES: Submit written comments to James Hess, Bureau of Reclamation, 1849 C Street NW., MC: 96–42000, Washington, DC 20240; or by email to *jhess@usbr.gov.* The draft report is available for public review at *www.usbr.gov/ruralwater.*

FOR FURTHER INFORMATION CONTACT: James Hess at (202) 513–0543 about the report or Christopher Perry at (303) 445–2887 about the prioritization criteria.

SUPPLEMENTARY INFORMATION: We, the Bureau of Reclamation, are seeking public comment on a draft Rural Water Assessment Report prepared as required by the Rural Water Supply Act of 2006. This section provides background on the reasons for the report and describes its contents.

For over a century, Reclamation has designed and constructed some of the largest and most important water supply projects in the Western United States including Hoover Dam, Grand Coulee Dam, and the Central Valley Project. Because of Reclamation's expertise in water resources management, rural communities have sought our advice and assistance in addressing their need for potable water supplies. However, since Reclamation did not have legal authority to provide this assistance, many rural communities developed potable water supply projects without the benefit of our expertise and went directly to Congress to get their projects authorized for Reclamation's involvement—often after the project plan was developed. As a result, since 1980, Congress has authorized Reclamation to design and build projects to deliver potable water supplies to specific rural communities located primarily in North Dakota, South Dakota, Montana and New Mexico. In addition, Congress specifically authorized Reclamation's involvement in the Lewis and Clark Rural Water Supply Project located in the Reclamation State of South Dakota, but also in the non-Reclamation States of Iowa and Minnesota.

To get Reclamation involved earlier in the process, Congress passed the Reclamation Rural Water Supply Act in 2006 which authorized the Secretary of the Interior to establish and carry out a rural water supply program in the 17 western states.

The Act also requires the Secretary of the Interior to develop an assessment of rural potable water supply projects and programs in the Western United States. As part of that requirement, the Act requires the Secretary of the Interior to develop this assessment in consultation with the Secretaries of Agriculture, Housing and Urban Development, and the Army; the Administrator of the Environmental Protection Agency; and the Director of the Indian Health Service. The assessment must include the following:

(1) The status of all rural water supply projects under the jurisdiction of the Secretary that are authorized for design and construction, but not completed;

(2) The current plan for the completion of the authorized rural water projects identified above;

(3) The demand for new rural water supply projects;

(4) The rural water programs within other agencies;

(5) The extent of the demand that can be met by the Reclamation Rural Water Supply Program; and

(6) How the Program will complement and coordinate with other Federal rural water supply programs to minimize overlap and leverage and maximize the benefits achieved with the resources of each.

Public Disclosure

Before including your address, phone number, email address, or other personal identifying information in your comment, please 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.

Authority

The Reclamation Rural Water Supply Act of December 22, 2006 (Pub. L. 109–451, Title I, 120 Stat. 3346, 43 U.S.C. 2401, *et seq.*).

David Murillo,

Deputy Commissioner, Operations.

[FR Doc. 2012–14715 Filed 6–14–12; 8:45 am]

BILLING CODE 4310–MN–P

DEPARTMENT OF JUSTICE

[OMB Number 1103–0102]

Agency Information Collection Activities: COPS Progress Report, Revision of a Previously Approved Collection, With Change; Comments Requested

ACTION: 60-Day notice of information collection under review.

The Department of Justice (DOJ) Office of Community Oriented Policing Services (COPS) 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 revision of a previously approved information collection is published to obtain comments from the public and affected agencies.

The purpose of this notice is to allow for 60 days for public comment until August 14, 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 Ashley Hoornstra, Department of Justice Office of Community Oriented Policing Services, 145 N Street NE., Washington, DC 20530.

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 previously approved collection, with change; comments requested.

(2) *Title of the Form/Collection:* COPS Progress Report.

(3) *Agency form number, if any, and the applicable component of the Department sponsoring the collection:* None. U.S. Department of Justice Office of Community Oriented Policing Services.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Under the Violent Crime and Control Act of 1994, the U.S. Department of Justice COPS Office would require the completion of the COPS Progress Report by recipients of COPS hiring and non-hiring grants. Grant recipients must complete this report in order to inform COPS of their activities with their awarded grant funding.

An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:

It is estimated that approximately 7,600 annual, quarterly, and final report respondents can complete the report in an average of 25 minutes.

(5) *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 3,167 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., Washington, DC 20530.

Jerri Murray,

Department Clearance Officer, PRA, U.S. Department of Justice.

[FR Doc. 2012–14598 Filed 6–14–12; 8:45 am]

BILLING CODE 4410–AT–P

DEPARTMENT OF JUSTICE

[OMB No. 1121–0065]

Agency Information Collection Activities: Existing Collection; Comments Requested: Extension of a Currently Approved Collection; National Corrections Reporting Program (NCRP)

ACTION: 60-Day Notice.

The Department of Justice (DOJ), Bureau of Justice Statistics, 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 August 14, 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 Elizabeth Ann Carson, Ph.D., Bureau of Justice Statistics, 810 Seventh Street NW., Washington, DC 20531 (phone: 202–616–3496).

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
—Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
—Enhance the quality, utility, and clarity of the information to be collected; and
—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* National Corrections Reporting Program. The collection includes the forms: Prisoner Admission Report, Prisoner Release Report, Parole Release Report, Prisoners in Custody at Yearend Report.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form number(s): NCRP–1A, NCRP–1B, NCRP–1C, and NCRP–1D. Corrections Statistics Unit, Bureau of Justice Statistics, Office of Justice Programs, United States Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* The National Corrections Reporting Program (NCRP) is the only national data collection furnishing annual individual-level information for state prisoners at four points in the incarceration process: prison admission; prison release; annual yearend prison custody census; and discharge from parole/community corrections supervision. BJS, the U.S. Congress, researchers, and criminal justice practitioners use these data to describe annual movements of adult offenders through state correctional systems, as well as to examine long term trends in time served in prison, demographic and offense characteristics of inmates, sentencing practices in the states that submit data, transitions between incarceration and community corrections, and recidivism. Providers of the data are personnel in the states' Departments of Corrections and Parole, and all data are submitted on a voluntary basis. The NCRP collects the following administrative data on each inmate in participating states' custody:

- County of sentencing
- State inmate identification number
- Dates of: birth; prison admission; prison release; parole discharge; parole eligibility hearing; projected prison release; mandatory prison release
- First and last names
- Demographic information: sex; race; Hispanic origin; education level
- Offense type and number of counts per inmate for a maximum of three convicted offenses per inmate
- Prior time spent in prison and jail, and prior felony convictions
- Total sentence length imposed
- Additional offenses and sentence time imposed since prison admission
- Type of facility where inmate is serving sentence (for yearend custody census records only, the name of the facility is requested)
- Type of prison admission
- Type of prison release
- Whether inmate was AWOL/escape during incarceration
- Agency assuming custody of inmate released from prison (parole records only)
- Supervision status prior to discharge from parole and type of discharge

In addition, BJS is requesting OMB clearance to add the following items to the NCRP collection, all of which are likely available from the same databases as existing data elements, and should therefore pose minimal additional burden to the respondents, while greatly enhancing BJS' ability to better characterize the corrections systems and populations it serves:

- Date and type of parole admission
- Location of parole discharge or parole office
- FBI identification number
- Prior military service, date and type of last discharge

BJS uses the information gathered in NCRP in published reports and statistics. The reports will be made available to the U.S. Congress, Executive Office of the President, practitioners, researchers, students, the media, others interested in criminal justice statistics, and the general public via the BJS Web site.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* BJS anticipates 57 respondents to NCRP for report year 2012: 50 state respondents; the California Juvenile Justice Division; and six separate state parole boards. Each respondent currently submitting NCRP data will require an estimated 28 hours of time to supply the information for their annual caseload and an additional 3 hours documenting or explaining the data for a total of 1,200 hours. For the 15 states which have never submitted data or are returning to NCRP submission following a lapse of several years, the total first year's burden estimate is 933 hours, which includes the time required for developing or modifying computer programs to extract the data, performing and checking the extracted data, and submitting it electronically to BJS' data collection agency via SFTP. The total burden for all 57 NCRP data providers is 2,133 hours for report year 2012. Starting with report year 2013, this burden will decrease to 1,326 hours since all states will have data extract programs created and need only make minor modifications to obtain report year 2013 data. All states submit data via a secure file transfer protocol (SFTP) electronic upload.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 2,133 total burden hours associated with this collection for report year 2013.

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., Washington, DC 20530.

Jerri Murray,

Department Clearance Officer, PRA, U.S. Department of Justice.

[FR Doc. 2012–14612 Filed 6–14–12; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Clean Water Act

Notice is hereby given that on June 11, 2012, a proposed Consent Decree in *United States* v. *Siemens Industry, Inc., et al.,* Civil Action No. 1:12-cv-00729 was lodged with the United States District Court for the District of Delaware.

The complaint in this matter alleges that defendants violated Section 311 of the Clean Water Act at an oil recycling, storage and distribution facility in Wilmington, Delaware through their failure to prepare and implement an adequate Facility Response Plan, failing to provide an adequate secondary containment system, and failing to prepare and implement an adequate Spill Prevention, Control, and Countermeasure Plan.

The proposed Consent Decree requires defendants to take appropriate actions to comply with Section 311 of the CWA and implementing regulations at 40 CFR part 112, particularly to insure compliance with secondary containment requirements and Spill Prevention, Control and Countermeasure Plan requirements. Defendants will also pay a $300,000 civil penalty.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and either emails to emailed to *pubcomment-ees.enrd@USDOJ.gov* or mailed to P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States* v. *Siemens Industry, Inc.,* D.J. Ref. 90–5–1–1–09287.

During the public comment period, the proposed Decree may be examined on the following Department of Justice Web site: *http://www.usdoj.gov/enrd/Consent_Decrees.html.* A copy of the proposed Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, or by faxing or emailing a request to ''Consent Decree Copy'' (*EESCDCopy.ENRD@usdoj.gov*) fax no. (202) 514–0097, phone confirmation number: (202) 514–5271. If requesting a copy from the Consent Decree Library, please enclose a check in the amount of $8.25 (25 cents per page reproduction cost) payable to the U.S. Treasury or, if by email or fax, please forward a check in that amount to the Consent Decree Library at the stated address.

Robert Brook,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2012–14664 Filed 6–14–12; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Patrick K. Chau, M.D.; Decision and Order

On August 8, 2011, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, issued an Order to Show Cause to Patrick K. Chau, M.D. (Registrant), of Vancouver, Washington. The Show Cause Order proposed the revocation of Registrant's DEA Certificate of Registration BC1983659, which authorizes him to dispense controlled substances as a practitioner,

and the denial of any pending application to renew or modify his registration, on the ground that his ''continued registration is inconsistent with the public interest.'' GX 3, at 1 (citing 21 U.S.C. 823(f) & 824(a)(4)).

More specifically, the Show Cause Order alleged that between February 20 and March 27, 2009, Registrant had issued prescriptions for alprazolam, a schedule IV controlled substance, to two undercover officers, without a legitimate medical purpose and outside the usual course of professional practice, in violation of 21 CFR 1306.04(a) and Wash. Rev. Code § 18.130.180(4). *Id.* at 1–2. The Show Cause Order further alleged that on October 15, 2009, the State of Washington's Medical Quality Assurance Commission issued an order prohibiting Registrant from prescribing controlled substances and that Registrant is therefore without authority to prescribe controlled substances in the State in which he is registered with DEA. *Id.* at 2. Finally, the Show Cause Order notified Registrant of his right to request a hearing on the allegations or to submit a written statement regarding the matters of fact and law raised in the Order in lieu of a hearing, the procedures for doing either, and the consequences for failing to do either. *Id.* (citing 21 CFR 1301.43(a), (c), (d), & (e)).

As evidenced by the signed return receipt card, the Government accomplished service on or about August 11, 2011. GX 4. Since the date of service of the Show Cause Order, more than thirty days have now passed and neither Registrant, nor anyone purporting to represent him, has either filed a request for a hearing or submitted a written statement in lieu thereof. Accordingly, I find that Registrant has waived both his right to a hearing and his right to submit a written statement in lieu of a hearing. 21 CFR 1301.43(e). I therefore issue this Decision and Order based on relevant evidence contained in the Investigative Record submitted by the Government. I make the following findings.

Findings

Registrant is the holder of DEA Certificate of Registration BC1983659, which authorizes him to dispense controlled substances in schedules II through V as a practitioner at the registered location of 6816 NE Highway 99, Suite 108, Vancouver, Washington. GX 1. While this registration was due to expire on August 31, 2010, on August 30, 2010, Registrant submitted a renewal application. GX 2. Accordingly, I find that Registrant's registration has remained in effect pending the issuance of the Final Order in this matter. 5 U.S.C. 558(c).

Registrant, who is a board-certified psychiatrist, is also the holder of a license to practice as a physician and surgeon issued by the State of Washington. GX 6, at 2. On October 1, 2009, Registrant entered into a Stipulated Findings of Fact, Conclusions of Law and Agreed Order with the State's Medical Quality Assurance Commission (hereinafter, MQAC or Commission); the MQAC accepted the Order on October 15, 2009. *Id.* at 24.

The MQAC's Order contained extensive findings regarding Registrant's prescribing of controlled substances to numerous patients. *See id.* at 3–17. For example, the MQAC found that Registrant had ''violated the standard of care in the following ways'' in treating Patient B, noting that:

> Patient B was on addicting doses of benzodiazepines and opioids when he started seeing [Registrant]. At that point, [Registrant] should have had Patient B detoxified rather than continue to support his treatment, and over time, increased the prescribed amounts of addictive medications.
>
> [Registrant] increased Patient B's already addictive and dangerous doses of opioids and benzodiazepines. In addition, there is no evidence of much, if any, resulting improvement to the patient's condition.
>
> [Registrant's] prescriptions of large amounts of opioids likely caused Patient B to become addicted to narcotics. [Registrant] failed to consider and try Patient B on non-addictive alternatives to treat his headaches.

Id. at 5–6. The MQAC thus found that ''[a]s a result, [Registrant] harmed, or created an unreasonable risk of harm, to Patient B.'' *Id.* at 6.

The MQAC further found that Registrant ''has engaged in a pattern of prescribing high doses and large amounts of addicting medication, particularly benzodiazepines, to new patients who claimed to need ongoing treatment at such doses, but who also provided rationales for transferring their care to [Registrant], such as that they recently moved from another state or part of this state, or that they changed or lost their insurance.'' *Id.* at 7. The Commission then found that in numerous instances Registrant ''did not obtain any records or otherwise verify [a patient's] treatment history.'' *See id.* at 7–13 (Patients D, E, F, G, H, I, J, K, L, M, N, O, P, Q, & R). Moreover, with respect to Patients D through R, the MQAC found that Registration violated the standard of care by:

> Failing to recognize that the patients were on addicting doses of medication and refer them to an appropriate detoxification facility.
>
> Repeatedly providing new patients with three-month supplies of high doses of addictive medications without planning to see the patients for three months.
>
> Ignoring possible drug-seeking and diversion behaviors, and not requesting medical records from other providers or otherwise substantiating the patients' reported treatment and prescription histories. As a result, [Registrant] placed these patients at an unreasonable risk of harm.

Id. at 13.

The MQAC catalogued additional violations by Registrant of the standard of care with respect to several of the patients. With respect to Patient K, the MQAC found that Registrant ''violated the standard of care * * * by prescribing two benzodiazepines, both at addicting doses.'' *Id.* Next, the MQAC found that Registrant ''violated the standard of care in prescribing OxyContin to Patient M and Norco to Patient N because he did not document that they suffered from current pain complaints.'' *Id.* at 14.

With respect to Patient S, the MQAC found that he had told Registrant ''that his symptoms improved when he tried two milligrams of Xanax supplied by 'other people.''' *Id.* Registrant ''prescribed a daily regimen of eight milligrams of Xanax, wrote for a three-month supply, and asked the patient to return in three months. The patient returned one month early * * * at which time [Registrant] increased the prescription to ten milligrams per day and again wrote for a three-month supply.'' *Id.* The Commission also found that approximately two months later, ''Patient S told [Registrant] that he was leaving the area for a summer job in Alaska and that he needed a 90-day supply of Xanax to last him for that period. [Registrant] provided the requested prescription.'' *Id.*

Regarding his prescribing to Patient S, the MQAC found that Registrant violated the standard of care, explaining that:

> He started the patient on an unduly high and addictive dose of Xanax instead of starting at a safer, lower dose and titrating up if warranted. He also disregarded signs that the patient was drug-seeking and possibly diverting. In accepting the patient's claim that he needed a 90-day supply of Xanax because he was going to work in Alaska for the summer, [Registrant] accepted at face value a brief note to that effect that the patient provided. The note was purportedly written by another of [Registrant's] patients.

Id.

Based on these and other findings, the MQAC concluded that Registrant had ''committed unprofessional conduct'' in violation of RCW 18.130.180(4), (8)(a), and (9). *Id.* at 18. The Commission placed Registrant's medical license on probation and prohibited him from

prescribing controlled substances, explaining that it ''will not lift this restriction unless the Center for Personalized Education for Physicians in Denver, Colorado * * * determined that [Registrant] can prescribe safely and with reasonable skill and without posing an unreasonable risk of harm to the public.'' *Id.*

On February 20, 2009, a DEA Special Agent (S/A) made an undercover visit to Registrant. During the visit, which was recorded, Registrant explained that he is a psychiatrist and asked the S/A if he was looking for psychiatric services and that his fee was $140, which the S/A paid in cash. GXs 8 & 9. The S/A told Registrant that he had a friend in Seattle who was giving him Xanax and that his girlfriend had also given him some of the drug. GX 9. Registrant asked the S/A to tell him about his symptoms; the SA replied that he had a friend who gave him a couple of pills, stated that he was really relaxed and ''just more relaxed after'' taking the drug, that ''I feel better after I take the pill,'' and ''I definitely feel better after than before.'' *Id.* Registrant than asked the S/A whether anyone in his family had anxiety; the S/A denied that anyone in his family had ''an anxiety problem.'' *Id.* Registrant then reviewed some type of agreement with the S/A, and after completing this, Registrant stated that ''my diagnosis for you is some sort of general anxiety problem.'' *Id.*

However, at no point during the visit, did the S/A state that he felt anxious. Registrant nonetheless gave the S/A a prescription for 90 tablets of Xanax 1mg. GX 10.

The Government also submitted a recording of a second undercover visit, which was conducted on March 27, 2009 by a different S/A. In his affidavit, the S/A stated that he had paid $140 cash; that he told Registrant that he had been referred by the S/A, who had performed the previous visit; and that Registrant gave him a prescription for 73 tablets of Xanax 1mg. GX 11, at 1–2; *see also* GX 13 (copy of Rx).

During the visit, the S/A told Registrant that he had not seen a doctor in a long time, and after confirming that he lived in Seattle, the S/A denied having a doctor in Seattle, stating that he was ''actually pretty healthy to be honest with you.'' After discussing the S/A's purported job, Registrant asked the S/A to ''tell me about what kind of symptoms you would like me to help you with?'' The S/A answered: ''Well actually * * * I'm not doing bad, I'm doing very good.'' Registrant replied: ''OK,'' and asked the S/A why he wanted to see him. The S/A explained he wanted to get some Xanax and when asked to explain why, stated that ''the only reason I can think of is it makes me feel good when I take it. Can't think of anything else to be honest with you.''

Registrant then asked the SA if he had previously taken Xanax; the S/A replied that he had taken it about two years ago. Registrant asked the S/A why he had then taken Xanax; the S/A stated: ''the same reason really.'' After Registrant asked: ''You feel relaxed''?; the S/A said: ''It makes me feel good,'' and that he had bought it on the street then, but that it was too expensive. After discussing the price the S/A had paid on the street, Registrant asked: ''Can you tell me the benefit when you taking it? Like when you're on it compared to when you're not on it? And the difference to justify the benefit, the reason you pay money to take it?'' The S/A answered: ''It just makes me feel good. I mean in general.''

Registrant then asked if a doctor had ''ever formally prescribe[d]'' the drug; the S/A stated ''No, No, I'll be honest with you.'' Next, Registrant asked if the Xanax helped him sleep; the S/A denied having any problem sleeping. Registrant then asked: ''And in the way you feel good that means you're relaxed? Able to do your job better? Is that right?'' The SA responded: ''I don't know if I could say that. I'm trying to be honest with you. I'm not trying to lie to you.'' Registrant then told the SA to ''try to justify the reason you come to visit me and to get the medication and so there's a reason. It just feels good. If you don't take it, if you feel good also, that might not be really reasonable right?'' The S/A replied ''right,'' and Registrant continued, stating: ''So in order for you to pay that much money and to come all the way to see me you must have some reason you want to do so.'' The S/A stated: ''right, right, right. It just makes me feel better in general.'' Registrant remarked: ''General well-being. So I suppose it takes away some kind of a tense, some kind of anxiety feeling.'' The S/A replied: ''well if we've * * * if that. If we've gotta say that, yes we can say that if we've gotta say that, yes.''

Registrant responded that ''anxiety is not like a panic that comes and goes and for some kind of anxiety that is pervasive always there, and that if the anxiety is being resolved and the people feel liberated from those feelings, that's how you feel better or general sense of well-being.'' The S/A replied: ''I mean if we have to say that, general well-being then you know, let's say that. I thank God I'm doing very good in everything, really, you know.'' Registrant then stated:

> So what I would do since there's not a very severe degree of symptom and may not be as drastic as other people I've had and there's also a considerable benefit like that you tell me that makes you come all the way. So what I would call a middle of the road approach, ok? Of course I believe you are not selling drugs either and not trying to take the medicine from me to go to the streets sell eighty bucks a pill. So I have to trust the best of you. You go to a lawyer, the lawyer have to trust you instead of think that you're bad. Otherwise, won't be a client relationship.

Continuing, Registrant said that in ''this good willing or good faith, I would give you a try, ok, a preliminary trial of medication,'' but that it wouldn't be ''what you get from the street but according to our standard of trial I will start you on a very preliminary dose.'' Registrant then explained his dosing regimen and that he would not give the S/A more than a one-month prescription for a patient that had not been receiving the medication on an ongoing basis from another doctor.

Registrant further said that he was ''fighting the State of Washington over the controversial [sic] of prescribing Xanax and Klonopin because some people doesn't want to, some people says it's excess, but for me its justified for the patient's presentation. Except in your case, we are ambiguous, ambiguity. So I want the patient to use only one pharmacy.'' Registrant then told the S/A that he would have to use a local WalMart pharmacy and required him to sign an agreement for their ''mutual protection,'' which required that he use only one pharmacy, that he was not on methadone or heroin, that he would not divert or sell the controlled substance to others, and that he would not have more than one doctor prescribe the same class of controlled substances.

Subsequently, in between small talk, Registrant asked the S/A whether he had ''any other physical illness'' and whether family members ''have any anxiety problem''; the S/A answered: ''No, they're doing great.'' Registrant then calculated the number of tablets he was prescribing per his dosing regimen and wrote out the prescription, which he then gave to the S/A.

Discussion

Section 304(a) of the Controlled Substances Act (CSA) provides that ''[a] registration pursuant to section 823 of this title to * * * dispense a controlled substance * * * may be suspended or revoked by the Attorney General upon a finding that the registrant * * * has committed such acts as would render his registration under section 823 of this title inconsistent with the public interest as determined under such

section.'' 21 U.S.C. 824(a)(4). In making the public interest determination in the case of a practitioner, Congress directed that the following factors be considered:

(1) The recommendation of the appropriate State licensing board or professional disciplinary authority.

(2) The applicant's experience in dispensing * * * controlled substances.

(3) The applicant's conviction record under Federal or State laws relating to the manufacture, distribution, or dispensing of controlled substances.

(4) Compliance with applicable State, Federal, or local laws relating to controlled substances.

(5) Such other conduct which may threaten the public health and safety.

21 U.S.C. 823(f).

''[T]hese factors are considered in the disjunctive.'' *Robert A. Leslie,* 68 FR 15227, 15230 (2003). I may rely on any one or a combination of factors and may give each factor the weight I deem appropriate in determining whether to revoke an existing registration or to deny an application. *Id.* Moreover, while I ''must consider each of these factors, [I] 'need not make explicit findings as to each one.''' *MacKay* v. *DEA,* 664 F.3d 808, 816 (10th Cir. 2011) (quoting *Volkman* v. *DEA,* 567 F.3d 215, 222 (6th Cir. 2009)); *see also Hoxie* v. *DEA,* 419 F.3d 477, 482 (6th Cir. 2005) (citing *Morall* v. *DEA,* 412 F.3d 165, 173–74 (DC Cir. 2005)).

With respect to a practitioner's registration, the Government bears the burden of proving by substantial evidence that the continuation of a registration would be inconsistent with the public interest. *Cf.* 21 CFR 1301.44(d).[1] In this matter, I have considered all of the factors and conclude that the evidence with respect to factors one, two, and four supports a finding that Registrant's continued registration would be inconsistent with the public interest.

Factor One—The Recommendation of the State Licensing Board

As found above, on October 15, 2009, the MQAC adopted the Agreed Order which Registrant has previously entered into, pursuant to which Registrant is prohibited from prescribing controlled substances under Washington law. *See* Rev. Code Wash. § 18.130.160(3) (authorizing a ''[r]estriction or limitation of [license's holder's] practice''); *id.* § 18.130.180(9) (providing that ''[f]ailure to comply with an order issued by the disciplining authority or a stipulation for informal disposition entered into with the disciplining authority'' is unprofessional conduct).

The CSA defines ''the term 'practitioner' [to] mean [] a * * * physician * * * or other person licensed, registered or otherwise permitted, by * * * the jurisdiction in which he practices * * * to distribute, dispense, [or] administer * * * a controlled substance in the course of professional practice.'' 21 U.S.C. 802(21). Consistent with this definition, Congress, in setting the requirements for obtaining a practitioner's registration, provided that ''[t]he Attorney General shall register practitioners * * * if the applicant is authorized to dispense * * * controlled substances under the laws of the State in which he practices.'' 21 U.S.C. 823(f).

Accordingly, because one cannot obtain a practitioner's registration unless one holds authority under state law to dispense controlled substances, and because where a registered practitioner's state authority has been revoked or suspended, the practitioner no longer meets the statutory definition of a practitioner, DEA has repeatedly held that the possession of authority to dispense controlled substances under the laws of the State in which a practitioner engages in professional practice is a fundamental condition for both obtaining and maintaining a practitioner's registration.[2] *See, e.g., Calvin Ramsey,* 76 FR 20034, 20036 (2011); *Dominick A. Ricci,* 58 FR 51104, 51105 (1993); *Bobby Watts,* 53 FR 11919, 11920 (1988). Because the CSA expressly conditions the holding of a practitioner's registration on the practitioner's being ''authorized to dispense controlled substances under the laws of the State in which he practices,'' *id.,* and also limits the definition of the term ''practitioner'' to a physician who is licensed, registered or otherwise permitted to dispense a controlled substance in the course of professional practice, *id.* § 802(21), and Registrant, by virtue of the Agreed Order, is no longer authorized under his license to dispense a controlled substance, this factor provides reason alone to revoke his registration.

Factors Two and Four—Registrant's Experience in Dispensing Controlled Substances and Record of Compliance With Applicable Laws Related to Controlled Substances

The MQAC Findings

As found above, the MQAC found that Registrant had repeatedly violated the standard of care and committed unprofessional conduct in prescribing controlled substances to numerous patients. More specifically, the MQAC found that Registrant had committed ''[i]ncompetence, negligence, or malpractice which results in injury to a patient or which creates an unreasonable risk that a patient may be harmed.'' GX 6, at 18 (citing Rev. Code Wash. § 18.130.180(4)). The MQAC also found that Registrant committed unprofessional conduct by ''[f]ail[ing] to cooperate with the disciplinary authority,'' as well as by ''[f]ail[ing] to comply with an order issued by the disciplinary authority,'' *id.* (citing Rev. Code Wash. § 18.130.180(8) & (9)). However, the MQAC did not find that Registrant had prescribed controlled substances ''other than for legitimate or therapeutic purpose'' or that he diverted controlled substances, in violation of Rev. Code Wash. § 18.130.180(6)).[3] *Id.*

As I have previously acknowledged,[4] numerous federal courts of appeal have held ''the offense of unlawful

[1] As found above, Registrant neither requested a hearing nor submitted a written statement explaining his position on the matters of fact and law asserted. By contrast, in a contested case, where the Government satisfies its *prima facie* burden, as for example, by showing that a registrant has committed acts which are inconsistent with the public interest, the burden then shifts to the registrant to demonstrate why he can be entrusted with a registration. *Medicine Shoppe-Jonesborough,* 73 FR 363, 380 (2008).

[2] To effectuate this requirement, in 21 U.S.C. 843(a)(3), Congress also granted the Attorney General authority to revoke a registration ''upon a finding'' that a registrant ''has had his State license or registration suspended, revoked, or denied by competent State authority and is no longer authorized by State law to engage in the * * * dispensing of controlled substances.''

[3] Under a longstanding DEA regulation, a prescription for a controlled substance is not ''effective'' unless it is ''issued for a legitimate medical purpose by an individual practitioner acting in the usual course of his professional practice.'' 21 CFR 1306.04(a). This regulation further provides that ''[a]n order purporting to be a prescription issued not in the usual course of professional treatment * * * is not a prescription within the meaning and intent of [21 U.S.C. 829] and * * * the person issuing it, shall be subject to the penalties provided for violations of the provisions of law relating to controlled substances.'' *Id.*

As the Supreme Court has explained, ''the prescription requirement * * * ensures patients use controlled substances under the supervision of a doctor so as to prevent addiction and recreational abuse. As a corollary, [it] also bars doctors from peddling to patients who crave the drugs for those prohibited uses.'' *Gonzales* v. *Oregon,* 546 U.S. 243, 274 (2006) (citing *United States* v. *Moore,* 423 U.S. 122, 135 (1975)).

[4] I also assume, without deciding, that the facts as found by the MQAC in the Agreed Order do not establish a violation of 21 CFR 1306.04(a). *But see George Mathew, M.D.,* 75 FR 66138, 66146 (2010) (rejecting MQAC's finding that physician had not diverted controlled substances when ''[s]everal Federal courts of appeals have held that conduct similar to what the MQAC found [the physician] to have engaged in by prescribing over the Internet violates the prescription requirement of Federal law and constitutes an unlawful distribution under 21 U.S.C. 841(a)''), *pet. for rev. denied, Mathew* v. *DEA,* No. 10–73480, slip op. at 5 (9th Cir. Mar. 16, 2012).

distribution requires proof that the practitioner's conduct went 'beyond the bounds of any legitimate medical practice, including that which would constitute civil negligence.''' *Laurence T. McKinney,* 73 FR 43260, 43266 (quoting *United States* v. *McIver,* 470 F.3d 550, 559 (4th Cir. 2006)). *See also United States* v. *Feingold,* 454 F.3d 1001, 1010 (9th Cir. 2006) (The Supreme Court in *United States* v. *Moore,* 423 U.S. 122 (1975), ''based its decision not merely on the fact that the doctor had committed malpractice, or even intentional malpractice, but rather on the fact that his actions completely betrayed any semblance of legitimate medical treatment.'').

However, as the Agency has explained in multiple cases, ''the Agency's authority to deny an application [and] to revoke an existing registration * * * is not limited to those instances in which a practitioner intentionally diverts a controlled substance.'' *Bienvenido Tan,* 76 FR 17673, 17689 (2011) (citing *Paul J. Caragine, Jr.,* 63 FR 51592, 51601 (1998)); *see also Dewey C. MacKay,* 75 FR 49956, 49974 (2010), *pet. for rev. denied* 664 F.3d 808 (10th Cir. 2011). As *Caragine* explained: ''[j]ust because misconduct is unintentional, innocent, or devoid of improper motive, [it] does not preclude revocation or denial. Careless or negligent handling of controlled substances creates the opportunity for diversion and [can] justify'' the revocation of an existing registration or the denial of an application for a registration. 63 FR at 51601.

''Accordingly, under the public interest standard, DEA has authority to consider those prescribing practices of a physician, which, while not rising to the level of intentional or knowing misconduct, nonetheless create a substantial risk of diversion.'' *MacKay,* 75 FR at 49974. Likewise, ''[a] practitioner who ignores the warning signs that [his] patients are either personally abusing or diverting controlled substances commits 'acts inconsistent with the public interest,' 21 U.S.C. 824(a)(4), even if [he] is merely gullible or naïve.'' *Jayam Krishna-Iyer,* 74 FR 459, 460 n.3 (2009).

Here, even if the MQAC's findings do not establish that Registrant engaged in intentional or knowing misconduct, they nonetheless establish numerous instances in which he recklessly prescribed controlled substances and that his prescribing practices created a substantial risk of diversion and abuse. More specifically, the MQAC found that Patient B was already on addictive doses of benzodiazepines and opioids when he/she started seeing Registrant and that he should have referred B to detoxification. Yet Registrant increased B's doses, failed to try non-addictive alternatives, and as a result, B likely became addicted. GX 6, at 5–6.

The MQAC further identified numerous other practices by Registrant which created a substantial risk of diversion and abuse. For example, the MQAC found that he ''engaged in a pattern of prescribing high doses and large amounts of addicting medication, particularly benzodiazepines, to new patients who claimed to need ongoing treatment at such doses,'' and who represented that they had either moved or changed/lost their insurance, and yet Registrant ''did not obtain any records or otherwise verify [the patient's] treatment history.'' *Id.* at 7. Indeed, the MQAC identified fifteen patients who obtained controlled substances from Registrant in this manner. *Id.* at 7–13. With respect to each of these patients, the MQAC found that: (1) Registrant failed to recognize that they were on addictive doses and refer them for detoxification; (2) he repeatedly prescribed three-month supplies of high doses of controlled substances ''without planning to see the patients for three months''; (3) he ignored ''drug-seeking and diversion behaviors''; and (4) he did not request the patient's medical records from other providers and otherwise failed to ''substantiat[e] the patients' reported treatment and prescription histories.'' *Id.*

With respect to still another patient (K), the MQAC found that he ''violated the standard of care * * * by prescribing two benzodiazepines, both at addicting doses.'' *Id.* at 13. In addition, the MQAC found that Registrant prescribed OxyContin (a schedule II controlled substance) to Patient M and Norco (hydrocodone, a schedule III controlled substances) to Patient N but ''did not document that they suffered from current pain complaints.''[5] *Id.* at 14.

Finally, the MQAC found that Patient S had told Registrant that he had obtained Xanax from non-medical sources and yet started him at ''an unduly high and addictive dose'' of eight milligrams a day and wrote him a prescription for a three-month supply. *Id.* Yet, Patient S returned one month early and at this visit, Registrant wrote him another prescription for a three-month supply and increased his daily dose to ten milligrams. *Id.* Moreover, two months later, Patient S returned and said that he was going to take a summer job in Alaska and needed a 90-day supply, and presented a note to this effect. *Id.* Registrant issued the requested prescription to Patient S. The MQAC found that Registrant had accepted at face value Patient S's representation and that Registrant ''disregarded signs that [Patient S] was drug-seeking and possibly diverting.'' *Id.* at 14.

As the forgoing demonstrates, even if Respondent did not intentionally divert controlled substances to any of the patients identified in the MQAC's Order, the Order identified numerous instances in which Respondent recklessly prescribed controlled substances to persons who were likely engaged in either self-abuse or diversion. Respondent's repeated failure to obtain the medical records for his patients, as well as to otherwise verify their treatment histories and other claims, created a substantial risk of diversion and abuse. *MacKay,* 75 FR at 49974.

So too, Respondent's practice of ''[r]epeatedly providing new patients with three-month supplies of high doses of addictive medications without planning to see the patients for three months,'' *id.* at 13, created a substantial risk that the patients were either diverting the drugs or abusing them. As the Supreme Court explained in *Gonzales,* one of the core purposes of the CSA's ''prescription requirement [is to] ensure[] [that] patients use controlled substances under the supervision of a doctor so as to prevent addiction and recreational abuse.'' 546 U.S. at 274 (other citation omitted). The MQAC's Order makes clear that Respondent failed to properly monitor numerous patients to ensure that they were not abusing or diverting the drugs he prescribed to them.

Accordingly, I hold that the MQAC's findings alone support findings under factors two and four that Registrant has committed acts which render his registration ''inconsistent with the public interest.'' 21 U.S.C. 824(a)(4). *See also Tan* 76 FR at 17689; *Krishna-Iyer,* 74 FR at 460 n.3; *Caragine,* 63 FR at 51601. I further hold that this finding supports the revocation of Registrant's registration.

The DEA Undercover Visits

As found above, in February and March 2009, two S/As made undercover visits to Registrant and at each visit, obtained Xanax prescriptions. At the first visit, the S/A told Registrant that he had gotten Xanax from both a friend and his girlfriend, and when Registrant asked him to describe his symptoms, the

[5] No explanation was provided by the MQAC as to why these two instances do not constitute violations of Rev. Code Wash. § 18.130.180(6).

S/A reiterated that a friend had given him a couple of pills and that he was just more relaxed after taking the drug, and that he felt better after taking the drug. Significantly, at no point during the meeting did the S/A relate that he had anxiety, and denied that anyone in his family had anxiety.

Registrant then stated that he was diagnosing the S/A with some sort of general anxiety problem. However, given that the S/A stated that he was getting the pills from non-medical sources, and that when asked to relate his symptoms, simply stated that the pills just made him relax and that he felt better after taking the drug, I conclude that substantial evidence supports a finding that Registrant lacked a legitimate medical purpose and violated 21 CFR 1306.04(a) when he prescribed Xanax to the first S/A.[6]

Likewise, when asked to relate what symptoms he wanted Registrant to help him with, the second S/A stated that he wasn't doing badly but was doing ''very good'' and that he actually wanted to get some Xanax. When asked to explain why, the S/A explained that the drug made him feel good when he took it. Subsequently, the second S/A made clear that he had gotten Xanax off the street and that the drug had never been prescribed to him. Upon further questioning by Registrant, the second S/A again said that the drug made him feel good and denied that he had any problem sleeping. Moreover, when asked whether taking Xanax helped him relax and do his job better, the S/A said that he did not know that he ''could say that'' and later added that the drug just made him ''feel better in general.'' Finally, after Registrant explained that the S/A's statement suggested that taking the drug took ''away some kind of a tense, some kind of anxiety feeling,'' the S/A replied that ''if we have to say that, yes we can say that,'' but that he was ''doing very good in everything.'' Subsequently, Registrant stated that the S/A's presentation of his reason for taking Xanax was ambiguous.

However, I conclude that there was nothing ambiguous in the S/A's presentation because he never once acknowledged being anxious, and repeatedly denied having symptoms or problems that would provide a medical justification for prescribing the drug. Indeed, whenever Registrant questioned him, the S/A response was that he took Xanax because it just made him feel better. Accordingly, I conclude that substantial evidence supports a finding that Registrant lacked a legitimate medical purpose and violated 21 CFR 1306.04(a) when he prescribed Xanax to the second S/A.

Registrant's prescribing of Xanax to the two S/As thus provides additional support for my conclusion that he has committed acts which render his registration ''inconsistent with the public interest.'' 21 U.S.C. 824(a)(4). However, as explained above, the findings of the MQAC are, by themselves, more than adequate to reach this conclusion and to support the revocation of his registration.[7]

Sanction

Having found that Registrant lacks state authority to dispense controlled substances, and that he has committed numerous acts which render his registration inconsistent with the public interest, I conclude that the Government has made out a *prima facie* case for revocation. Because Registrant failed to request a hearing or to submit a written statement in lieu of a hearing, and has thus offered no evidence to rebut the Government's *prima facie* case, I will order that his registration be revoked and that any pending application be denied.

Order

Pursuant to the authority vested in me by 21 U.S.C. 823(f) and 824(a)(4), as well as 28 CFR 0.100(b), I order that DEA Certificate of Registration BC1983659, issued to Patrick K. Chau, M.D., be, and it hereby is, revoked. I further order that any pending application of Patrick K. Chau, M.D., to renew or modify his registration, be, and it hereby is, denied. This Order is effective July 16, 2012.

Dated: June 5, 2012.

Michele M. Leonhart,

Administrator.

[FR Doc. 2012–14653 Filed 6–14–12; 8:45 am]

BILLING CODE 4410–09–P

[6] While I have considered the audio recordings submitted in this matter, in future cases such evidence must be accompanied by a transcript.

[7] It is acknowledged that there is no evidence that Registrant has been convicted of an offense falling within factor three. However, this is not dispositive of the public interest inquiry. *See MacKay,* 664 F.3d at 817–18 (quoting *Dewey C. MacKay,* 75 FR 49956, 49973 (2010)). I also deem it unnecessary to make any findings under factor five.

DEPARTMENT OF JUSTICE

Federal Bureau of Investigation

[OMB Number 1110–0048]

Agency Information Collection Activities; Proposed Collection: Cargo Theft Incident Report, Revision of a Currently Approved Collection, Comments Requested

ACTION: 30-Day notice of information collection under review.

The Department of Justice, Federal Bureau of Investigation, Criminal Justice Information Services Division (CJIS) will be submitting the following Information Collection Request to the Office of Management and Budget (OMB) for review and clearance in accordance with the established review procedures of the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** Number 72, Volume 77, on page 22348, on April 12, 2012, allowing for a 60 day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until July 16, 2012. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to Mr. Gregory E. Scarbro, Unit Chief, Federal Bureau of Investigation, CJIS Division, Module E–3, 1000 Custer Hollow Road, Clarksburg, West Virginia 26306; facsimile (304) 625–3566.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who

are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques of other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of information collection:* Revision of a currently approved collection.

(2) *The title of the form/collection:* Cargo Theft Incident Report.

(3) *The agency form number, if any, and the applicable component of the department sponsoring the collection: Form Number:* None.

Sponsor: Criminal Justice Information Services Division, Federal Bureau of Investigation, Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* City, county, state, federal, and tribal law enforcement agencies. Brief Abstract: This collection is needed to collect information on cargo theft incidents committed throughout the United States.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* There are approximately 18,108 law enforcement agency respondents that submit monthly for a total of 217,296 responses with an estimated response time of 5 minutes per response.

(6) *An estimate of the total public burden (in hours) associated with this collection:* There are approximately 18,108 hours, annual burden, associated with this information collection.

If additional information is required contact: Jerri Murray, Department Clearance Officer, Policy and Planning Staff, Justice Management Division, United States Department of Justice, Two Constitution Square, 145 N Street NE., Room 2E–508, Washington, DC 20530.

Jerri Murray,

Department Clearance Officer, PRA, United States Department of Justice.

[FR Doc. 2012–14597 Filed 6–14–12; 8:45 am]

BILLING CODE 4410–02–P

DEPARTMENT OF JUSTICE

Office of Justice Programs

[OMB Number 1121–0115]

Agency Information Collection Activities: Proposed Collection; Comments Requested: Extension of a Currently Approved Collection; Victims of Crime Act, Crime Victim Assistance Grant Program, State Performance Report

ACTION: 60-Day Notice.

Department of Justice (DOJ), Office of Justice Programs (OJP), Office for Victims of Crime (OVC) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for ''sixty days'' until August 14, 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 DeLano Foster 202–616–3612, Office for Victims of Crime, Office of Justice Programs, U.S. Department of Justice, 810 7th Street NW., Washington, DC 20531.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Enhance the quality, utility, and clarity of the information to be collected; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Victims of Crime Act, Victim Assistance Grant Program, State Performance Report.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form number: 1121–0115. Office for Victims of Crime, Office of Justice Programs, U.S. Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: State government. Other: None. The VOCA, Crime Victim Assistance Grant Program, State Performance Report is a required annual submission by state grantees to report to the Office for Victims of Crime (OVC) on the uses and effects VOCA victim assistance grant funds have had on services to crime victims in the State, to certify compliance with the eligibility requirement of VOCA, and to provide a summary of supported activities carried out within the State during the grant period. This information will be aggregated and serve as supporting documentation for the Director's biennial report to the President and to the Congress on the effectiveness of the activities supported by these grants.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The information to compile these reports will be drawn from victim assistance program data to the 56 respondents (grantees). The number of victim assistance programs varies widely from state to state. A state could be responsible for compiling subgrant data for as many as 436 programs (California) to as few as 12 programs (District of Columbia). Therefore, the estimated clerical hours can range from 1 to 70 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The current estimated burden is 1,176 (20 hours per respondent (estimate median) + 1 hour per respondent for recordkeeping × 56 respondents = 1,176 hours). There is a decrease in the annual recordkeeping and reporting burden. This decrease is a result of a change in the number of respondents reporting.

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., Washington, DC 20530.

Jerri Murray,

Department Clearance Officer, U.S. Department of Justice.

[FR Doc. 2012–14613 Filed 6–14–12; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF JUSTICE

Office of Justice Programs

[OMB No. 1121–0249]

Agency Information Collection Activities; Agency Information Collection Activities; Proposed Collection; Extension of a Currently Approved Collection; Comment Requested Deaths in Custody—Series of Collections From State-Level Law Enforcement Respondents, Local Jails and State Prisons

ACTION: 60-day notice.

The Department of Justice (DOJ), Office of Justice Programs (OJP), Bureau of Justice Statistics (BJS) 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 60 days until August 14, 2012. This process is 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 Margaret Noonan, Statistician, (202) 353–2060, Bureau of Justice Statistics, 810 Seventh St., NW., Washington, DC 20531.

We request written comments and suggestions from the public and affected agencies concerning the proposed collection of information. 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 assumption 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:* Renewal of existing collection.

(2) *The title of the Form/Collection:* Deaths in Custody Reporting Program.

(3) *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* Forms—Death Report on Inmates Under Jail Jurisdiction (CJ–9); Annual Summary on Inmates Under Jail Jurisdiction (CJ–9A); Death Report on Inmates In Private and Multi-Jurisdictional Jails (CJ–10); Annual Summary on Inmates in Private and Multi-Jurisdictional Jails (CJ–10A); State Prison Inmate Death Report (NPS–4A); Annual Summary of Inmate Deaths in State Prisons (NPS–4); Summary of Arrest-Related Deaths (CJ–11); Arrest-Related Death Report (CJ–11A). The Bureau of Justice Statistics, Office of Justice Programs, Department of Justice is the sponsor for the collection.

(4) *Affected public who will be asked to respond, as well as a brief abstract:* Primary: Local jail administrators, state prison administrators, and state-level law enforcement respondents. One reporter from each of the estimated 3,000 local jail jurisdictions and one reporter from each of the 50 state prison systems in the United States are asked to provide information on the following categories:

(a) The number of inmates confined in jail facilities on December 31 of the previous year, by sex, either actual or estimated (local jails only);

(b) The number of inmates admitted to jail facilities in the previous year, by sex, either actual or estimated (local jails only);

(c) The average daily population of all jail confinement facilities operated by the jurisdiction in the previous year, by sex, either actual or estimated (local jails only);

(d) The number of persons who died while under the supervision of the jurisdiction in the previous year, by sex, either actual or estimated (local jails only);

(e) The number of persons who died while in custody of state correctional facility during the previous year (state prisons only);

(f) The full name, date of death, date of birth, sex, and race/ethnic origin for each inmate who died during the reporting year;

(g) The name and location of the correctional facility involved for each inmate who died during the reporting year (state prisons only);

(h) The admission date and current offense(s) for each inmate who died during the reporting year;

(i) The legal status for each inmate who died during the reporting year (local jails only);

(j) Whether the inmate ever stayed overnight in a mental health observation unit or outside mental health facility;

(k) The location and cause of death of each inmate death that took place during the reporting year;

(l) The time of day that the incident causing the inmate's death occurred and where the incident occurred (limited to accidents, suicides, and homicides only);

(m) Whether the cause of death was a preexisting medical condition or a condition that developed after admission to the facility and whether the inmate received treatment for the medical condition after admission and if so, the kind of treatment received (deaths due to accidental injury, intoxication, suicide, or homicide do not apply);

(n) Whether an autopsy/postmortem exam/review of medical records to determine the cause of death of the inmate was performed and the availability of those results;

(o) The survey ends with a box in which respondents can enter notes;

(p) Confirmation or correction of the agency and agency head's name, phone number, email address, and mailing address;

(q) Confirmation or correction of the agency's primary point of contact for data collection, title, phone number, email address, and mailing address;

(r) Confirmation or correction of the names of facilities within the jurisdiction;

(s) Whether the facility holds inmates for U.S. Immigration and Customs Enforcement (ICE) inmates, U.S. Marshals Service, or other counties, jurisdictions or correctional authorities.

A total of 52 respondents, comprising of 50 state-level respondents, representing each state, and two local-level law enforcement agencies representing the District of Columbia

and New York City are asked to provide information on the number of persons who died during the process of arrest by state or local law enforcement in the reporting year. In addition, state-level law enforcement respondents are asked to provide the following information for each person who died during the process of arrest in the reporting year:

(a) The full name, date of death, date of birth, sex, and race/ethnic origin;

(b) The name and ORI number of the law enforcement agency involved;

(c) The address, and location type, of the incident that caused the death;

(d) The reason for the initial contact between law enforcement and the deceased, as well as whether specialize units responded during the incident;

(e) Whether the deceased engaged in non-compliant or aggressive behavior during the process of arrest;

(f) Whether the deceased possessed, threaten to use, or used any weapons during the process of arrest;

(g) Whether law enforcement personnel engage in tactics to restrain or used restraints or weapons during the process of arrest;

(h) Whether the deceased sustained injuries during the incident and whether law enforcement personnel, the decedent, or another civilian was responsible for inflicting injuries;

(i) The type of weapon that caused the death;

(j) The location, date, time, manner, and cause of death;

(k) Whether the autopsy or post-mortem evaluation indicated the presences of alcohol, other drugs, or confirmed psychological diagnosis;

(l) The survey ends with a box in which respondents can enter notes.

The Bureau of Justice Statistics uses this information in published reports and statistics. The reports will be made available to the U.S. Congress, Executive Office of the President, practitioners, researchers, students, the media, others interested in criminal justice statistics, and the general public.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* An approximate 3,102 total respondents will be asked to submit an estimated 11,152 responses each year to this collection program. The typical amount of time needed for a respondent to complete each form is broken down as follows:

Local jails/death reports (forms CJ–9 and CJ–10)—600 respondents will have an average response time of 30 minutes per form, for a total of 451 hours. Analysis of data from past years shows that approximately 80% of jails nationwide have zero deaths in a given calendar year. Thus, based on the 2010 data, approximately 20% of the 3,000 jails will complete death reports, resulting in 600 respondents. Respondents reporting zero deaths will not need to complete a death report form. Based on 2009 and 2010 data, approximately 22% of the total 4,100 death reports received was from jail respondents; thus, we expect to receive approximately 902 death reports from jails. For jurisdictions reporting a death, the average response time is estimated at 30 minutes per death, for a total of 451 hours devoted to reporting data on deaths in jails. The estimated time is based on feedback from jail staff.

Local jails/annual (forms CJ–9A and CJ–10A)—an estimated 3,000 jail respondents will have an average response time of 15 minutes per form, for a total of 750 hours. The estimated time is based on feedback from jail staff.

State prison/death reports (form NPS–A)—50 state prison respondents are estimated to have an average response time of 30 minutes per death, across 3,198 deaths each year, for a total of 1,599 hours. Based on 2009 and 2010 data, 78% of the total 4,100 death reports received was from state prisons; thus, we expect to receive approximately 3,198 death reports from state prisons. The estimated time is based on feedback from state prison staff.

State prison/annual (form NPS–4)—50 state prison respondents are estimated to have an average response time of 5 minutes per form, for a total of 4 hours. Based on 2010 data, we expect approximately 50 respondents. The estimated time is based on feedback from state prison staff.

Local jail and state prisons (verification call)—3,050 respondents (3,000 jail jurisdiction respondents and 50 state department of corrections respondents) will be asked to participate in the verification call, which has an average response time of 8 minutes per call, for a total of 407 hours (400 for jail respondents and 7 for state prison respondents). The estimated time is based on the average time to complete a verification call with a respondent.

Arrest-Related/death reports (CJ–11A)—50 state-level respondents and 2 local law enforcement agencies are estimated to have an average response time of 60 minutes per death, across 900 deaths each year, for a total of 900 hours.

Arrest-Related/summary (CJ–11)—50 state-level respondents and 2 local law enforcement agencies are estimated to have an average response time of 5 minutes per form, for a total of 4 hours. Based on 2010 data, we expect approximately 50 respondents. The estimated time is based on feedback from state-level respondents.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 4,115 annual burden hours. The estimates contributing to this calculation are provided in the table below.

SUMMARY OF TOTAL RESPONDENT BURDEN FOR DCRP DATA COLLECTION

Reporting method	Type of data supplier	Number of data suppliers	Number of responses	Average reporting time	Total burden hours
Mail and Online Data Entry	Local Jails—Death Records [1]	600	902	30 minutes per death	451
Mail and Online Data Entry	Local Jails—Annual Summary [2]	3,000	3,000	15 minutes	750
Mail and Online Data Entry	State Prison—Death Records [3]	50	3,198	30 minutes per death	1,599
Mail and Online Data Entry	State Prison—Annual Summary [4].	50	50	5 minutes	4
Telephone	Local Jails– Verification Call	3,000	3,000	8 minutes	400
Telephone	State Prisons—Verification Call	50	50	8 minutes	7
Mail, Email, and Fax	Arrest-Related Death Record [5]	52	900	60 minutes per death	900
Mail, Email, and Fax	Arrest-Related Death Summary [6]	52	52	5 minutes	4
Total		3,102	11,152		4,115

[1] The forms associated with local jail death records are forms CJ–9 and CJ–10.
[2] The forms associated with local jail annual summaries are forms CJ–9A and CJ–10A.
[3] The form associated with the state prison death records is form NPS–4A.
[4] The form associated with the state prison annual summary is form NPS–4.

[5] The form associated with arrest-related death records is form CJ–11A.
[6] The form associated with arrest-related death summary is form CJ–11.

If additional information is required contact: Jerri Murray, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE., Suite 2E–508, Washington, DC 20530.

Jerri Murray,

Department Clearance Officer, PRA, U.S. Department of Justice.

[FR Doc. 2012–14614 Filed 6–14–12; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF LABOR

Employment and Training Administration

[Funding Opportunity Number SGA/DFA PY–11–13]

Notice of Availability of Funds and Solicitation for Grant Applications for Pay for Success Pilot Projects

SUMMARY: The Employment and Training Administration (ETA), U.S. Department of Labor, announces the availability of approximately $20 million in Pay for Success grants, funded out of the Workforce Innovation Fund in the Department of Labor Appropriations Act, 2012 (Pub. L. 112–74, Div. F, Tit. I). The Workforce Innovation Fund supports innovative approaches to the design and delivery of employment and training services that generate long-term improvements in the performance of the public workforce system, both in terms of positive results for job seekers and employers and cost-effectiveness. Grants awarded under this Solicitation for Grant Applications (SGA) will fund pilots of a Pay for Success model, an innovative funding strategy for achieving specific social service outcomes.

The complete SGA and any subsequent SGA amendments in connection with this solicitation are described in further detail on ETA's Web site at *http://www.doleta.gov/grants/* or on *http://www.grants.gov.* The Web sites provide application information, eligibility requirements, review and selection procedures and other program requirements governing this solicitation.

DATES: The closing date for receipt of applications is December 11, 2012.

FOR FURTHER INFORMATION CONTACT: Linda Forman, Grants Management Specialist, Office of Grants Management, at (202) 693–3416.

Signed June 11, 2012 in Washington, DC.

Eric D. Luetkenhaus,

Grant Officer, Employment and Training Administration.

[FR Doc. 2012–14577 Filed 6–14–12; 8:45 am]

BILLING CODE 4510–FN–P

NATIONAL SCIENCE FOUNDATION

Notice of Record of Decision

AGENCY: National Science Foundation.

ACTION: Notice of Record of Decision.

FOR FURTHER INFORMATION CONTACT: For further information regarding the ROD contact: Holly Smith, National Science Foundation, 4201 Wilson Blvd., Suite 725, Arlington, VA 22230; telephone: (703) 292–8583; email: *nepacomments@nsf.gov.*

SUMMARY: On June 12, 2012, the National Science Foundation (NSF) signed a Record of Decision (ROD) regarding the Final Programmatic Environmental Impact Statement/Overseas Environmental Impact Statement (PEIS/OEIS) (hereafter Final PEIS) for Marine Seismic Research Funded by NSF or Conducted by the U.S. Geological Survey (USGS). The Final PEIS assesses the potential impacts on the human and natural environment as a result of marine seismic surveys conducted during marine geophysical research funded by NSF or conducted by the USGS. The Proposed Action is for academic and U.S. government scientists in the U.S., and possible international collaborators, to conduct marine seismic research using a variety of acoustic sources from research vessels operated by U.S. academic institutions and government agencies. The purpose of the Proposed Action is to fund the investigation of the geology and geophysics of the seafloor by collecting seismic reflection and refraction data that reveal the structure and stratigraphy of the crust and/or overlying sediment below the world's oceans. NSF has a continuing need to fund seismic surveys that enable scientists to collect data essential to understanding complex Earth processes beneath the ocean floor.

Prior to issuance of the ROD, NSF prepared the Final PEIS as the lead federal agency with support from the cooperating agencies, USGS and the National Marine Fisheries Service (NMFS) of the National Oceanic and Atmospheric Administration (NOAA). The Final PEIS was prepared in compliance with the National Environmental Policy Act (NEPA) (42 U.S.C. 4321 *et seq.*) and made available to the public in June 2011. Two action alternatives (Alternative A and Alternative B) and the No-Action Alternative were assessed. Alternative B, the preferred alternative, was selected in the ROD. The USGS will prepare and publish a separate ROD for the Final PEIS.

The NSF ROD is available on the Internet at: *http://www.nsf.gov/geo/oce/envcomp/* in Adobe® portable document format (pdf).

Dated: June 12, 2012.

Suzanne H. Plimpton,

Reports Clearance Officer, National Science Foundation.

[FR Doc. 2012–14661 Filed 6–14–12; 8:45 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 52–039; NRC–2008–0603]

PPL Bell Bend, LLC; Bell Bend Nuclear Power Plant Combined License Application; Notice of Intent To Conduct a Supplemental Scoping Process on the Revised Site Layout

AGENCY: Nuclear Regulatory Commission.

ACTION: Solicitation of public comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC or the Commission) is seeking public comment for the supplemental scoping process for the Bell Bend combined license (COL) application review.

DATES: Please submit any comments by July 16, 2012.

ADDRESSES: You may access information and comment submissions related to this document, which the NRC possesses and are publically available, by searching on *http://www.regulations.gov* under Docket ID NRC–2008–0603. You may submit comments by the following methods:

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2008–0603. 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.

• *Email Comments to: BBNP.COLEIS@nrc.gov.*

To ensure that comments will be considered in the supplemental scoping process, written comments must be postmarked by July 16, 2012. Electronic comments must be submitted no later than July 16, 2012 to ensure that they will be considered in the supplemental scoping process. The NRC staff may, at its discretion, consider comments received after the end of the comment period. Participation in the supplemental scoping process for the EIS does not entitle participants to become parties to the proceeding to which this EIS relates.

FOR FURTHER INFORMATION CONTACT: Mrs. Laura Quinn-Willingham, Environmental Projects Branch 2, Division of New Reactor Licensing, Office of New Reactors, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–2220; email: *Laura.Quinn-Willingham@nrc.gov.* In her absence, please contact Mr. John Fringer at 301–415–6208 or via email at *John.Fringer@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Accessing Information and Submitting Comments

A. Accessing Information

Please refer to Docket ID NRC–2008–0603 when contacting the NRC about the availability of information regarding this document. You may access information related to this document by the following methods:

• *Federal Rulemaking Web Site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2008–0603.

• *NRC's Agencywide Documents Access and Management System (ADAMS):* You may access publicly-available documents online in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''ADAMS Public Documents'' and then select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The ADAMS accession number for each document referenced in this notice (if that document is available in ADAMS) is provided the first time that a document is referenced. The revised ER is available in ADAMS under Accession Number ML12145A242. The revised ER may also be viewed on the Internet at *http://www.nrc.gov/reactors/new-reactors/col/bell-bend/documents.html#application.* In addition, the Mill Memorial Public Library, 495 E Main Street, Nanticoke, PA 18634, and the McBride Memorial Library, 500 N Market Street, Berwick, PA 18603, have agreed to make the revised ER available for public inspection.

• *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–2008–0603 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.

II. Background

PPL Bell Bend, LLC (PPL) has submitted an application for a COL to build and operate a new unit at its Bell Bend Nuclear Power Plant (BBNPP) site, located west of the existing Susquehanna Steam Electric Station site on approximately 975 acres in Luzerne County, on the Susquehanna River, approximately 5 miles northeast of Berwick, Pennsylvania. PPL submitted the application for the COL to the NRC by letter dated October 10, 2008, pursuant to Title 10 of the *Code of Federal Regulations* (10 CFR) Part 52. A notice of intent to prepare an environmental impact statement (EIS) and conduct scoping was published in the **Federal Register** on January 6, 2009 (74 FR 470). On March 30, 2012, PPL submitted a revised Environmental Report (ER) (Part 3 of the COL application), in accordance with 10 CFR 51.45 and 51.50, to provide detailed information regarding the revised site layout that was developed in order to avoid wetland impacts by relocating the power block footprint and other plant components.

For purposes of developing the EIS the NRC is the lead agency and the U.S. Army Corps of Engineers (USACE), Baltimore District, is a cooperating agency, as described in the Memorandum of Understanding established by the NRC and the USACE (73 FR 55546; September 12, 2008).

III. Discussion

The purpose of this notice is to inform the public that the NRC and the USACE are providing the public a supplemental opportunity to participate in the environmental scoping process, as described in 10 CFR 51.29. The supplemental scoping opportunity affords the public an occasion to provide comments concerning the new information related to the revised site layout, which were not available during the initial scoping review. The supplemental scoping process will have a 30-day comment period that begins with the publication of this **Federal Register** notice.

This notice advises the public that the NRC and USACE intend to gather information, pertaining to the revised site layout, to prepare an EIS as part of the review of the Bell Bend COL application. Possible alternatives to the proposed action (issuance of the COL for the BBNPP) include no action, reasonable alternative energy sources, and alternate sites. As set forth in 10 CFR 51.20(b)(2), issuance of a COL under 10 CFR part 52 is an action that requires an EIS. This notice is being published in accordance with National Environmental Policy Act (NEPA) and the NRC's regulations in 10 CFR part 51.

The NRC and USACE will first conduct a supplemental scoping process on the revised ER, and, as soon as practicable thereafter, will prepare a draft EIS for public comment. Participation in this supplemental scoping process by members of the public and local, State, Tribal, and Federal government agencies is encouraged. The supplemental scoping opportunity will be used to accomplish the following:

a. Determine how the new information on the revised site layout impacts the scope of the EIS and identify the significant issues regarding the revised site layout to be analyzed in depth;

b. Identify and eliminate from detailed study those issues that are peripheral or that are not significant as they pertain to the revised site layout;

c. Identify any environmental assessments and other EISs that are being or will be prepared that are related to the new information on the revised site layout;

d. Identify other environmental review and consultation requirements related to the revised site layout;

e. Identify parties consulting with the NRC under the National Historic Preservation Act of 1966, as amended, as set forth in 36 CFR 800.8(c)(1)(i);

f. Identify any additional cooperating agencies and, as appropriate, allocate assignments for preparation and schedules for completing the EIS to the NRC, USACE, and any other cooperating agencies; and

g. Identify how the EIS preparation will include the revised site layout, including any other contractor assistance to be used.

The NRC invites the following entities to participate in the supplemental scoping process:

a. The applicant, PPL;

b. Any Federal agency that has jurisdiction by law or special expertise with respect to any environmental impact involved or that is authorized to develop and enforce relevant environmental standards;

c. Affected State and local government agencies including those authorized to develop and enforce relevant environmental standards;

d. Any affected Indian tribe;

e. Any person who requests or has requested an opportunity to participate in the scoping process; and

f. Any person who intends to petition for late leave to intervene in the proceeding, or who has submitted such a petition, or who is admitted as a party.

At the conclusion of the supplemental scoping process, the NRC staff will prepare a concise summary of the determination and conclusions reached on the scope of the environmental review for the revised site layout and will send this summary to each participant in the scoping process for whom the staff has an address. The summary will also be available for inspection through ADAMS at *http://www.nrc.gov/reading-rm/adams.html* and the NRC's public Web site for the COL review at *http://www.nrc.gov/reactors/new-reactors/col/bell-bend.html.* The NRC and USACE will then prepare and issue for comment the draft EIS, which will be the subject of a separate **Federal Register** notice and a public meeting. After receipt and consideration of comments on the draft EIS, the NRC and USACE will prepare a final EIS, which will also be the subject of a separate **Federal Register** notice and will be available to the public.

Dated at Rockville, Maryland, this 11th day of June 2012.

For the Nuclear Regulatory Commission.

David B. Matthews,

Director, Division of New Reactor Licensing, Office of New Reactors.

[FR Doc. 2012–14759 Filed 6–14–12; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2012–0134]

Initial Test Program of Emergency Core Cooling Systems for Boiling-Water Reactors

AGENCY: Nuclear Regulatory Commission.

ACTION: Draft regulatory guide; request for comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC or the Commission) is issuing for public comment draft regulatory guide (DG), DG–1277, ''Initial Test Program of Emergency Core Cooling Systems for Boiling-Water Reactors.'' This guide describes methods that the NRC staff considers acceptable to implement with regard to initial testing features of emergency core cooling systems (ECCSs) for boiling-water reactors (BWRs).

DATES: Submit comments by August 15, 2012. Comments received after this date will be considered if it is practical to do so, but the NRC is able to ensure consideration only for comments received on or before this date. Although a time limit is given, comments and suggestions in connection with items for inclusion in guides currently being developed or improvements in all published guides are encouraged at any time.

ADDRESSES: You may access information and comment submissions related to this document, which the NRC possesses and is publicly available, by searching on *http://www.regulations.gov* under Docket ID NRC–2012–0134. You may submit comments by the following methods:

- *Federal rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2012–0134. 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.

FOR FURTHER INFORMATION CONTACT: Mekonen Bayssie, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone: 301–251–7489 or email: *Mekonen.Bayssie@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Accessing Information and Submitting Comments

A. Accessing Information

Please refer to Docket ID NRC–2012–0134 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–2012–0134.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may access publicly available documents online in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''*ADAMS Public Documents*'' and then select ''*Begin Web-based ADAMS Search.*'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The draft regulatory guide is available electronically under ADAMS Accession Number ML113550182. The regulatory analysis may be found in ADAMS under Accession No. ML113550199.

Regulatory guides are not copyrighted, and NRC approval is not required to reproduce them.

- *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–2012–0134 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 enters the comment submissions into ADAMS. 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.

II. Further Information

The NRC is issuing for public comment a draft guide in the NRC's ''Regulatory Guide'' series. This series was developed to describe and make available to the public such information as methods that are acceptable to the NRC staff for implementing specific parts of the NRC's regulations, techniques that the staff uses in evaluating specific problems or postulated accidents, and data that the staff needs in its review of applications for permits and licenses.

The draft regulatory guide, entitled, ''Initial Test Program of Emergency Core Cooling Systems for Boiling-Water Reactors,'' is temporarily identified by its task number, DG–1277. DG–1277 is proposed new Regulatory Guide 1.79.1. This guide describes methods that the NRC staff considers acceptable to implement Title 10 of the *Code of Federal Regulations* (10 CFR) Part 50, ''Domestic Licensing of Production and Utilization Facilities,'' Appendix A, ''General Design Criteria for Nuclear Power Plants,'' with regard to initial testing features of ECCSs for boiling-water reactors BWRs.

III. Backfitting and Issue Finality

Because this regulatory guide reflects current regulatory practice, it does not require a backfit analysis as described in 10 CFR 50.109(c).

Dated at Rockville, Maryland, this 4th day of June, 2012.

For the Nuclear Regulatory Commission.

Thomas H. Boyce,

Chief, Regulatory Guide Development Branch, Division of Engineering, Office of Nuclear Regulatory Research.

[FR Doc. 2012–14684 Filed 6–14–12; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–247–LR and 50–286–LR; ASLBP No. 07–858–03–LR–BD01]

Atomic Safety and Licensing Board; Entergy Nuclear Operations, Inc. (Indian Point Nuclear Generating Units 2 and 3); Notice of Hearing (Application for License Renewal)

June 8, 2012.

Before Administrative Judges: Lawrence G. McDade, Chairman, Dr. Michael F. Kennedy, Dr. Richard E. Wardwell.

This proceeding arises out of the April 23, 2007, application of Entergy Nuclear Operations, Inc. (Entergy) to renew its operating licenses for Indian Point Nuclear Generating Units 2 and 3 (Operating License Nos. DPR–26 and DPR–64) at its Indian Point Energy Center in Buchanan, New York. Entergy seeks to extend these licenses for an additional twenty years beyond the current expiration dates of September 9, 2013 (Indian Point Unit 2) and December 12, 2015 (Indian Point Unit 3). On August 1, 2007, the Commission published a notice of opportunity to request a hearing on Entergy's license renewal application.[1] Requests for hearings and petitions to intervene were filed by sixteen entities: The State of New York (New York); the State of Connecticut (Connecticut); Westchester County, New York (Westchester); the Town of Cortlandt, New York (Cortlandt); the Village of Buchanan, New York (Buchanan); the City of New York (New York City); the New York Affordable Reliable Electricity Alliance; Friends United for Sustainable Energy; Hudson River Sloop Clearwater (Clearwater); Connecticut Residents Opposed to Relicensing Indian Point; Westchester Citizen Awareness Network; Rockland County Conservation Association; Sierra Club—Atlantic Chapter; Assemblyman Richard Brodsky; Public Health and Sustainable Energy; and Riverkeeper, Inc. (Riverkeeper). On October 18, 2007, this Atomic Safety and Licensing Board was established to conduct this adjudication.[2]

On July 31, 2008, this Board issued a memorandum and order in which it (a) granted the hearing requests of three entities: New York, Riverkeeper, and Clearwater; (b) admitted thirteen contentions; and (c) granted interested governmental entity status to Connecticut, Westchester, and the Town of Cortlandt.[3] On December 18, 2008, we granted interested governmental entity status to New York City and Buchanan.[4] Since our original order granting hearing requests, we have admitted several new and/or amended

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[1] Entergy Nuclear Operations, Inc., Indian Point Nuclear Generating Unit Nos. 2 and 3; Notice of Acceptance for Docketing of the Application and Notice of Opportunity for Hearing Regarding Renewal of Facility Operating License Nos. DPR–26 and DPR–64 for an Additional 20-Year Period, 72 FR 42,134 (Aug. 1, 2007). In a subsequent notice, the Commission extended the time for which petitions to intervene in this license renewal proceeding could be timely filed. *See* Entergy Nuclear Operations, Inc., Indian Point Nuclear Generating Unit Nos. 2 and 3; Notice of Opportunity for Hearing Regarding Renewal of Facility Operating License Nos. DPR–26 and DPR–64 for an Additional 20-Year Period: Extension of Time for Filing of Requests for Hearing or Petitions for Leave to Intervene in the License Renewal Proceeding, 72 FR 55,834 (Oct. 1, 2007).

[2] Establishment of Atomic Safety and Licensing Board, 72 FR 60,394 (Oct. 24, 2007). On April 9, 2012, the Board was reconstituted, substituting Judge Michael F. Kennedy for Judge Kaye D. Lathrop. *See* Entergy Nuclear Operations, Inc., (Indian Point Nuclear Generating Units 2 and 3); Notice of Atomic Safety and Licensing Board Reconstitution, 77 FR 22,361 (Apr. 13, 2012).

[3] LBP–08–13, 68 NRC 43, 217–220 (2008). These thirteen contentions, which challenge the sufficiency of Entergy's license renewal application, were: NYS–5 (concerning buried pipes, tanks, and transfer canals), NYS–6/7 (concerning non-environmentally qualified inaccessible medium-voltage and low-voltage cables and wiring), NYS–8 (concerning electrical transformers), NYS–9 (concerning energy conservation in the ''no-action'' alternative analysis), NYS–12 (concerning decontamination and cleanup costs associated with severe accidents), NYS–16 (concerning underestimation of cleanup costs in light of underestimated population projections in severe accidents), NYS–17 (concerning land values in the no-action alternative to relicensing), NYS–24 (concerning containment structure integrity), NYS–25 (concerning embrittlement of reactor pressure vessels and associated internals), NYS–26A/RK–TC–1A (concerning metal fatigue on key reactor components), RK–TC–2 (concerning flow-accelerated corrosion on reactor components), RK–EC–3/CW–EC–1 (concerning leaks from spent fuel pools), and CW–EC–3 (concerning disproportionate environmental justice impacts on minority, low-income, and disabled populations near Indian Point).

[4] *See* Licensing Board Memorandum and Order (Authorizing Interested Governmental Entities to Participate in this Proceeding) (Granting in Part Riverkeeper's Motion for Clarification and Reconsideration of the Board's Ruling in LBP–08–13 Related to the Admissibility of Riverkeeper Contention EC–2) (Denying Riverkeeper's Request to Admit Amended Contention EC–2 and New Contentions EC–4 and EC–5) (Denying Entergy's Motion for Reconsideration of the Board's Decision to Admit Riverkeeper Contention EC–3 and Clearwater Contention EC–1) (Dec. 18, 2008) at 2 (unpublished).

contentions filed against Entergy's license renewal application and the NRC Staff's environmental review of that application, and consolidated some of these contentions with pre-existing contentions.[5] We have also summarily disposed of two contentions in favor of New York[6] and approved of the settlement of one contention.[7]

The NRC Staff issued its final Safety Evaluation Report (SER) in November 2009[8] and a first supplemental SER in August 2011.[9] The NRC Staff issued its draft Supplemental Environmental Impact Statement (SEIS) in December 2008[10] and its final SEIS in December 2010.[11] The NRC Staff has indicated that it intends to issue a second supplemental SER in August 2012 and a second draft SEIS in July 2012, with a final version to follow.[12]

In light of the foregoing, an evidentiary hearing will be conducted in this proceeding pursuant to Section 189(a) of the Atomic Energy Act, 42 U.S.C. 2239(a). Subject to a Board determination regarding any request to employ hearing procedures under 10 CFR part 2, Subpart G, the evidentiary hearing on all admitted contentions will be governed by the hearing procedures set forth in 10 CFR part 2, Subpart L, 10 CFR 2.1200–2.1213.[13]

Parties to this proceeding (including the NRC Staff) have begun to provide evidentiary submissions in support of or in opposition to the merits of the admitted contentions.[14] The Board intends to begin taking oral testimony on October 15, 2012, in Westchester County, New York. We anticipate addressing the admitted contentions in the following order:

1. NYS–12C
2. NYS–16B
3. RK–TC–2
4. NYS–17B
5. NYS–37
6. NYS–5
7. NYS–8
8. NYS–6/7
9. CW–EC–3A
10. RK–EC–3/CW–EC–1[15]

We anticipate that the hearing will continue on October 16, 17, 18, 22, 23, and 24. Current plans tentatively call for the hearing to convene again on December 10 and run through December 14 as needed. Due to the proprietary nature of some information discussed in the evidentiary submissions associated with contentions NYS–6/7 and RK–TC–2, the Board may be required to close portions of the oral hearing on those contentions from public viewing.

Despite the NRC Staff's ongoing safety and environmental reviews, and because it has received no objections in light of 10 CFR 2.332(d) from the participants in this proceeding, the Board has tentatively decided that it is efficient to proceed to the evidentiary hearing before issuance of the NRC's additional environmental and safety review documents. This decision is based on our understanding that the NRC's recent draft SEIS will not address any issue raised in any contention other than RC–EC–8 and that the second supplemental SER will not address any issue raised in any contention other than NYS–25 and those portions of NYS–38/RK–TC–5 that have previously been defined.[16] As noted above, at footnote 15, we issued an Order on June 7, 2012, seeking input from the parties on these assumptions. The Board will notify the parties if our plans to proceed to hearing in October 2012 on the ten contentions listed above change based on the parties' responses to that order. After the NRC's additional safety and environmental documents have issued, the Board will provide a schedule on how it will hear all remaining contentions.

As provided in 10 CFR 2.315(a), any person not a party to the proceeding may submit a written limited appearance statement setting forth his or her position on the issues in this proceeding. These statements do not constitute evidence but may assist the Board and/or parties in defining the issues being considered. Persons wishing to submit a written limited appearance statement should send it to the Office of the Secretary by one of the methods prescribed below:

Mail to: Office of the Secretary, Rulemakings and Adjudications Staff, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

Fax to: (301) 415–1101 (verification (301) 415–1966).

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[5] These contentions are CW–EC–3A (displacing CW–EC–3), NYS–12C (displacing NYS–12, NYS–12A, and NYS–12B), NYS–16B (displacing NYS–16 and NYS–16A), NYS–17B (displacing NYS–17 and NYS–17A), NYS–26B/RK–TC–1B (displacing NYS–26A/RK–TC–1A), NYS–33 (displacing NYS–9), NYS–35/36 (concerning severe accident mitigation alternatives cost-benefit analyses), NYS–37 (displacing NYS–9 and NYS–33), NYS–38 (concerning reactor vessel aging management plans), and RK–EC–8 (concerning the NRC Staff's Endangered Species Act consultations). *See* Licensing Board Memorandum and Order (Admitting New Contention NYS–38/RK–TC–5) (Nov. 10, 2011) (unpublished); Licensing Board Memorandum and Order (Ruling on Pending Motions for Leave to File New and Amended Contentions) (July 6, 2011) (unpublished); Licensing Board Memorandum and Order (Ruling on Motion for Summary Disposition of NYS–26/26A/Riverkeeper TC–1/1A (Metal Fatigue of Reactor Components) and Motion for Leave to File New Contention NYS–26B/Riverkeeper TC–1B) (Nov. 4, 2010) (unpublished); LBP–10–13, 71 NRC 673 (2010); Licensing Board Order (Ruling on New York State's New and Amended Contentions) (June 16, 2009) (unpublished).

[6] LBP–11–17, 74 NRC __, __ (slip op. at 16–18) (July 14, 2011), *pet. for rev. denied,* CLI–11–14, 74 NRC __, __ (slip op.) (Dec. 22, 2011) (disposing of contentions NYS–35/36).

[7] Licensing Board Order (Approving Settlement of Contention NYS–24) (Jan. 26, 2012) (unpublished).

[8] Office of Nuclear Reactor Regulation, Safety Evaluation Report, Related to the License Renewal of Indian Point Nuclear Generating Unit Nos. 2 and 3, Docket Nos. 50–247 and 50–286, Entergy Nuclear Operations, Inc., NUREG–1930, Vol. 1 (Nov. 2009) (ADAMS Accession No. ML093170451); Office of Nuclear Reactor Regulation, Safety Evaluation Report, Related to the License Renewal of Indian Point Nuclear Generating Unit Nos. 2 and 3, Docket Nos. 50–247 and 50–286, Entergy Nuclear Operations, Inc., NUREG–1930, Vol. 2 (Nov. 2009) (ADAMS Accession No. ML093170671).

[9] United States Nuclear Regulatory Commission, Office of Nuclear Reactor Regulation, Safety Evaluation Report, Related to the License Renewal of Indian Point Nuclear Generating Unit Nos. 2 and 3, Supp. 1, Docket Nos. 50–247 and 50–286, NUREG–1930 (Supp. 1, Aug. 2011) (ADAMS Accession No. ML11242A215).

[10] Indian Point Nuclear Generating Unit Nos. 2 and 3; Notice of Availability of the Draft Supplement 38 to the Generic Environmental Impact Statement for License Renewal of Nuclear Plants and Public Meeting for the License Renewal of Indian Point Nuclear Generating Unit Nos. 2 and 3, 73 FR 80,440 (Dec. 31, 2008).

[11] Office of Nuclear Reactor Regulation, Generic Environmental Impact Statement for License Renewal of Nuclear Plants, Supp. 38, Regarding Indian Point Nuclear Generating Unit Nos. 2 and 3, Final Report Main Report and Comment Responses, NUREG–1437, Vol. 1 (Supp. 38, Dec. 2010) (ADAMS Accession No. ML103350405); Office of Nuclear Reactor Regulation, Generic Environmental Impact Statement for License Renewal of Nuclear Plants, Supp. 38, Regarding Indian Point Nuclear Generating Unit Nos. 2 and 3, Final Report Public Comments, NUREG–1437, Vol. 2 (Supp. 38, Dec. 2010) (ADAMS Accession Nos. ML103350438, ML103360209, and ML103360212); Office of Nuclear Reactor Regulation, Generic Environmental Impact Statement for License Renewal of Nuclear Plants, Supp. 38, Regarding Indian Point Nuclear Generating Unit Nos. 2 and 3, Final Report Public Comments Continued, Appendices, NUREG–1437, Vol. 3 (Supp.38, Dec. 2010) (ADAMS Accession No. ML103350442).

[12] *See* NRC Staff's Fourth Status Report in Response to the Atomic Safety and Licensing Board's Order of February 16, 2012 (June 1, 2012) at 2–3.

[13] *See* 10 CFR 2.310; Licensing Board Scheduling Order (July 1, 2010) at 17 (unpublished).

[14] The Board will announce by order the resumption of the evidentiary submission schedule for contention NYS–25 and the commencement of the evidentiary submission schedule for contention RK–EC–8 and portions of contention NYS–38/RK–TC–5 that relate to NYS–25. The Board will conduct the oral hearing on contentions NYS–25, NYS–26/RK–TC–1B, NYS–38/RK–TC–5, and RK–EC–8 after receiving the evidentiary submissions for each of the contentions. The time and date of subsequent oral hearings will be announced by order of the Board.

[15] The order in which we anticipate hearing contentions is subject to change if the NRC Staff's brief in response to our June 7, 2012 Order warrants such a change. *See* Licensing Board Order (Ordering the NRC Staff to Address Board Questions) (June 7, 2012) (unpublished).

[16] *See* NRC Staff's Third Status Report in Response to the Atomic Safety and Licensing Board's Order of February 16, 2012 (May 1, 2012) at 2.

Email to: hearing.docket@nrc.gov.

In addition, a copy of the limited appearance statement should be sent to the Licensing Board by one of the methods below:

Mail to: Administrative Judge Lawrence G. McDade, c/o Anne Siarnacki, Law Clerk, Atomic Safety and Licensing Board Panel, Mail Stop T–3F23, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

Fax to: (301) 415–5599 (verification (301) 415–7550).

Email to: anne.siarnacki@nrc.gov.

The deadline for this Board's receipt of written limited appearance statements will be September 15, 2012. This will be the sole method for providing limited appearance statements.

Documents relating to this proceeding are available for public inspection at the Commission's Public Document Room or electronically from the publicly available records component of NRC's Agencywide Documents Access and Management System (ADAMS). ADAMS is accessible from the NRC Web site at *www.nrc.gov/reading-rm/adams.html* (the Public Electronic Reading Room). Persons who do not have access to ADAMS, or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff by telephone at 1–800–397–4209 or 301–415–4737, or by email at *pdr@nrc.gov.*

Dated: June 8, 2012.

For the Atomic Safety and Licensing Board.

Lawrence G. McDade,

Chairman, Administrative Judge, Rockville, Maryland.

[FR Doc. 2012–14679 Filed 6–14–12; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards (ACRS); Meeting of the ACRS Subcommittee on Digital I&C; Cancellation of the June 19, 2012 ACRS Subcommittee Meeting

The ACRS Subcommittee meeting on Digital I&C scheduled for June 19, 2012 has been cancelled.

The notice of this meeting was previously published in the **Federal Register** on Monday, June 4, 2012, (77 FR 33003–33004).

Information regarding this meeting can be obtained by contacting Christina Antonescu, Designated Federal Official (DFO) (Telephone 301–415–6792 or Email: *Christina.Antonescu@nrc.gov*) between 7:30 a.m. and 5:15 p.m. (EST)).

Dated: June 8, 2012.

Antonio Dias,

Technical Advisor, Advisory Committee on Reactor Safeguards.

[FR Doc. 2012–14667 Filed 6–14–12; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2012–0139]

Regulatory Guide 7.3, Procedures for Picking Up and Receiving Packages of Radioactive Material

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of withdrawal.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC or Commission) is withdrawing Regulatory Guide (RG) 7.3, ''Procedures for Picking Up and Receiving Packages of Radioactive Material.'' The guide is being withdrawn because it is obsolete and new guidance has been included in Revision 1 of RG 7.7, ''Administrative Guide for Verifying Compliance with Packaging Requirements for Shipment and Receipt of Radioactive Material'' which was issued in March 2012 and announced in the **Federal Register** (77 FR 18871; March 28, 2012).

ADDRESSES: Please refer to Docket ID NRC–2012–0139 when contacting the NRC about the availability of information on this document. You may access information related to this document, which the NRC possesses and are publicly available, using the following methods:

- *NRC's Agencywide Documents Access and Management System (ADAMS):* Publicly available documents created or received at the NRC are available online in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html.* To begin 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, or 301–415–4737, or by email at *PDR.Resource@nrc.gov.* The ADAMS accession number for each document referenced in this notice (if that document is available in ADAMS) is provided the first time that a document is referenced. The review for the withdrawal of RG 7.3 is available in ADAMS under Accession No. ML120900195.
- *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, MD 20852.

The documents are not copyrighted and NRC approval is not required to reproduce them.

FOR FURTHER INFORMATION CONTACT: Bernard White, Office of Nuclear Material Safety and Safeguards, Division of Spent Fuel Storage and Transportation, U.S. Nuclear Regulatory Commission, Washington DC 20555–0001, telephone: 301–492–3303; or by email at *Bernard.White@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

The NRC is withdrawing RG 7.3 because its guidance has been superseded and is no longer needed. The guide was published in May 1975 to provide guidance on meeting the requirements in Title 10 of the *Code of Federal Regulations* (10 CFR) 20.205, ''Procedures for Picking Up, Receiving, and Opening Packages.'' Regulatory Guide 7.3 provided guidance to licensees on making arrangements for receipt, pickup, and monitoring of packages containing radioactive material; and reporting when received packages showed evidence of leakage or excessive radiation levels. The NRC is withdrawing this regulatory guide because the information it contained has been combined into Revision 1 of RG 7.7, ''Administrative Guide for Verifying Compliance with Packaging Requirements for Shipment and Receipt of Radioactive Material.'' Revision 1 of RG 7.7 was finalized in March 2012 and announced in the **Federal Register** (77 FR 18871; March 28, 2012).

Regulatory Guide 7.3 was issued as part of an immediately effective rule making by the Atomic Energy Commission (AEC) in 1974. The rule making was issued in response to two incidents that resulted in excessive contamination and radiation exposures from improperly packaged radioactive material. Since these requirements were new to the transportation community, the AEC developed RG 7.3 to provide licensees with guidance and describe a method for meeting the new requirements that the NRC staff found acceptable. In the 37 years since RG 7.3 was issued, the transportation community has gained extensive experience on transporting, receiving and opening packages containing radioactive material. The regulations have been updated several times, but RG has not been kept current.

II. Further Information

The withdrawal of RG 7.3 does not alter any prior or existing licensing commitments based on its use. The guidance provided in this RG is no longer necessary. Regulatory guides may be withdrawn when their guidance no longer provides useful information, or is superseded by technological innovations, congressional actions, or other events.

Regulatory guides are revised for a variety of reasons and the withdrawal of an RG should be thought of as the final revision of the guide. Although an RG is withdrawn, current licensees may continue to use it, and withdrawal does not affect any existing licenses or agreements. Withdrawal of a guide means that the guide should not be used for future NRC licensing activities. However, although a regulatory guide is withdrawn, changes to existing licenses can be accomplished using other regulatory products.

Regulatory guides and publicly available NRC documents are available on line in the NRC Library at: *http://www.nrc.gov/reading-rm/doc-collections/*. The documents can also be viewed online for free or printed for a fee in the NRC's PDR at 11555 Rockville Pike, Rockville, MD; the mailing address is USNRC PDR, Washington, DC 20555–0001; telephone: 301–415–4737, or 1–800–397–4209; fax 301–415–3548; or by email to *pdr.resource@nrc.gov.* Regulatory guides are not copyrighted, and NRC approval is not required to reproduce them.

Dated at Rockville, Maryland, this 7th day of June, 2012.

For the Nuclear Regulatory Commission.

Thomas H. Boyce,

Branch Chief, Regulatory Guide Development Branch, Division of Engineering, Office of Nuclear Regulatory Research.

[FR Doc. 2012–14680 Filed 6–14–12; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension:

Form D and Regulation D; OMB Control No. 3235–0076; SEC File No. 270–72.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget a request for extension of the previously approved collection of information discussed below.

Regulation D (17 CFR 230.501 *et seq.*) sets forth rules governing the limited offer and sale of securities without Securities Act registration. Those relying on Regulation D must file Form D. The purpose of the Form D (17 CFR 239.500) is to collect empirical data, which provides a continuing basis for action by the Commission either in terms of amending existing rules and regulations or proposing new ones. In addition, the form allows the Commission to elicit information necessary to assess the effectiveness of Regulation D (17 CFR 230.501 *et seq.*) and Section 4(6) of the Securities Act of 1933 (U.S.C. 77d(6)) as capital-raising devices. Form D information is required to obtain or retain benefits under Regulation D. Approximately 25,000 issuers file Form D and it takes approximately 4 hours per response. We estimate that 25% of the 4 hours per response (1 hour per response) is prepared by the issuer for an annual reporting burden of 25,000 hours (1 hour per response × 25,000 responses).

The Commission may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to PRA that does not display a valid Office of Management and Budget (OMB) control number.

The public may view the background documentation for this information collection at the following Web site, *www.reginfo.gov*. Comments should be directed to: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503, or by sending an email to: *Shagufta_Ahmed@omb.eop.gov*; and (ii) Thomas Bayer, Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 6432 General Green Way, Alexandria, VA 22312 or send an email to: *PRA_Mailbox@sec.gov*. Comments must be submitted to OMB within 30 days of this notice.

Dated: June 11, 2012.

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–14625 Filed 6–14–12; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request; Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension:

Form TH; OMB Control No. 3235–0425; SEC File No. 270–377.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget a request for extension of the previously approved collection of information discussed below.

Form TH (17 CFR 239.65, 249.447, 269.10 and 274.404) under the Securities Act of 1933 (15 U.S.C. 77a *et seq.*), the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*), the Trust Indenture Act of 1939 (15 U.S.C. 77aaa *et seq.*) and the Investment Company Act of 1940 (15 U.S.C. 80a–1 *et seq.*) is used by registrants to notify the Commission that an electronic filer is relying on the temporary hardship exemption for the filing of a document in paper form that would otherwise be required to be filed electronically as prescribed by Rule 201(a) of Regulation S–T. (17 CFR 232.201(a)). Form TH is a public document and is filed on occasion. Form TH must be filed every time an electronic filer experiences unanticipated technical difficulties preventing the timely preparation and submission of a required electronic filing. Approximately 70 registrants file Form TH and it takes an estimated 0.33 hours per response for a total annual burden of 23 hours.

The Commission may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to PRA that does not display a valid Office of Management and Budget (OMB) control number.

The public may view the background documentation for this information collection at the following Web site, *www.reginfo.gov*. Comments should be directed to: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503, or by sending an email to:

Shagufta_Ahmed@omb.eop.gov; and (ii) Thomas Bayer, Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 6432 General Green Way, Alexandria, VA 22312 or send an email to: *PRA_Mailbox@sec.gov*. Comments must be submitted to OMB within 30 days of this notice.

Dated: June 11, 2012.

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–14627 Filed 6–14–12; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: U.S. Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension:

Interagency Statement on Sound Practices; OMB Control No. 3235–0622; SEC File No. 270–560.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget (''OMB'') a request for approval of extension of the existing collection of information provided for in the proposed Interagency Statement on Sound Practices Concerning Elevated Risk Complex Structured Finance Activities (''Statement'') under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*) (''Exchange Act'') and the Investment Advisers Act of 1940 (15 U.S.C. 80b *et seq.*) (''Advisers Act'').

The Statement was issued by the Commission, together with the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, and the Office of Thrift Supervision (together, the ''Agencies''), in May 2006. The Statement describes the types of internal controls and risk management procedures that the Agencies believe are particularly effective in assisting financial institutions to identify and address the reputational, legal, and other risks associated with elevated risk complex structured finance transactions.

The primary purpose of the Statement is to ensure that these transactions receive enhanced scrutiny by the institution and to ensure that the institution does not participate in illegal or inappropriate transactions.

The Commission estimates that approximately 5 registered broker-dealers or investment advisers will spend an average of approximately 25 hours per year complying with the Statement. Thus, the total compliance burden is estimated to be approximately 125 burden-hours per year.

The Commission may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid Office of Management and Budget (OMB) control number.

Background documentation for this information collection may be viewed at the following Web site, *www.reginfo.gov.* Comments should be directed to: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503, or by sending an email to: *Shagufta_Ahmed@omb.eop.gov*; and (ii) Thomas Bayer, Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 6432 General Green Way, Alexandria, VA 22312 or send an email to: *PRA_Mailbox@sec.gov*. Comments must be submitted to OMB within 30 days of this notice.

Dated: June 11, 2012.

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–14628 Filed 6–14–12; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension:

Form F–9; OMB Control No. 3235–0377; SEC File No. 270–333.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget a request for extension of the previously approved collection of information discussed below.

Form F–9 (17 CFR 239.39) is a registration statement under the Securities Act of 1933 (15 U.S.C. 77a *et seq.*) that is used to register investment grade debt or investment grade preferred securities that are offered for cash or in connection with an exchange, offer and are either non-convertible or not convertible for a period of at least one year from the date of issuance and thereafter are only convertible into a security of another class of the issuer. The purpose of the information collection is to permit verification of compliance with securities law requirements and to assure the public availability and dissemination of such information. The principal function of the Commission's forms and rules under the securities laws' disclosure provisions is to make information available to the investors. Form F–9 is a public document and the information provided is mandatory. We estimate that Form F–9 takes approximately 25 hours per response and it is filed by 18 respondents. We further estimate that 25% of the 25 hours per response (6.25 hours) is prepared by the issuer for an annual reporting burden of 113 hours (6.25 hours per response × 18 responses).

The Commission may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to PRA that does not display a valid Office of Management and Budget (OMB) control number.

The public may view the background documentation for this information collection at the following Web site, *www.reginfo.gov*. Comments should be directed to: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503, or by sending an email to: *Shagufta_Ahmed@omb.eop.gov*; and (ii) Thomas Bayer, Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 6432 General Green Way, Alexandria, VA 22312 or send an email to: *PRA_Mailbox@sec.gov*. Comments must be submitted to OMB within 30 days of this notice.

Dated: June 11, 2012.

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–14626 Filed 6–14–12; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension:
Regulation FD; OMB Control No. 3235–0536; SEC File No. 270–475.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget a request for extension of the previously approved collection of information discussed below.

Regulation FD (17 CFR 243.100 *et seq.*)—Other Disclosure Materials requires public disclosure of material information from issuers of publicly traded securities so that investors have current information upon which to base investment decisions. The purpose of the regulation is to require that: (1) When an issuer intentionally discloses material information, to do so through public disclosure, not selective disclosure; and (2) to make prompt public disclosure of material information that was unintentionally selectively disclosed. Regulation FD was adopted due to a concern that the practice of selective disclosure leads to a loss of investor confidence in the integrity of our capital markets. All information is provided to the public for review. The information required is filed on occasion and is mandatory. We estimate that approximately 13,000 issuers make Regulation FD disclosures approximately five times a year for a total of 58,000 submissions annually, not including an estimated 7,000 issuers who file Form 8–K to comply with Regulation FD. We estimate that it takes approximately 5 hours per response (58,000 responses × 5 hours) for a total burden of 290,000 hours annually. In addition, we estimate that 25% of the 5 hours (1.25 hours) is prepared by the filer for an annual reporting burden of 72,500 hours (1.25 hours per response × 58,000 responses).

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 control number.

The Commission may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to PRA that does not display a valid Office of Management and Budget (OMB) control number.

The public may view the background documentation for this information collection at the following Web site, *www.reginfo.gov*. Comments should be directed to: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503, or by sending an email to: *Shagufta_Ahmed@omb.eop.gov*; and (ii) Thomas Bayer, Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 6432 General Green Way, Alexandria, VA 22312 or send an email to: *PRA_Mailbox@sec.gov*. Comments must be submitted to OMB within 30 days of this notice.

Dated: June 11, 2012.

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–14624 Filed 6–14–12; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 30102; 812–13859–01]

Notice of Application; Hirtle Callaghan & Co., LLC and HC Capital Trust

June 11, 2012.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of an application under section 6(c) of the Investment Company Act of 1940 (''Act'') for an exemption from section 15(a) of the Act and rule 18f–2 under the Act.

SUMMARY OF APPLICATION: Applicants request an order that would permit them to enter into and materially amend subadvisory agreements without shareholder approval.

APPLICANTS: Hirtle Callaghan & Co., LLC (the ''Adviser'') and HC Capital Trust (the ''Trust'').

DATES: *Filing Dates:* The application was filed on January 19, 2011, and amended on May 5, 2011, and April 27, 2012.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on July 9, 2012, and should be accompanied by proof of service on the applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Elizabeth M. Murphy, Secretary, U.S. Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090. Applicants: Hirtle Callaghan & Co., LLC; Five Tower Bridge, 300 Barr Harbor Drive, Suite 500, West Conshohocken, PA 19428.

FOR FURTHER INFORMATION CONTACT: Barbara T. Heussler, Senior Counsel, at (202) 551–6990, or Jennifer L. Sawin, Branch Chief, at (202) 551–6821 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained via the Commission's Web site by searching for the file number, or an applicant using the Company name box, at *http://www.sec.gov/search/search.htm* or by calling (202) 551–8090.

Applicants' Representations

1. The Trust, a Delaware statutory trust, is registered under the Act as an open-end management investment company and offers series of shares (each a ''Series''), each of which has its own distinct investment objectives, policies and restrictions.[1] The Adviser,

[1] Applicants also request relief with respect to future Series and any other existing or future registered open-end management investment company or series thereof that: (a) Is advised by the Adviser or an entity controlling, controlled by or under common control with the Adviser or its successors (each such entity included in the term ''Adviser''); (b) uses the multi-manager structure described in the application; and (c) complies with the terms and conditions of the application (together with any Series that currently uses one or more Sub-Advisers, as defined below, each a ''Subadvised Fund'' and collectively, the ''Subadvised Funds''). The only existing registered open-end management investment company that currently intends to rely on the requested order is named as an Applicant. For purposes of the requested order, ''successor'' is limited to an entity that results from a reorganization into another jurisdiction or a change in the type of business organization. If the name of any Subadvised Fund contains the name of a Sub-Adviser, the name of the Adviser that serves as the primary adviser to the Subadvised Fund, or a trademark or trade name that is owned by that Adviser, will precede the name of the Sub-Adviser.

a Delaware limited liability company, is registered as an investment adviser under the Investment Advisers Act of 1940 (''Advisers Act'') and serves as the investment adviser to the Trust pursuant to two separate investment advisory agreements currently in effect, one of which applies to each Series (each an ''Investment Advisory Agreement'' and together the ''Investment Advisory Agreements''). Each Investment Advisory Agreement was initially approved by the board of trustees of the Trust (the ''Board''),[2] including a majority of the trustees who are not ''interested persons,'' as defined in section 2(a)(19) of the Act, of the Trust or the Adviser (''Independent Trustees'') and by the shareholders of the applicable Subadvised Fund in accordance with sections 15(a) and 15(c) of the Act and rule 18f–2 thereunder.[3]

2. Under the terms of each Investment Advisory Agreement, the Adviser, subject to the oversight of the Board, furnishes a continuous investment program for each Subadvised Fund. The Adviser periodically reviews each Subadvised Fund's investment policies and strategies and based on the need of a particular Subadvised Fund may recommend changes to the investment policies and strategies of the Subadvised Fund for consideration by its Board. For its services to each Subadvised Fund, the Adviser receives an investment advisory fee from that Subadvised Fund as specified in the applicable Investment Advisory Agreement. The investment advisory fees for the current Series of the Trust are calculated based on the ''Average Daily Net Assets'' of the particular Series.[4] The terms of each Investment Advisory Agreement also permit the Adviser, subject to the approval of the Board, including a majority of the Independent Trustees, and the shareholders of the applicable Subadvised Fund, to delegate portfolio management responsibilities of all or a portion of the assets of the Subadvised Fund to one or more sub-advisers (''Sub-Advisers''). The Trust has entered into investment subadvisory agreements with various Sub-Advisers (''Sub-Advisory Agreements'') to provide investment advisory services to certain Subadvised Funds.[5] The Adviser may also enter into Sub-Advisory Agreements on behalf of other Subadvised Funds. Each Sub-Adviser is, and any future Sub-Adviser will be, an investment adviser as defined in section 2(a)(20) of the Act as well as registered as an investment adviser under the Advisers Act. The Adviser evaluates, allocates assets to and oversees the Sub-Advisers, and makes recommendations about their hiring, termination and replacement to the Board, at all times subject to the authority of the Board. For its services to a Subadvised Fund, each Sub-Adviser will receive from the Subadvised Fund, a monthly fee, computed and accrued daily, on the same basis (but not necessarily the same rate) as the Adviser's investment advisory fees are calculated for the particular Subadvised Fund managed by that Sub-Adviser. The Adviser is not responsible for paying sub-advisory fees to the Sub-Adviser.

3. Applicants request an order to permit the Adviser, subject to Board approval, including a majority of Independent Trustees, to select certain Sub-Advisers to manage all or a portion of the assets of a Subadvised Fund pursuant to a Sub-Advisory Agreement and materially amend Sub-Advisory Agreements without obtaining shareholder approval. The requested relief will not extend to any Sub-Adviser that is an affiliated person, as defined in section 2(a)(3) of the Act, of a Subadvised Fund, or the Adviser other than by reason of serving as a Sub-Adviser to a Subadvised Fund (''Affiliated Sub-Adviser''). Because the Sub-Advisers are paid directly by the Subadvised Funds, Applicants acknowledge that, after the requested order is issued, shareholder approval will still be sought for any amendment to a Sub-Advisory Agreement that would increase the total management and advisory fees payable by a Subadvised Fund.

Applicants' Legal Analysis

1. Section 15(a) of the Act provides, in relevant part, that it is unlawful for any person to act as an investment adviser to a registered investment company except pursuant to a written contract that has been approved by the vote of a majority of the company's outstanding voting securities. Rule 18f–2 under the Act provides that each series or class of securities in a series investment company affected by a matter must approve that matter if the Act requires shareholder approval.

2. Section 6(c) of the Act provides that the Commission may exempt any person, security, or transaction or any class or classes of persons, securities, or transactions from any provisions of the Act, or from any rule thereunder, if such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicants state that the requested relief meets this standard for the reasons discussed below.

3. Applicants assert that the shareholders expect the Adviser, subject to the review and approval of the Board, to select the Sub-Advisers who are best suited to achieve the Subadvised Fund's investment objective. Applicants assert that, from the perspective of the shareholder, the role of the Sub-Adviser is substantially equivalent to the role of the individual portfolio managers employed by an investment adviser to a traditional investment company. Applicants state that requiring shareholder approval of each Sub-Advisory Agreement would impose unnecessary delays and expenses on the Subadvised Funds, and may preclude the Adviser from acting promptly in a manner considered advisable by the Board. Applicants note that the Investment Advisory Agreement and Sub-Advisory Agreement with an Affiliated Sub-Adviser (if any) will continue to be subject to the shareholder approval requirement of section 15(a) of the Act and rule 18f–2 under the Act.

4. If new Sub-Advisers are hired, the Subadvised Funds will inform shareholders of the hiring of a new Sub-Adviser pursuant to the following procedures (''Modified Notice and Access Procedures''): (a) Within 90 days after a new Sub-Adviser is hired for any Subadvised Fund, that Subadvised Fund will send its shareholders either a Multi-manager Notice or a Multi-manager Notice and Multi-manager Information Statement;[6] and (b) the

[2] The term ''Board'' also includes the board of trustees or directors of a future Subadvised Fund.

[3] Each other Subadvised Fund will enter into an investment advisory agreement with its Adviser (included in the term ''Investment Advisory Agreement''). Each Investment Advisory Agreement will be approved by the applicable Board, including a majority of the Independent Trustees and the shareholders of that Subadvised Fund. Each other Adviser will be registered with the Commission as an investment adviser under the Advisers Act.

[4] The amounts of the investment advisory fees paid for the current Series of the Trust are calculated based on the ''Average Daily Net Assets'' of the particular Series, which means the average daily value of the total assets of the Series, less all accrued liabilities of the Series, (other than the aggregate amount of any outstanding borrowings constituting financial leverage).

[5] The Trust has not entered into a Sub-Advisory Agreement with an affiliate of the Adviser. The requested relief will not extend to Affiliated Sub-Advisers, as defined below.

[6] A ''Multi-manager Notice'' will be modeled on a Notice of Internet Availability as defined in rule 14a–16 under the Securities Exchange Act of 1934 (''Exchange Act''), and specifically will, among other things: (a) Summarize the relevant information regarding the new Sub-Adviser; (b) inform shareholders that the Multi-manager Information Statement is available on a Web site; (c) provide the Web site address; (d) state the time period during which the Multi-manager Information

Continued

Subadvised Fund will make the Multi-manager Information Statement available on the Web site identified in the Multi-manager Notice no later than when the Multi-manager Notice (or Multi-manager Notice and Multi-manager Information Statement) is first sent to shareholders, and will maintain it on that Web site for at least 90 days. In the circumstances described in this application, a proxy solicitation to approve the appointment of new Sub-Advisers provides no more meaningful information to shareholders than the proposed Multi-manager Information Statement. Moreover, as indicated above, the applicable Board would comply with the requirements of section 15(a) and 15(c) of the Act before entering into or amending Sub-Advisory Agreements.

Applicants' Conditions

Applicants agree that any order granting the requested relief will be subject to the following conditions:

1. Before a Subadvised Fund may rely on the requested order, the operation of the Subadvised Fund in the manner described in the application will have been approved by a majority of the Subadvised Fund's outstanding voting securities as defined in the Act or, in the case of a Subadvised Fund whose public shareholders purchase shares on the basis of a prospectus containing the disclosure contemplated by condition 2 below, by the initial shareholder(s) before such Subadvised Fund's shares are offered to the public.

2. The prospectus for each Subadvised Fund will disclose the existence, substance, and effect of any order granted pursuant to this application. In addition, each Subadvised Fund will hold itself out to the public as employing a multi-manager structure as described in the application. The prospectus will prominently disclose that the Adviser has ultimate responsibility, subject to oversight by the Board, to oversee the Sub-Advisers and recommend their hiring, termination, and replacement.

3. Subadvised Funds will inform shareholders of the hiring of a new Sub-Adviser within 90 days after the hiring of the new Sub-Adviser pursuant to the Modified Notice and Access Procedures.

4. The Adviser will not enter into a Sub-Advisory Agreement with any Affiliated Sub-Adviser without that agreement, including the compensation to be paid thereunder, being approved by the shareholders of the applicable Subadvised Fund.

5. At all times, at least a majority of the Board will be Independent Trustees, and the nomination of new or additional Independent Trustees will be placed within the discretion of the then-existing Independent Trustees.

6. Whenever a Sub-Adviser change is proposed for a Subadvised Fund with an Affiliated Sub-Adviser, the Board, including a majority of the Independent Trustees, will make a separate finding, reflected in the Board minutes, that the change is in the best interests of the Subadvised Fund and its shareholders, and does not involve a conflict of interest from which the Adviser or the Affiliated Sub-Adviser derives an inappropriate advantage.

7. The Adviser will provide general management services to each Subadvised Fund, including overall supervisory responsibility for the general management and investment of the Subadvised Fund's assets, and subject to review and approval of the Board, will: (i) Set the Subadvised Fund's overall investment strategies; (ii) evaluate, select and recommend Sub-Advisers to manage all or a portion of the Subadvised Fund's assets; (iii) allocate and, when appropriate, reallocate the Subadvised Fund's assets among Sub-Advisers; (iv) monitor and evaluate the Sub-Advisers' performance; and (v) implement procedures reasonably designed to ensure that the Sub-Advisers comply with the Subadvised Fund's investment objective, policies and restrictions.

8. No trustee or officer of the Trust or of a Subadvised Fund or director or officer of the Adviser will own directly or indirectly (other than through a pooled investment vehicle that is not controlled by such person) any interest in a Sub-Adviser, except for (i) ownership of interests in the Adviser or any entity that controls, is controlled by, or is under common control with the Adviser; or (ii) ownership of less than 1% of the outstanding securities of any class of equity or debt of a publicly traded company that is either a Sub-Adviser or an entity that controls, is controlled by, or is under common control with a Sub-Adviser.

9. In the event the Commission adopts a rule under the Act providing substantially similar relief to that in the order requested in the application, the requested order will expire on the effective date of that rule.

10. Subadvised Funds pay fees to a Sub-Adviser directly from Fund assets. Any changes to a Sub-Advisory Agreement that would result in an increase in the total management and advisory fees payable by a Subadvised Fund will be approved by the shareholders of that Subadvised Fund.

For the Commission, by the Division of Investment Management, under delegated authority.

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–14630 Filed 6–14–12; 8:45 am]

BILLING CODE 8011–01–P

Statement will remain available on that Web site; (e) provide instructions for accessing and printing the Multi-manager Information Statement; and (f) instruct the shareholder that a paper or email copy of the Multi-manager Information Statement may be obtained, without charge, by contacting the Subadvised Funds.

A ''Multi-manager Information Statement'' will meet the requirements of Regulation 14C, Schedule 14C and Item 22 of Schedule 14A under the Exchange Act for an information statement. Multi-manager Information Statements will be filed electronically with the Commission via the EDGAR system.

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 30101; 812–13981]

Notice of Application; Precidian ETFs Trust, et al.

June 8, 2012.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of an application to amend a prior order under section 6(c) of the Investment Company Act of 1940 (''Act'') granting an exemption from sections 2(a)(32), 5(a)(1), 22(d) and 22(e) of the Act and rule 22c–1 under the Act, and under sections 6(c) and 17(b) of the Act for an exemption from sections 17(a)(1) and (2) of the Act, and under section 12(d)(1)(J) of the Act for an exemption from sections 12(d)(1)(A) and (B) of the Act (''Prior Order'').

SUMMARY OF APPLICATION: Applicants seek to amend the Prior Order [1] to permit the Funds (as defined below) to issue Shares in less than Creation Unit size to investors participating in the Distribution Reinvestment Program (as defined below).

APPLICANTS: Precidian ETFs Trust (''Trust''), Precidian Funds LLC (''Adviser'') and Foreside Fund Services, LLC (''Foreside'').

DATES: *Filing Dates:* The application was filed on November 28, 2011, and amended on March 23, 2012, and May 29, 2012. Applicants have agreed to file an amendment during the notice period, the substance of which is reflected in this notice.

HEARING OR NOTIFICATION OF HEARING: An order granting the requested relief will

[1] Precidian ETFs Trust, Investment Company Act Release Nos. 29692 (June 9, 2011) (notice) and 29712 (July 1, 2011) (order).

be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on July 3, 2012 and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, U.S. Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090. Applicants, Trust and Adviser, c/o Mark Criscitello, 350 Main St., Suite 9, Bedminster, New Jersey 07921, Foreside, Three Canal Plaza, Suite 100, Portland, ME 04101.

FOR FURTHER INFORMATION CONTACT: Marilyn Mann, Special Counsel, at (202) 551–6813 or Mary Kay Frech, Branch Chief, at (202) 551–6821 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained via the Commission's Web site by searching for the file number, or an applicant using the Company name box, at *http://www.sec.gov/search/search.htm* or by calling (202) 551–8090.

Applicants' Representations

1. The Trust is registered under the Act as an open-end management investment company with multiple series and organized as a Delaware statutory trust. The Adviser is a Delaware limited liability corporation that is registered under the Investment Advisers Act of 1940 and serves as investment adviser to Maxis Nikkei 225 Index Fund (''Initial Fund''). The distributor for the Initial Fund is Foreside, a Delaware limited liability company. Applicants request relief for the Initial Fund and for any Future Funds (collectively, the ''Funds'').[2] The Funds will operate as exchange-traded funds (''ETFs'').

2. The application for the Prior Order (''Prior Application'')[3] stated that ''No Fund will make DTC book-entry dividend reinvestment service available for use by Beneficial Owners for reinvestment of their cash proceeds but certain individual Brokers may make a dividend reinvestment service available to their clients.'' In addition, the Prior Application included several representations and a condition noting that Shares could be acquired from the Funds and the Funds would issue Shares in Creation Units only. The applicants seek an order amending the Prior Order (''Amended Order'') to specifically permit the Funds to operate the ''Distribution Reinvestment Program,'' as described below.[4]

3. The Trust will make the DTC Dividend Reinvestment Service available for use by the beneficial owners of Shares (''Beneficial Owners'') through DTC Participants for reinvestment of their cash dividends.[5] DTC Participants whose customers participate in the program will have the distributions of their customers automatically reinvested in additional whole Shares issued by the applicable Fund at NAV per Share. Shares will be issued at NAV under the DTC Dividend Reinvestment Service regardless of whether the Shares are trading in the secondary market at a premium or discount to NAV as of the time NAV is calculated. Thus, Shares may be purchased through the DTC Dividend Reinvestment Service at prices that are higher (or lower) than the contemporaneous secondary market trading price. Applicants state that the DTC Dividend Reinvestment Service differs from dividend reinvestment services offered by broker-dealers in two ways. First, in dividend reinvestment programs typically offered by broker-dealers, the additional shares are purchased in the secondary market at current market prices at a date and time determined by the broker-dealer at its discretion. Shares purchased through the DTC Dividend Reinvestment Service are purchased directly from the fund on the date of the distribution at the NAV per share on such date. Second, in dividend reinvestment programs typically offered by broker-dealers, shareholders are typically charged a brokerage or other fee in connection with the secondary market purchase of shares. Applicants state that brokers typically do not charge customers any fees for reinvesting distributions through the DTC Dividend Reinvestment Service.

4. Applicants state that the DTC Dividend Reinvestment Service will be operated by DTC in exactly the same way it runs such service for other open-end management investment companies. The initial decision to participate in the DTC Dividend Reinvestment Service is made by the DTC Participant. Once a DTC Participant elects to participate in the DTC Dividend Reinvestment Service, it offers its customers the option to participate. Beneficial Owners will have to make an affirmative election to participate by completing an election notice. Before electing to participate, Beneficial Owners will receive disclosure describing the terms of the DTC Dividend Reinvestment Service and the consequences of participation. This disclosure will include a clear and concise explanation that under the Distribution Reinvestment Program, Shares will be issued at NAV, which could result in such Shares being acquired at a price higher or lower than that at which they could be sold in the secondary market on the day they are issued (this will also be clearly disclosed in the Prospectus). Brokers providing the DTC Dividend Reinvestment Service to their customers will determine whether to charge Beneficial Owners a fee for this service. Applicants represent that brokers typically do not charge a fee for the DTC Dividend Reinvestment Service.

5. The Prospectus will make clear to Beneficial Owners that the Distribution Reinvestment Program is optional and that its availability is determined by their broker, at its own discretion. Broker-dealers are not required to utilize the DTC Dividend Reinvestment Service, and may instead offer a dividend reinvestment program under which Shares are purchased in the secondary market at current market prices or no dividend reinvestment program at all.

Applicants' Legal Analysis

1. Section 6(c) of the Act provides that the Commission may exempt any person, security or transaction, or any class of persons, securities or transactions, from any provision of the Act, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent

[2] As defined in the Prior Order, Future Funds are future series of the Trust as well as any other open-end management investment companies or their series that may be created in the future that track a specified domestic and/or foreign securities index and are advised by the Adviser or an entity controlling, controlled by, or under common control with the Adviser.

[3] All capitalized terms not otherwise defined herein have the meanings ascribed to them in the Prior Application.

[4] All entities that currently intend to rely on the Amended Order are named as applicants. Any other entity that relies on the Amended Order in the future will comply with the terms and conditions of the application.

[5] Some DTC Participants may not elect to utilize the DTC Dividend Reinvestment Service. Beneficial Owners will be encouraged to contact their broker to ascertain the availability of the DTC Dividend Reinvestment Service through such broker.

with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

2. Applicants seek to amend the Prior Order to specifically permit the Funds to operate the Distribution Reinvestment Program. The only difference between the terms and conditions in the Prior Order and the Amended Order relates to a Fund issuing shares in less than Creation Unit sizes under the Distribution Reinvestment Program. Applicants represent that the relief granted in the Prior Order under section 6(c) remains appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

3. Applicants state that the Distribution Reinvestment Program is reasonable and fair because it is voluntary and each Beneficial Owner will have in advance accurate and explicit information that makes clear the terms of the Distribution Reinvestment Program and the consequences of participation. The Distribution Reinvestment Program does not involve any overreaching on the part of any person concerned because it operates the same for each Beneficial Owner who elects to participate, and is structured in the public interest because it is designed to give those Beneficial Owners who elect to participate a convenient and efficient method to reinvest distributions without paying a brokerage commission. In addition, although brokers providing the Distribution Reinvestment Program could charge a fee, applicants represent that typically brokers do not charge for this service.

4. Applicants do not believe that the issuance of Shares under the Distribution Reinvestment Program will have a material effect on the overall operation of the Funds, including on the efficiency of the arbitrage mechanism inherent in ETFs. In addition, applicants do not believe that providing Beneficial Owners with an added optional benefit (the ability to reinvest in Shares at NAV) will change the Beneficial Owners' expectations about the Funds or the fact that individual Shares trade at secondary market prices. Applicants believe that Beneficial Owners (other than Authorized Participants) generally expect to buy and sell individual Shares only through secondary market transactions at market prices and that such owners will not be confused by the Distribution Reinvestment Program. Therefore, applicants believe that the Distribution Reinvestment Program meets the standards for relief under section 6(c) of the Act.

Applicants' Conditions

Applicants agree that the Amended Order will be subject to the same conditions as those imposed by the Prior Order, except that condition A.2 is revised in its entirety as follows:

Neither the Trust nor any Fund will be advertised or marketed as an open-end investment company or a mutual fund. Any advertising material that describes the purchase or sale of Creation Units or refers to redeemability will prominently disclose that Shares are not individually redeemable and that owners of Shares may acquire those Shares from a Fund (other than pursuant to the Distribution Reinvestment Program) and tender those Shares for redemption to a Fund in Creation Units only.

For the Commission, by the Division of Investment Management, under delegated authority.

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–14629 Filed 6–14–12; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–67175; File No. SR–C2–2012–016]

Self-Regulatory Organizations; C2 Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Its Fees Schedule

June 11, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act'') [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 29, 2012, C2 Options Exchange, Incorporated (the ''Exchange'' or ''C2'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its Fees Schedule. The text of the proposed rule change is available on the Exchange's Web site (*http://www.c2exchange.com/Legal/*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its Fees Schedule in order to state that, in regards to complex orders in multiply-listed, equity and ETF options classes, the rebate that would otherwise apply to Public Customer orders will not apply when a Public Customer order is trading with another Public Customer order. In such a circumstance, there will be no Maker or Taker fee or rebate. The reason for this change is to ensure that the Exchange pays rebates only on transactions in which the Exchange also collects some revenue.

The proposed change is to take effect on June 1, 2012.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[3] Specifically, the Exchange believes the proposed rule change is consistent with Section 6(b)(4) of the Act,[4] which provides that Exchange rules may provide for the equitable allocation of reasonable dues, fees, and other charges among its Trading Permit Holders and other persons using its facilities. The proposed change is reasonable because, while Public Customers trading complex orders in multiply-listed, equity and ETF classes with other Public Customers will no longer be receiving a rebate, they will still not be paying a fee for such transactions. The proposed change is equitable and not

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78f(b).

[4] 15 U.S.C. 78f(b)(4).

unfairly discriminatory because, as previously stated, Public Customers in this situation will still not be paying a fee, and because the Exchange must maintain its administrative and regulatory duties, the maintenance of a system in which the Exchange pays rebates to both sides of a transaction without collecting fees for such transactions may not be prudent. Further, other exchanges that offer customer rebates for complex order executions exclude customer-to-customer transactions.[5]

B. Self-Regulatory Organization's Statement on Burden on Competition

C2 does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange neither solicited nor received comments on the proposed rule change.

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)[6] of the Act and paragraph (f) of Rule 19b–4[7] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–C2–2012–016 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–C2–2012–016. 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 such filing will also be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–C2–2012–016 and should be submitted on or before July 6, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[8]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–14620 Filed 6–14–12; 8:45 am]

BILLING CODE 8011–01–P

[5] *See* International Securities Exchange, LLC Schedule of Fees, page 20, footnote 11.

[6] 15 U.S.C. 78s(b)(3)(A).

[7] 17 CFR 240.19b–4(f).

[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–67181; File No. SR–CME–2012–23]

Self-Regulatory Organizations; Chicago Mercantile Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend CME Rules Relating to Acceptable Performance Bond Deposits

June 11, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 5, 2012, Chicago Mercantile Exchange, Inc. (''CME'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change described in Items I, II and III below, which items have been prepared primarily by CME. CME filed the proposed rule change pursuant to Section 19(b)(3)(A)[3] of the Act and Rule 19b–4(f)(4)(ii)[4] thereunder, so that the proposed rule change was effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

I. Self-Regulatory Organization's Statement of Terms of Substance of the Proposed Rule Change

CME proposes to adopt revisions that would amend CME's rules relating to acceptable performance bond deposits for futures trading. The text of the proposed changes is as follows with additions italicized and deletions in brackets.

* * * * *

Rule 100—Rule 930.B—No Change

* * * * *

Rule 930.C ACCEPTABLE PERFORMANCE BOND DEPOSITS

1. Non-Security Futures and OTC Derivatives

Clearing members may accept from their account holders as performance bond cash currencies of any denomination, readily marketable securities (as defined by SEC Rule 15c3–1(c)(11) and applicable SEC interpretations), money market mutual funds allowable under CFTC Regulation 1.25, bank-issued letters of credit, *warrants, warehouse receipts and shipping certificates that are registered*

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(4)(ii).

as deliverable for commodities traded on Chicago Mercantile Exchange Inc., Chicago Board of Trade Inc., New York Mercantile Exchange, Inc. or Commodity Exchange, Inc., and ''London Good Delivery'' gold, as defined by the London Bullion Market Association.

Clearing members shall not accept as performance bond from an account holder securities that have been issued*, sponsored or otherwise guaranteed* by the account holder or an affiliate of the account holder unless the clearing member files a petition with and receives permission from Clearing House staff.

Bank-issued letters of credit must be in a form acceptable to the Clearing House. Such letters of credit must be drawable in the United States. Clearing members shall not accept as performance bond from an account holder letters of credit issued by the account holder, an affiliate of the account holder, the clearing member, or an affiliate of the clearing member.

All assets deposited by account holders to meet performance bond requirements must be and remain unencumbered by third party claims against the depositing account holder.

Except to the extent that Clearing House staff shall prescribe otherwise, cash currency performance bond deposits shall be valued at market value. All other performance bond deposits other than letters of credit*, warrants, warehouse receipts and shipping certificates* shall be valued at an amount not to exceed market value less applicable haircuts as set forth in SEC Rule 240.15c3–1. *Warrants, warehouse receipts and shipping certificates shall be valued at an amount not to exceed the market value of the commodities represented by the warrants, warehouse receipts or shipping certificates, less a deduction in the same amount as the inventory haircut specified in Commission Regulation 1.17(c)(5)(ii).*

* * * * *

Rule 930.C(2)—End—No Change

II. Self-Regulatory Organization's Statement of Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, CME included statements concerning the purpose and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. CME has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.[5]

A. Self-Regulatory Organization's Statement of Purpose of, and Statutory Basis for, the Proposed Rule Change

CME proposes to amend certain rules that relate to the forms of acceptable performance bond deposits it will accept for futures trading. More specifically, CME proposes to amend CME Rule 930.C (Acceptable Performance Bond Deposits) to allow warrants, shipping certificates and warehouse receipts registered as deliverable on commodities traded at CME, CBOT, NYMEX and the Commodity Exchange (''COMEX'') to be acceptable performance bond deposits at all of these Exchanges at the account-holder level. For example, under the revised Rule, a clearing member could accept COMEX warrants that are registered as deliverable to satisfy a customer's performance bond requirements for positions on CME, CBOT, COMEX and/or NYMEX. This revision will broaden the acceptability of performance bond deposits for customers trading at multiple Exchanges within CME Group Inc.

CME certified the proposed changes that are the subject of this filing to the CFTC in CME Submission 12–178.

The proposed CME changes are limited to CME's activities as a derivatives clearing organization clearing futures transactions. As such, the proposed CME changes do not significantly affect the security-based swap clearing operations of CME or any related rights or obligations of CME security-based swap clearing participants. The proposed change is therefore properly filed under Section 19(b)(3)(A) and Rule 19b–4(f)(4)(ii) thereunder because it effects a change in an existing service of a registered clearing agency that primarily affects the futures clearing operations of the clearing agency with respect to futures that are not security futures and does not significantly affect any securities clearing operations of the clearing agency or any related rights or obligations of the clearing agency or persons using such service.

B. Self-Regulatory Organization's Statement on Burden on Competition

CME does not believe that the proposed rule change will have any impact, or impose any burden, on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

CME has not solicited, and does not intend to solicit, comments regarding this proposed rule change. CME has not received any unsolicited written comments from interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change was filed pursuant to Section 19(b)(3)(A)[6] of the Act and Rule 19b–4(f)(4)(ii)[7] thereunder and thus became effective upon filing because it effects a change in an existing service of a registered clearing agency that primarily affects the futures clearing operations of the clearing agency with respect to futures that are not security futures and does not significantly affect any securities clearing operations of the clearing agency or any related rights or obligations of the clearing agency or persons using such service. At any time within sixty days of the filing of such rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

- Electronic comments may be submitted by using the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*), or send an email to *rule-comments@sec.gov*. Please include File No. SR–CME–2012–23 on the subject line.
- Paper comments should be sent in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–CME–2012–23. 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

[5] The Commission has modified the text of the summaries prepared by CME.

[6] 15 U.S.C. 78s(b)(3)(A)(ii).

[7] 17 CFR 240.19b–4(f)(4)(ii).

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 such filing also will be available for inspection and copying at the principal office of CME. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

All submissions should refer to File Number SR–CME–2012–23 and should be submitted on or before July 6, 2012.

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.[8]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–14623 Filed 6–14–12; 8:45 am]

BILLING CODE 8011–01–P

[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–67180; File No. SR–NYSEArca–2012–56]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the NYSE Arca Equities Schedule of Fees and Charges for Exchange Services

June 11, 2012.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the ''Act'')[2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on May 31, 2012, NYSE Arca, Inc. (the ''Exchange'' or ''NYSE Arca'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the NYSE Arca Equities Schedule of Fees and Charges for Exchange Services (''Fee Schedule''). The text of the proposed rule change is available on the Exchange's Web site at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the Fee Schedule, as described below, and implement the fee changes on June 1, 2012.

Passive Liquidity Orders

A Passive Liquidity Order is an order to buy or sell a stated amount of a security at a specified, undisplayed price.[4] Passive Liquidity Orders are available for all Equity Trading Permit (''ETP'') Holders.[5]

The Exchange does not currently make credits available for Passive Liquidity Orders in Exchange-listed and other Tape B securities that provide liquidity on the Exchange. The Exchange hereby proposes to implement credits for Passive Liquidity Orders in Exchange-listed and other Tape B securities that provide liquidity, as follows:

- $0.0015 per share for Tier 1 and Step Up Tier 1;
- $0.0010 per share for Tier 2, Tier 3, Step Up Tier 2 and Basic Rates; and
- For Investor Tiers 1–3, the applicable rate based on an ETP Holder's qualifying levels.

The Exchange also does not currently charge a fee for Passive Liquidity Orders in Exchange-listed securities that remove liquidity from the Exchange.[6] The Exchange hereby proposes to implement fees for Passive Liquidity Orders in Exchange-listed securities that remove liquidity, which would be the same as the applicable Tier, Step Up Tier or Basic Rate and would be based on an ETP Holder's qualifying levels, as follows:

- $0.0026 per share fee for Tape B Step Up Tier;
- $0.0028 per share fee for Tiers 1–3 and Step Up Tiers 1 and 2;
- $0.0030 per share fee for Basic Rates; and
- For Investor Tiers 1–3, the applicable rate based on an ETP Holder's qualifying levels.

The Exchange also proposes to reflect in the Fee Schedule that, as is the case today, there is neither a fee nor a credit for Passive Liquidity Orders in Tape A and Tape C securities that provide liquidity, but that Passive Liquidity Orders that remove liquidity would be charged a fee of $0.0030 per share, unless the ETP Holder qualifies for the Tape A or Tape C Step Up rate of $0.0029 per share.

Finally, for Lead Market Makers (''LMMs''),[7] the Exchange proposes to implement a $0.0015 per share credit for Passive Liquidity Orders that provide liquidity in securities for which they are registered as the LMM.

PO and PO+ Orders

The Exchange proposes to amend the Fee Schedule to increase the Tier 1, Tier 2 and Basic Rate fee for PO and PO+ Orders in Tape A securities that are routed to the New York Stock Exchange (''NYSE'') that execute in the opening or closing auction, from $0.00085 to $0.00095 per share.[8] Related to this proposed increase, the Exchange proposes to explicitly state that the Tier 3 fee for PO and PO+ Orders routed to the NYSE that execute in the opening or

[4] *See* NYSE Arca Equities Rule 7.31(h)(4).

[5] *See* NYSE Arca Equities Rule 1.1(n).

[6] The Exchange currently charges ETP Holders for Passive Liquidity Orders in non-Exchange-listed Tape B securities based on an ETP Holder's qualifying levels.

[7] The term ''Lead Market Maker'' means a registered Market Maker that is the exclusive Designated Market Maker in listings for which the Exchange is the primary market. *See* NYSE Arca Equities Rule 1.1(ccc).

[8] *See* NYSE Arca Equities Rule 7.31(x). A PO+ Order is a PO Order entered for participation in the primary market, other than for participation in the primary market opening or primary market re-opening. *See also* NYSE Arca Equities Rule 7.31(x)(3).

closing auction would be $0.00095 per share. The Exchange notes that the current rate is the $0.00085 fee applicable under the Basic Rate section of the Fee Schedule. The increase from $0.00085 to $0.00095 for the Tier 3 rate would be a substantive change consistent with the proposed increase in the Basic Rate, but charging a fee for these transactions for Tier 3 ETP Holders would not be a change.

Cross-Asset Tier

The Exchange also proposes to provide for a new Cross-Asset Tier credit of $0.0030 for orders that provide liquidity on the Exchange, which would apply to ETP Holders that (1) provide liquidity of 0.50% or more of the U.S. Consolidated Average Daily Volume (''CADV'') [9] per month, and (2) are affiliated with an NYSE Arca Options Trading Permit (''OTP'') Holder or OTP Firm that provides an Average Daily Volume (''ADV'') of electronic posted Customer executions in Penny Pilot issues on NYSE Arca Options of at least 110,000 contracts.[10]

Related to the introduction of the proposed Cross-Asset Tier credit of $0.0030, the Exchange proposes to specify in the Fee Schedule that Investor Tier 3 ETP Holders would become eligible to qualify for the Tape A, Tape B and Tape C Step Up Tiers. Currently, Investor Tier 1–3 ETP Holders are ineligible to qualify for the reduced fees provided under the Tape A, Tape B and Tape C Step Up Tiers. However, Investor Tier 3 ETP Holders are currently eligible for the same $0.0030 credit for their orders that provide liquidity on the Exchange as is proposed for the Cross-Asset Tier credit. Accordingly, this proposed change would align the fees that are applicable to ETP Holders that qualify for the Cross-Asset Tier and ETP Holders that qualify for Investor Tier 3.[11]

NYSE Amex Name Change

NYSE Amex LLC (''NYSE Amex'') recently changed the name of its equities market to NYSE MKT LLC.[12] Accordingly, the Exchange proposes to update references in the Fee Schedule from ''NYSE Amex'' to ''NYSE MKT.''

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Securities Exchange Act of 1934 (the ''Act''), in general, and furthers the objectives of Section 6(b)(4) of the Act, in particular, because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers.

The Exchange believes that the proposed rule change is reasonable, equitable and not unfairly discriminatory because the credits for Passive Liquidity Orders in Exchange-listed and other Tape B securities that provide liquidity to the Exchange are designed to incentivize ETP Holders to submit orders in such securities that provide liquidity on the Exchange and could therefore increase the quality of the Exchange's market in these securities. The Exchange also believes that the proposed rule change is reasonable, equitable and not unfairly discriminatory because the fees and credits for Passive Liquidity Orders in Exchange-listed and other Tape B securities that provide liquidity on the Exchange would apply to all ETP Holders that choose to submit this order type.

With respect to the LMM credit for Passive Liquidity Orders that provide liquidity, the Exchange believes that the change is reasonable, because it will provide the LMM with incentives to increase liquidity in a security. Moreover, the Exchange believes that the LMM credit is equitable and not unfairly discriminatory because LMMs have unique quoting obligations including maintaining continuous two-sided quotes, NBBO requirements, minimum displayed size requirements, minimum quoted spread requirements and participation requirements for opening and closing auctions. The undisplayed Passive Liquidity Orders add liquidity to the Book and enhance the possibility of price improvement; however, their undisplayed status does not contribute to the BBO. To the contrary, the credit LMMs receive for displayed liquidity executions is much larger, which is consistent with the added transparency created through decreased quoted spreads and increased quoted sizes of the BBO. In addition, the credit is reasonable, equitable and not unfairly discriminatory because all similarly situated LMMs would be subject to the same proposed fee structure.

Additionally, the Exchange believes that the proposed rule change is reasonable, equitable and not unfairly discriminatory because it would result in a clearer and more explicit description of the fees and credits that are applicable to Passive Liquidity Orders in Tape A, Tape C, and non-Exchange-listed Tape B securities. The Exchange also believes that the proposed rule change is reasonable, equitable and not unfairly discriminatory because it would result in the removal of obsolete text from the Fee Schedule related to the name change from NYSE Amex to NYSE MKT.

Also, the Exchange believes that the proposed rule change is reasonable, equitable and not unfairly discriminatory because it would result in an increase in the per share fee for PO and PO+ Orders routed to NYSE that execute in the opening or closing auction, thereby aligning the rate that the Exchange charges to ETP Holders with the rate that the Exchange is charged by NYSE. In this regard, the Exchange notes that a related fee on NYSE was recently increased for NYSE Market At-The-Close (''MOC'') Orders and Limit At-The-Close (''LOC'') Orders.[13] Accordingly, the Exchange is proposing this increase so that the rate it charges to ETP Holders corresponds to the rate that the Exchange is charged by NYSE.[14]

Additionally, the Exchange believes that the proposed rule change is reasonable, equitable and not unfairly discriminatory because the proposed Cross-Asset Tier would directly relate to the activity of an ETP Holder and the activity of an affiliated OTP Holder or OTP Firm on NYSE Arca Options, thereby encouraging increased trading activity on both the NYSE Arca equity and option markets. In this regard, the proposal is designed to bring additional posted order flow to NYSE Arca Options, so as to provide additional opportunities for all OTP Holders and OTP Firms to trade on NYSE Arca Options. Furthermore, the Exchange

[9] U.S. CADV means United States Consolidated Average Daily Volume for transactions reported to the Consolidated Tape and excludes volume on days when the market closes early.

[10] An affiliate of an ETP Holder would be a person or firm that directly, or indirectly through one or more intermediaries, controls or is controlled by, or is under common control with, the ETP Holder. *See* NYSE Arca Rule 1.1(b). As provided under NYSE Arca Options Rule 6.72, options on certain issues have been approved to trade with a minimum price variation of $0.01 as part of a pilot program that is currently scheduled to expire on June 30, 2012.

[11] As is the case today, Investor Tier 1 and Investor Tier 2 ETP Holders would remain ineligible to qualify for the Tape A, Tape B or Tape C Step Up Tiers.

[12] *See* Securities Exchange Act Release No. 67037 (May 21, 2012), 77 FR 31415 (May 25, 2012) (SR–NYSEAmex–2012–32).

[13] *See* Securities Exchange Act Release No. 66600 (March 14, 2012), 77 FR 16298 (March 20, 2012) (SR–NYSE–2012–07).

[14] The Exchange notes that it does not differentiate between the rate it charges to ETP Holders for PO and PO+ Orders routed to NYSE that execute in the opening auction and those that execute in the closing auction.

notes that, similar to the proposed Cross-Asset Tier, the NYSE Arca Options Fee Schedule includes a credit for OTP Holders and OTP Firms that is based on both equity and option volume. Similarly, the NASDAQ Stock Market LLC (''NASDAQ'') charges certain fees based on both equity and option volume.[15] Additionally, specifying that Investor Tier 3 ETP Holders would become eligible to qualify for the Tape A, Tape B and Tape C Step Up Tiers would align the fees that are applicable to ETP Holders that qualify for the Cross-Asset Tier and ETP Holders that qualify for Investor Tier 3.[16]

Finally, the Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues. In such an environment, the Exchange must continually review, and consider adjusting, its fees and credits to remain competitive with other exchanges. For the reasons described above, the Exchange believes that the proposed rule change reflects this competitive environment.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A)[17] of the Act and subparagraph (f)(2) of Rule 19b–4[18] thereunder, because it establishes a due, fee, or other charge imposed by the NYSE Arca.

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 Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–NYSEArca–2012–56 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–NYSEArca-2012–56. 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–NYSEArca–2012–56 and should be submitted on or before July 6, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[19]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–14622 Filed 6–14–12; 8:45 am]

BILLING CODE 8011–01–P

[15] *See* NASDAQ Rule 7018. *See also* Securities Exchange Act Release Nos. 59879 (May 6, 2009), 74 FR 22619 (May 13, 2009) (SR–NASDAQ–2009–041) and 65317 (September 12, 2011), 76 FR 57778 (September 16, 2011) (SR–NASDAQ–2011–127).

[16] As noted above, and as is the case today, Investor Tier 1 and Investor Tier 2 ETP Holders would remain ineligible to qualify for the Tape A, Tape B or Tape C Step Up Tiers.

[17] 15 U.S.C. 78s(b)(3)(A).

[18] 17 CFR 240.19b–4(f)(2).

[19] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–67176; File No. SR–FINRA–2012–027]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Update Rule Cross-References and Make Non-Substantive Technical Changes to Certain FINRA and NASD Rules

June 11, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 5, 2012, Financial Industry Regulatory Authority, Inc. (''FINRA'') (f/k/a National Association of Securities Dealers, Inc. (''NASD'')) filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by FINRA. FINRA has designated the proposed rule change as constituting a ''non-controversial'' rule change under paragraph (f)(6) of Rule 19b–4 under the Act,[3] which renders the proposal effective upon receipt of this filing by the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

FINRA is proposing to update cross-references within certain FINRA rules to reflect changes adopted in the consolidated FINRA rulebook and to make non-substantive technical changes to certain FINRA and NASD Rules.

The text of the proposed rule change is 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.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 17 CFR 240.19b–4(f)(6).

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, FINRA 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. FINRA 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, Proposed Rule Change

1. Purpose

FINRA is in the process of developing a new consolidated rulebook (''Consolidated FINRA Rulebook'').[4] That process involves FINRA submitting to the Commission for approval a series of proposed rule changes over time to adopt rules in the Consolidated FINRA Rulebook. The phased adoption and implementation of those rules necessitates periodic amendments to update rule cross-references and other non-substantive technical changes in the Consolidated FINRA Rulebook.

The proposed rule change would update rule cross-references to reflect changes adopted in the Consolidated FINRA Rulebook. In this regard, the proposed rule change would update references in FINRA Rules 0150 (Application of Rules to Exempted Securities Except Municipal Securities), 2111 (Suitability), 2330 (Members' Responsibilities Regarding Deferred Variable Annuities), 5220 (Offers at Stated Prices), 5320 (Prohibition Against Trading Ahead of Customer Orders), and 6630 (Applicability of FINRA Rules to Securities Previously Designated as PORTAL Securities) that are needed as the result of Commission approval of three recent FINRA proposed rule changes.[5] The proposed rule change would also make technical changes to FINRA Rules 3230 (Telemarketing) and 13204 (Class Action & Collective Actions Claims) to reflect FINRA Manual style convention. The proposed rule change would also delete from the FINRA Manual the Series heading for NASD Rule 0100 (General Provisions) to reflect that the NASD Rule 0100 Series has been replaced by FINRA Rule 0100 Series (General Standards).[6]

FINRA also is proposing to delete the definitions of ''Stop Stock Price'' and ''Stop Stock Transaction'' from paragraph (i) of Rule 6140 (Other Trading Practices). Those definitions were inadvertently included in Rule 6140, which generally relates to certain prohibited trading practices. However, the terms ''Stop Stock Price'' and ''Stop Stock Transaction'' are not used in Rule 6140, but in the equity trade reporting rules, and the definitions are separately—and more appropriately—contained in those rules (see Rules 6220, 6320A, 6320B and 6420 (Definitions)).

In addition, FINRA is relocating the definition of ''inter-dealer quotation system'' from former NASD Rule 2320(f)(4)(A) to FINRA Rule 6420 (Definitions).[7]

FINRA has filed the proposed rule change for immediate effectiveness. The implementation date for the proposed rule changes to FINRA Rules 0150, 2111, 2330, 3230, 5220, 5320, 6140, 6420, 6630, 13204 and NASD Rule 0100 will be July 9, 2012.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[8] 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. FINRA believes the proposed rule change will provide greater clarity to members and the public regarding FINRA's rules.

B. Self-Regulatory Organization's Statement on Burden on Competition

FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[9] and Rule 19b–4(f)(6) thereunder.[10]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml);* or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–FINRA–2012–027 on the subject line.

[4] The current FINRA rulebook consists of (1) FINRA Rules; (2) NASD Rules; and (3) rules incorporated from NYSE (''Incorporated NYSE Rules'') (together, the NASD Rules and Incorporated NYSE Rules are referred to as the ''Transitional Rulebook''). While the NASD Rules generally apply to all FINRA members, the Incorporated NYSE Rules apply only to those members of FINRA that are also members of the NYSE (''Dual Members''). The FINRA Rules apply to all FINRA members, unless such rules have a more limited application by their terms. For more information about the rulebook consolidation process, *see Information Notice,* March 12, 2008 (Rulebook Consolidation Process).

[5] *See* Securities Exchange Act Release No. 63325 (November 17, 2010), 75 FR 71479 (November 23, 2010) (Order Approving File No. SR–FINRA–2010–039); Securities Exchange Act Release No. 63784 (January 27, 2011), 76 FR 5850 (February 2, 2011) (Order Approving File No. SR–FINRA–2010–052); and Securities Exchange Act Release No. 65895 (December 5, 2011), 76 FR 77042 (December 9, 2011) (Order Approving File No. SR–FINRA–2011–052).

[6] *See* Securities Exchange Act Release No. 58643 (September 25, 2008), 73 FR 57174 (October 1, 2008) (Order Approving File No. SR–FINRA–2008–026); and Securities Exchange Act Release No. 65599 (October 20, 2011), 76 FR 66344 (October 26, 2011) (Order Approving File No. SR–FINRA–2010–029).

[7] *See* Securities Exchange Act Release No. 65895 (December 5, 2011), 76 FR 77042 (December 9, 2011) (Order Approving File No. SR–FINRA–2011–052).

[8] 15 U.S.C. 78*o*–3(b)(6).

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(6).

Paper Comments

• Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549.

All submissions should refer to File Number SR–FINRA–2012–027. 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 such filing also will be available for inspection and copying at the principal office of FINRA. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–FINRA–2012–027 and should be submitted on or before July 6, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–14621 Filed 6–14–12; 8:45 am]

BILLING CODE 8011–01–P

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[File No. 500–1]

ROK Entertainment Group, Inc., RussOil Corp., Tricell, Inc., Tunex International, Inc. (n/k/a Aone Dental International Group, Inc.), and Wireless Age Communications, Inc.; Order of Suspension of Trading

June 13, 2012.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of ROK Entertainment Group, 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 RussOil Corp. because it has not filed any periodic reports since the period ended March 31, 2008.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Tricell, Inc. because it has not filed any periodic reports since the period ended September 30, 2006.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Tunex International, Inc. (n/k/a Aone Dental International Group, Inc.) because it has not filed any periodic reports since the period ended December 31, 2006.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Wireless Age Communications, Inc. because it has not filed any periodic reports since the period ended September 30, 2008.

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 June 13, 2012, through 11:59 p.m. EDT on June 26, 2012.

By the Commission.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2012–14754 Filed 6–13–12; 11:15 am]

BILLING CODE 8011–01–P

SOCIAL SECURITY ADMINISTRATION

Agency Information Collection Activities: Comment Request

The Social Security Administration (SSA) publishes a list of information collection packages requiring clearance by the Office of Management and Budget (OMB) in compliance with Public Law 104–13, the Paperwork Reduction Act of 1995, effective October 1, 1995. This notice includes revisions of OMB-approved information collections.

SSA is soliciting comments on the accuracy of the agency's burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility, and clarity; and ways to minimize burden on respondents, including the use of automated collection techniques or other forms of information technology. Mail, email, or fax your comments and recommendations on the information collection(s) to the OMB Desk Officer and SSA Reports Clearance Officer at the following addresses or fax numbers.

(OMB), Office of Management and Budget, Attn: Desk Officer for SSA, Fax: 202–395–6974, Email address: *OIRA_Submission@omb.eop.gov*.

(SSA), Social Security Administration, DCRDP, Attn: Reports Clearance Director, 107 Altmeyer Building, 6401 Security Blvd., Baltimore, MD 21235, Fax: 410–966–2830, Email address: *OPLM.RCO@ssa.gov*.

SSA submitted the information collections below to OMB for clearance. Your comments regarding the information collections would be most useful if OMB and SSA receive them 30 days from the date of this publication. To be sure we consider your comments, we must receive them no later than July 16, 2012. Individuals can obtain copies of the OMB clearance packages by writing to *OPLM.RCO@ssa.gov*.

1. *Claimant's Medication—20 CFR 404.1512, 416.912—0960–0289.* In cases where claimants request a hearing after denial of their claim for Social Security benefits, SSA uses Form HA–4632 to request information from the claimant regarding the medications they are using. This information helps the administrative law judge overseeing the case to fully investigate (1) the claimant's medical treatment and (2) the effects of the medications on the claimant's medical impairments and functional capacity. The respondents are applicants (or their representatives) for Social Security benefits or payments requesting a hearing to contest an agency denial of their claim.

Type of Request: Revision of an OMB-approved information collection.

Collection method	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)
HA–4632 (paper)	20,000	1	15	5,000
Electronic Records Express	180,000	1	15	45,000
Total	200,000			50,000

2. *Representative Payee Report–Special Veterans Benefits—20 CFR 408.665—0960–0621.* Title VIII of the Social Security Act allows for payment of monthly Social Security benefits to qualified World War II veterans residing outside the United States. An SSA-appointed representative payee may receive and manage the monthly payment for the beneficiary's use and benefit. SSA uses Form SSA–2001–F6 to determine if the payee is using the benefits properly on behalf of the beneficiary. Respondents are persons or organizations who act on behalf of beneficiaries receiving Special Veterans Benefits and living outside the United States.

Type of Request: Revision of an OMB-approved information collection.

Collection method	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated Total Annual Burden (hours)
SSA–2001–F6	100	1	10	17

Dated: June 12, 2012.

Faye Lipsky,

Reports Clearance Director, Office of Regulations and Reports Clearance, Social Security Administration.

[FR Doc. 2012–14646 Filed 6–14–12; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF STATE

[Public Notice 7924]

Notice of Intent To Prepare a Supplemental Environmental Impact Statement (SEIS) and To Conduct Scoping and To Initiate Consultation Under Section 106 of the National Historic Preservation Act for the Proposed TransCanada Keystone XL Pipeline Proposed To Extend From Phillips, MT (the Border Crossing) to Steele City, NE

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: TransCanada Keystone Pipeline, L.P. (TransCanada) has applied to the United States Department of State for a Presidential Permit authorizing the construction, operation, and maintenance of facilities at the border of the United States for the importation of crude oil from a foreign country (Canada). Authorization is being requested in connection with TransCanada's proposed international pipeline project (the revised Keystone XL Project), which is designed to transport crude oil from the Western Canadian Sedimentary Basin and the Williston Basin to existing pipeline facilities near Steele City, Nebraska for onward transport to markets in the Texas Gulf Coast area. The Department of State receives and considers applications for Presidential Permits for such energy-related pipelines pursuant to authority delegated to it by the President under Executive Order 13337 of April 30, 2004 (69 FR 25299), as amended. To issue a Permit, the Department of State must find that issuance would serve the national interest. In the course of processing such applications, the Department consults extensively with concerned Federal and State agencies, and invites public comment in arriving at its determination.

The Department of State previously evaluated potential impacts resulting from construction, operation, and maintenance of a longer pipeline that would have terminated in the Port Arthur and east Houston areas of Texas. The Final Environmental Impact Statement for that proposed project was issued on August 26, 2011. On January 18, 2012, the Department announced its determination that the project—as presented and analyzed at that time—did not serve the national interest. Archived documents can be found at *www.keystonepipeline-xl.state.gov/archive/index.htm.*

TransCanada has submitted a new Presidential Permit application with a revised proposed route that extends from the Canadian border in Phillips County, Montana to Steele City, Nebraska and avoids the Sand Hills region of Nebraska. The Nebraska Department of Environmental Quality has identified the Sand Hills region and is currently evaluating the potential impacts associated with the proposed new route(s). The Department of State has entered into a Memorandum of Understanding with the Nebraska Department of Environmental Quality to facilitate coordination and cooperation between the State and the Federal government. TransCanada has indicated to the Department of State that it has decided to proceed with construction of a pipeline from Cushing, Oklahoma to the Gulf Coast of Texas, which had been included as part of the Keystone XL project in the previous application, as an independent project. Thus, TransCanada did not include the proposed pipeline from Cushing to the Gulf Coast as part of the project in the revised Presidential Permit application.

With respect to the application submitted by TransCanada, the Department of State has concluded, consistent with the National Environmental Policy Act (NEPA) of 1969, that the issuance of the new Presidential Permit would constitute a major Federal action that may have a significant impact upon the environment. For this reason, Department of State intends to prepare a Supplement to the Final Environmental Impact Statement dated August 26, 2011, to address reasonably foreseeable impacts from the proposed

action and alternatives. Additionally the Department of State has determined that it will undertake a review of the potential issuance of the Presidential Permit consistent with Section 106 of the National Historic Preservation Act and is consequently initiating the appropriate consultation. Consultation will be conducted with State Historic Preservation Officers, Indian tribes, and the Advisory Council on Historic Preservation, and other consulting parties, as appropriate, to determine the locations (if any) of potential sites for inclusion on the National Register of Historic Places as well as the potential eligibility and findings of effect for cultural resources identified within the Keystone XL Area of Potential Effect. The purpose of this Notice of Intent (NOI) is to inform the public about the proposed action, announce plans for scoping opportunities, invite public participation in the scoping process, and solicit public comments for consideration in establishing the scope and content of the SEIS.

DATES: Department of State invites interested agencies, organizations, and members of the public to submit comments or suggestions to assist in identifying significant environmental issues, measures that might be adopted to reduce environmental impacts, and in determining the appropriate scope of the SEIS. The public scoping period starts with the publication of this Notice in the **Federal Register** on June 15, 2012 and will continue until July 30, 2012. Written, electronic, and oral comments will be given equal weight and State will consider all comments received or postmarked by July 30, 2012 in defining the scope of the SEIS. Comments received or postmarked after that date may be considered to the extent practicable.

Public scoping opportunities are designed to provide opportunities to offer comments on the proposed project. Interested individuals and groups are encouraged to present comments on the environmental issues they believe should be addressed in the SEIS. Again, written comments are considered with equal weight in the process relative to those received in the public scoping meeting.

During this public scoping period, the Department of State also plans to use the scoping process to help identify consulting parties and historic preservation issues for consideration under Section 106 of the National Historic Preservation Act and its implementing regulations (36 CFR part 800).

ADDRESSES: Written comments or suggestions on the scope of the EIS should be addressed to: Genevieve Walker, OES/ENV Room 2657, U.S. Department of State, Washington, DC 20520. Comments may be submitted electronically to *http://www.keystonepipeline-XL.state.gov.* Public comments will be posted on the Web site identified below.

FOR FURTHER INFORMATION CONTACT: For information on the proposed project or to receive a copy of the draft SEIS when it is issued, contact Genevieve Walker at the address listed in the **ADDRESSES** section of this notice by electronic or regular mail as listed above, or by telephone (202) 647–6849 or by fax at (202) 647–5947.

SUPPLEMENTARY INFORMATION:

Project Description

TransCanada proposes to construct and operate a crude oil pipeline and related facilities from an oil supply hub near Hardisty, Alberta, Canada to the northernmost point of the existing Keystone Pipeline Cushing Extension at Steele City, Nebraska. The pipeline is anticipated to be 1,179 miles long (329 miles of that are in Canada) and has an initial capacity of 830,000 barrels per day. To connect the Canadian and U.S. portions of the pipeline project, TransCanada must first obtain a Presidential Permit from the Department of State authorizing the construction, operation, and maintenance of the pipeline and related facilities at the international border.

The SEIS Process

The Department of State, consistent with NEPA, will take into account the environmental impacts that could result from the approval of a Presidential Permit authorizing construction, operation, and maintenance of pipeline facilities for the importation of crude oil to be located at the international border of the United States and Canada. The Department of State will use the SEIS to assess the environmental impacts that could result if TransCanada is granted a Presidential permit for the revised Keystone XL Pipeline Project. The SEIS will supplement the August 26, 2011 FEIS, by including information and analysis about potential impacts associated with the new proposed route(s) within Nebraska, as well as about any other subjects that may need to be updated because there exists significant new circumstances or information relevant to environmental concerns bearing on the proposed action or its impacts. The Department of State will select a Third-Party Contractor to help prepare the SEIS. The SEIS will be prepared under the direction of the Department of State and will be reviewed by the cooperating agencies.

In the SEIS, the Department of State will discuss impacts that could occur as a result of the construction and operation of the revised proposed project under these general headings:

- Geology and soils;
- Water resources;
- Fish, wildlife, and vegetation;
- Threatened and endangered species;
- Cultural resources;
- Land use, recreation and special interest areas;
- Visual resources;
- Air quality and noise;
- Socioeconomics;
- Environmental Justice; and,
- Reliability and safety.

In the SEIS, the Department of State will also evaluate reasonable alternatives, including a ''no action alternative,'' to the proposed project or portions of the project and make recommendations on how to lessen or avoid impacts on affected resources.

The Department of State's independent analysis of the issues will be included in a draft SEIS. The draft SEIS will be published and mailed to relevant Federal, State, and local government agencies, elected officials, environmental and public interest groups, Indian tribes, affected landowners, commenters, local libraries, newspapers, and other interested parties. You are encouraged to become involved in this process and provide your specific comments or concerns about the proposed project. By becoming a commenter, your concerns will be considered by the Department of State and addressed appropriately in the SEIS. Parties interested in being involved in Section 106 consultation should also contact the Department of State.

The Department of State will consider all timely comments on the draft SEIS and revise the document, as necessary, before issuing a final SEIS.

Project details and environmental information on the Keystone XL Project application for a Presidential Permit, including associated maps are downloadable from a Web site that is being established for this purpose: *http://www.keystonepipeline-XL.state.gov.* This Web site is expected to be operational on or about June 15, 2012. This Web site will accept public comments for the record.

Information on the Department of State Presidential Permit process can also be found at the above Internet address.

A TransCanada hosted project Web site is also available at *http://www.transcanada.com/keystone.html.* The Keystone XL Project toll-free number is 1–866–717–7473 (United States and Canada).

Dated: June 13, 2012.

Genevieve Walker,

NEPA Director, Bureau of Oceans and International Environmental and Scientific Affairs/Office of Environmental Policy, U.S. Department of State.

[FR Doc. 2012–14803 Filed 6–14–12; 8:45 am]

BILLING CODE 4710–09–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Notice of Funding Availability for the Small Business Transportation Resource Center Program

AGENCY: Department of Transportation (DOT), Office of the Secretary of Transportation (OST), Office of Small and Disadvantaged Business Utilization (OSDBU).

ACTION: Notice of Funding Availability.

SUMMARY: The Department of Transportation (DOT), Office of the Secretary (OST), Office of Small and Disadvantaged Business Utilization (OSDBU) announces the opportunity for: (1) Business centered community-based organizations; (2) transportation-related trade associations; (3) colleges and universities; (4) community colleges; or (5) chambers of commerce, registered with the Internal Revenue Service as 501 C(6) or 501 C(3) tax-exempt organizations, to compete for participation in OSDBU's Small Business Transportation Resource Center (SBTRC) program in the Central Region.

OSDBU will enter into Cooperative Agreements with these organizations to provide outreach to the small business community in their designated region and provide financial and technical assistance, business training programs, business assessment, management training, counseling, marketing and outreach, and the dissemination of information, to encourage and assist small businesses to become better prepared to compete for, obtain, and manage DOT funded transportation-related contracts and subcontracts at the federal, state and local levels. Throughout this notice, the term ''small business'' will refer to: 8(a), small disadvantaged businesses (SDB), disadvantaged business enterprises (DBE), women owned small businesses (WOSB), HubZone, service disabled veteran owned businesses (SDVOB), and veteran owned small businesses (VOSB). Throughout this notice, ''transportation-related'' is defined as the maintenance, rehabilitation, restructuring, improvement, or revitalization of any of the nation's modes of transportation.

Funding Opportunity Number: USDOT–OST–OSDBU–SBTRC2012–10.

Catalog of Federal Domestic Assistance (CFDA) Number: 20.910 Assistance to small and disadvantaged businesses.

Type of Award: Cooperative Agreement Grant.

Award Ceiling: $150,000.

Award Floor: $100,000.

Program Authority: DOT is authorized under 49 U.S.C. 332(b)(4), (5) & (7) to design and carry out programs to assist small disadvantaged businesses in getting transportation-related contracts and subcontracts; develop support mechanisms, including management and technical services, that will enable small disadvantaged businesses to take advantage of those business opportunities; and to make arrangements to carry out the above purposes.

DATES: Complete Proposals must be electronically submitted to OSDBU via email on or before July 16, 2012, 5:00 p.m. Eastern Standard Time. Proposals received after the deadline will be considered non-responsive and will not be reviewed. The applicant is advised to request delivery receipt notification for email submissions. DOT plans to give notice of award for the competed region on or before August 13, 2012.

ADDRESSES: Applications must be electronically submitted to OSDBU via email at *SBTRC@dot.gov.*

FOR FURTHER INFORMATION CONTACT: For further information concerning this notice, contact Ms. Patricia Martin, U.S. Department of Transportation, Office of Small and Disadvantaged Business Utilization, 1200 New Jersey Avenue SE. W56–462, Washington, DC 20590. Telephone: 1–800–532–1169. Email: *patricia.martin@dot.gov.*

SUPPLEMENTARY INFORMATION:

Table of Contents

1. Introduction
   1.1 Background
   1.2 Program Description and Goals
   1.3 Description of Competition
   1.4 Duration of Agreements
   1.5 Authority
   1.6 Eligibility Requirements
2. Program Requirements
   2.1 Recipient Responsibilities
   2.2 Office of Small and Disadvantaged Business Utilization Responsibilities
3. Submission of Proposals
   3.1 Format for Proposals
   3.2 Address, Number of Copies, Deadline for Submission
4. Selection Criteria
   4.1 General Criteria
   4.2 Scoring of Applications
   4.3 Conflicts of Interest
Format for Proposals—Appendix A

Full Text of Announcement

1. Introduction

1.1 Background

The DOT established OSDBU in accordance with Public Law 95–507, an amendment to the Small Business Act and the Small Business Investment Act of 1958.

The mission of OSDBU at DOT is to ensure that the small and disadvantaged business policies and goals of the Secretary of Transportation are developed and implemented in a fair, efficient and effective manner to serve small and disadvantaged businesses throughout the country. The OSDBU also administers the provisions of Title 49, Section 332, the Minority Resource Center (MRC) which includes the duties of advocacy, outreach and financial services on behalf of small and disadvantaged business and those certified under CFR 49 parts 23 and/or 26 as Disadvantaged Business Enterprises (DBE) and the development of programs to encourage, stimulate, promote and assist small businesses to become better prepared to compete for, obtain and manage transportation-related contracts and subcontracts.

The Regional Partnerships Division of OSDBU, through the SBTRC program, allows OSDBU to partner with local organizations to offer a comprehensive delivery system of business training, technical assistance and dissemination of information, targeted towards small business transportation enterprises in their regions.

1.2 Program Description and Goals

The national SBTRC program utilizes Cooperative Agreements with chambers of commerce, trade associations, educational institutions and business-centered community based organizations to establish SBTRCs to provide business training, technical assistance and information to DOT grantees and recipients, prime contractors and subcontractors. In order to be effective and serve their target audience, the SBTRCs must be active in the local transportation community in order to identify and communicate opportunities and provide the required technical assistance. SBTRCs must already have, or demonstrate the ability to, establish working relationships with the state and local transportation

agencies and technical assistance agencies (i.e., The U.S. Department of Commerce's Minority Business Development Centers (MBDCs), Small Business Development Centers (SBDCs), Procurement Technical Assistance Centers (PTACs)), SCORE and State DOT highway supportive services contractors in their region. Utilizing these relationships and their own expertise, the SBTRCs are involved in activities such as information dissemination, small business counseling, and technical assistance with small businesses currently doing business with public and private entities in the transportation industry.

Effective outreach is critical to the success of the SBTRC program. In order for their outreach efforts to be effective, SBTRCs must be familiar with DOT's Operating Administrations, its funding sources, and how funding is awarded to DOT grantees, recipients, contractors, subcontractors, and its financial assistance programs. SBTRCs must provide outreach to the regional small business transportation community to disseminate information and distribute DOT-published marketing materials, such as Short Term Lending Program (STLP) Information, Bonding Education Program (BEP) information, SBTRC brochures and literature, Procurement Forecasts; Contracting with DOT booklets, Women and Girls Entrepreneurial Training and Technical Assistance Internship Program (WGP), and any other materials or resources that DOT or OSDBU may develop for this purpose. To maximize outreach, the SBTRC may be called upon to participate in regional and national conferences and seminars. Quantities of DOT publications for on-hand inventory and dissemination at conferences and seminars will be available upon request from the OSDBU office.

1.3 Description of Competition

The purpose of this Request For Proposal (RFP) is to solicit proposals from transportation-related trade associations, chambers of commerce, community based entities, colleges and universities, community colleges, and any other qualifying transportation-related non-profit organizations with the desire and ability to partner with OSDBU to establish and maintain an SBTRC.

It is OSDBU's intent to award Cooperative Agreement to one organization in the Central Region, from herein referred to as ''region)'', in this solicitation. However, if warranted, OSDBU reserves the option to make multiple awards to selected partners. Proposals submitted for a region must contain a plan to service the entire region, not just the SBTRC's state or local geographical area. The region's SBTRC headquarters must be established in one of the designated states set forth below. Submitted proposals must also contain justification for the establishment of the SBTRC headquarters in a particular city within the designated state.

SBTRC Region Competed in This Solicitation

Central Region: Arkansas, Missouri, Minnesota, Iowa, Kansas.

Program requirements and selection criteria, set forth in Sections 2 and 4 respectively, indicate that the OSDBU intends for the SBTRC to be multidimensional; that is, the selected organization must have the capacity to effectively access and provide supportive services to the broad range of small businesses within the respective geographical region. To this end, the SBTRC must be able to demonstrate that they currently have established relationships within the geographic region with whom they may coordinate and establish effective networks with DOT grant recipients and local/regional technical assistance agencies to maximize resources.

Cooperative agreement awards will be distributed to the region(s) as follows:

Central Region: Ceiling $150,000 per year, Floor $100,000 per year.

Cooperative agreement awards by region are based upon an analysis of DBEs, Certified Small Businesses, and US DOT transportation dollars in each region.

It is OSDBU's intent to maximize the benefits received by the small business transportation community through the SBTRC. Funding may be utilized to reimburse an on-site Project Director up to 100% of salary plus fringe benefits, an on-site Executive Director up to 20% of salary plus fringe benefits, up to 100% of a Project Coordinator salary plus fringe benefits, the cost of designated SBTRC space, other direct costs, and all other general and administrative expenses. Selected SBTRC partners will be expected to provide in-kind administrative support. Submitted proposals must contain an alternative funding source with which the SBTRC will fund administrative support costs. Preference will be given to proposals containing in-kind contributions for the Project Director, the Executive Director, the Project Coordinator, cost of designated SBTRC space, other direct costs, and all other general and administrative expenses.

1.4 Duration of Agreements

The cooperative agreement will be awarded for a period of 12 months (one year) with options for two (2) additional one year periods. OSDBU will notify the SBTRC of our intention to exercise an option year or not to exercise an option year 30 days in advance of expiration of the current year.

1.5 Authority

DOT is authorized under 49 U.S.C. 332(b)(4), (5) &(7) to design and carry out programs to assist small disadvantaged businesses in getting transportation-related contracts and subcontracts; develop support mechanisms, including management and technical services, that will enable small disadvantaged businesses to take advantage of those business opportunities; and to make arrangements to carry out the above purposes.

1.6 Eligibility Requirements

To be eligible, an organization must be an established, nonprofit, community-based organization, transportation-related trade association, chamber of commerce, college or university, community college, and any other qualifying transportation-related non-profit organization which has the documented experience and capacity necessary to successfully operate and administer a coordinated delivery system that provides access for small businesses to prepare and compete for transportation-related contracts.

In addition, to be eligible, the applicant organization must:

(A) Be an established 501 C (3) or 501 C (6) tax-exempt organization and provide documentation as verification. No application will be accepted without proof of tax-exempt status;

(B) Have at least one year of documented and continuous experience prior to the date of application in providing advocacy, outreach, and technical assistance to small businesses within the region in which proposed services will be provided. Prior performance providing services to the transportation community is preferable, but not required; and

(C) Have an office physically located within the proposed city in the designated headquarters state in the region for which they are submitting the proposal that is readily accessible to the public.

2. Program Requirements

2.1 Recipient Responsibilities

(A) Assessments, Business Analyses

1. Conduct an assessment of small businesses in the SBTRC region to determine their training and technical assistance needs, and use information that is available at no cost to structure programs and services that will enable small businesses to become better prepared to compete for and receive transportation-related contract awards.

2. Contact other federal, state and local government agencies, such as the U.S. Small Business Administration (SBA), state and local highway agencies, state and local airport authorities, and transit authorities to identify relevant and current information that may support the assessment of the regional small business transportation community needs.

(B) General Management & Technical Training and Assistance

1. Utilize OSDBU's Intake Form to document each small business assisted by the SBTRC and type of service(s) provided. The completed form must be transmitted electronically to the SBTRC Program Analyst on a monthly basis, accompanied by a narrative report on the activities and performance results for that period. The data gathered must be supportive by the narrative and must relate to the numerical data on the monthly reports.

2. Ensure that an array of information is made available for distribution to the small business transportation community that is designed to inform and educate the community on DOT/OSDBU services and opportunities.

3. Coordinate efforts with OSDBU's National Information Clearinghouse in order to maintain an on-hand inventory of DOT/OSDBU informational materials for general dissemination and for distribution at transportation-related conferences and other events.

(C) Business Counseling

1. Collaborate with agencies, such as the SBA, U.S. Department of Commerce's Minority Business Development Centers (MBDCs), Service Corps of Retired Executives (SCORE), Procurement Technical Assistance Centers (PTACs), and Small Business Development Centers (SBDCs), to offer a broad range of counseling services to transportation-related small business enterprises.

2. Create a technical assistance plan that will provide each counseled participant with the knowledge and skills necessary to improve the management of their own small business to expand their transportation-related contracts and subcontracts portfolio.

3. Provide a minimum of 20 hours of individual or group counseling sessions to small businesses per month.

(D) Planning Committee

1. Establish a Regional Planning Committee consisting of at least 7 members that includes representatives from the regional community and federal, state, and local agencies. The highway, airport, and transit authorities for the SBTRC's headquarters state must have representation on the planning committee. This committee shall be established no later than 60 days after the execution of the Cooperative agreement between the OSDBU and the selected SBRTC.

2. Provide a forum for the federal, state, and local agencies to disseminate information about upcoming procurements.

3. Hold either monthly or quarterly meetings at a time and place agreed upon by SBTRC and planning committee members.

4. Use the initial session (teleconference call) by the SBTRC explain the mission of the committee and identify roles of the staff and the members of the group.

5. Responsibility for the agenda and direction of the Planning Committee should be handled by the SBTRC Executive Director or his/her designee.

(E) Outreach Services/Conference Participation

1. Utilize the services of the Central Contractor Registration (CCR) and other sources to construct a database of regional small businesses that currently or may in the future participate in DOT direct and DOT funded transportation related contracts, and make this database available to OSDBU, upon request.

2. Utilize the database of regional transportation-related small businesses to match opportunities identified through the planning committee forum, FedBiz Opps (a web-based system for posting solicitations and other Federal procurement-related documents on the Internet), and other sources to eligible small businesses and inform the small business community about those opportunities.

3. Develop a ''targeted'' database of firms (100–150) that have the capacity and capabilities, and are ready, willing and able to participate in DOT contracts and subcontracts immediately. This control group will receive ample resources from the SBTRC, i.e., access to working capital, bonding assistance, business counseling, management assistance and direct referrals to DOT agencies at the state and local levels, and to prime contractors as effective subcontractor firms.

4. Identify regional, state and local conferences where a significant number of small businesses, with transportation related capabilities, are expected to be in attendance. Maintain and submit a list of those events to the SBTRC Program Analyst for review and posting on the OSDBU Web site on a monthly basis. Clearly identify the events designated for SBTRC participation and include recommendations for OSDBU participation.

5. Conduct outreach and disseminate information to small businesses at regional transportation-related conferences, seminars, and workshops. In the event that the SBTRC is requested to participate in an event, the SBTRC will send DOT materials, the OSDBU banner and other information that is deemed necessary for the event.

6. Submit a conference summary report to OSDBU no later than 5 business days after participation in the event or conference. The conference summary report must summarize activities, contacts, outreach results, and recommendations for continued or discontinued participation in future similar events sponsored by that organization.

7. Upon request by OSDBU, coordinate efforts with DOT's grantees and recipients at the state and/or local levels to sponsor or cosponsor an OSDBU transportation related conference in the region.

(F) Short Term Lending Program

1. Work with STLP participating banks and if not available, other lending institutions to deliver a minimum of five (5) seminars/workshops per year on the STLP financial assistance program to the transportation-related small business community. The seminar/workshop must cover the entire STLP process, from completion of STLP loan applications and preparation of the loan package to graduation from the STLP.

2. Provide direct support, technical support, and advocacy services to potential STLP applicants to increase the probability of STLP loan approval and generate a minimum of 5 approved STLP applications per year.

(G) Bonding Education Program

1. Work with OSDBU, bonding industry partners, local small business transportation stakeholders, and local bond producers/agents in your region to deliver the Bonding Education Program

(BEP). The BEP consists of the following components; (1) The stakeholder's meeting; (2) the educational workshops component; (3) the bond readiness component; and (4) follow-on assistance to BEP participants via technical and procurement assistance based on the prescriptive plan determined by the BEP.

2. For each BEP event, work with the local bond producers/agents in your region and the disadvantaged business participants to deliver minimum of 10 disadvantaged business participants in the BEP event with either access to bonding or an increase in bonding capacity.

(H) Furnish All Labor, Facilities and Equipment To Perform the Services Described in This Announcement

(I) Women and Girls Internship Program

1. Pursuant to Executive Order 13506, and 49 U.S.C. 332 (b) (4) & (7), the SBTRC shall administer the Women & Girls Internship Program in their geographical region. The SBTRC shall design and establish an internship program within the overall parameters of the program defined by USDOT/OSDBU. The program must be designed to engage female students from a variety of disciplines in the transportation industry. The SBTRC shall also be responsible for outreach activities in the implementation of this program and advertising the internship program to all colleges and universities and transportation entities in their region. Internships shall be developed in conjunction with the skill needs of the USDOT, state and local transportation agencies and appropriate private sector transportation-related participants including, S/WOBs/DBEs, and women organizations involved in transportation. Emphasis shall be placed on establishing internships with transportation-related WOBs. The SBTRC shall also develop a student mentorship program in conjunction with the internship program.

The student interns and the SBTRC shall follow the participating institution's required policies and procedures to submit and acquire academic credit for students participating in the internship program. In the event academic credit is not awarded to the student intern by the participating institution, the SBTRC may provide a stipend to the student from the amount awarded for stipends under a separate amendment to the Cooperative Agreement, to students placed in US DOT, the public sector and S/WOBs/DBEs. Stipends may also be provided in cases of financial hardship. All stipends must be pre-approved by the USDOT/OSDBU Budget Analyst. The stipend may be paid at the rate negotiated by the SBTRC and the USDOT/OSDBU Program Analyst.

In advance of student selection, the SBTRC shall submit to the Program Analyst the criteria developed to select student interns; describe an individual student formative goal; estimate student participation, provisions for academic credit, the duration of the internships in weeks, the names of the collaborating transportation-related public or private entity, the names of contact persons and their related contact information. In the event a stipend is requested, the SBTRC shall also submit to the Program Analyst the amount of the stipend requested and the basis of the request. Criteria for selecting interns may include, but is not limited to, vocational interest in transportation-related careers, academic success, work experience and recommendations from professors.

2.2 Office of Small and Disadvantaged Business Utilization (OSDBU) Responsibilities

(A) Provide consultation and technical assistance in planning, implementing and evaluating activities under this announcement.

(B) Provide orientation and training to the applicant organization.

(C) Monitor SBTRC activities, cooperative agreement compliance, and overall SBTRC performance.

(D) Assist SBTRC to develop or strengthen its relationships with federal, state, and local transportation authorities, other technical assistance organizations, and DOT grantees.

(E) Facilitate the exchange and transfer of successful program activities and information among all SBTRC regions.

(F) Provide the SBTRC with DOT/OSDBU materials and other relevant transportation-related information for dissemination.

(G) Maintain effective communication with the SBTRC and inform them of transportation news and contracting opportunities to share with small businesses in their region.

(H) Provide all required forms to be used by the SBTRC for reporting purposes under the program.

(I) Perform an annual performance evaluation of the SBTRC. Satisfactory performance is a condition of continued participation of the organization as an SBTRC and execution of all option years.

3. Submission of Proposals

3.1 Format for Proposals

Each proposal must be submitted to DOT's OSDBU in the format set forth in the application form attached as Appendix A to this announcement.

3.2 Address; Number of Copies; Deadlines for Submission

Any eligible organization, as defined in Section 1.6 of this announcement, will submit only one proposal per region for consideration by OSDBU. Applications must be double spaced, and printed in a font size not smaller than 12 points. Applications will not exceed 35 single-sided pages, not including any requested attachments.

All pages should be numbered at the top of each page. All documentation, attachments, or other information pertinent to the application must be included in a single submission.

Grant application packages must be submitted electronically to OSDBU at *SBTRC@dot.gov.* The applicant is advised to turn on request delivery receipt notification for email submissions.

Proposals must be received by DOT/OSDBU no later than July 16, 2012, 5:00 p.m., EST.

4. Selection Criteria

4.1 General Criteria

OSDBU will award the cooperative agreement on a best value basis, using the following criteria to rate and rank applications:

Applications will be evaluated using a point system (maximum number of points = 100);

- Approach and strategy (25 points)
- Linkages (25 points)
- Organizational Capability (25 points)
- Staff Capabilities and Experience (15 points)
- Cost Proposal (10 points)

(A) Approach and Strategy (25 Points)

The applicant must describe their strategy to achieve the overall mission of the SBTRC as described in this solicitation and service the small business community in their entire geographic regional area. The applicant must also describe how the specific activities outlined in Section 2.1 will be implemented and executed in the organization's regional area. OSDBU will consider the extent to which the proposed objectives are specific, measurable, time-specific, and consistent with OSDBU goals and the applicant organization's overall mission. OSDBU will give priority consideration to applicants that demonstrate

innovation and creativity in their approach to assist small businesses to become successful transportation contractors and increase their ability to access DOT contracting opportunities and financial assistance programs. Applicants must also submit the estimated direct costs, other than labor, to execute their proposed strategy. OSDBU will consider the quality of the applicant's plan for conducting program activities and the likelihood that the proposed methods will be successful in achieving proposed objectives at the proposed cost.

(B) Linkages (25 Points)

The applicant must describe their established relationships within their geographic region and demonstrate their ability to coordinate and establish effective networks with DOT grant recipients and local/regional technical assistance agencies to maximize resources. OSDBU will consider innovative aspects of the applicant's approach and strategy to build upon their existing relationships and established networks with existing resources in their geographical area. The applicant should describe their strategy to obtain support and collaboration on SBTRC activities from DOT grantees and recipients, transportation prime contractors and subcontractors, the SBA, U.S. Department of Commerce's Minority Business Development Centers (MBDCs), Service Corps of Retired Executives (SCORE), Procurement Technical Assistance Centers (PTACs), Small Business Development Centers (SBDCs), State DOTs, and State highway supportive services contractors. In rating this factor, OSDBU will consider the extent to which the applicant demonstrates ability to be multidimensional. The applicant must demonstrate that they have the ability to access a broad range of supportive services to effectively serve a broad range of transportation-related small businesses within their respective geographical region. Emphasis will also be placed on the extent to which the applicant identifies a clear outreach strategy related to the identified needs that can be successfully carried out within the period of this agreement and a plan for involving the Planning Committee in the execution of that strategy.

(C) Organizational Capability (25 Points)

The applicant must demonstrate that they have the organizational capability to meet the program requirements set forth in Section 2. The applicant organization must have sufficient resources and past performance experience to successfully provide outreach to the small business transportation resources in their geographical area and carry out the mission of the SBTRC. In rating this factor, OSDBU will consider the extent to which the applicant's organization has recent, relevant and successful experience in advocating for and addressing the needs of small businesses. Applicants will be given points for demonstrated past transportation-related performance. The applicant must also describe technical and administrative resources it plans to use in achieving proposed objectives. In their description, the applicant must describe their facilities, computer and technical facilities, ability to tap into volunteer staff time, and a plan for sufficient matching alternative financial resources to fund the general and administrative costs of the SBTRC. The applicant must also describe their administrative and financial management staff. OSDBU will place an emphasis on capabilities of the applicant's financial management staff.

(D) Staff Capability and Experience (15 Points)

The applicant organization must provide a list of proposed personnel for the project, with salaries, fringe benefit burden factors, educational levels and previous experience clearly delineated. The applicant's project team must be well-qualified, knowledgeable, and able to effectively serve the diverse and broad range of small businesses in their geographical region. The Executive Director and the Project Director shall be deemed key personnel. Detailed resumes must be submitted for all proposed key personnel and outside consultants and subcontractors. Proposed key personnel must have detailed demonstrated experience providing services similar in scope and nature to the proposed effort. The proposed Project Director will serve as the responsible individual for the program. 100% of the Project Director's time must be dedicated to the SBTRC. Both the Executive Director and the Project Director must be located on-site. In this element, OSDBU will consider the extent to which the applicant's proposed Staffing Plan; (a) Clearly meets the education and experience requirements to accomplish the objectives of the cooperative agreement; (b) delineates staff responsibilities and accountability for all work required and; (c) presents a clear and feasible ability to execute the applicant's proposed approach and strategy.

(E) Cost Proposal (10 Points)

Applicants must submit the total proposed cost of establishing and administering the SBTRC in the applicant's geographical region for a 12 month period, inclusive of costs funded through alternative matching resources. The applicant's budget must be adequate to support the proposed strategy and costs must be reasonable in relation to project objectives. The portion of the submitted budget funded by OSDBU cannot exceed the ceiling outlined in Section 1.3: Description of Competition of this RFP per fiscal year. Applicants are encouraged to provide in-kind costs and other innovative cost approaches.

4.2 Scoring of Applications

A review panel will score each application based upon the evaluation criteria listed above. Points will be given for each evaluation criteria category, not to exceed the maximum number of points allowed for each category. Proposals which are deemed non–responsive, do not meet the established criteria, or incomplete at the time of submission will be disqualified.

OSDBU will perform a responsibility determination of the prospective awardee in the region, which may include a site visit, before awarding the cooperative agreement.

4.3 Conflicts of Interest

Applicants must submit signed statements by key personnel and all organization principals indicating that they, or members of their immediate families, do not have a personal, business or financial interest in any DOT-funded transportation project, nor any relationships with local or state transportation agencies that may have the appearance of a conflict of interest.

Appendix A

Format for Proposals for the Department of Transportation Office of Small and Disadvantaged Business Utilization's Small Business Transportation Resource Center (SBTRC) Program

Submitted proposals for the DOT, Office of Small and Disadvantaged Business Utilization's Small Business Transportation Resource Center Program must contain the following 12 sections and be organized in the following order:

1. Table of Contents

Identify all parts, sections and attachments of the application.

2. Application Summary

Provide a *summary overview* of the following:

• The applicant's proposed SBTRC region and city and key elements of the plan of action/strategy to achieve the SBTRC objectives.

• The applicant's relevant organizational experience and capabilities.

3. Understanding of the Work

Provide a narrative which contains specific project information as follows:

• The applicant will describe its understanding of the OSDBU's SBTRC program mission and the role of the applicant's proposed SBTRC in advancing the program goals.

• The applicant will describe specific outreach needs of transportation-related small businesses in the applicant's region and how the SBTRC will address the identified needs.

4. Approach and Strategy

• Describe the applicant's plan of action/strategy for conducting the program in terms of the tasks to be performed.

• Describe the specific services or activities to be performed and how these services/activities will be implemented.

• Describe innovative and creative approaches to assist small businesses to become successful transportation contractors and increase their ability to access DOT contracting opportunities and financial assistance programs.

• Estimated direct costs, other than labor, to execute the proposed strategy.

5. Linkages

• Describe established relationships within the geographic region and demonstrate the ability to coordinate and establish effective networks with DOT grant recipients and local/regional technical assistance agencies.

• Describe the strategy to obtain support and collaboration on SBTRC activities from DOT grantees and recipients, transportation prime contractors and subcontractors, the SBA, U.S. Department of Commerce's Minority Business Development Centers (MBDCs), Service Corps of Retired Executives (SCORE), Procurement Technical Assistance Centers (PTACs), Small Business Development Centers (SBDCs), State DOTs, and State highway supportive services contractors.

• Describe the outreach strategy related to the identified needs that can be successfully carried out within the period of this agreement and a plan for involving the Planning Committee in the execution of that strategy.

6. Organizational Capability

• Describe recent and relevant past successful performance in addressing the needs of small businesses, particularly with respect to transportation-related small businesses.

• Describe internal technical, financial management, and administrative resources.

• Propose a plan for sufficient matching alternative financial resources to fund the general and administrative costs of the SBTRC.

7. Staff Capability and Experience

• List proposed key personnel, their salaries and proposed fringe benefit factors.

• Describe the education, qualifications and relevant experience of key personnel. Attach detailed resumes.

• Proposed staffing plan. Describe how personnel are to be organized for the program and how they will be used to accomplish program objectives. Outline staff responsibilities, accountability and a schedule for conducting program tasks.

8. Cost Proposal

• Outline the total proposed cost of establishing and administering the SBTRC in the applicant's geographical region for a 12 month period, inclusive of costs funded through alternative matching resources. Clearly identify the portion of the costs funded by OSDBU.

• Provide a brief narrative linking the cost proposal to the proposed strategy.

9. Proof of Tax Exempt Status

10. Assurances Signature Form

Complete Standard Form 424B ASSURANCES-NON-CONSTRUCTION PROGRAMS identified as Attachment 1. SF424B may be downloaded from *http://www.grants.gov/techlib/SF424B-V1.1.pdf.*

11. Certification Signature Forms

Complete form DOTF2307–1 DRUG-FREE WORKPLACE ACT CERTIFICATION FOR A GRANTEE OTHER THAN AN INDIVIDUAL and Form DOTF2308–1 CERTIFICATION REGARDING LOBBYING FOR CONTRACTS, GRANTS, LOANS, AND COOPERATIVE AGREEMENTS identified as Attachment 2. The forms may be downloaded from *http://www.osdbu.dot.gov/financial/docs/CertDrug-FreeDOTF2307-1.pdf* and *http://www.osdbu.dot.gov/financial/docs/CertLobbyingDOTF2308-1.pdf.*

12. Signed Conflict of Interest Statements

The statements must say that they, or members of their immediate families, do not have a personal, business or financial interest in any DOT-funded transportation projects, nor any relationships with local or state transportation agencies that may have the appearance of a conflict of interest.

13. Standard Form 424

Complete Standard Form 424 Application for Federal Assistance identified as Attachment 3. SF424 can be downloaded from *http://apply07.grants.gov/apply/forms/sample/SF424_2_1-V2.1.pdf.*

PLEASE BE SURE THAT ALL FORMS HAVE BEEN SIGNED BY AN AUTHORIZED OFFICIAL WHO CAN LEGALLY REPRESENT THE ORGANIZATION.

Issued in Washington, DC on June 11, 2012.

Brandon Neal,

Director, Office of Small and Disadvantaged Business Utilization, Office of the Secretary, U.S. Department of Transportation.

[FR Doc. 2012–14718 Filed 6–14–12; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[NHTSA Docket No. NHTSA–2012–0079]

Federal Interagency Committee on Emergency Medical Services

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Meeting Notice—Federal Interagency Committee on Emergency Medical Services.

SUMMARY: NHTSA announces a meeting of the Federal Interagency Committee on Emergency Medical Services (FICEMS) to be held in the Washington, DC area. This notice announces the date, time and location of the meeting, which will be open to the public. Pre-registration is required to attend.

DATES: The meeting will be held on June 25, 2012, from 9:00 a.m. EDT to 12:00 p.m. EDT.

ADDRESSES: The meeting will be held at the Department of Transportation (DOT) Headquarters Building at 1200 New Jersey Avenue SE., Washington, DC 20590 in the Conference Center on the ground floor of the West building.

FOR FURTHER INFORMATION CONTACT: Drew Dawson, Director, Office of Emergency Medical Services, National Highway Traffic Safety Administration, 1200 New Jersey Avenue SE., NTI–140, Washington, DC 20590, Telephone number (202) 366–9966; Email *Drew.Dawson@dot.gov.*

Required Registration Information: This meeting will be open to the public,;

however, pre-registration is required to comply with security procedures. Picture I.D. must be provided to enter the DOT Building and it is suggested that visitors arrive 20–30 minutes early in order to facilitate entry. Members of the public wishing to attend must register online at *www.regonline.com/FICEMSJune2012* no later than June 21, 2012. Please be aware that visitors to DOT are subject to search and must pass through a magnetometer. Weapons of any kind are strictly forbidden in the building unless authorized through the performance of the official duties of your employment (i.e. law enforcement officer).

SUPPLEMENTARY INFORMATION: Section 10202 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy For Users (SAFETEA–LU), Public Law 109–59, provides that the FICEMS consist of several officials from Federal agencies as well as a State emergency medical services director appointed by the Secretary of Transportation. SAFETEA–LU directs the Administrator of NHTSA, in cooperation with the Administrator of the Health Resources and Services Administration of the Department of Health and Human Services and the Director of the Preparedness Division, Directorate of Emergency Preparedness and Response of the Department of Homeland Security, to provide administrative support to the Interagency Committee, including scheduling meetings, setting agendas, keeping minutes and records, and producing reports.

This meeting of the FICEMS will focus on addressing the requirements of SAFETEA–LU and the opportunities for collaboration among the key Federal agencies involved in emergency medical services. The tentative agenda includes:

- Discussion of Response to Recommendations from the National Transportation Safety Board
  - Update on Helicopter Emergency Medical Services recommendations
  - Status of responses to Mexican Hat, Utah Motorcoach Crash recommendations
- Review of correspondence received
- Reports and updates from Technical Working Group committees
- A discussion of FICEMS strategic planning process
- A discussion of recently finalized recommendations from the National EMS Advisory Council (NEMSAC) including a response to the FICEMS request for information regarding the Model Uniform Core Criteria (MUCC) for mass casualty incident triage
- Reports, updates, and recommendations from FICEMS members
- A public comment period

There will not be a call-in number provided for this FICEMS meeting; however, minutes of the meeting will be available to the public online at *www.ems.gov.*

Issued on: June 12, 2012.

Jeffrey P. Michael,

Associate Administrator, Research and Program Development.

[FR Doc. 2012–14666 Filed 6–14–12; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. FD 35604]

Watco Holdings, Inc.—Continuance in Control Exemption—San Antonio Central Railroad, L.L.C.

Watco Holdings, Inc. (Watco), a noncarrier, has filed a verified notice of exemption pursuant to 49 CFR 1180.2(d)(2), for Watco to continue in control of San Antonio Central Railroad, L.L.C. (SAC), upon SAC's becoming a Class III rail carrier. Watco owns, indirectly, 100 percent of the issued and outstanding stock of SAC, a Texas limited liability company.

This transaction is related to a concurrently filed verified notice of exemption in *San Antonio Central Railroad, L.L.C.—Lease Exemption—Port Authority of San Antonio,* Docket No. FD 35603, wherein SAC seeks Board approval to lease and operate approximately four miles of rail line owned by the Port Authority of San Antonio, in San Antonio, Tex.

The transaction may be consummated on or after July 1, 2012, the effective date of the exemption (30 days after the notice of exemption was filed).

Watco is a Kansas corporation that currently controls, indirectly, one Class II rail carrier, operating in two states, and 25 Class III rail carriers, operating in 19 states. For a complete list of these rail carriers, and the states in which they operate, see Watco's notice of exemption filed on June 1, 2012. The notice is available on the Board's Web site at *www.stb.dot.gov.*

Watco represents that: (1) The rail lines to be operated by SAC do not connect with any of the rail lines operated by the carriers in the Watco corporate family [1]; (2) the continuance in control is not a part of a series of anticipated transactions that would result in such a connection; and (3) the transaction does not involve a Class I carrier. Therefore, the transaction is exempt from the prior approval requirements of 49 U.S.C. 11323. *See* 49 CFR 1180.2(d)(2).

Watco states that the purpose of the transaction is to reduce overhead expenses, coordinate billing, maintenance, mechanical, and personnel policies and practices of its rail carrier subsidiaries and thereby improve the overall efficiency of rail service provided by the railroads in the Watco corporate family.

Under 49 U.S.C. 10502(g), the Board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees. Because the transaction involves the control of one Class II and one or more Class III rail carriers, the transaction is subject to the labor protection requirements of 49 U.S.C. 11326(b) and *Wisconsin Central Ltd.—Acquisition Exemption—Lines of Union Pacific Railroad,* 2 S.T.B. 218 (1997).

If the verified notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Petitions for stay must be filed by June 22, 2012 (at least seven days before the exemption becomes effective).

An original and 10 copies of all pleadings, referring to Docket No. FD 35604, must be filed with the Surface Transportation Board, 395 E Street SW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Karl Morell, Ball Janik LLP, 655 Fifteenth Street NW., Suite 225, Washington, DC 20005.

Board decisions and notices are available on our Web site at *www.stb.dot.gov.*

Decided: June 12, 2012.

By the Board.

Rachel D. Campbell,

Director, Office of Proceedings.

Derrick A. Gardner,

Clearance Clerk.

[FR Doc. 2012–14663 Filed 6–14–12; 8:45 am]

BILLING CODE 4915–01–P

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[1] According to the notice, the rail lines that will be operated by SAC are located in San Antonio, Tex., and no other Watco railroad operates rail lines in or near San Antonio.

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. FD 35635]

Nevada 5, Inc. and Oakland Transportation Holdings LLC—Control Exemption—GTR Leasing LLC and US Rail Holdings LLC [1]

Nevada 5, Inc. (Nevada 5) and Oakland Transportation Holdings LLC (Oakland) (collectively, applicants) have filed a verified notice of exemption to acquire control of US Rail Holdings, LLC (Rail Holdings), a Class III rail carrier, through Oakland's acquisition of GTR Leasing LLC (GTR), the parent company of Rail Holdings.[2] As a result of the proposed transaction, applicants will indirectly control Rail Holdings.

Oakland currently owns all of the equity interests of Brookhaven Rail, LLC (formerly known as US Rail New York, LLC) (Brookhaven Rail), a Class III rail carrier.[3] Nevada 5, in turn, owns 98% of the equity in Oakland and indirectly controls Brookhaven Rail.

Applicants state that they propose to consummate the transaction on or after June 23, 2012. The earliest this transaction can be consummated is June 29, 2012, the effective date of the exemption (30 days after the verified notice was filed).

Applicants represent that: (1) The rail lines of Rail Holdings and Brookhaven Rail do not connect with each other; (2) the transaction is not part of a series of anticipated transactions that would connect the rail lines of the two carriers; and (3) the transaction does not involve a Class I rail carrier. The proposed transaction is therefore exempt from the prior approval requirements of 49 U.S.C. 11323 pursuant to 49 CFR 1180.2(d)(2). Applicants state that the purpose of the transaction is to allow Oakland to take advantage of the consolidation of the administrative and operational support it can provide, which, in turn, will permit more efficient operation and management of Rail Holdings and Brookhaven Rail.

Under 49 U.S.C. 10502(g), the Board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees. Section 11326(c), however, does not provide for labor protection for transactions under 11324 and 11325 that involve only Class III rail carriers. Accordingly, the Board may not impose labor protective conditions here, because all of the carriers involved are Class III carriers.

If the verified notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Petitions for stay must be filed no later than June 22, 2012 (at least seven days before the exemption becomes effective).

An original and ten copies of all pleadings, referring to Docket No. FD 35635, must be filed with the Surface Transportation Board, 395 E Street SW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Eric M. Hocky, Thorp Reed & Armstrong, LLP, One Commerce Square, 2005 Market Street, Suite 1000, Philadelphia, PA 19103.

Board decisions and notices are available on our Web site at *www.stb.dot.gov.*

Decided: June 12, 2012.

By the Board.

Rachel D. Campbell,

Director, Office of Proceedings.

Raina S. White,

Clearance Clerk.

[FR Doc. 2012–14670 Filed 6–14–12; 8:45 am]

BILLING CODE 4915–01–P

[1] Applicants styled the transaction as a continuance in control exemption. The transaction, however, involves an acquisition of control of a carrier by noncarriers that already control a carrier. *See* 49 U.S.C. 11323(a)(5). Accordingly, this docket has been recaptioned as a control exemption.

[2] Applicants state that Oakland is in the process of acquiring GTR.

[3] *See Gabriel D. Hall—Corporate Family Transaction Exemption—U.S. Rail N.Y., LLC,* FD 35458 (STB served Jan. 7, 2011).

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. FD 35603]

San Antonio Central Railroad, L.L.C.—Lease Exemption—Port Authority of San Antonio

San Antonio Central Railroad, L.L.C. (SAC), a noncarrier, has filed a verified notice of exemption pursuant to 49 CFR 1150.31 to lease and operate approximately four miles of rail line owned by the Port Authority of San Antonio (the Port), in San Antonio, Tex.

This transaction is related to a concurrently filed verified notice of exemption in *Wacto Holdings, Inc.—Continuance in Control Exemption—San Antonio Central Railroad, L.L.C.,* Docket No. FD 35604, wherein Watco Holdings, Inc. has filed a verified notice of exemption to continue in control of SAC upon SAC becoming a Class III rail carrier.

As a result of this transaction, SAC will provide common carrier rail service over the rail lines owned by the Port in the East Kelly Railport (the Railport) [1] and will be able to interchange traffic with both the Union Pacific Railroad Company and BNSF Railway Company. SAC states that the lease agreement between SAC and the Port will not contain any interchange commitments.

SAC certifies that its projected annual revenues as a result of this transaction will not result in SAC's becoming a Class II or Class I rail carrier and further certifies that its projected annual revenues will not exceed $5 million.

The transaction is expected to be consummated on or after July 1, 2012, the effective date of the exemption (30 days after the notice of exemption was filed).

If the verified notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Petitions for stay must be filed by June 22, 2012 (at least seven days before the exemption becomes effective).

An original and 10 copies of all pleadings, referring to Docket No. FD 35603, must be filed with the Surface Transportation Board, 395 E Street SW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Karl Morell, Ball Janik LLP, 655 Fifteenth Street NW., Suite 225, Washington, DC 20005.

Board decisions and notices are available on our Web site at *www.stb.dot.gov.*

Decided: June 12, 2012.

By the Board.

Rachel D. Campbell,

Director, Office of Proceedings.

Derrick A. Gardner,

Clearance Clerk.

[FR Doc. 2012–14662 Filed 6–14–12; 8:45 am]

BILLING CODE 4915–01–P

[1] According to SAC, there are no mileposts associated with the tracks in the Railport.

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Additional Designations, Foreign Narcotics Kingpin Designation Act

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The U.S. Department of the Treasury's Office of Foreign Assets Control (''OFAC'') is publishing the names of two individuals whose property and interests in property have been blocked pursuant to the Foreign Narcotics Kingpin Designation Act (''Kingpin Act'') (21 U.S.C. 1901–1908, 8 U.S.C. 1182).

DATES: The designation by the Director of OFAC of the two individuals identified in this notice pursuant to section 805(b) of the Kingpin Act is effective on June 7, 2012.

FOR FURTHER INFORMATION CONTACT: Assistant Director, Sanctions Compliance & Evaluation, Office of Foreign Assets Control, U.S. Department of the Treasury, Washington, DC 20220, Tel: (202) 622–2490.

SUPPLEMENTARY INFORMATION:

Electronic and Facsimile Availability

This document and additional information concerning OFAC are available on OFAC's Web site at *http://www.treasury.gov/ofac* or via facsimile through a 24-hour fax-on-demand service at (202) 622–0077.

Background

The Kingpin Act became law on December 3, 1999. The Kingpin Act establishes a program targeting the activities of significant foreign narcotics traffickers and their organizations on a worldwide basis. It provides a statutory framework for the imposition of sanctions against significant foreign narcotics traffickers and their organizations on a worldwide basis, with the objective of denying their businesses and agents access to the U.S. financial system and the benefits of trade and transactions involving U.S. companies and individuals.

The Kingpin Act blocks all property and interests in property, subject to U.S. jurisdiction, owned or controlled by significant foreign narcotics traffickers as identified by the President. In addition, the Secretary of the Treasury, in consultation with the Attorney General, the Director of the Central Intelligence Agency, the Director of the Federal Bureau of Investigation, the Administrator of the Drug Enforcement Administration, the Secretary of Defense, the Secretary of State, and the Secretary of Homeland Security may designate and block the property and interests in property, subject to U.S. jurisdiction, of persons who are found to be: (1) Materially assisting in, or providing financial or technological support for or to, or providing goods or services in support of, the international narcotics trafficking activities of a person designated pursuant to the Kingpin Act; (2) owned, controlled, or directed by, or acting for or on behalf of, a person designated pursuant to the Kingpin Act; or (3) playing a significant role in international narcotics trafficking.

On June 7, 2012, the Director of OFAC designated the following two individuals whose property and interests in property are blocked pursuant to section 805(b) of the Kingpin Act.

Individuals

1. GUZMAN SALAZAR, Jesus Alfredo (a.k.a. GUZMAN LOERA, Alfredo; a.k.a. GUZMAN SALAZAR, Alejandro), Cerrada Nayar No. 222, Colonia Ciudad del Sol, Zapopan, Jalisco 45050, Mexico; Calle Quebec 606 B, Prados Providencia, Guadalajara, Jalisco, Mexico; Calle Mango 2129, Colonia Paraisos del Colli, Guadalajara, Jalisco, Mexico; Calle 3 De Mayo #16, Texcalame, Tequila, Jalisco, Mexico; Calle Mexico Independiente #733, Colonia Conjunto Patria, Zapopan, Jalisco, Mexico; Rincon del Abedul 126, Colonia Rinconada Guadalupe, Zapopan, Jalisco, Mexico; Avenida Guadalupe #5105, Colonia Jardines Guadalupe, Zapopan, Jalisco, Mexico; Empresarios 35, Zapopan, Jalisco, Mexico; DOB 17 May 1986; alt. DOB 17 May 1983; POB Zapopan, Jalisco, Mexico; C.U.R.P. GUSJ860517HJCZLS06 (Mexico) (individual) [SDNTK]

2. SALAZAR HERNANDEZ, Maria Alejandrina (a.k.a. HERNANDEZ SALAZAR, Maria A; a.k.a. SALAZAR DE GUZMAN, Alejandrina; a.k.a. SALAZAR HERNANDEZ, Alejandrina Maria; a.k.a. SALAZAR HERNANDEZ, Alejandrina; a.k.a. SALAZAR HERNANDEZ, Alejandra; a.k.a. SALAZAR HERNANDEZ, Maria A; a.k.a. SALAZAR HERNANDEZ DE GUZMAN, Maria), Avenida Central 1191–35, Condominio Malaga, Colonia Parques de la Castellana, Zapopan, Jalisco, Mexico; Local 9 Zona E, Plaza Universidad, Zapopan, Jalisco, Mexico; Avenida Nayar #222, Colonia Ciudad del Sol, Zapopan, Jalisco, Mexico; Avenida Pablo Neruda #4341–E9, Colonia Villa Universitaria, Guadalajara, Jalisco, Mexico; Calle Mexico Independiente #733, Colonia Conjunto Patria, Zapopan, Jalisco, Mexico; Calle GK Chesterton #184, Zapopan, Jalisco, Mexico; Hidalgo 20 Naucalpan, Mexico City, DF, Mexico; Calle Quebec 606–B, Colonia Prados Providencia, Guadalajara, Mexico; Avenida Manuel Acuna 2929 C–6, Fraccionamiento Terranova, Guadalajara, Mexico; Calle Herrera y Cairo 2800, Local C6, Fraccionamiento Terranova, Guadalajara, Jalisco, Mexico; Calle Rinconada del Abedul #126, Colonia Rinconada Guadalupe, Zapopan, Jalisco, Mexico; Conchas Chinas Condominiums, Puerto Vallarta, Jalisco, Mexico; DOB 17 Jul 1958; POB Culiacan, Sinaloa, Mexico; C.U.R.P. SAHA580717MSLLRL07 (Mexico); Passport 140302262 (Mexico); R.F.C. SAHA580717AP6 (Mexico) (individual) [SDNTK]

Dated: June 7, 2012.

Adam J. Szubin,

Director, Office of Foreign Assets Control.

[FR Doc. 2012–14596 Filed 6–14–12; 8:45 am]

BILLING CODE 4810–AL–P

FEDERAL REGISTER

Vol. 77 Friday,

No. 116 June 15, 2012

Part II

Environmental Protection Agency

40 CFR Part 52

Approval and Promulgation of State Implementation Plans; New Mexico; Regional Haze Rule Requirements for Mandatory Class I Areas; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R06–OAR–2009–0050; FRL–9683–9]

Approval and Promulgation of State Implementation Plans; New Mexico; Regional Haze Rule Requirements for Mandatory Class I Areas

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve New Mexico State Implementation Plan (SIP) revisions submitted on July 5, 2011, and December 1, 2003, by the Governor of New Mexico addressing the regional haze requirements for the 16 Class I areas covered by the Grand Canyon Visibility Transport Commission Report and a separate submittal for other Federal mandatory Class I areas. EPA is proposing to find that the submittals meet the requirements. We are proposing action on all components of the state's submittals except for the submitted nitrogen oxides (NO_X) Best Available Retrofit Technology (BART) determination for the San Juan Generating Station (SJGS). We propose to approve all other components, including the sulfur dioxide emission reduction milestones and backstop trading program, the smoke management plan and the particulate matter BART determination for the SJGS. We are also proposing to approve several SIP submissions offered as companion rules to the regional haze plan, including submitted regulations for the Western Backstop Sulfur Dioxide Trading Program, for the inventorying of emissions, for smoke management, and open burning. EPA is taking this action under section 110 of the Clean Air Act.

DATES: Comments must be received on or before July 16, 2012.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R06–OAR–2009–0050 by one of the following methods:

- *Federal e-Rulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Email: R6air_nmhaze@epa.gov.*
- *Mail:* Mr. Michael Feldman, Air Planning Section (6PD–L), Environmental Protection Agency, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202–2733.
- *Hand or Courier Delivery:* Mr. Michael Feldman, Air Planning Section (6PD–L), Environmental Protection Agency, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202–2733. Such deliveries are accepted only between the hours of 8 a.m. and 4 p.m. weekdays, and not on legal holidays. Special arrangements should be made for deliveries of boxed information.
- *Fax:* Mr. Michael Feldman, Air Planning Section (6PD–L), at fax number 214–665–7263.

Instructions: Direct your comments to Docket No. EPA–R06–OAR–2009–0050. Our policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or email. The *www.regulations.gov* web site is an ''anonymous access'' system, which means we 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 us without going through *www.regulations.gov* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, we recommend 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 we cannot read your comment due to technical difficulties and cannot contact you for clarification, we 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.

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The State of New Mexico submittal is also available for public inspection during official business hours, by appointment, at New Mexico Environmental Department, Air Quality Bureau, 1301 Siler Rd, Building B, Santa Fe, New Mexico 87507.

FOR FURTHER INFORMATION CONTACT: Michael Feldman, Air Planning Section (6PD–L), Environmental Protection Agency, Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733, telephone 214–665–9793; fax number 214–665–7263; email address *feldman.michael@epa.gov.*

SUPPLEMENTARY INFORMATION:

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 words *EPA, we, us* or *our* mean or refer to the United States Environmental Protection Agency.

iii. The initials *SIP* mean or refer to State Implementation Plan.

iv. The initials *FIP* mean or refer to Federal Implementation Plan.

v. The initials *RH* and *RHR* mean or refer to Regional Haze and Regional Haze Rule.

vi. The initials *NMED* mean the New Mexico Environmental Department.

vii. The initials *BART* mean or refer to Best Available Retrofit Technology.

viii. The initials *OC* mean or refer to organic carbon.

ix. The initials *EC* mean or refer to elemental carbon.

x. The initials *VOC* mean or refer to volatile organic compounds.

xi. The initials *EGUs* mean or refer to Electric Generating Units.

xii. The initials NO_X mean or refer to nitrogen oxides.

xiii. The initials SO_2 mean or refer to sulfur dioxide.

xiv. The initials PM_{10} mean or refer to particulate matter with an aerodynamic diameter of less than 10 micrometers.

xv. The initials $PM_{2.5}$ mean or refer to particulate matter with an aerodynamic of less than 2.5 micrometers.

xvi. The initials *RPGs* mean or refer to reasonable progress goals.

xvii. The initials *LTS* mean or refer to long term strategy.

xviii. The initials *RPOs* mean or refer to regional planning organizations.

xix. The initials *WRAP* mean or refer to the Western Regional Air Partnership.

xx. The initials *CENRAP* mean or refer to the Central Regional Air Planning Association.

xxi. The initials *AQCB* mean or refer to the Albuquerque-Bernalillo County Air Quality Control Board.

xxii. The initials *GCVTC* mean or refer to the Grand Canyon Visibility Transport Commission.

xxiii. The initials *PNM* mean or refer to the Public Service Company of New Mexico.

xxiv. The initials *SJGS* mean or refer to the San Juan Generating Station.

Table of Contents

I. Overview of Proposed Action
II. What is the background for our proposed actions?
A. Regional Haze
B. Roles of Agencies in Addressing Regional Haze
C. Development of the Requirements for 40 CFR 51.309
III. What are the requirements for RH SIPs submitted under 40 CFR 51.309?
A. The CAA and the Regional Haze Rule
B. Projection of Visibility Improvement
C. Clean Air Corridors
D. Stationary Source Reductions
1. SO_2 Emission Reductions
2. Provisions for Stationary Source Emissions of Nitrogen Oxides (NO_X) and Particulate Matter (PM)
E. Mobile Sources
F. Programs Related to Fire
G. Paved and Unpaved Road Dust
H. Pollution Prevention
I. Additional Recommendations
J. Periodic Implementation Plan Revisions
K. Interstate Coordination
L. Additional Class I Areas
1. Determination of Reasonable Progress Goals
2. Determination of Baseline, Natural, and Current Visibility Conditions
3. Long-Term Strategy (LTS)
4. Monitoring Strategy and Other SIP Requirements
IV. What are the additional requirements for alternative programs under the RHR?
A. ''Better-Than-BART'' Demonstration
B. Elements Required for All Alternative Programs That Have an Emissions Cap
1. Applicability
2. Allowances
3. Monitoring, Recordkeeping, and Reporting
4. Tracking System
5. Account Representative
6. Allowance Transfer
7. Compliance Provisions
8. Penalty Provisions
9. Banking of Allowances
10. Program Assessment
V. Our Analysis of the State of New Mexico's Regional Haze SIP Submittal
A. Projection of Visibility Improvement
B. Clean Air Corridors (CAC)
1. Comprehensive Emissions Tracking Program
2. Identification of CACs
3. Patterns of Growth Within and Outside of the CAC
4. Actions If Impairment Inside or Outside the Clean Air Corridor Occurs
5. Other CACs
C. Stationary Source Reductions
1. Provisions for Stationary Source Emissions of SO_2
2. Documentation of Emissions Calculation Methods for SO_2
3. Monitoring, Recordkeeping, and Reporting of SO_2 Emissions
4. Criteria and Procedures for a Market Trading Program
5. Market Trading Program
6. Provisions for the 2018 Milestone
7. Special Penalty Provision for 2018
D. ''Better-Than-BART'' Demonstration
1. List of BART-Eligible Sources
2. Subject to BART Determination
3. Best System of Continuous Emission Control Technology
4. Projected Emissions Reductions
5. Evidence That the Trading Program Achieves Greater Reasonable Progress Than BART
6. All Emission Reductions Must Take Place During the First Planning Period
7. Detailed Description of the Alternative Program
8. Surplus Reductions
9. Geographic Distribution of Emissions
E. Requirements for Alternative Programs With an Emissions Cap
1. Applicability Provisions
2. Allowance Provisions
3. Monitoring and Recordkeeping Provisions
4. Tracking System
5. Account Representative
6. Allowance Transfers
7. Compliance Provisions
8. Penalty Provisions
9. Banking of Allowances
10. Program Assessment
F. Provisions for Stationary Source NO_X and PM
1. Identification of BART–Eligible Sources
2. Identification of Sources Subject to BART
a. Modeling Methodology
b. Contribution Threshold
c. Sources Identified to be Subject-to-BART
3. BART Determination for SJGS
a. New Mexico's PM BART Determination
b. Our Evaluation of New Mexico's PM BART Determination
G. Mobile Sources
H. Programs Related to Fire
1. Evaluation of Current Fire Programs
a. Actions To Minimize Emissions
b. Evaluation of Smoke Dispersion
c. Alternatives to Fire
d. Public Notification
e. Air Quality Monitoring
f. Surveillance and Enforcement
g. Program Evaluation
2. Inventory and Tracking System
3. Identification and Removal of Administrative Barriers
4. Enhanced Smoke Management Program
5. Annual Emission Goal
I. Paved and Unpaved Road Dust
J. Pollution Prevention
1. Description of Existing Pollution Prevention Program
2. Incentive Programs
3. Programs To Preserve and Expand Energy Conservation Efforts
4. Potential for Renewable Energy
5. Projections of Renewable Energy Goals, Energy Efficiency, and Pollution Prevention Activities
6. Programs To Achieve GCVTC Renewable Energy Goal
K. Additional Recommendations
L. Periodic Implementation Plan Revisions
M. Interstate Coordination
N. Additional Class I Areas
1. Affected Class I Areas
2. Determination of Baseline, Natural and Current Visibility Conditions
a. Estimating Natural Visibility Conditions
b. Estimating Baseline Visibility Conditions
c. Natural Visibility Impairment
d. Uniform Rate of Progress
3. Evaluation of New Mexico's Reasonable Progress Goals
a. WRAP Visibility Modeling
b. NMED's Reasonable Progress ''Four Factor'' Analysis
c. Establishment of the Reasonable Progress Goal
d. Reasonable Progress Consultation
e. Our Conclusion on New Mexico's Reasonable Progress Goals
4. Long-Term Strategy
a. Emissions Inventory
i. New Mexico's 2002 Emission Inventory
ii. New Mexico's 2018 Emission Inventory
b. Visibility Projection Modeling
c. Sources of Visibility Impairment in New Mexico Class I Areas
i. Sources of Visibility Impairment in Bandelier Wilderness
ii. Sources of Visibility Impairment in Bosque del Apache National Wildlife Refuge
iii. Sources of Visibility Impairment in Carlsbad Caverns National Park
iv. Sources of Visibility Impairment in Gila Wilderness
v. Sources of Visibility Impairment in Pecos Wilderness and Wheeler Peak Wilderness
vi. Sources of Visibility Impairment in Salt Creek Wilderness
vii. Sources of Visibility Impairment in White Mountain Wilderness
d. New Mexico's Contributions to Visibility Impairment at Class I Areas in Other States
e. Consultation and Emissions Reductions for Other States' Class I Areas
f. Mandatory Long Term Strategy Factors
i. Reductions Due to Ongoing Air Pollution Programs
ii. Measures to Mitigate the Impacts of Construction Activities
iii. Emission Limitations and Schedules of Compliance
iv. Source Retirement and Replacement Schedules
v. Agricultural and Forestry Smoke Management Techniques
vi. Enforceability of New Mexico's Measures
vii. Anticipated Net Effect on Visibility Due to Projected Changes
g. Our Conclusion on New Mexico's Long Term Strategy
5. Monitoring Strategy and Other SIP Requirements
VI. EPA's Conclusions and Proposed Action
VII. Statutory and Executive Order Reviews

I. Overview of Proposed Action

As explained in further detail below, 40 CFR 51.309 presents certain Western states covered by the Grand Canyon Visibility Transport Commission with the option of fulfilling the regional haze rule (RHR) requirements for 16 Class I areas under the provisions of that section, rather than under 40 CFR 51.308. Three states—Wyoming, Utah, and New Mexico—have elected to submit a SIP under 40 CFR 51.309. The Albuquerque/Bernalillo County Air Quality Control Board, as the federally delegated air quality authority for the City of Albuquerque and Bernalillo County, New Mexico, for its geographic area of New Mexico under the New Mexico Air Quality Control Act (section 74–2–4) has also submitted a Section 309 regional haze SIP. This separate submittal for Albuquerque/Bernalillo County is necessary for the Regional Haze (RH) requirements to be met for the entire State of New Mexico and is also necessary to ensure the requirements of section 110(a)(2)(D) of the CAA are satisfied for the entire State of New Mexico. The Regional Haze and 110(a)(2)(D) submissions for Albuquerque/Bernalillo County are being reviewed in a separate **Federal Register** action.

New Mexico submitted its RH SIP to EPA on July 5, 2011, and it adds to earlier RH SIP planning components that were submitted by the state on December 1, 2003. We are acting on the great majority of the components of this newly submitted 2011 revision in advance of our ordinary statutory requirement to act on new submissions.

In this action, we are proposing to approve components of the New Mexico Regional Haze SIP revisions that were submitted to satisfy the requirements of 40 CFR 51.309. Among the requirements, Section 309 calls for plans to include a market trading program, conventionally known as the 309 backstop-trading program; this program will not be effective until EPA has finalized action on all section 309 SIPs. Section 51.309 does not require the participation of a certain number of states to validate its effectiveness. Utah submitted its 309 SIP to EPA on May 26, 2011, Wyoming submitted its 309 SIP to EPA on January 12, 2011 and the City of Albuquerque-Bernalillo County submitted its 309 SIP to EPA on July 28, 2011. EPA proposed action on Bernalillo County's 309 SIP on April 25, 2012 (77 FR 24768), Utah's 309 SIP on May 15, 2012 (77 FR 28825), and Wyoming's 309 SIP on May 24, 2012 (77 FR 30953). If EPA takes final action approving the necessary components for the 309 backstop-trading program to operate in all of the jurisdictions electing to submit 309 SIPs, the program will become effective.

Our review of the RH SIP is supported by the review of companion regulations—regulations that the RH SIP references and relies upon, that have also been submitted for SIP approval. Specifically, New Mexico submitted 20.2.81 NMAC, Western Backstop Sulfur Dioxide Trading Program, after initial adoption, on December 1, 2003, and thereafter submitted revisions with the State's RH 309 SIP on July 5, 2011. We are proposing to fully approve 20.2.81 NMAC. We are also proposing to fully approve the following additional companion regulations: 20.2.65 NMAC, *Smoke Management* and 20.2.60 NMAC *Open Burning,* both—after their initial adoption—submitted on December 1, 2003; and July 5, 2011 submitted revisions to 20.2.73.300.F NMAC, a subprovision of a previously approved rule that pertains to the ''*Emission tracking requirements for sulfur dioxide emission inventories.*'' [1] Further details and the analyses of these companion regulations are provided in the Technical Support Document in the docket for this rulemaking. These rules are also discussed at later points in this notice when they are relevant to our analysis of New Mexico's RH SIP submittal.

As previously stated, EPA is proposing to approve New Mexico SIP revisions submitted on July 5, 2011, and December 1, 2003, that address the regional haze requirements for the mandatory Class I areas under 40 CFR 51.309. EPA is proposing to find that all reviewed components of the SIP meet the requirements of 40 CFR 51.309.

We note that we are not proposing action on the submitted NO_X BART determination for the San Juan Generating Station. The NO_X BART requirement for the source is presently satisfied by the BART determination that is effective under the federal implementation plan at 40 CFR 52.1628. We have no current statutory duty or consent decree obligation to act on this component of the state's Regional Haze SIP submittal. We will, however, propose action on the submitted NO_X BART determination for San Juan Generating Station through a future, separate proposal, unless the state of New Mexico earlier withdraws it in favor of an alternative that it may develop through discussions with the source and EPA.

II. What is the background for our proposed actions?

A. Regional Haze

RH is visibility impairment that is produced by a multitude of sources and activities which are located across a broad geographic area and emit fine particles ($PM_{2.5}$) (*e.g.,* sulfates, nitrates, organic carbon, elemental carbon, and soil dust) and their precursors (*e.g.,* SO_2, nitrogen oxides (NO_X), and in some cases, ammonia (NH_3) and volatile organic compounds (VOCs)). Fine particle precursors react in the atmosphere to form $PM_{2.5}$ (*e.g.,* sulfates, nitrates, organic carbon, elemental carbon, and soil dust), which also impair visibility by scattering and absorbing light. Visibility impairment reduces the clarity, color, and visible distance that one can see. $PM_{2.5}$ also can 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 park and wilderness areas. The average visual range [2] in many Class I areas (*i.e.,* national parks and memorial parks, wilderness areas, 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. 64 FR 35714, 35715 (July 1, 1999). 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. *Id.*

In section 169A of the 1977 Amendments to the CAA, Congress created a program for protecting visibility in the nation's national parks and wilderness areas. This section of the CAA establishes as a national goal the ''prevention of any future, and the remedying of any existing, impairment of visibility in mandatory Class I Federal areas [3] which impairment

[1] We previously approved 20.2.73 NMAC, including 20.2.73.300 NMAC, through our action at 75 FR 48860 (August 12, 2010). The state undertook other revisions of 20.2.73 NMAC in 2008, but they have not been submitted and they are unrelated to the minor revisions submitted for review in the 2011 SIP submission.

[2] Visual range is the greatest distance, in kilometers or miles, at which a dark object can be viewed against the sky.

[3] Areas designated as mandatory Class I Federal areas consist of national parks exceeding 6000 acres, wilderness areas and national memorial parks

results from man-made air pollution.'' CAA § 169A(a)(1). The terms ''impairment of visibility'' and ''visibility impairment'' are defined in the Act to include a reduction in visual range and atmospheric discoloration. *Id.* section 169A(g)(6). In 1980, we promulgated regulations to address visibility impairment in Class I areas that is ''reasonably attributable'' to a single source or small group of sources, *i.e.,* ''reasonably attributable visibility impairment'' (RAVI). 45 FR 80084 (December 2, 1980). These regulations represented the first phase in addressing visibility impairment. We deferred action on RH that emanates from a variety of sources until monitoring, modeling and scientific knowledge about the relationships between pollutants and visibility impairment improved.

Congress added section 169B to the CAA in 1990 to address RH issues, and we promulgated regulations addressing RH in 1999. 64 FR 35714 (July 1, 1999), codified at 40 CFR part 51, subpart P. The Regional Haze Rule (RHR) revised the existing visibility regulations to integrate into the regulations provisions addressing RH impairment and established a comprehensive visibility protection program for Class I areas. The requirements for RH, found at 40 CFR 51.308 and 51.309, are included in our visibility protection regulations at 40 CFR 51.300–309. Some of the main elements of the RH requirements are summarized in section III. The requirement to submit a RH SIP applies to all 50 states, the District of Columbia and the Virgin Islands.[4] States were required to submit the first implementation plan addressing RH visibility impairment no later than December 17, 2007. 40 CFR 51.308(b).

B. Roles of Agencies in Addressing Regional Haze

Successful implementation of the RH 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 address effectively 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 RH can originate from sources located across broad geographic areas, we have 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 RH 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 RH.

The 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, Idaho, Montana, New Mexico, North Dakota, Oregon, South Dakota, Utah, Washington, and Wyoming. The City of Albuquerque and Bernalillo County act as agents of the Albuquerque-Bernalillo County Air Quality Control Board (AQCB) to implement, administer, and enforce the local air quality program within Albuquerque and Bernalillo County. The AQCB is the federally-delegated authority to implement the CAA for this area, which lies within the State of New Mexico. The AQCB staff participated in meetings with the State of New Mexico staff to coordinate its efforts with the State of New Mexico in developing its separate 309 SIP.

C. Development of the Requirements for 40 CFR 51.309

EPA's RHR provides two paths to address regional haze. One is 40 CFR 51.308, requiring states to perform individual point source BART determinations and evaluate the need for other control strategies. These strategies must be shown to make ''reasonable progress'' in improving visibility in Class I areas inside the state and in neighboring jurisdictions. The other method for addressing regional haze is through 40 CFR 51.309 (section 309), and is an option for nine states termed the ''Transport Region States'' which include: Arizona, California, Colorado, Idaho, Nevada, New Mexico, Oregon, Utah, and Wyoming, and the 211 Tribes located within those states.

Section 309 requires participating states to adopt regional haze strategies that are based on recommendations from the Grand Canyon Visibility Transport Commission (GCVTC) for protecting the 16 Class I areas in the Colorado Plateau area.[5] The EPA established the GCVTC on November 13, 1991. The purpose of the GCVTC was to assess information about the adverse impacts on visibility in and around 16 Class I areas on the Colorado Plateau region and to provide policy recommendations to EPA to address such impacts. Section 169B of the CAA called for the GCVTC to evaluate visibility research as well as other available information pertaining to adverse impacts on visibility from potential or projected growth in emissions from sources located in the region. It was determined that all transport region states impacted or could potentially impact the Class I areas on the Colorado Plateau. The GCVTC submitted a report to EPA in 1996 with its policy recommendations. Provisions of the 1996 GCVTC report include: strategies for addressing smoke emissions from wildland fires and agricultural burning; provisions to prevent pollution by encouraging renewable energy development; and provisions to manage clean air corridors, mobile sources, and wind-blown dust, among other things. The EPA codified these recommendations as part of the 1999 RHR.

EPA determined that the GCVTC strategies would provide for reasonable progress in mitigating regional haze if supplemented by an annex containing quantitative emission reduction

exceeding 5000 acres, and all international parks that were in existence on August 7, 1977. *See* CAA section 162(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. *See* 44 FR 69122, November 30, 1979. The extent of a mandatory Class I area includes subsequent changes in boundaries, such as park expansions. CAA section 162(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'' (FLM). *See* CAA section 302(i). When we use the term ''Class I area'' in this action, we mean a ''mandatory Class I Federal area.''

[4] Albuquerque/Bernalillo County in New Mexico must also submit a regional haze SIP to completely satisfy the requirements of section 110(a)(2)(D) of the CAA for the entire State of New Mexico under the New Mexico Air Quality Control Act (section 74–2–4).

[5] The Colorado Plateau is a high, semi-arid tableland in southeast Utah, northern Arizona, northwest New Mexico, and western Colorado. The 16 mandatory Class I areas are as follows: Grand Canyon National Park, Mount Baldy Wilderness, Petrified Forest National Park, Sycamore Canyon Wilderness, Black Canyon of the Gunnison National Park Wilderness, Flat Tops Wilderness, Maroon Bells Wilderness, Mesa Verde National Park, Weminuche Wilderness, West Elk Wilderness, San Pedro Parks Wilderness, Arches National Park, Bryce Canyon National Park, Canyonlands National Park, Capital Reef National Park, and Zion National Park.

milestones and provisions for a trading program or other alternative measure (64 FR 35749 and 35756, July 1, 1999). Thus, the 1999 RHR required that Western states submit an annex to the GCVTC report with quantitative milestones and detailed guidelines in order to establish the GCVTC recommendations as an alternative approach to fulfilling the section 308 requirements for compliance with the RHR. In September 2000, the WRAP, which is the successor organization to the GCVTC, submitted to EPA an annex to the GCVTC. The annex contained SO_2 emission reduction milestones and the detailed provisions of a backstop trading program to be implemented automatically if voluntary measures failed to achieve the milestones. EPA codified the annex on June 5, 2003 as 40 CFR 51.309(h). 68 FR 33764.

Five Western states submitted implementation plans under the section 309 alternative program in 2003. EPA was challenged by the Center for Energy and Economic Development (CEED) on the validity of the annex provisions. In *CEED* v. *EPA,* the D.C. Circuit vacated EPA's approval of the WRAP annex (*Center for Energy and Economic Development* v. *EPA,* No. 03–1222 (D.C. Cir. Feb. 18, 2005)). In response to the court's decision, EPA vacated the annex requirements adopted as 40 CR 51.309(h), but left in place the stationary source requirements in 40 CFR 51.309(d)(4). 71 FR 60612 (October 13, 2006). The requirements under 40 CFR 51.309(d)(4) contain general requirements pertaining to stationary sources and market trading, and allow states to adopt alternatives to the point source application of BART.

III. What are the requirements for RH SIPs submitted under 40 CFR 51.309?

The following is a summary and basic explanation of the regulations covered under the RHR. See 40 CFR 51.309 for a complete listing of the regulations under which this SIP was evaluated.

A. The CAA and the Regional Haze Rule

RH SIPs must assure reasonable progress towards the national goal of achieving natural visibility conditions in Class I areas. Section 169A of the CAA and our implementing regulations require states to establish long-term strategies for making reasonable progress toward meeting this goal. Implementation 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, and require these sources, where appropriate, to install BART controls for the purpose of eliminating or reducing visibility impairment. The specific RH SIP requirements are discussed in further detail below.

B. Projection of Visibility Improvement

For each of the 16 Class I areas located on the Colorado Plateau, the RH 309 SIP must include a projection of the improvement in visibility expressed in deciviews. 40 CFR 51.309(d)(2). The plan needs to show the projected visibility improvement for the best and worst 20 percent days through the year 2018, based on the application of all section 309 control strategies.

C. Clean Air Corridors

Pursuant to 40 CFR 51.309(d)(3), the RH 309 SIP must identify Clean Air Corridors (CACs). CACs are geographic areas located within transport region states that contribute to the best visibility days (least impaired) in the 16 Class I areas of the Colorado Plateau. (A map of the CAC can be found in section B.1 of the State's SIP). The CAC as described in the 1996 GCVTC report covers nearly all of Nevada, large portions of Oregon, Idaho, and Utah, and encompasses several Indian nations. In order to meet the RHR requirements for CACs, states must adopt a comprehensive emissions tracking program for all visibility impairing pollutants within the CAC. Based on the emissions tracking, states must identify overall emissions growth or specific areas of emissions growth in and outside of the CAC that could be significant enough to result in visibility impairment at one or more of the 16 Class I areas. If there is visibility impairment in the CAC, states must conduct an analysis of the potential impact in the 16 Class I areas and determine if additional emission control measures are needed and how these measures would be implemented. States must also indicate in their SIP if any other CACs exist, and if others are found, provide necessary measures to protect against future degradation of visibility in the 16 Class I areas.

D. Stationary Source Reductions

1. SO_2 Emission Reductions

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 their visibility impacts. 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 built between 1962 and 1977 procure, install, and operate the ''Best Available Retrofit Technology'' (BART) [6] as determined by the state.[7] 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.

Section 309 provides an alternative method of satisfying the Section 308 SO_2 BART requirements with emission milestones and a backstop trading program (40 CFR 51.309(d)(4)). Under this approach, an RH 309 SIP must establish declining SO_2 emission milestones for each year of the program through 2018. The milestones must be consistent with the GCTVC's goal of 50 to 70 percent reduction in SO_2 emissions by 2040. If the milestones are exceeded in any year, the backstop trading program is triggered.

Pursuant to 40 CFR 51.309(d)(4)(ii)–(iv), states must include requirements in the RH 309 SIP that allow states to determine whether the milestone has been exceeded. These requirements include documentation of the baseline emission calculation, monitoring, recordkeeping, and reporting (MRR) of SO_2 emissions, and provisions for conducting an annual evaluation to determine whether the milestone has been exceeded. 40 CFR 309(d)(4)(v) also contains requirements for implementing the backstop trading program in the event that the milestone is exceeded and the program is triggered.

The WRAP, in conjunction with EPA, developed a model for a backstop trading program. In order to ensure consistency between states, states opting to participate in the 309 program need to adopt rules that are substantively equivalent to the rules of the model

[6] ''Best Available Retrofit Technology (BART) means an emission limitation based on the degree of reduction achievable through the application of the best system of continuous emission reduction for each pollutant which is emitted by an existing stationary facility. The emission limitation must be established, on a case-by-case basis, taking into consideration the technology available, the costs of compliance, the energy and nonair quality environmental impacts of compliance, any pollution control equipment in use or in existence at the source, the remaining useful life of the source, and the degree of improvement in visibility which may reasonably be anticipated to result from the use of such technology'' 40 CFR 51.301

[7] The set of ''major stationary sources'' potentially subject to BART is listed in CAA section 169A(g)(7).

backstop trading program to meet the requirements of 40 CFR 51.309(d)(4). The trading program must also be implemented no later than 15 months after the end of the first year that the milestone is exceeded, require that sources hold allowances to cover their emissions, and provide a framework, including financial penalties, to ensure that the 2018 milestone is met.

2. Provisions for Stationary Source Emissions of Nitrogen Oxides (NO_X) and Particulate Matter (PM)

Pursuant to 40 CFR 51.309(d)(4)(vii), a section 309 SIP must contain any necessary long term strategies and BART requirements for PM and NO_X. Any such BART provisions may be submitted pursuant to 40 CFR 51.308(e). We promulgated regulations addressing RH in 1999, 64 FR 35714 (July 1, 1999), codified at 40 CFR part 51, subpart P.[8] These regulations require all states to submit implementation plans that, among other measures, contain either emission limits representing BART for certain sources constructed between 1962 and 1977, or alternative measures that provide for greater reasonable progress than BART. 40 CFR 51.308(e). The discussion below specifically applies to regional haze plans that opt to require BART on sources subject to the BART requirements, rather than satisfying the requirements for alternative measures that would be evaluated under 40 CFR 51.308(e)(2).

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 the appropriate emission limits for each applicable source. The BART Guidelines are not mandatory for all sources; in making a BART determination for a fossil fuel-fired electric generating plant (EGU) with a total generating capacity in excess of 750 megawatts, a state must use the approach set forth in the BART Guidelines. A state is encouraged, but not required, to follow the BART Guidelines in making BART determinations for other types of sources.

The process of establishing BART emission limitations can be logically broken down into three steps: first, states identify those sources which meet the definition of ''BART-eligible source'' set forth in 40 CFR 51.301[9]; second, states determine whether such sources ''emits any air pollutant which may reasonably be anticipated to cause or contribute to any impairment of visibility in any such area'' (a source which fits this description is ''subject to BART,''; and third, for each source subject to BART, states then identify the appropriate type and the level of control for reducing emissions.

Under the BART Guidelines, states may 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 state must document this exemption threshold value in the SIP and state the basis for its selection of that value. Any source with emissions that model above the threshold value would be subject to a BART determination review, or would become what is termed a ''subject-to-BART'' source. The BART Guidelines acknowledge varying circumstances affecting different Class I areas. States should consider the number of emission sources affecting the Class I areas at issue and the magnitude of the individual sources' impacts. Any exemption threshold set by the state should not be higher than 0.5 deciview. See also 40 CFR part 51, Appendix Y, section III.A.1.

In their SIPs, states must identify subject-to-BART-sources and document their BART control determination analyses. The term ''subject-to-BART-source'' used in the BART Guidelines means the collection of individual emission units at a facility that together comprises the subject-to-BART-source. 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 to be assigned to each factor. Although the states have the freedom to determine the weight and significance of the statutory factors, they have an overriding obligation to come to a reasoned determination. 76 FR 81733 (Dec 28, 2011).

A regional haze SIP must include source-specific BART emission limits and compliance schedules for each source subject to BART. Once a state has made its BART determination, the BART controls must be installed and in operation as expeditiously as practicable, but no later than five years after the date of EPA approval of 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. *See* CAA section 110(a).

E. Mobile Sources

Under 40 CFR 51.309(d)(5), the RH 309 SIP must provide inventories of on-road and non-road mobile source emissions of VOCs, NO_X, SO_2, $PM_{2.5}$, elemental carbon, and organic carbon for the years 2003, 2008, 2013, and 2018. The inventories must show a continuous decline in total mobile source emissions of each of the above pollutants. If the inventories show a continuous decline in total mobile source emissions of each of these pollutants over the period 2003–2018, a state is not required to take further action in their SIP. If the inventories do not show a continuous decline in mobile source emissions of one or more of these pollutants over the period 2003–2018, a state must submit a SIP that contains measures that will achieve a continuous decline.

The RH 309 SIP must also contain any long-term strategies necessary to reduce emissions of SO_2 from non-road mobile sources, consistent with the goal of reasonable progress. In assessing the need for such long-term strategies, the state may consider emissions reductions achieved or anticipated from any new federal standards for sulfur in non-road diesel fuel. Section 309 SIPs must provide an update on any additional mobile source strategies implemented within the state related to the GCVTC 1996 recommendations on mobile sources.

F. Programs Related to Fire

For states submitting a section 309 SIP, the RHR contains requirements for programs related to fire (40 CFR 51.309(d)(6)). The plan must show that the state's smoke management program and all federal or private programs for

[8] In *American Corn Growers Ass'n* v. *EPA,* 291 F.3d 1 (D.C. Cir. 2002), the U.S. Court of Appeals for the District of Columbia Circuit issued a ruling vacating and remanding the BART provisions of the regional haze rule. In 2005, we issued BART guidelines to address the court's ruling in that case. *See* 70 FR 39104 (July 6, 2005).

[9] BART-eligible sources are those sources that have the potential to emit 250 tons or more of a visibility-impairing air pollutant, were put in place between August 7, 1962 and August 7, 1977, and whose operations fall within one or more of 26 specifically listed source categories.

prescribed fire in the state have a mechanism in place for evaluating and addressing the degree of visibility impairment from smoke in their planning and application of burning. The plan must also ensure that its prescribed fire smoke management programs have at least the following seven elements: actions to minimize emissions; evaluation of smoke dispersion; alternatives to fire; public notification; air quality monitoring; surveillance and enforcement; and program evaluation. The plan must be able to track statewide emissions of VOC, NO_X, EC, OC, and fine particulate emissions from prescribed burning within the state.

Other requirements states must meet in their 309 plan related to fire include the adoption of a statewide process for gathering post-burn activity information to support emissions inventory and tracking systems. The plan must identify existing administrative barriers to the use of non-burning alternatives and adopt a process for continuing to identify and remove administrative barriers where feasible. The RH 309 SIP must include an enhanced smoke management program that considers visibility effects in addition to health objectives and is based on the criteria of efficiency, economics, law, emission reduction opportunities, land management objectives, and reduction of visibility impairment. Finally, the plan must establish annual emission goals to minimize emission increases from fire.

G. Paved and Unpaved Road Dust

Section 309 requires states to submit a SIP that assesses the impact of dust emissions on regional haze in the 16 Class I areas on the Colorado Plateau and to include a projection of visibility conditions through 2018 for the least and most impaired days (40 CFR 51.309(d)(7)). If dust emissions are determined to be a significant contributor to visibility impairment, the plan must provide emissions management strategies to address their impact.

H. Pollution Prevention

The requirements under pollution prevention only require the RH 309 SIP to provide an assessment of the energy programs as outlined in 40 CFR 51.309(d)(8) and does not require a state to adopt any specific energy-related strategies or regulations for regional haze. In order to meet the requirements related to pollution prevention, the state's plan must include an initial summary of all pollution prevention programs currently in place, an inventory of all renewable energy generation capacity and production in use or planned as of the year 2002, the total energy generation capacity and production for the state, and the percent of the total that is renewable energy.

The state's plan must include a discussion of programs that provide incentives for efforts that go beyond compliance and/or achieve early compliance with air-pollution related requirements and programs to preserve and expand energy conservation efforts. The state must identify specific areas where renewable energy has the potential to supply power where it is now lacking and where renewable energy is most cost-effective. The RH 309 plan must include projections of the short- and long-term emissions reductions, visibility improvements, cost savings, and secondary benefits associated with the renewable energy goals, energy efficiency, and pollution prevention activities. The plan must also provide its anticipated contribution toward the GCVTC renewable energy goals for 2005 and 2015. The GCVTC goals are that renewable energy will comprise 10 percent of the regional power needs by 2005 and 20 percent by 2015.

I. Additional Recommendations

Section 309 requires states to determine if any of the other recommendations in the 1996 GCVTC report not codified by EPA as part of section 309 should be implemented in their RH SIP (40 CFR 51.309(d)(9)). States are not required in their RH 309 SIPs to adopt any control measures unless the state determines they are appropriate and can be practicably included as enforceable measures to remedy regional haze in the 16 Class I areas. Any measures adopted would need to be enforceable like the other 309 required measures. States must also submit a report to EPA and the public in 2013 and 2018, showing there has been an evaluation of the additional recommendations and the progress toward developing and implementing any such recommendations.

J. Periodic Implementation Plan Revisions

The RHR requires states to submit progress reports in the form of SIP revisions in 2013 and 2018 (40 CFR 51.309(d)(10)). The SIP revisions must comply with the procedural requirements of 40 CFR 51.102 for public hearings and 40 CFR 51.103 for submission of plans. The assessment in the progress report must include an evaluation of Class I areas located within the state and Class I areas outside the state that are affected by emissions from the state. EPA views these SIP revisions as a periodic check on progress, rather than a thorough revision of regional strategies. The state should focus on significant shortcomings of the original SIP from sources that were not fully accounted for or anticipated when the SIP was initially developed. The specifics of what each progress report must contain can be found at 40 CFR 51.309(d)(10)(i)(A)–(G).

At the same time that the state submits its progress reports to EPA, it must also take an action based on the outcome of this assessment. If the assessment shows that the SIP requires no substantive revision, the state must submit to EPA a ''negative declaration'' statement saying that no further SIP revisions are necessary at this time. If the assessment shows that the SIP is or may be inadequate due to emissions from outside the state, the state must notify EPA and other regional planning states and work with them to develop additional strategies. If the assessment shows that the SIP is or may be inadequate due to emissions from another country, the state must include appropriate notification to EPA in its SIP revision. In the event the assessment shows that the SIP is or may be inadequate due to emissions from within the state, the state shall develop additional strategies to address the deficiencies and revise the SIP within one year from the due date of the progress report.

K. Interstate Coordination

In complying with the requirements of 40 CFR 51.309(d)(11), states may include emission reductions strategies that are based on coordinated implementation with other states. The SIP must include documentation of the technical and policy basis for the individual state apportionment (or the procedures for apportionment throughout the trans-boundary region), the contribution addressed by the state's plan, how it coordinates with other state plans, and compliance with any other appropriate implementation plan approvability criteria. States may rely on the relevant technical, policy, and other analyses developed by a regional entity, such as the WRAP in providing such documentation.

L. Additional Class I Areas

To comply with the requirements of 40 CFR 51.309(g), RH 309 SIPs must demonstrate reasonable progress for mandatory Class I Federal areas other than the 16 Class I areas covered by the GCVTC. States must submit an

implementation plan that demonstrates the expected visibility conditions for the most and least impaired days at the additional Class I areas based on emission projections from the long-term strategies in the implementation plan. The implementation plan must contain provisions establishing reasonable progress goals and additional measures necessary to demonstrate reasonable progress for the additional Federal Class I areas. The RH 309 SIP must address regional haze in each additional Class I area located within the State and in each additional Class I area located outside the State which may be affected by emissions from within the State. 40 CFR 51.309(g) requires that these provisions comply with 40 CFR 51.308(d)(1) through (4), the general requirements of which are described below.

1. Determination of Reasonable Progress Goals

Pursuant to 40 CFR 51.308(d)(1), for each mandatory Class I area located within the State, the regional haze SIPs must establish goals (expressed in deciviews, dv) that provide for reasonable progress towards achieving natural visibility conditions. The vehicle for ensuring continuing progress towards achieving the natural visibility goal is the submission of a series of RH SIPs from the states that establish two reasonable progress goals (RPGs) *(i.e.,* two distinct goals, one for the ''best'' and one for the ''worst'' days) for every Class I area for each (approximately) 10-year implementation period. *See* 70 FR 39104 (July 6, 2005); *see also* 64 FR 35714 (July 1, 1999). 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) 10-year period of the SIP, and ensure no degradation in visibility for the least impaired days over the same period. *Id.*

States have significant discretion in establishing RPGs, but are required to consider the following factors established in section 169A of the CAA and in our 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 our Reasonable Progress Guidance [10]. In setting the RPGs, states must also consider the rate of progress needed to reach natural visibility conditions by 2064 (referred to hereafter as the ''Uniform Rate of Progress (URP)'' and the emission reduction measures needed to achieve that rate of progress over the 10-year period of the SIP. Uniform progress towards achievement of natural conditions by the year 2064 represents a rate of progress, which states are to use for analytical comparison to the amount of progress they expect to achieve. If the State establishes a RPG that provides for a slower rate of improvement in visibility than the URP, the State must demonstrate that the URP is not reasonable based on the factors above and that the RPG is reasonable. Regional haze SIPs must provide an assessment of the number of years it would take to attain natural visibility at the rate of progress selected by the State as reasonable. 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).

2. Determination of Baseline, Natural, and Current Visibility Conditions

The RHR establishes the deciview (dv) as the principal metric for measuring visibility. 70 FR 39104 (July 6, 2005). This visibility metric expresses uniform changes in the degree of haze in terms of common increments across the entire range of visibility conditions, from pristine to extremely hazy conditions. Visibility is sometimes expressed in terms of the visual range, which is the greatest distance, in kilometers or miles, at which a dark object can just be distinguished against the sky. The deciview is a useful measure for tracking progress in improving visibility, because each deciview change is an equal incremental change in visibility perceived by the human eye. Most people can detect a change in visibility of one deciview.[11]

The deciview is used in expressing Reasonable Progress Goals (RPGs) (which are interim visibility goals towards meeting the national visibility goal), defining baseline, current, and natural conditions, and tracking changes in visibility. To track changes in visibility over time 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 at the time of each RH SIP submittal and periodically review progress every five years midway through each 10-year implementation period. To do this, section 51.308(d)(2) of 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 also 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. We have provided guidance to states regarding how to calculate baseline, natural and current visibility conditions.[12]

For the first RH SIPs that were due by December 17, 2007, ''baseline visibility conditions'' were 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

[10] *Guidance for Setting Reasonable Progress Goals under the Regional Haze Program,* June 1, 2007, memorandum from William L. Wehrum, Acting Assistant Administrator for Air and Radiation, to EPA Regional Administrators, EPA Regions 1–10 (pp.4–2, 5–1).

[11] The preamble to the RHR provides additional details about the deciview. 64 FR 35714, 35725 (July 1, 1999).

[12] *Guidance for Estimating Natural Visibility Conditions Under the Regional Haze Rule,* September 2003, EPA–454/B–03–005, available at *http://www.epa.gov/ttncaaa1/t1/memoranda/rh_envcurhr_gd.pdf,* (hereinafter referred to as ''our 2003 Natural Visibility Guidance''); and *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,* (hereinafter referred to as our ''2003 Tracking Progress Guidance'').

amount of progress made. In general, the 2000–2004 baseline period is considered the time from which improvement in visibility is measured.

3. Long-Term Strategy (LTS)

Consistent with the requirement in section 169A(b) of the CAA that states include in their regional haze SIP a 10 to 15 year strategy for making reasonable progress, Section 51.308(d)(3) of the RHR requires that states include a LTS in their RH 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 any applicable RPGs. The LTS must include ''enforceable emissions limitations, compliance schedules, and other measures as necessary to achieve the reasonable progress goals'' for all Class I areas within, or 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 impacted state to coordinate with the contributing states in order to develop coordinated emissions management strategies. 40 CFR 51.308(d)(3)(i). Also, a state with a Class I area impacted by emissions from another state must consult with such contributing state, (*id.*) and must also demonstrate that it has included in its SIP all measures necessary to obtain its share of emission reductions needed to meet the reasonable progress goals for the Class I area. *Id.* at (d)(3)(ii). 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. The RPOs have provided forums for significant interstate consultation, but additional consultations between states may be required to sufficiently address interstate visibility issues. This is especially true where two states belong to different RPOs.

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; (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). Pursuant to 40 CFR 51.309(g)(2)(i), the State may build upon and take credit for the strategies implemented to meet the requirements under paragraph (d) of 40 CFR 51.309.

4. Monitoring Strategy and Other SIP Requirements

Section 51.308(d)(4) of the RHR includes the requirement for a monitoring strategy for measuring, characterizing, and reporting of RH visibility impairment that is representative of all mandatory Class I Federal areas within the state. The strategy must be coordinated with the monitoring strategy required in section 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 RH SIP, and it must be reviewed every five (5) 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 RH 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 RH 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.

The RHR requires control strategies to cover an initial implementation period extending to the year 2018, with a comprehensive reassessment and revision of those strategies, as appropriate, every 10 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 RH 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.

IV. What are the additional requirements for alternative programs under the RHR?

States opting to submit an alternative program, such as the backstop trading program under section 309, must also meet requirements under 40 CFR 51.308(e)(2) and (e)(3). These requirements for alternative programs relate to the ''Better-than-BART'' test and fundamental elements of any alternative program that establishes a cap on emissions.

A. ''Better-Than-BART'' Demonstration

In order to demonstrate that the alternative program achieves greater reasonable progress than source-specific BART, states must provide a demonstration in their SIP that meets the requirements in 40 CFR 51.308(e)(2)(i)-(v). States submitting section 309 SIPs or other alternative programs are required to list all BART-eligible sources and categories covered by the alternative program. States are then required to determine which BART-eligible sources are ''subject to BART.'' The SIP must provide an analysis of the best system of continuous emission control technology available and the associated reductions for each source subject to BART covered by the alternative program, or what is termed a ''BART benchmark.'' Where the alternative program, such as the 309 backstop trading program, has been designed to meet requirements other than BART, states may use simplifying assumptions in establishing a BART benchmark. These assumptions can provide the baseline to show that the alternative program achieves greater

reasonable progress than BART. 71 FR 60619 (Oct. 13, 2006). Under this approach, states should use the presumptive limits for EGUs in the BART Guidelines to establish the BART benchmark used in the comparison, unless the state determines that such presumptions are not appropriate for particular EGUs (71 FR 60619).

The RH SIP, and any RH 309 SIP that establishes a 309 backstop trading program, must provide an analysis of the projected emissions reductions achievable through the trading program or other alternative measure and a determination that the trading program or other alternative measure achieves greater reasonable progress than would be achieved through the installation and operation of BART (40 CFR 308(e)(2)(C)(iii)). Section 308(e)(2) requires that all emission reductions for the alternative program take place by 2018, as well as that the emission reductions resulting from the alternative program are surplus to those reductions resulting from measures adopted to meet requirements of the CAA as of the baseline date of the SIP. Pursuant to 40 CFR 51.309(e)(2)(E)(v), states have the option of including a provision that the emissions trading program or other alternative measure may include a geographic enhancement to the program to address the requirement under 40 CFR 51.302(c) related to BART, for reasonably attributable visibility impairment from the pollutants covered under the emissions trading program or other alternative measure.

States must also address the distribution of emissions under the BART alternative as part of the ''better-than-BART'' demonstration (40 CFR 51.308(e)(3)). If a state can show that with the alternative program the distribution of emissions is not substantially different than under BART and the alternative program results in greater emission reductions, then the alternative measure may be deemed to achieve greater reasonable progress. If the distribution of emissions is significantly different, the state must conduct dispersion modeling to determine differences in visibility between BART and the alternative program for each impacted Class I area for the worst and best 20 percent of days. The modeling must show that visibility does not decline at any Class I area and that visibility overall is greater than what would be achieved with BART.

B. Elements Required for All Alternative Programs That Have an Emissions Cap

Under 40 CFR 51.308(e)(2)(vi)(A)–(L), EPA established fundamental requirements for trading or alternative programs that have an emissions cap and require sources to hold allowances that they can sell, buy, or trade, as in the section 309 backstop trading program. These requirements are discussed in detail below.

1. Applicability

The alternative program must have applicability provisions that define the sources subject to the program. In the case of a program covering sources in multiple states, the states must demonstrate that the applicability provisions in each state cover essentially the same size facilities and, if source categories are specified, cover the same source categories.

2. Allowances

Allowances are a key feature of a cap and trade program. An allowance is a limited authorization for a source to emit a specified amount of a pollutant, as defined by the specific trading program, during a specified period. Allowances are fully marketable commodities. Once allocated, allowances may be bought, sold, traded, or banked for use in future years. EPA has not included in the rule detailed requirements on how states and tribes can allocate allowances. A state or tribe can determine how to allocate allowances as long as the allocation of the tonnage value of allowances does not exceed the total number of tons of emissions capped by the budget. The trading program must include allowance provisions ensuring that the total value of allowances issued each year under the program will not exceed the emissions cap on total annual emissions from the sources in the program.

3. Monitoring, Recordkeeping, and Reporting

Monitoring, recordkeeping, and reporting (MRR) of a source's emissions are integral parts of any cap and trade program. Consistent and accurate measurement of emissions ensures reliability of allowances by validating that each allowance actually represents its specified tonnage value of emissions and that one ton of reported emissions from one source is equivalent to one ton of reported emissions at another source. The MRR provisions must require that boilers, combustion turbines, and cement kilns in the alternative program that are allowed to sell or transfer allowances comply with the requirements of 40 CFR part 75. The MRR provisions must require that other sources in the program allowed to sell or transfer allowances provide emissions information with the same precision, reliability, accessibility, and timeliness as information required by 40 CFR part 75.

4. Tracking System

An accurate and efficient tracking system is critical to the functioning of an emissions trading market. The tracking system must also be transparent, allowing all interested parties access to the information contained in the accounting system. Thus, alternative programs must have requirements for a tracking system that is publicly available in a secure, centralized database to track in a consistent manner all allowances and emissions in the program.

5. Account Representative

Each source owner or operator covered by the alternative program must designate an individual account representative who is authorized to represent the owner or operator in all matters pertaining to the trading program and who is responsible for the data reported for that source. The account representative will be responsible for, among other things, permitting, compliance, and allowance related actions.

6. Allowance Transfer

SIPs must contain provisions detailing a uniform process for transferring allowances among all sources covered by the program and other possible participants. The provisions must provide procedures for sources to request an allowance transfer, for the request and transfer to be recorded in the allowance tracking system, for notification to the source that the transfer has occurred, and for notification to the public of each transfer and request.

7. Compliance Provisions

Cap and trade programs must include compliance provisions that prohibit a source from emitting more emissions than the total tonnage value of allowances the source holds for that year. A cap and trade program must also contain the specific methods and procedures for determining compliance on an annual basis.

8. Penalty Provisions

In order to provide sources with a strong incentive to comply with the requirement to hold sufficient allowances for their emissions on an annual basis and to establish an immediate minimum economic consequence for non-compliance, the program must include a system for mandatory allowance deductions. SIPs

must contain a provision that if a source has excess emissions in a given year, allowances allocated for the subsequent year will be deducted from the source's account in an amount at least equal to three times the excess emissions.

9. Banking of Allowances

The banking of allowances occurs when allowances that have not been used for compliance are set aside for use in a later compliance period. Alternative programs can include provisions for banked allowances, so long as the SIP clearly identifies how unused allowances may be used in future years and whether there are any restrictions on the use of any such banked allowances.

10. Program Assessment

The alternative program must include provisions for periodic assessment of the program. Such periodic assessments are a way to retrospectively assess the performance of the trading program in meeting the goals of the regional haze program and determining whether the trading program needs any adjustments or changes. At a minimum, the program evaluation must be conducted every five years to coincide with the periodic report describing progress towards the reasonable progress goals required under 40 CFR 51.308(g) and must be submitted to EPA.

V. Our Analysis of the State of New Mexico's Regional Haze SIP Submittal

The following summarizes how New Mexico's June 28, 2011 submittals address the requirements of 40 CFR 51.309. As was noted in the Overview section of this notice, this section also discusses various companion regulations that have been submitted as SIP revisions that we have evaluated and propose to approve.

A. Projection of Visibility Improvement

Pursuant to 40 CFR 51.309(d)(2), New Mexico's RH 309 SIP provides a comparison of the monitored 2000–2004 baseline visibility conditions in deciviews (dv) for the 20 percent best and 20 percent worst days to the projected visibility improvement for 2018 for the Class I areas on the Colorado Plateau. Table 1 shows the baseline monitoring data and projected visibility improvement for 2018 from the WRAP photochemical modeling (for details on the WRAP photochemical modeling refer to the WRAP Technical Support Document [13] and our review of the technical products developed by the WRAP for the States in the western region, in support of their RH SIPs [14]). The projected visibility improvement for the 2018 Base Case (referred to as the Base18b emission inventory and modeled projections) reflects growth plus all controls ''on the books'' as of December 2004. The projected visibility improvement for the Preliminary Reasonable Progress Case (referred to as the PRP18b emission inventory and modeled projections) reflects refined growth estimates, all controls ''on the books'' as of 2007, and includes presumptive or known SO_2 BART controls. The modeling results show projected visibility improvement for the 20 percent worst days in 2018 and no degradation in visibility conditions on the 20 percent best days at all 16 Class I areas on the Colorado Plateau. We are proposing to determine the RH 309 SIP submittal satisfies the requirements of 40 CFR 51.309(d)(2).

TABLE 1—BASELINE AND 2018 VISIBILITY AT THE COLORADO PLATEAU CLASS I AREAS

[Monthly average method]

Class I Area	State	20 Percent worst visibility days			20 Percent best visibility days		
		2000–2004 Baseline monitoring data (dv)	2018 Base case (dv)	2018 Preliminary reasonable progress PRP18b case (dv)	2000–2004 Baseline monitoring data (dv)	2018 Base case (dv)	2018 Preliminary reasonable progress PRP18b case (dv)
Grand Canyon National Park	AZ	11.7	11.4	11.1	2.2	2.2	2.1
Mount Baldy Wilderness	AZ	11.9	11.5	11.5	3.0	2.9	2.9
Petrified Forest National Park	AZ	13.2	12.9	12.8	5.0	4.9	4.7
Sycamore Canyon Wilderness	AZ	15.3	15.1	15.0	5.6	5.6	5.5
Black Canyon of the Gunnison National Park Wilderness.	CO	10.3	10.0	9.8	3.1	2.9	2.9
Flat Tops Wilderness	CO	9.6	9.2	9.0	0.7	0.6	0.5
Maroon Bells Wilderness	CO	9.6	9.2	9.0	0.7	0.6	0.5
Mesa Verde National Park	CO	13.0	12.8	12.5	4.3	4.1	4.0
Weminuche Wilderness	CO	10.3	10.0	9.8	3.1	2.9	2.9
West Elk Wilderness	CO	9.6	9.2	9.0	0.7	0.6	0.5
San Pedro Parks Wilderness	NM	10.2	10.0	9.8	1.5	1.3	1.2
Arches National Park	UT	11.2	11.0	10.7	3.8	3.6	3.5
Bryce Canyon National Park	UT	11.6	11.3	11.1	2.8	2.7	2.6
Canyonlands National Park	UT	11.2	11.0	10.7	3.8	3.6	3.5
Capitol Reef National Park	UT	10.9	10.6	10.4	4.1	4.0	3.9
Zion National Park	UT	13.2	13.0	12.8	5.0	4.7	4.7

[13] WRAP Regional Technical Support Document for the Requirements of § 309 of the Regional Haze Rule (64 **Federal Register** 35714—July 1, 1999) revised May 7, 2008.

[14] Our review of the technical products developed by the WRAP is available as *Technical Support Document for Technical Products Prepared by the Western Regional Air Partnership (WRAP) in Support of Western Regional Haze Plans,* EPA Regions 6, 8, 9 and 10, February 28, 2011.

B. Clean Air Corridors

1. Comprehensive Emissions Tracking Program

Pursuant to 40 CFR 51.309(d)(3), NM's RH SIP submittal provides for the implementation of strategies regarding clean-air corridors. We propose to find the SIP's treatment of clean-air corridors satisfies the requirements of 40 CFR 309(d)(3), and its subsections, as discussed in the next several paragraphs.

The WRAP developed a comprehensive emissions tracking system to assist the states in tracking emissions within portions of Oregon, Idaho, Nevada and Utah that have been identified as part of the CAC. The emission tracking is to ensure that visibility does not degrade on the least-impaired days in any of the 16 Class I areas of the Colorado Plateau. Appendix M–1 of the NM RH 309 SIP describes the emission tracking system and the process by which the annual emission trends will be summarized in order to identify any significant emissions growth that could lead to visibility degradation in the 16 Class I areas. The SIP submittal and all appendices can be found in the docket for this notice. Since no portion of the CAC lies within New Mexico, this emissions tracking system does not include tracking of emissions from New Mexico. We are proposing to determine the RH 309 SIP submittal has met the requirements of 40 CFR 51.309(d)(3).

2. Identification of CACs

Pursuant to 40 CFR 51.309(d)(3)(i), the State has provided in its RH 309 SIP submittal the geographic boundaries of the CAC (a map of the CAC can be found as in Section B(b) of the SIP). The WRAP identified the CAC using studies conducted by the Meteorological Subcommittee of the GCVTC and then updated the CAC based on an assessment described in the *WRAP Policy on Clean Air Corridors* (available as Appendix-B of the NM RH 309 SIP) and related technical analysis conducted by the WRAP. Appendix N of the NM RH 309 SIP (the WRAP final draft Technical Support Document [15]) contains additional technical analysis associated with the identification of the CAC. We are proposing to determine the RH 309 SIP submittal satisfies the 51.309(d)(3)(i) requirement.

3. Patterns of Growth Within and Outside of the CAC

Pursuant to 40 CFR 51.309(d)(3)(ii)–(iii), the State in its RH 309 SIP submittal has determined, based on the *WRAP Policy Paper on Clean Air Corridors* and technical analysis conducted by the WRAP, that inside and outside the CAC there is no significant emissions growth occurring at this time that is causing visibility impairment in the 16 Class I areas of the Colorado Plateau. The WRAP will summarize annual emission trends within and outside of the CAC and will assess whether any significant emissions growth is occurring that could result in visibility impairment in any of the 16 Class I areas. We are proposing to determine that 40 CFR 51.309(d)(3)(ii)–(iii) is met.

4. Actions if Impairment Inside or Outside the Clean Air Corridor Occurs

The RH 309 SIP submittal describes how the State, in coordination with other transport region states and tribes, will review the annual summary of emission trends within the CAC and determine whether any significant emissions growth has occurred. If the State identifies significant emissions growth, the State, in coordination with other transport region states, and tribes, will seek WRAP assistance in conducting an analysis of the effects of this emissions growth. Pursuant to 40 CFR 51.309(d)(3)(iv), if this analysis finds that the emissions growth is causing visibility impairment in the 16 Class I areas, the State, in coordination with other transport region states, and tribes, will evaluate the need for additional emission reduction measures and identify an implementation schedule for such measures. The State will report on the need for additional reduction measures to EPA in accordance with the periodic progress reports required under 40 CFR 51.309(d)(10)(i). We are proposing to determine the RH 309 SIP submittal satisfies the strategy requirement of 40 CFR 309(d)(3)(iv).

5. Other CACs

Pursuant to 40 CFR 51.309(d)(3)(v), the State in its RH 309 SIP submittal has concluded that no other CACs can be identified at this time. The State's conclusion is based on the *WRAP Policy on Clean Air Corridors,* which used technical information to determine that no other CACs could be identified. We are proposing to approve the state's determination under 40 CFR 51.309(d)(3)(v).

C. Stationary Source Reductions

1. Provisions for Stationary Source Emissions of SO_2

As required by 40 CFR 51.309(d)(4)(i), the State in its RH 309 SIP submittal sets forth milestone SO_2 numbers for each year of the program until 2018.[16] Table 2 shows the milestone numbers and how compliance with the annual milestones will be determined (Table C–1 of the NM RH 309 SIP).

TABLE 2—SO_2 EMISSIONS MILESTONES

Year	Regional sulfur dioxide milestone (tons per year (tpy))	Annual SO_2 emissions used to determine compliance with the annual milestones
2008	269,083 tons SO_2	Average of 2006, 2007 and 2008.
2009	234,903 tons SO_2	Average of 2007, 2008 and 2009.
2010	200,722 tons SO_2	Average of 2008, 2009 and 2010.
2011	200,722 tons SO_2	Average of 2009, 2010 and 2011.
2012	200,722 tons SO_2	Average of 2010, 2011 and 2012.
2013	185,795 tons SO_2	Average of 2011, 2012 and 2013.
2014	170,868 tons SO_2	Average of 2012, 2013 and 2014.
2015	155,940 tons SO_2	Average of 2013, 2014 and 2015.
2016	155,940 tons SO_2	Average of 2014, 2015 and 2016.
2017	155,940 tons SO_2	Average of 2015, 2016 and 2017.
2018	141,849 tons SO_2	Year 2018 only.

[15] WRAP Regional Technical Support Document for the Requirements of § 309 of the Regional Haze Rule (64 **Federal Register** 35714—July 1, 1999) revised May 7, 2008.

[16] The milestone numbers reflect the participation of Wyoming, Utah, and New Mexico (including City of Albuquerque-Bernalillo County) in the 309 backstop trading program.

TABLE 2—SO_2 EMISSIONS MILESTONES—Continued

Year	Regional sulfur dioxide milestone (tons per year (tpy))	Annual SO_2 emissions used to determine compliance with the annual milestones
2019 forward, until replaced by an approved SIP.	141,849 tons SO_2	Annual; no multiyear averaging.

SO_2 emissions from sources in 1990 totaled 358,364 tpy and the 2018 milestone are 141,849 tpy (see *Demonstration that the SO_2 Milestones Provide Greater Reasonable Progress than BART,* Section M of the NM RH 309 SIP). The difference is a 60 percent reduction in SO_2 emissions from 1990 to 2018. Thus, the State has concluded that the emission reductions are on target to achieve the GCVTC goal of a 50 to 70 percent reduction of SO_2 emissions by 2040. We are proposing to determine the RH 309 submittal meets the requirements of 40 CFR 51.309(d)(4)(i).

2. Documentation of Emissions Calculation Methods for SO_2

Pursuant to 40 CFR 51.309(d)(4)(ii), the RH 309 SIP submittal provides documentation of the specific methodology used to calculate SO_2 emissions during the 2006 base year for each emitting unit included in the program. The requirement is addressed in Section C of the NM RH 309 SIP submittal, and implemented through 20.2.73.300.F NMAC provisions that were previously approved at 75 FR 48860 (August 12, 2010). We are also now proposing to approve revisions to 20.2.73.300 that were submitted for approval with the most recent RH 309 SIP submittal on July 5, 2011.

Pursuant to 40 CFR 51.309(d)(4)(ii), New Mexico's RH 309 SIP submittal provides that it will document any change to the specific methodology used to calculate emissions at any emitting unit for any year after the base year. Until the program has been triggered and source compliance is required, the State will submit an annual emissions report that documents prior year emissions for New Mexico sources covered by the 309 program to all participating states by September 30 of each year. The State will adjust actual emission inventories for sources that change the method of monitoring or calculating their emissions to be comparable to the emission monitoring or calculation method used to calculate the 2006 base year inventory. EPA is proposing to determine that the current SIP as revised by the SIP submittal satisfies the requirements of 40 CFR 309(d)(4)(ii).

3. Monitoring, Recordkeeping, and Reporting of SO_2 Emissions

In order to meet the emission reporting requirements of 40 CFR 51.309(d)(4)(iii), the RH 309 SIP submittal includes provisions requiring the monitoring, recordkeeping, and reporting of actual stationary source SO_2 emissions within the State to determine if the milestone has been exceeded. 20.2.73.300.F NMAC requires major sources of SO_2 to report their emissions annually along with documentation of the emissions monitoring/estimation methodology used, and demonstrate that the selected methodology is acceptable under the inventory program. This rule defines the emission inventory and reporting requirements for tracking compliance with the regional sulfur dioxide milestones until the western backstop sulfur dioxide trading program has been fully implemented and emission tracking has occurred under 20.2.81.106 NMAC (See section V.E.3 of this notice for a further detail on emission inventory requirements under 20.2.81.106 NMAC). We are proposing to approve the July 5, 2011 submitted revisions to 20.2.73.300.F NMAC and determine that the 309 SIP submittal satisfies the requirements of 40 CFR 51.309(d)(4)(iii).

4. Criteria and Procedures for a Market Trading Program

As stated above, until the backstop trading program has been triggered and source compliance is required, the RH 309 SIP submittal provides that the state shall submit an annual emissions report for New Mexico sources to all participating states by September 30 of each year. The report shall document actual sulfur dioxide emissions during the previous calendar year for all sources subject to the Section 309 program. The WRAP will compile reports from all participating states into a draft regional emission report for SO_2 by December 31 of each year. This report will include actual regional sulfur dioxide emissions, adjustments to account for changes in monitoring/calculation methods or enforcement/settlement agreements, and adjusted average emissions for the last three years for comparison to the regional milestone. As required by 40 CFR 51.309(d)(4)(iv), based on this compilation of reports from all states participating in the 309 program, states will determine if the milestone has been exceeded and will include a determination in a final regional emissions report that is submitted to EPA. This final report and determination will be submitted to EPA by the end of March, 15 months following the milestone year. We are proposing to determine the RH 309 SIP meets the requirements of 40 CFR 51.309(d)(4)(iv).

5. Market Trading Program

Per 40 CFR 51.309(d)(4)(v), the RH 309 SIP submittal provides that if the 309 backstop trading program is triggered, the regional emissions report will contain a common trigger date. In the absence of a common trigger date, the default date will be March 31 of the applicable year, but no later than 15 months after the end of the milestone year where the milestone was exceeded. The NM RH 309 SIP submittal requires that sources comply, as soon as practicable, with the requirement to hold allowances covering their emissions. Because the backstop trading program does not allow allocations to exceed the milestone, the program is sufficient to achieve the milestones adopted pursuant to 40 CFR 51.309(d)(4)(i) as discussed above. The backstop trading program is also consistent with the elements for such programs outlined in 40 CFR 51.308(e)(2)(vi). The analysis found in Section V.E. of this notice shows that the backstop trading program is consistent with the elements for trading programs outlined in 40 CFR 51.308(e)(2)(vi), as required by Section 309. See 40 CFR 51.309(d)(4)(v). We are proposing to determine the RH 309 SIP submittal meets the requirements of 40 CFR 309(d)(4)(v). We are also proposing to approve 20.2.81 NMAC, which includes the rules that govern the program.

6. Provisions for the 2018 Milestone

Pursuant to 40 CFR 51.309(d)(4)(vi)(A), the RH 309 SIP submittal has provisions to ensure that until a revised implementation plan is submitted in accordance with 40 CFR 51.308(f) and approved by EPA,

emissions from covered stationary sources in any year beginning in 2018 do not exceed the 2018 milestone. In order to meet this requirement, the State has included special provisions for what will be required as part of their 2013 SIP revision required under 40 CFR 51.309(d)(10). The submitted plan provides that the 2013 SIP revision required by 40 CFR 51.309(d)(10) will contain either the provisions of a program designed to achieve reasonable progress for stationary sources of SO_2 beyond 2018 or a commitment to submit a SIP revision containing the provisions of such a program no later than December 31, 2016. (Section C, Part D of the NM RH 309 SIP). We are proposing to determine the RH 309 SIP submittal meets the requirements of 40 CFR 51.309(d)(4)(vi)(A).

7. Special Penalty Provision for 2018

Pursuant to 40 CFR 51.309(d)(4)(vi)(B), the RH 309 SIP submittal includes special penalty provisions to ensure that the 2018 milestone is met. If the backstop trading is triggered and the program will not start until after the year 2018, a special penalty shall be assessed to sources that exceed the 2018 milestone (Section A.5 of the NM RH 309 SIP and Section 20.2.81.110 NMAC, which we are proposing to approve). The State shall seek at least the minimum financial penalty of $5,000 per ton of SO_2 emissions in excess of a source's allowance limitation. Any source may resolve its excess emissions violation by agreeing to a streamline settlement approach where the source pays a penalty of $5,000 per ton or partial ton of excess emissions and the source makes the payment within 90 calendar days after the issuance of a notice of violation. Any source that does not resolve its excess emissions violation in accordance with the streamlined settlement approach will be subject to formal enforcement action, in which the NMED shall seek a financial penalty for the excess emissions based on New Mexico's statutory maximum civil penalties. The special penalty provisions for 2018 will apply for each year after 2018 until the State determines that the 2018 milestone has been met. The State will evaluate the amount of the minimum monetary penalty during each five-year SIP review and the penalty will be adjusted to ensure that penalties per ton substantially exceed the expected cost of allowances, and thus provide sufficient deterrence. We are proposing to determine the RH SIP submittal satisfies the special penalties provisions requirement of 40 CFR 51.309(d)(4)(vi)(B). We are proposing approval of 20.2.81 NMAC, which includes proposed approval of 20.2.81.110 NMAC.

D. ''Better-Than-BART'' Demonstration

As discussed in Section IV.A of this preamble, if a state adopts an alternative program designed to replace ''source-by-source'' BART controls, the state must be able to demonstrate that the alternative program achieves greater reasonable progress than would be achieved by BART. In Section M of the NM RH 309 SIP, the State has included a demonstration of how the 309 program achieves greater reasonable progress than BART as discussed in the document titled *Demonstration that the SO_2 Milestones Provide for Greater Reasonable Progress than BART* (''better-than-BART'' demonstration). Below is a discussion on how the 309 backstop trading program achieves greater reasonable progress than BART. The City of Albuquerque—Bernalillo County, Wyoming and Utah have also submitted SIPs with the same better than BART demonstration as New Mexico and thus are relying on a consistent demonstration across the states.

1. List of BART-Eligible Sources

Pursuant to 40 CFR 51.308(e)(2)(i)(A), New Mexico's RH 309 SIP submittal offers a ''better-than-BART'' demonstration that lists the BART-eligible sources covered by the program in the section 309 states (see Table 3 below). BART eligible sources are identified as those sources that fall within one of the 26 specific source categories, were built between 1962 and 1977 and have potential emissions of 250 tons per year of any visibility impairing air pollutant. (40 CFR 51.301). We are proposing to determine that this list satisfies 40 CFR 51.308(e)(2)(i)(A).

2. Subject to BART Determination

Pursuant to 40 CFR 51.308(e)(2)(i)(B), the Section 309 states conducted individual source modeling on the BART-eligible sources within their states to determine which sources in their state causes or contributes to visibility impairment and are thus subject to BART. New Mexico and Utah relied on modeling by the WRAP to identify sources subject to BART. Based on the list of identified sources, the WRAP performed the initial BART modeling for New Mexico and Utah. The procedures used are outlined in the WRAP Regional Modeling Center (RMC) BART Modeling Protocol.[17] One source in New Mexico, the SJGS, was determined to be subject-to-BART based on the initial WRAP modeling. See section V.F.2 of this notice for a more detailed discussion of New Mexico's identification of subject-to-BART sources. Appendix C of the NM RH 309(g) SIP submittal contains a summary of the WRAP modeling used in New Mexico's identification of subject-to-BART sources. The State of Wyoming performed separate modeling to identify sources subject to BART.[18] The states established a threshold of 0.5 deciviews for determining if a single source causes or contributes to visibility impairment. If the modeling shows that a source has a 0.5 or greater deciview impact at any Class I area, that source causes or contributes to visibility impairment and is subject to BART. Table 3 shows the BART-eligible sources covered by the 309 backstop program and whether they are subject to BART. We are proposing to determine that the RH 309 SIP submittal satisfies 40 CFR 51.308(e)(2)(i)(B).

TABLE 3—SUBJECT TO BART STATUS FOR SECTION 309 BART-ELIGIBLE SOURCES

State	Company	Facility	Subject to BART?
New Mexico	Frontier	Empire Abo	No.
New Mexico	Xcel Energy	SWPS Cunningham Station	No.
New Mexico	Duke Energy	Artesia Gas Plant	No.

[17] CALMET/CALPUFF Protocol for BART Exemption Screening Analysis for Class I Areas in the Western United States‖, Western Regional Air Partnership (WRAP); Gail Tonnesen, Zion Wang; Ralph Morris, Abby Hoats and Yiqin Jia, August 15, 2006. Available at: *http://pah.cert.ucr.edu/aqm/308/bart/WRAP_RMC_BART_Protocol_Aug15_2006.pdf.*

[18] BART Air Modeling Protocol, Individual Source Visibility Assessments for BART Control Analyses, State of Wyoming, Department of Environmental Quality, Air Quality Division, Cheyenne, WY September 2006.

TABLE 3—SUBJECT TO BART STATUS FOR SECTION 309 BART-ELIGIBLE SOURCES—Continued

State	Company	Facility	Subject to BART?
New Mexico	Duke Energy	Linam Ranch Gas Plant	No.
New Mexico	Dynegy	Saunders	No.
New Mexico	Giant Refining	San Juan Refinery	No.
New Mexico	Giant Refining	Ciniza Refinery	No.
New Mexico	Xcel Energy	SWPS Maddox Station	No.
New Mexico	Marathon	Indian Basin Gas Plant	No.
New Mexico	Public Service of New Mexico	San Juan Generating Station	Yes.
New Mexico		Rio Grande Station	No.
New Mexico	Western Gas Resources	San Juan River Gas Plant	No.
Utah	Pacificorp	Hunter	Yes.
Utah	Pacificorp	Huntington	Yes.
Wyoming	Basin Electric	Laramie River	Yes.
Wyoming	Black Hills Power & Light	Neil Simpson I	No.
Wyoming	Dyno Nobel	Dyno Nobel	No.
Wyoming	FMC Corp	Green River Soda Ash Plant	Yes.
Wyoming	FMC Corp	Granger River Soda Ash Plant	No.
Wyoming	General Chemical	Green River Soda Ash Plant	Yes.
Wyoming	P4 Production	Rock Springs Coking Plant	No.
Wyoming	Pacificorp	Dave Johnston	Yes.
Wyoming	Pacificorp	Jim Bridger	Yes.
Wyoming	Pacificorp	Naughton	Yes.
Wyoming	Pacificorp	Wyodak	Yes.
Wyoming	Sinclair Oil Corp	Sinclair Refinery	No.
Wyoming	Sinclair Refinery	Casper	No.

3. Best System of Continuous Emission Control Technology

As required by 40 CFR 51.308(e)(2)(i)(C), each state is to determine what BART would be for each subject to BART source covered by the 309 backstop trading program. In the ''better-than-BART'' demonstration, all subject to BART electric generating units (EGUs) were assumed to be operating at the presumptive SO_2 emission rate provided in the BART Guidelines (0.15 lb/MMBtu). The 309 program also includes non-EGU subject to BART units. The non-EGU subject to BART units are four boilers located at two trona plants in Wyoming. Wyoming made a determination of what BART would be for these non-EGU units. One trona plant recently installed pollution control projects achieving a 63 percent reduction in SO_2 from its two boilers. The State of Wyoming determined this control level would serve as a BART benchmark for all trona boilers. Thus, a 63 percent reduction in emissions from these sources was included as the BART benchmark in calculating emission reductions assuming application of BART at these sources. Emission reductions or the BART benchmark for all subject to BART sources covered by the 309 program was calculated to be 48,807 tons of SO_2. We are proposing to determine the furnished analysis meets the requirements of 40 CFR 51.308(e)(2)(i)(C).

4. Projected Emissions Reductions

As required by 40 CFR 51.308(e)(2)(i)(D), the RH 309 SIP submittal has provided the expected emission reductions that would result from the 309 backstop trading program. The ''better-than-BART'' demonstration projects that 2018 baseline emissions would be 190,656 tpy of SO_2 for the sources covered by the 309 program in the participating states. The reductions achieved by the program are 48,807 tpy of SO_2, resulting in remaining emissions of 141,849 tpy of SO_2 in 2018. We are proposing to determine the analysis furnished to satisfy 40 CFR 51.308(e)(2)(i)(D) is acceptable.

5. Evidence That the Trading Program Achieves Greater Reasonable Progress Than BART

We are proposing to approve the RH 309 SIP submittal's determination that the SO_2 trading program achieves greater reasonable progress than would be achieved through the installation and operation of SO_2 BART at all sources subject to BART and covered by the SO_2 trading program in the participating states, as required by 40 CFR 51.308(e)(2)(i)(E). As the RH 309 SIP submittal explains, the program ensures that sources beyond BART sources are included. The backstop trading program includes all stationary sources with emissions greater than 100 tpy of SO_2 and thus encompasses 63 non-subject to BART sources. BART applied on a source-by-source basis would not affect these sources, and there would be no limitation on their future operations under their existing permit conditions, or allowable emissions. The milestones will cap these sources at actual emissions, which are less than current allowable emissions.

As the RH 309 SIP submittal also explains, the SO_2 trading program also provides for a cap on new source growth. Future impairment is prevented by capping SO_2 emissions growth from sources covered by the program and from entirely new sources in the region. BART applied on a source-specific basis would have no impact on future growth. The backstop trading program also provides a mass-based cap that has inherent advantages over applying BART to each individual source. The baseline emission projections and assumed reductions due to the assumption of BART-level emission rates on all sources subject to BART are all based on actual emissions, using 2006 as the baseline. If the BART process were applied on a source-by-source basis to individual sources, emission limitations would typically be established as an emission rate (lbs/hr or lbs/MMBtu) that would account for variations in the sulfur content of fuel and alternative operating scenarios, or allowable emissions. A mass-based cap that is based on actual emissions is more stringent because it does not allow a source to consistently use this difference between current actual and allowable emissions.

6. All Emission Reductions Must Take Place During the First Planning Period

The first planning period ends in 2018. As discussed in the preamble above, the reductions from the 309 program will occur by 2018. We are therefore proposing to determine the submitted plan satisfies the requirement of 40 CFR 51.309(e)(2)(iii).

7. Detailed Description of the Alternative Program

The detailed description of the backstop trading program is provided in Section C—*Sulfur Dioxide Milestones and Backstop Trading Program* of the NM RH 309 SIP submittal and Western Backstop SO_2 Trading Program Model Rule 20.2.81 NMAC, also a SIP submittal which we are proposing to approve. We propose to determine the detailed description requirement in 40 CFR 51.309(e)(2)(iii) is met. The details of the backstop trading program are discussed in section V.E of this notice.

8. Surplus Reductions

We propose to approve the determination in the RH 309 SIP submittal that all emission reductions resulting from the emissions trading program are surplus as of the baseline date of the SIP, as required by 40 CFR 51.208(e)(2)(iv).

9. Geographic Distribution of Emissions

The NM RH 309 SIP submittal includes modeling conducted by the WRAP in 2000 to compare the visibility improvement expected from BART to the backstop trading program for the Class I areas on the Colorado Plateau. A summary of the modeling results can be found in, Section M of the NM RH 309 SIP, which refers to data from modeling included in Tables 2 and 3 of Attachment C to the Annex.[19] [20] This modeling was conducted during the development of the Annex to examine if the geographic distribution of emissions under the trading program would be substantially different and disproportionately impact any Class I area due to a geographic concentration of emissions. The modeled visibility improvement for the best and worst days at the Class I areas for the 309 program is similar to improvement anticipated from the BART scenario (within 0.1 dv) on the worst and best visibility days, thus—if we assume participation consistent with the model—demonstrating that the distribution of emissions between the BART scenario and the 309 trading program are not substantially different. We note this modeling demonstration included nine states, many of which are not participating in the backstop trading program. We believe this modeling demonstration adds support to our proposed determination discussed above in this section that the RH 309 SIP submittal appropriately shows the SO_2 trading program will achieve greater reasonable progress than would be achieved through the installation and operation of SO_2 BART at all sources subject to BART and covered by the SO_2 trading program, as required by 40 CFR 51.308(e)(2)(i)(E).

E. Requirements for Alternative Programs With an Emissions Cap

Since the 309 trading program is a backstop trading program, the provisions outlined below will only apply if the milestone is exceeded and the program is triggered. We are proposing to approve 20.2.81 NMAC, which provides enforceable rules that govern the triggering and administration of the program. The analysis that follows shows that the backstop trading program is consistent with the elements for trading programs outlined in 40 CFR 51.308(e)(2)(vi), as required by Section 309. See 40 CFR 51.309(d)(4)(v).

1. Applicability Provisions

Pursuant to 40 CFR 51.308(e)(2)(vi)(A), the backstop trading program has the same applicability requirements in all states opting to participate in the program. 20.2.81.101 NMAC, which we are proposing to approve, contains the applicability provisions, which indicates that the backstop trading program generally applies to all stationary sources that emit 100 tons per year or more of SO_2 in the program trigger year. We are proposing to approve the 20.2.81.101 NMAC as meeting the requirements of 40 CFR 51.308(e)(2)(vi)(A).

2. Allowance Provisions

Part C.C1 of the SIP and 20.2.81.105 NMAC, which we propose to approve, contain the allowance allocation provisions as required by 40 CFR 51.308(e)(2)(vi)(B). The rule requires sources to open a compliance account in order to track allowances and contains other requirements associated with those accounts. These SIP provisions also contain the provisions on how the State will allocate allowances and states that the total number of allowances distributed cannot exceed the milestone for any given year. We are proposing to approve the submitted 20.2.81.105 NMAC as meeting the requirement of 40 CFR 51.308(e)(2)(vi)(B).

3. Monitoring and Recordkeeping Provisions

Pursuant to 40 CFR 51.308(e)(2)(vi)(C)–(E), the submitted rule 20.2.81.106.A.1 NMAC provides that sources subject to 40 CFR part 75 under a separate requirement from the backstop trading program shall meet the requirements contained in part 75 with respect to monitoring, recording and reporting SO_2 emissions. If a unit is not subject to 40 CFR part 75 under a requirement separate from the trading program, the State requires that a source use one of the following monitoring methods: (1) A continuous emission monitoring system (CEMS) for SO_2 and flow that complies with all applicable monitoring provisions in 40 CFR part 75; (2) if the unit is a gas- or oil-fired combustion device, the monitoring methodology in Appendix D to 40 CFR part 75, or, if applicable, the low mass emissions provisions (with respect to SO_2 mass emissions only) of section 75.19(c) of 40 CFR part 75; (3) one of the optional protocols, if applicable, in 20.2.81.111 NMAC or 20.2.81.112 NMAC; or (4) a petition for site-specific monitoring that the source submits for approval by NMED and EPA in accordance with Paragraph (5) Subsection O of 20.2.81.106 NMAC. All the above sources are required to comply with the reporting and recordkeeping requirements in 40 CFR part 75.

Although most sources covered by the backstop trading program will be able to meet the monitoring requirements stated above, there are some emission units that are either not physically able to install the needed equipment or do not emit enough sulfur dioxide to justify the expense of installing these systems. As discussed in part C5.3 of the SIP, the trading program allows these emission units to continue to use their pre-trigger monitoring methodology, but does not allow the source to transfer any allowances that were allocated to that unit for use by another source. The program requires that the allowances associated with emission units that continue to use their pre-trigger monitoring methodology be placed in a special reserve compliance account, while allowances for other emission

[19] Voluntary Emissions Reduction Program for Major Industrial Sources of Sulfur Dioxide in Nine Western States and A Backstop Market Trading Program, an Annex to the Report of the Grand Canyon Visibility Transport Commission (September 2000) at C–15 and 16.

[20] WRAP conducted modeling of the degree of visibility improvement that would occur on average and for the 20% best and worst visibility days. The WRAP used the transfer coefficients developed as part of the Integrated Assessment System (IAS) and used by the Grand Canyon Visibility Transport Commission. As noted in the Annex, this modeling has limitations which must be considered when interpreting the results.

units are placed in a regular compliance account. Sources may not trade allowances out of a special reserve compliance account, even for use by emission units at the same source, but can use the allowances to show compliance for that particular unit.

Subsection B of 20.2.81.106 NMAC allows sources with any of the following emission units to apply to establish a special reserve compliance account: (1) Any smelting operation where all of the emissions from the operation are not ducted to a stack; (2) any flare, except to the extent such flares are used as a fuel gas combustion device at a petroleum refinery; or (3) any other type of unit without add-on sulfur dioxide control equipment, if the unit belongs to one of the following source categories: cement kilns, pulp and paper recovery furnaces, lime kilns, or glass manufacturing. Pursuant to the submitted 20.2.81.106 NMAC, sources with a special reserve compliance account are required to submit to the State an annual emissions statement and sources are required to maintain operating records sufficient to estimate annual emissions consistent with the baseline emission inventory submitted in 1998.

We are proposing to approve the above discussed submitted provisions of 20.2.81 NMAC and find the submitted trading program is consistent with the monitoring, recordkeeping and reporting requirements in 40 CFR 51.308(e)(2)(vi)(C) through (E).

4. Tracking System

As required by 40 CFR 51.308(e)(2)(vi)(F), section C2 of the submitted RH 309 SIP provides the overarching specifications for an Emissions and Allowance Tracking System (EATS). According to the SIP submittal, the EATS must provide that all necessary information regarding emissions, allowances, and transactions is publicly available in a secure, centralized database. The EATS must ensure that each allowance is uniquely identified, allow for frequent updates, and include enforceable procedures for recording data. If the program is triggered, the State will work with other states and tribes participating in the trading program to implement this system. More detailed specifications for the EATS are provided in the *WEB Emission and Allowance Tracking System (EATS) Analysis.*[21] New Mexico assumes responsibility for ensuring that all the EATS provisions are completed as described in its SIP.

In addition, the State will work with the other participating states to designate one tracking system administrator (TSA). The submitted RH 309 SIP provides that the TSA shall be designated as expeditiously as possible, but no later than six months after the program trigger date. The State will enter into a binding contract with the TSA that shall require the TSA to perform all TSA functions described in the SIP and in 20.2.81 NMAC, such as transferring and recording allowances. We propose to determine the submitted trading program has adequate tracking system provisions to satisfy the requirements of CFR 51.308(e)(2)(vi)(F).

5. Account Representative

Pursuant to 40 CFR 51.308(e)(2)(vi)(G), the submitted RH 309 SIP relies on submitted rule 20.2.81.102 NMAC, which contains provisions for the establishment of an account representative. The SIP submittal requires each source to identify one account representative. The account representative shall submit to the State and the TSA a signed and dated certificate that contains a certification statement verifying that the account representative has all the necessary authority to carry out the account representative responsibilities under the trading program on behalf of the owners and operators of the sources. The certification statement also needs to indicate that each such owner and operator shall be fully bound by the account representatives representations, actions, inactions, or submissions and by any decision or order issued to the account representative by the State regarding the trading program. We are proposing to determine the submitted rule 20.2.81.102 NMAC and submitted SIP meet the requirements for ''authorized account representative provisions'' in 40 CFR 51.308(e)(2)(vi)(G).

6. Allowance Transfers

The submitted RH 309 SIP establishes procedures pertaining to allowance transfers to meet the requirement of 40 CFR 51.308(e)(2)(vi)(H). 20.2.81.107 NMAC, a submitted rule we propose to approve, contains requirements sources must follow for allowance transfers. To transfer or retire allowances, the account representative shall submit the transfer account number(s) identifying the transferor account, the serial number of each allowance to be transferred, the transferor's account representative's name and signature, and date of submission. The allowance transfer deadline is midnight Pacific Standard Time on March 1 of each year following the end of the control period. Sources must correctly submit transfers by this time in order for a source to be able to use the allowance to demonstrate compliance. We are proposing to approve 20.2.81.107 NMAC as being consistent with the program elements required at 40 CFR 51.308(e)(2)(vi)(H).

Section C3 of the RH 309 SIP submittal provides the procedures the TSA must follow to transfer allowances. The TSA will record an allowance transfer by moving each allowance from the transferor account to the transferee account as specified by the request from the source, if the transfer is correctly submitted and the transferor account includes each allowance identified in the transfer. Within five business days of the recording of an allowance transfer, the TSA shall notify the account representatives of both the transferor and transferee accounts, and make the transfer information publicly available on the Internet. Within five business days of receipt of an allowance transfer that fails to meet the requirements for transfer, the TSA will notify the account representatives of both accounts of the decision not to record the transfer, and the reasons for not recording the transfer. We are proposing to determine the submitted trading program is consistent with the ''allowance transfer provisions'' requirement of 40 CFR51.308(e)(2)(vi)(H).

7. Compliance Provisions

Pursuant to 40 CFR 51.308(e)(2)(vi)(I), the trading program in the submitted RH 309 SIP provides the procedures for determining compliance and relies on submitted rule 20.2.81.109 NMAC, which we are proposing to approve. Per this submitted rule, the source must hold allowances as of the allowance transfer deadline in the source's compliance account (together with any current control year allowances held in the source's special reserve compliance account) in an amount not less than the total SO_2 emissions for the control period from the source. The State determines compliance by comparing allowances held by the source in their compliance account(s) with the total annual SO_2 emissions reported by the source. If the comparison of the allowances to emissions results in emissions exceeding allowances, the source's excess emissions are subject to the allowance deduction penalty in 20.2.81.109 C. NMAC (discussed in further detail below). We are proposing to determine the submitted rule

[21] Western Backstop (WEB) Emissions and Allowance Tracking System (EATS) Analysis. Perrin Quarles Associates, Inc. July 18, 2003. Available at: *http://www.wrapair.org/forums/mtf/documents/eats/WEB_EATS_Final_Report_July_31.pdf.*

20.2.81.109 NMAC is consistent with the ''compliance provisions'' requirement of 40 CFR 51.308(e)(2)(vi)(I).

8. Penalty Provisions

The submitted rule 20.2.81.109 C. NMAC provides the penalty provisions required by 40 CFR 51.308(e)(2)(vi)(J). Per this section, a source's allowances will be reduced by an amount equal to three times the source's tons of excess emissions if they are unable to show compliance. We are proposing to determine the submitted rule 20.2.81 is consistent with the ''penalty provisions'' requirement of 40 CFR 51.308(e)(2)(vi)(J).

9. Banking of Allowances

As allowed by 40 CFR 51.308(e)(2)(vi)(K), 20.2.81.108 NMAC, which we propose to approve, allows sources to use allowances from current and prior years to demonstrate compliance, with some restrictions. Sources can only use 2018 allowances to show compliance with the 2018 milestone and may not use allowances from prior years. In order to insure that the use of banked allowances does not interfere with the attainment or maintenance of reasonable progress goals, the backstop trading program includes flow-control provisions (see section C4 of the RH 309 SIP submittal). The flow control provisions are triggered if the TSA determines that the banked allowances exceed ten percent of the milestone for the next control year, and thereby ensure that too many banked emissions are not used in any one year. We are proposing to determine the submitted trading program has provisions that clarifies the restrictions on the use of banked allowances, consistent with the requirement in 40 CFR 51.308(e)(2)(vi)(K).

10. Program Assessment

Pursuant to 40 CFR 51.308(e)(2)(vi)(L), section D1 of the RH 309 SIP submittal contains provisions for a 2013 assessment. For the 2013 assessment, the State will work with other participating states to develop a projected emission inventory for SO_2 through the year 2018. The State will then evaluate the projected inventory and assess the likelihood of meeting the regional milestone for the year 2018. New Mexico shall include this assessment as part of the 2013 progress report that must be submitted under 40 CFR 51.309(d)(10). We are proposing to determine the RH 309 SIP submittal is consistent with the program assessment provisions requirement in 40 CFR 51.308(e)(2)(vi)(L).

F. Provisions for Stationary Source NO_X and PM

Pursuant to 40 CFR 51.309(d)(4)(vii) and 40 CFR 51.309(g), NMED's submittal contains BART and long-term strategies to address NOx and PM emissions. An initial assessment of emissions control strategies for stationary source NOx and PM, and the degree of visibility improvement that would result from implementation of the identified strategies was prepared by the WRAP. This report, *Stationary Source NO_X and PM Emissions in the WRAP Region: An Initial Assessment of Emissions, Controls, and Air Quality Impacts,* is included in Appendix C–2 of the submitted NM RH 309 SIP. This report represents an initial assessment of stationary source NO_X and PM strategies for regional haze performed in 2003 using emission inventories, available ambient monitoring data, and very limited modeling. Based on this analysis, NMED concluded that for the majority of the Class I areas in the WRAP, NO_X and PM emissions are not major contributors to visibility impairment, and that RAVI remedies are available in cases where particular stationary sources may impact a particular Class I area. An additional assessment of long-term strategies and BART requirements for NO_X and PM are included in the NM RH 309(g) SIP. An evaluation of NMED's PM BART determination is in this section. As previously stated, we are not proposing action on the NO_X BART determination for SJGS. Evaluation of NMED's LTS is available in Section V.N.4 of this proposal. NMED has committed to reassess its NO_X and PM long-term strategies in its SIP updates in 2013 and 2018.

BART is an element of New Mexico's LTS for the first implementation period. As discussed in more detail in section III.D. of this preamble, the BART evaluation process consists of three components: (1) An identification of all the BART-eligible sources, (2) an assessment of whether those BART-eligible sources are in fact subject to BART and (3) a determination of any BART controls. NMED addressed these steps as follows:

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. NMED identified the BART-eligible sources in New Mexico by utilizing the three eligibility criteria in the BART Guidelines (70 FR 39158, July 6, 2005) and our regulations (40 CFR 51.301): (1) One or more emission units at the facility fit within one of the 26 categories listed in the BART Guidelines; (2) the emission unit(s) was constructed on or after August 6, 1962, and was in existence prior to August 6, 1977; and (3) potential emissions of any visibility-impairing pollutant from subject units are 250 tons or more per year. Table 3 above lists the BART-eligible sources in New Mexico.

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 visibility impairment at any Class I area, *i.e.* those sources that are subject to BART. The BART Guidelines allow states 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. Consistent with the BART Guidelines, NMED relied on the WRAP's initial BART screening modeling to assess the extent of each facility's contribution to visibility impairment at surrounding Class I areas and identify sources subject to BART. Appendix C of the submitted NM RH SIP for 309(g) summarizes the initial BART screening performed by the WRAP for New Mexico.

a. Modeling Methodology

The BART Guidelines provide that states may choose to use the CALPUFF 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 believe 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). NMED relied on WRAP screening modeling using the CALPUFF modeling system to determine whether individual sources in New Mexico were subject to or exempt from BART.

The BART Guidelines also recommend that states develop a modeling protocol for making individual source attributions, and suggest that states may want to consult with us and their RPO to address any issues prior to modeling. The procedures used are outlined in the WRAP Regional Modeling Center (RMC)

BART Modeling Protocol.[22] Stakeholders, including EPA, FLMs, industrial sources, trade groups, and other interested parties, actively participated in the development and review of the WRAP protocol at the time it was developed. We propose to find the chosen model and the general modeling methodology used by the WRAP to be acceptable at the time it was utilized for identifying which units were subject to BART.

b. Contribution Threshold

For states using 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 39104, 39161 (July 6, 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 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 are free to use a lower threshold if they conclude that the location of a large number of BART-eligible sources in proximity of a Class I area justifies this approach. NMED and the WRAP used a contribution threshold of 0.5 dv for determining which sources are subject to BART. The results of the visibility impacts modeling demonstrated that the majority of the individual BART-eligible sources had visibility impacts well below 0.5 dv.[23] With the exception of the San Juan Generating Station that had modeled visibility impacts well above 0.5 dv, the highest visibility impact of the remaining BART-eligible sources was 0.33 dv. We agree with the State's rationale for choosing this threshold value.

c. Sources Identified to be Subject-to-BART

The WRAP screening modeling evaluated sources that were identified as BART-eligible and determined the only sources that did not screen out in New Mexico were the four units of the SJGS. An eligible BART source with a predicted impact of 0.5 dv or more of impairment in a Class I area ''contributes'' to visibility impairment and is subject to BART.[24] A single source that is responsible for a 1.0 deciview change or more should be considered to ''cause'' visibility impairment. The results of this analysis indicated that SJGS, on a facility-wide basis, causes visibility impairment at all 16 Class I areas that lie within 300 km of the facility. However, this modeling was based on the installed control technology at the time and does not reflect emission reductions due to the installation of consent decree[25] controls. Revised modeling performed by NMED and by us, including controls required by the consent decree and currently installed, further confirmed that SJGS still causes visibility impairment at more than half of the Class I areas in the vicinity of the facility and contributes (above 0.5 deciviews) to visibility impairment at the remaining areas on a facility-wide basis. Furthermore, on an individual unit basis, all units cause visibility impairment at Mesa Verde National Park, and cause or contribute to visibility impairment at a number of other Class I areas.[26] Our modeling indicates that the visibility impairment is primarily dominated by nitrate particulates. Therefore, as the WRAP screening modeling has previously concluded, and further modeling by NMED and EPA confirms, even with post-consent decree controls on SJGS units, the SJGS units 1, 2, 3, and 4 still have a significant impact at surrounding Class I areas. Consequently, we propose to approve NMED's subject-to-BART determination and find that units 1, 2, 3, and 4 of the SJGS are the only New Mexico sources subject to BART.

3. BART Determination for SJGS

The third step of a BART evaluation is to perform the BART analysis. The BART Guidelines[27] describe the BART analysis as consisting of the following five basic 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.

The SJGS consists of four (4) coal-fired generating units and associated support facilities. Each coal-fired unit burns pulverized coal and No. 2 diesel oil (for startup) in a boiler, and produces high-pressure steam which powers a steam turbine coupled with an electric generator. Electric power produced by the units is supplied to the electric power grid for sale. Coal for the units is supplied by the adjacent San Juan Mine and is delivered to the facility by conveyor. Units 1 and 2 have a unit capacity of 350 and 360 MW, respectively. Units 3 and 4 each have a unit capacity of 544 MW.

In June, 2007, the operator of the SJGS, Public Service Company of New Mexico (PNM) submitted its PM and NO_X BART evaluation to NMED. That evaluation was revised multiple times to incorporate additional visibility modeling analyses, control technology considerations, and cost analyses.[28] NMED's final evaluation of this BART determination for NO_X and PM is available in Chapter 10 and Appendix D of the NM RH 309(g) SIP submittal. Our evaluation and proposal for action only

[22] The procedures used are outlined in the WRAP Regional Modeling Center (RMC) BART Modeling Protocol that is available at: *http://pah.cert.ucr.edu/aqm/308/bart/WRAP_RMC_BART_Protocol_Aug15_2006.pdf.*

[23] See Appendix C of the NM RH 309(g) SIP for a Summary of WRAP RMC BART Modeling for New Mexico Draft#6, December 17, 2010.

[24] 70 FR 39104, 39121 (July 6, 2005).

[25] Consent Decree in *The Grand Canyon Trust and Sierra Club, Plaintiffs, The State of New Mexico, Plaintiff-Intervenor,* v. *Public Service Company of New Mexico, Defendant,* (CV 02–552 BB/ACT (ACE)), lodged in the United States District Court, District of New Mexico, on March 10, 2005, at 15–16. The consent decree resulted in the installation of low-NO_X burners with overfire air ports and a neural network system to reduce NO_X emissions, and a full-sized pulse jet fabric filter to reduce PM emissions. The wet limestone scrubber was modified to eliminate flue gas bypass, and dibasic acid was added to the scrubber process to improve SO_2 removal. Installation of these controls on all four units was completed in the spring of 2009. The consent decree requires compliance with emission limits of 0.3 lb/MMBtu NO_X, 0.015 lb/MMBtu PM, and 90% annual average control, not to exceed 0.25 lb/MMBtu SO_2 for a seven day block average for each unit.

[26] See the TSD for our FIP, ''Visibility Modeling for BART Determination: San Juan Generating Station, New Mexico'' available in the docket to our FIP (Docket No. EPA–R06–OAR–2010–0846) and included in the docket for this action.

[27] 70 FR 39164.

[28] Public Service Company of New Mexico, San Juan Generating Station, Best Available Retrofit Technology Analysis, June 6, 2007; PNM San Juan Generating Station, BART Analysis of SNCR, May 30, 2008. PNM San Juan Generating Station, BART Analysis of Nalco Mobotec NO_X Control Technologies, August 29, 2008; Public Service Company of New Mexico, San Juan Generating Station Final particulate matter BART analysis, August 28, 2008; Public Service Company of New Mexico, San Juan Generating Station Revised SNCR Analysis, February 11, 2011 and supporting reports and analysis.

concerns the PM BART determination. As discussed above, BART requirements for SO_2 are met through New Mexico's participation in a SO_2 milestone emissions and backstop trading program. As also discussed above, we are not proposing action on the submitted NO_X BART determination for the San Juan Generating Station. The NO_X BART requirement for the source is presently satisfied by the BART determination that is effective under the federal implementation plan at 40 CFR 52.1628. We will propose action on the submitted NO_X BART determination for San Juan Generating Station through a future, separate proposal, unless the state of New Mexico earlier withdraws it in favor of an alternative that it may develop through discussions with the source and EPA.

a. New Mexico's PM BART Determination

The SJGS currently has pulse jet fabric filters installed and an emission limit of 0.015 lb/MMBtu PM. PNM identified flue gas conditioning with hot side electrostatic precipitator (ESP), pulse jet fabric filter (PJFF), compact hybrid particulate collector, and max-9 electrostatic fabric filter as available controls for PM at SJGS. At NMED's request, PNM also identified wet ESP (WESP).

Hot-side ESP and compact hybrid particulate collector were eliminated because these technologies were determined to not provide control performance lower than the currently permitted limit for PM. The max-9 electrostatic fabric filter was also eliminated due to limited application in large utility boilers. WESP and PJFF were determined to be technically feasible and were evaluated in PNM's BART analysis for PM.[29] PNM determined that PJFF and WESP are capable of achieving emission limits of 0.015 lb/MMBtu PM and 0.010 lb/MMBtu PM, respectively. PNM then evaluated the impacts, including costs of compliance, energy impacts, non-air quality impacts, and the remaining useful life, of operating WESP in addition to the existing PJFF. PNM's evaluation considered auxiliary power consumption, additional water consumption, and waste water disposal requirements, as well as cost. The installation of WESP was estimated to reduce emissions of PM by 69 tons per year (tpy) each for Units 1 and 2, 107 tpy for Unit 3 and 105 tpy at Unit 4. The addition of WESP was determined by PNM and evaluated by NMED to have a cost-effectiveness ranging from about $145,000 to $173,000 per ton of PM removed for each unit. PNM then performed modeling to investigate the visibility impacts. Based on their five-factor analysis, NMED concluded that BART for units 1–4 for PM is the existing PJFF and the existing emission limit of 0.015 lb/MMBtu.

b. Our Evaluation of New Mexico's PM BART Determination

We have determined that PNM overestimated the cost of WESP because PNM did not follow the EPA Air Pollution Control Cost Manual,[30] where possible, as directed by the BART Guidelines.[31] For example, PNM's cost analysis includes costs not allowed under EPA's Cost Manual methodology, such as Allowance for Funds Used During Construction (AFUDC).[32] PNM's visibility analysis shows a maximum visibility improvement of 0.62 dv from WESP being installed on all four units at Mesa Verde and 0.14 dv improvement at San Pedro Parks. Visibility benefits at other Class I areas are below 0.1 dv. As discussed in detail in the FIP and accompanying TSD,[33] we identified inconsistencies between PNM's modeling and EPA guidance. In our evaluation of NMED's PM BART determination we considered these deviations from EPA guidance for cost estimates and visibility impact analysis. We note that some visibility benefit is anticipated at Mesa Verde through the installation of WESP at SJGS. However, given the high anticipated cost on a $/ton removed basis for WESP at SJGS, even if we corrected the cost estimate to be consistent with EPA guidance, we believe the cost of installation and operation of WESP would not be cost-effective. Therefore, we propose to approve NMED's PM BART determination for the SJGS that PM BART is satisfied by the existing PJFF and the existing emission limit of 0.015 lb/MMBtu.

G. Mobile Sources

Pursuant to 40 CFR 51.309(d)(5)(i), New Mexico, in collaboration with the WRAP, assembled a comprehensive statewide inventory of mobile source emissions that was included in the RH 309 SIP submittal. The inventory included on-road and non-road mobile source emissions inventories for Western states for the time period 1996 through 2018, inventorying 1996, and then projecting 2003, 2008, 2013, and 2018.[34] These inventories for New Mexico are summarized in Tables D–1 and D–2 of the NM RH 309 SIP and described in Chapter 5 of the WRAP TSD.[35] Mobile source emissions (on-road and non-road) are projected to be at their lowest level within New Mexico at the end of the planning period, primarily due to on-road vehicle emission and fuel standards by the EPA, with the exception of SO_2.

An emission inventory update was also done for a 2002 base year and emission projections for the years 2008, 2013, and 2018.[36] The inventory shows a continuous decline in emissions from mobile sources from VOC, NO_X, $PM_{2.5}$, elemental carbon (EC), and organic carbon (OC) emissions over the period of 2002–2018. Per 40 CFR 51.309(d)(5)(i)(A), the inventories show a decline in mobile source emissions and therefore no further action is required by New Mexico to address mobile source emissions.

Pursuant to 40 CFR 51.309(d)(5)(i)(B), the State will submit a SIP revision no later than December 31, 2013, containing any long-term strategies necessary to reduce SO_2 emissions from non-road mobile sources consistent with the goal of reasonable progress if necessary based on consideration of the emission reductions achieved by Federal standards. We note the updated available emission inventory projections show that there will be a 99 percent decrease in SO_2 emissions from non-road mobile sources for 2002–2018. The reduction will result from compliance with EPA's rule titled *Control of Emissions of Air Pollution from Non-*

[29] Public Service Company of New Mexico, San Juan Generating Station Final particulate matter BART analysis, PNM (August 28, 2008).

[30] U.S. EPA, EPA Air Pollution Control Cost Manual, Report EPA/452/B–02–001, 6th Ed., January 2002 (''Cost Manual''), The EPA Air Pollution Control Cost Manual is the current name for what was previously known as the OAQPS Control Cost Manual, the name for the Cost Manual in previous (pre-2002) editions of the Cost Manual.

[31] In order to maintain and improve consistency, cost estimates should be based on the OAQPS Control Cost Manual, where possible. 70 FR 39104, 39166 (2005).

[32] There may be other deficiencies in New Mexico's cost evaluation of PM BART for the SJGS, but we take no position on them, as they are moot in light of the potential visibility benefits versus the order of any possible magnitude adjustment in New Mexico's cost analysis.

[33] The proposed FIP, the TSD, and the Final Rule are added to the docket for this rule making and are also available in the docket to our FIP (Docket No. EPA–R06–OAR–2010–0846).

[34] Summary and Discussion of 1996 Through 2018 Mobile Source Emissions Inventories. Technical Memo from Tom Moore to Mobile Sources Forum. November 26, 2002.; Final Report: Development of WRAP Mobile Source Emission Inventories, ENVIRON, Feb. 9, 2004.

[35] WRAP Regional Technical Support Document for the Requirements of § 309 of the Regional Haze Rule (64 FR 35714–July 1, 1999) revised May 7, 2008.

[36] Detailed information on the emission inventory is contained in the ENVIRON Report *WRAP Mobile Source Emission Inventories Update,* May 2006.

road Diesel Engines and Fuel. 69 FR 38958 (June 29, 2004). A 99 percent reduction in SO_2 from non-road mobile sources is consistent with the goal of reasonable progress and no other long-term strategies are necessary to address SO_2 emissions from non-road mobile sources at this time. Pursuant to 40 CFR 51.309(d)(5)(ii), the State will submit interim reports to EPA in 2013 and 2018 on the implementation of regional and local recommendations from the GCVTC report pertaining to mobile sources. New Mexico will include these reports as part of the reports required by 40 CFR 51.309(d)(10). We propose to determine the RH 309 SIP submittal satisfies the requirements of 51 CFR 51.309(d)(5).

H. Programs Related to Fire

Pursuant to 40 CFR 51.309(d)(6)(i), the NM RH 309 SIP must provide for an evaluation of how its SIP meets the ''Programs related to fire'' requirements. Based on our review of Section E of the 309 SIP, we propose to find that the submittal meets the 309(d)(6) requirements as discussed in detail below. We also propose approval of 20.2.65 NMAC, *Smoke Management,* and revisions to 20.2.60 NMAC, *Open Burning,* both submitted on December 1, 2003. The 2003 submittal of 20.2.60 NMAC replaces the state's Open Burning that we previously approved as part of the New Mexico SIP at 62 FR 50514 (September 26, 1997). By proposing to approve the 2003 submittal, we are proposing to repeal from the New Mexico SIP the earlier version of the Open Burning Rule.

1. Evaluation of Current Fire Programs

The State's submittal meets 51.309(d)(6)(i) as it demonstrates how its smoke management program and all federal or private programs for prescribed fire in New Mexico have a mechanism in place for evaluating and addressing the degree of visibility impairment from smoke in their planning and application of burning. New Mexico has adopted 20.2.65 NMAC to meet regional haze rule requirements. New Mexico has also submitted revisions to 20.2.60 NMAC as a SIP revision. See submittals at the EPA docket identified No. EPA–R06–OAR–2009–0050. We note that 20.2.60 NMAC, the rule for Open Burning, is not strictly related to the satisfaction of regional haze requirements. We first approved the State's open burning regulation (20.2.60 NMAC) into the SIP on September 26, 1997 at 62 FR 50518, and we propose to approve the submitted 20.2.60 NMAC as improving the SIP. Because this new open burning rule is an improvement over the SIP open burning rule, we also are proposing to remove from the SIP, the previously approved open burning rule. Among other things, 20.2.60 NMAC adds new restrictions on the burning of household waste. A more detailed discussion of our proposed approval of the Smoke Management rule and Open Burning rule can be found in Appendix B of the Technical Support Document (TSD) that accompanies this notice.

We propose to find that the NM RH 309 SIP submittal and the companion rules meet the specific additional requirements of 309(d)(6)(i) which address: (a) Actions to minimize emissions, (b) evaluation of smoke dispersion, (c) alternatives to fire, (d) public notification, (e) air quality monitoring, (f) surveillance and enforcement, and (g) program evaluation. These are discussed below.

a. Actions To Minimize Emissions

In order to minimize emissions, New Mexico's RH 309 SIP relies on the use of emission reduction techniques by burners. Any techniques used in conjunction with burning that reduce the actual amount of emissions produced from a planned burn project are considered emission reduction techniques. The Smoke Management Rule submittal requires land managers burning SMP–II burns (burn projects that emit greater than or equal to one ton of PM_{10} emissions per day) to use at a minimum one emission reduction technique for each planned burn project. See 20.2.65.103.C NMAC. SMP–II burners will indicate on the required form which emission reduction techniques are being utilized for each planned burn project. We propose to find that these portions of the Smoke Management rule meet the requirement to address actions to minimize emissions.

b. Evaluation of Smoke Dispersion

The Smoke Management Rule only allows SMP–I burns (burn projects that emit less than one ton per day of PM_{10} emissions) to be ignited during daytime hours when the ventilation index category is rated ''Good'' or better. See 20.2.65.102.A(2)(a) NMAC. To comply with this requirement, the burner must conduct visual monitoring and document the results in writing. For burns within 1 mile of a population, the burner must notify the department at least two business days in advance and NMED may choose to conduct instrument monitoring. See 20.2.65.102.A(2)(b).

For SMP–II burns, the Smoke Management rule provides the burner can ignite a planned burn project only during times when the ventilation category is ''Good'' or better,[37] and must notify the public at least two days prior to the burn. See 20.2.65.103.D. The burner must conduct visual monitoring and document the results in writing. NMED may choose to conduct instrument monitoring in addition to visual monitoring. See 20.2.65.103.J.(1). We propose to find that these portions of the Smoke Management rule meet the requirement for evaluation of smoke dispersion.

c. Alternatives to Fire

The NM RH 309 SIP requires, through the Smoke Management Rule, that for burns exceeding 1 ton PM_{10} emissions per day, burners must consider the use of alternatives to burning. See 20.2.65.103.B and C. Burners must then document that the use of alternatives to burning was considered prior to the decision to utilize fire. The documentation includes citing the feasibility criterion that prevented the use of alternatives. This documentation must be included on the registration form provided by the NMED. The burner must maintain all records of actions and maintain such records for a minimum of one year. See 20.2.65.103.K. We propose to find that these portions of the Smoke Management Rule meet the requirement to consider alternatives to fire.

d. Public Notification

To meet the public notification requirements, the Smoke Management rule contains requirements for public notice for burn projects planned in proximity to population. For example, 20.2.65.102.E requires for SMP–I burns, that burners notify the populations that are located with one mile of the planned burn project. The burner must conduct public notification no sooner than 30 days and no later than two days in advance of the ignition of the planned burn project. In addition, under 20.2.65.102.B, the burner must notify the local fire authorities prior to igniting a burn and register the burn project with NMED. For SMP–II burns, the 20.2.65.103.J requires that burners notify the populations within 15 miles of the planned burn project. The burner must conduct public notification no sooner than 30 days and no later than

[37] Ventilation category is a classification that describes the potential for smoke to ventilate away from its source. The classification (Excellent, Very Good, Good, Fair, Poor) is determined by multiplying the mixing height in feet by the transport winds in knots, thus providing the ventilation category in knot-feet. The ventilation category can be found in the National Weather Service's Fire Weather Forecast, which is the State approved source for this information.

two days in advance of the ignition of the planned burn project. In addition, the burner will also notify the local fire authorities prior to igniting a burn and register the burn project with NMED under 20.2.65.103.F. We propose to find that these portions of the Smoke Management rule meet the requirement to address notification of the public.

e. Air Quality Monitoring

To address air quality monitoring, the Smoke Management rule requires that SMP–I and SMP–II burners conduct and document visual monitoring on all planned burn projects under 20.2.65.102.A(2)(b) and 20.2.65.103.E. The use of monitoring equipment will be based on the planned burn project's proximity to a population, nonattainment area, or Class I area and will be determined on a case-by-case basis by NMED. We propose to find that this portion of the Smoke Management rule meets this requirement.

f. Surveillance and Enforcement

To address surveillance and enforcement requirements, 20.2.65 NMAC requires that the permittee submit reports and burn project tracking forms to the NMED on SMP–I and SMP–II burns. See 20.2.65.102D NMAC and 20.2.65.103I NMAC. The New Mexico Air Quality Control Act, NMSA 1978 Chapter 74, Article 2 authorizes enforcement actions and the assessment of civil penalties for violations. Section E of the State's submittal contains a more detailed explanation of the existing procedures in place to address this. We propose to find that the current SIP and the State's enforcement mechanisms meet this requirement.

g. Program Evaluation

Pursuant to 40 CFR 51.309(d)(6)(i), the RH SIP submittal also contains an evaluation of whether its smoke management program and these prescribed fire smoke management programs contain the following elements: actions to minimize emissions; evaluation of smoke dispersion; alternatives to fire; public notification; air quality monitoring; surveillance and enforcement; and program evaluation. The SIP at Section E and Appendix E–1 describe the results of these evaluations in detail. For example, NMED, in its RH 309 SIP, commits to hosting an annual meeting with all burners and interested stakeholders to assess the adequacy of the design, impact, and implementation of the program. These program evaluations will be used to revise and improve the smoke management plan, as needed. The State also commits to review gathered data with stakeholders on an annual basis that will serve to establish annual emissions goals. In addition, that State has adopted a Smoke Management regulation at 20.2.65 NMAC that serves as the foundation of the smoke management plan, which the NMED administers and enforces. We propose to find that the New Mexico RH SIP submittal meets the requirement for program evaluation under 51.309(d)(6)(i).

2. Inventory and Tracking System

We propose to find the RH 309 SIP meets the requirements of 40 CFR 51.309(d)(6)(ii) for fire emissions inventorying and tracking. Pursuant to 40 CFR 51.309(d)(6)(ii), States must include in their section 309 plan a statewide process for gathering the essential post-burn activity information to support emissions inventory and tracking systems. The SIP submittal provides for a host of inventory and tracking measures that we believe meet the 309(d)(6)(ii) requirement. For example, the State follows the WRAP's guidance, ''Fire Tracking System Policy,'' on establishing an adequate system for tracking and emissions inventory of the following pollutants: VOC, NOx, elemental carbon, organic carbon, and fine particulate for fire sources within New Mexico. The SIP follows the WRAP's policies on emission inventory and tracking requirements that can be found in section E (c) and Appendix M–2, and Appendix E–6 of the state's submittal. In order to maintain the emission inventory, 20.2.65.102.D and 20.2.65.103.I NMAC requires the burners to complete and submit to the NMED a burn project tracking form within two weeks after completion of the burn activity to report on emissions from their burns including quantitative information regarding fuel types, fuel consumption, and type of burn. We are proposing to determine that the RH SIP submittal and the submitted Smoke Management rule meet these requirements.

3. Identification and Removal of Administrative Barriers

We propose to find that the NM RH 309 SIP submittal meets the 40 CFR 51.309(d)(6)(iii) requirements to address administrative barriers to facilitate alternatives to burning. Section E(d) and Appendix E–2 of the state's RH 309 SIP, describe the process the NMED commits to undertake to address this requirement.

In section E(d) of the SIP, the State commits to working with key public and private entities to identify and remove administrative barriers to the use of alternatives to burning for prescribed fire on federal, State, and private lands, pursuant to 40 CFR 51.309(d)(6)(iii). The process is collaborative and provides for continuing identification and removal of administrative barriers, and considers economic, safety, technical and environmental feasibility criteria, and land management objectives. The State relied on *Non-burning Alternatives for Vegetation and Fuel Management,* and *Burning Management Alternatives on Agricultural Lands in the Western United States* developed by the WRAP for non-burning alternatives and methods to assess their applicability. Should New Mexico determine that an administrative barrier exists, the State will work collaboratively with the appropriate public and private entities to evaluate the administrative barrier, identify the steps necessary to remove the administrative barrier, and initiate the removal of the administrative barrier, where it is feasible to do so. For example, NMED is committed to review the registration forms required for burns conducted under SMP II that requires burners to identify why alternatives to burning have not been used. The State commits to collect this data and analyze it to determine whether administrative barriers to the use of alternatives exist. The state commits to evaluate this information at the annual program evaluation meeting to be held each year in January with all burners. Should it be determined that a specific administrative barrier exists, New Mexico will contact the appropriate agency to determine how this barrier may be removed and will work collaboratively with the agency and the burners to remove the barrier. We accordingly, believe the requirement to address administrative barriers is satisfied.

4. Enhanced Smoke Management Program

We propose to find the submitted RH 309 SIP provides enhanced smoke management programs to meet the requirements of 40 CFR 51.309(d)(6)(iv). The smoke management programs that operate within the State are consistent with the *WRAP Policy on Enhanced Smoke Management Programs for Visibility* (WRAP ESMP). A copy of this policy can be found in the Appendix E–4 of the NM RH 309 SIP. This policy calls for programs to be based on the criteria of efficiency, economics, law, emission reduction opportunities, land management objectives, and reduction of visibility impacts. The intent of the WRAP ESMP is to assist states to

address visibility effects associated with fire in a way that is adequate for a SIP. Appendix E–1 of the NM RH 309 SIP explains how the smoke management program in New Mexico meets the Enhanced Smoke Management Program (ESMP) policy and the Regional Haze Rule (RHR) requirements. The RH 309 SIP submittal and the submitted Smoke Management rule meet the requirements as described above.

5. Annual Emission Goal

We propose to find the submitted RH 309 SIP satisfies the requirements of 40 CFR 51.309(d)(6)(v) for ''annual emission goals for fire, excluding wildfire.'' In its RH 309 SIP, the state commits to minimizing emission increases in fire through the use of annual emission goals using the policies set out by *Western Regional Air Partnership Policy on Annual Emission Goals for Fire.* A copy of this policy can be found in the Appendix E–5 of the NM RH 309 SIP. The State will use a collaborative mechanism for setting annual emission goals and developing a process for tracking their attainment on a yearly basis. New Mexico will rely on emission reduction techniques (ERT), where appropriate, to minimize emission increases in fire within the State. The State will quantify the ERTs that are being used within New Mexico on a project-specific basis to reduce the total amount of emissions being generated from areas where prescribed fire is being used. 20.2.65 NMAC, requires the use of at least one ERT for all prescribed fires with emissions exceeding one ton of PM_{10} per day.

Based on our review of Section E and Appendix E of the state's RH 309 submittal, we propose to find the submitted SIP meets the 309(d)(6)(v) requirements. We also propose approval of the state's Smoke Management and Open Burning rules submitted to us on December 1, 2003.

I. Paved and Unpaved Road Dust

To meet the requirements of 40 CFR 51.309(d)(7), the submitted RH 309 SIP relies on the assessment WRAP performed on the impact of dust emissions from paved and unpaved roads on the 16 Class I areas of the Colorado Plateau. The WRAP modeled and calculated the significance of road dust in terms of the impact on visibility on the worst 20 percent days. The modeled regional impact of road dust emissions ranged from 0.31 deciviews at the Black Canyon of the Gunnison National Park to 0.08 deciviews at the Weminuche Wilderness Area. For more information on the WRAP modeling and assessment of road dust impacts see Appendix F of the NM RH 309 SIP submittal and Chapter 7 of the WRAP TSD.[38] Based on the WRAP modeling, the State has concluded in section F of the SIP that road dust is not a significant contributor to visibility impairment in the 16 Class I areas. We propose to agree that road dust is not a significant contributor to visibility impairment in the 16 Class I areas. Since the State has found that road dust is not a significant contributor to visibility impairment, there is no need to include road dust control strategies in the SIP pursuant to 40 CFR 51.309(d)(7). The State will track road dust emissions with the assistance of the WRAP and provide an update on paved and unpaved road dust emission trends, including any modeling or monitoring information regarding the impact of these emissions on visibility in the 16 Colorado Plateau Class I Areas. A description of the road dust emission tracking program is included in Appendix M–3 of the NM RH 309 SIP. These updates will include a reevaluation of whether road dust is a significant contributor to visibility impairment. These updates shall be part of the periodic implementation plan revisions pursuant to 40 CFR 51.309(d)(10). We propose to determine the submitted RH 309 SIP satisfies 40 CFR 51.309(d)(7).

J. Pollution Prevention

Under 40 CFR 51.309(d)(8), states must provide information on renewable energy and other pollution prevention efforts in the state. 40 CFR 51.309(d)(8) does not require states to adopt any new measures or regulations. We propose to find the information New Mexico provided in the RH 309 SIP submittal adequate to meet the requirements of 40 CFR 51.309(d)(8) as discussed below.

1. Description of Existing Pollution Prevention Program

Pursuant to 40 CFR 51.309(d)(8)(i), Tables G–1 through G–3 of the NM RH 309 SIP submittal summarize all pollution prevention programs currently in place in New Mexico (as of 2002). Appendix G summarizes all renewable energy capacity and production in use or planned in the State as of 2002, the total energy generation capacity and production in the State and the percent of that total that is renewable.

2. Incentive Programs

Per 40 CFR 51.309(d)(8)(ii), Table G–6 of the RH 309 SIP submittal identifies incentive programs in the State of New Mexico that reward efforts for early compliance or to go beyond compliance with air pollution related requirements. Table G–6 lists the Green Zia Environmental Excellence Program that encourages establishment of prevention-based environmental management systems. The 309 regional SO_2 backstop trading program allows for early reduction credits. Sources of SO_2 subject to the trading program that reduce emissions prior to the program trigger date shall receive early reduction bonus allocations (20.2.81.104E NMAC). The source may use such allowances for compliance purposes or may sell them to other parties.

3. Programs To Preserve and Expand Energy Conservation Efforts

Per 40 CFR 51.309(d)(8)(iii), Tables G–1 through G–5 of the NM RH 309 SIP submittal discuss the policies and programs within the State of New Mexico that preserve and expand energy conservation efforts and renewable energy.

4. Potential for Renewable Energy

Pursuant to 40 CFR 51.309(d)(8)(iv), the RH 309 SIP submittal contains an assessment of areas where there is the potential for renewable energy to supply power in a cost effective manner. Appendix G of the submitted RH 309 SIP summarizes the potential for renewable energy development in New Mexico.

5. Projections of Renewable Energy Goals, Energy Efficiency, and Pollution Prevention Activities

Pursuant to 40 CFR 51.309(d)(8)(v), the submitted RH 309 SIP uses projections made by the WRAP of the short and long-term emissions reductions, visibility improvements, cost savings, and secondary benefits associated with renewable energy goals, energy efficiency, and pollution prevention activities. (A complete description of these projections can be found in Appendix G of the NM RH 309 SIP.) The NM RH 309 SIP provides overall projections of visibility improvements for the 16 Class I areas (Table 2). These projections include the combined effects of all measures in this SIP, including air pollution prevention programs. Although emission reductions and visibility improvements from air-pollution prevention programs are expected at some level, they were not explicitly calculated because the resolution of the regional air quality modeling system is not currently sufficient to show any significant visibility changes resulting from the marginal nitrogen oxide emission

[38] WRAP Regional Technical Support Document for the Requirements of § 309 of the Regional Haze Rule (64 **Federal Register** 35714–July 1, 1999) revised May 7, 2008.

expected from air pollution prevention programs.

6. Programs To Achieve GCVTC Renewable Energy Goal

Pursuant to 40 CFR 51.309(d)(8)(vi), the submitted RH 309 SIP indicates the State will rely on current renewable energy programs as described in G–1 through G–5 and Appendix G of the SIP submittal to demonstrate progress in achieving the renewable energy goal of the GCVTC. The GCVTC's goal is that that renewable energy will comprise 10 percent of the regional power needs by 2005 and 20 percent by 2015. New Mexico will submit progress reports in 2013 and 2018, describing New Mexico's contribution toward meeting the GCVTC renewable energy goals. To the extent that it is not feasible for New Mexico to meet its contribution to these goals, the State will identify what measures were implemented to achieve its contribution, and explain why meeting its contribution was not feasible.

K. Additional Recommendations

As part of the 1996 GCVTC report to EPA, *Recommendations for Improving Western Vistas,*[39] the Commission included additional recommendations that EPA did not adopt as part of 40 CFR 51.309. Pursuant to 40 CFR 51.309(d)(9), the submitted RH 309 SIP has an evaluation of the additional recommendations of the GCVTC to determine if any of these recommendations could be practicably included in the SIP. The RH 309 SIP includes the determination that no additional measures were practicable or necessary to demonstrate reasonable progress in the SIP. Pursuant to 40 CFR 51.309(d)(9), the State will submit to EPA a progress report in 2013 and 2018 on the progress toward developing and implementing policy or strategy options recommended in the Commission report. We propose to determine the RH 309 SIP submittal meets the requirements of 40 CFR 51.309(d)(9).

L. Periodic Implementation Plan Revisions

Pursuant to 40 CFR 51.309(d)(10)(i), section I of the NM RH 309 SIP submittal requires the State to submit to EPA, as a SIP revision, periodic progress reports for the years 2013 and 2018. New Mexico will assess whether current programs are achieving reasonable progress in Class I areas that are affected by emissions from New Mexico sources. New Mexico will address the elements listed under 40 CFR 51.309(d)(10)(i)(A) through (G) in the progress reports.

Pursuant to 40 CFR 51.309(d)(10)(ii), the RH 309 SIP submittal provides that the state will take one of the following actions based upon information contained in each periodic progress report. The State will provide a negative declaration statement to EPA saying that no SIP revision is needed if New Mexico determines reasonable progress is being achieved. If New Mexico finds that the SIP is inadequate to ensure reasonable progress due to emissions from outside New Mexico, the State will notify EPA and the contributing state(s), and initiate efforts through a regional planning process to address the emissions in question. If New Mexico finds that the SIP is inadequate to ensure reasonable progress due to emissions from another country, New Mexico will notify EPA and provide information on the impairment being caused by these emissions. If New Mexico finds that the SIP is inadequate to ensure reasonable progress due to emissions from within the State, New Mexico will develop emission reduction strategies to address the emissions and revise the SIP no later than one year from the date that the progress report was due. We propose to determine the RH 309 SIP submittal adequately addresses the requirements of 40 CFR 51.309(d)(10) for future progress reports.

M. Interstate Coordination

Pursuant to 40 CFR 51.309(d)(11), the State has participated in regional planning and coordination with other states by participating in the WRAP, and participating in interstate coordination efforts with the City of Albuquerque-Bernalillo County while developing its emission reduction strategies under 40 CFR 51.309. The backstop trading program in the NM RH 309 SIP submittal and companion rules involved coordination of the three states (Wyoming, Utah, and New Mexico, including Albuquerque-Bernalillo County) in its development and will continue to involve coordination of the participants once it is implemented. We propose to determine the submitted RH 309 SIP is consistent with the 40 CFR 51.309(d)(11).

N. Additional Class I Areas

Pursuant to 40 CFR 51.309(g), New Mexico must demonstrate reasonable progress for mandatory Class I Federal areas other than the 16 Class I areas covered by the GCVTC. With the RH 309 SIP submittal discussed above, New Mexico submitted a separately marked ''309(g)'' SIP revision, supported by various technical appendices. As discussed below, we have evaluated the demonstration in the 309(g) SIP submittal of the expected visibility conditions for the most and least impaired days at the additional Class I areas based on emission projections from the long-term strategies in the implementation plan. We have also evaluated the provisions establishing reasonable progress goals for the additional class I areas as required by 40 CFR 51.309(g)(2), as detailed below. These provisions must comply with 40 CFR 51.308(d)(1) through (4).

1. Affected Class I Areas

In accordance with 40 CFR 51.308(d), NMED has identified nine Class I areas within its borders, Bandelier Wilderness Area, Bosque del Apache National Wildlife Refuge, Carlsbad Caverns National Park, Gila Wilderness, Pecos Wilderness, Salt Creek Wilderness, Wheeler Peak Wilderness, White Mountain Wilderness, and San Pedro Parks Wilderness Area. As discussed above, the San Pedro Parks Wilderness Area is the only Class I area included as one of the 16 Class I areas of the Colorado Plateau and visibility requirements for this area are covered under the NM RH 309 SIP submittal evaluated in the preceding sections. NMED has also determined that New Mexico emissions can impact visibility at Class I areas outside of New Mexico. NMED evaluated the impact of New Mexico emissions at Class I areas in Arizona, Colorado, Nevada, Utah, Texas and Wyoming, based on modeled visibility for 2002 and projections of visibility in 2018 for the 20% worst visibility days focusing on available source apportionment modeling data for nitrate and sulfate. The modeling results for the 2002 base year indicate that New Mexico emissions are responsible for up to 60% of the nitrate concentrations and 43% of the sulfate at individual Class I areas in neighboring states on the 20% worst visibility days. See our TSD that accompanies this notice and Chapter 12 of the NM RH 309(g) SIP for more information on New Mexico's impact at specific Class I areas in nearby states. We are proposing to find that New Mexico has appropriately identified the Class I areas within New Mexico and the Class I areas outside of New Mexico which may be affected by emissions from within New Mexico, as required by 40 CFR 51.308(d).

2. Determination of Baseline, Natural and Current Visibility Conditions

As required by section 51.308(d)(2)(i) of the RHR and consistent with EPA's

[39] Recommendations for Improving Western Vistas, Report of the Grand Canyon Visibility Transport Commission to the EPA, June 1996. Available at: *http://www.wrapair.org/WRAP/reports/GCVTCFinal.PDF.*

2003 Natural Visibility Guidance,[40] the RH 309(g) SIP submittal includes calculations of the baseline/current and natural visibility conditions for the additional Class I areas, on the most impaired and least impaired days, as summarized below (and further described in the TSD). The natural visibility conditions, baseline visibility conditions, and visibility impact reductions needed to achieve the natural visibility conditions are presented in Table 7 and further explained in this section. More detail is available in Chapter 6 of the NM RH 309(g) SIP submittal.

TABLE 7—BASELINE AND NATURAL VISIBILITY CONDITIONS AT NEW MEXICO'S CLASS I AREAS *

Class I area	IMPROVE Monitor	2064 Natural visibility conditions (dv)		Baseline visibility conditions (dv)		Difference (dv)	
		20% Worst days	20% Best days	20% Worst days	20% Best days	20% Worst days	20% Best days
Bandelier	BAND1	6.26	1.29	12.22	4.95	5.96	3.66
Bosque del Apache	BOAP1	6.73	2.16	13.80	6.28	7.07	4.12
Carlsbad Caverns	GUMO1	6.65	0.99	17.19	5.95	10.54	4.96
Gila Wilderness	GICL1	6.66	0.52	13.11	3.31	6.45	2.79
Pecos Wilderness, Wheeler Park.	WHPE1	6.08	[41] −0.57	10.41	1.22	4.33	1.79
Salt Creek	SACR1	6.81	2.12	18.03	7.84	11.22	5.72
White Mountains	WHIT1	6.8	0.66	13.70	3.55	6.90	2.89

* **Note:** Because the San Pedro Parks Wilderness Area is on the Colorado Plateau, it is not subject to the requirements of Section 51.309(g) and is therefore missing from this and other tables in this section. Baseline and projected visibility conditions for San Pedro Parks Wilderness Area can be found in Table 1.

a. Estimating Natural Visibility Conditions

Natural background visibility, as defined in EPA's 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 EPA's 2003 Natural Visibility Guidance, EPA allows states to use ''refined'' or alternative approaches to 2003 EPA 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.[42] 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.

NMED opted to use the WRAP calculations in which the default estimates for the natural conditions were combined with the ''new IMPROVE equation,'' for the Class I areas in New Mexico. This is an acceptable approach under our 2003 Natural Visibility Guidance. NMED used the new IMPROVE equation to calculate the ''refined'' natural visibility value for the 20 percent worst days and for the 20 percent best days.[43] The natural conditions for New Mexico's Class I areas are summarized in Table 7, above. We have reviewed NMED's estimate of the natural visibility conditions and propose to find it acceptable using the new IMPROVE equation.

The new IMPROVE equation takes into account the most recent review of the science[44] and it accounts for the effect of particle size distribution on light extinction efficiency of sulfate, nitrate, and organic carbon. It also adjusts the mass multiplier for organic carbon (particulate organic matter) by increasing it from 1.4 to 1.8. New terms are 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, elemental carbon (light-absorbing carbon), fine soil, and coarse mass terms, do not change between the original and new IMPROVE equations.

[40] Guidance for Estimating Natural Visibility Conditions Under the Regional Haze Rule, EPA–454/B–03–005, September 2003.

[41] Negative deciview values correspond to total extinction less than 10 Mm^{-1}, and can occur in areas of high elevation with lower Rayleigh Scattering, WHPE1 is located at an elevation of 11,000 ft.

[42] 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 participant in visibility-related research, including the advancement of monitoring instrumentation, analysis techniques, visibility modeling, policy formulation and source attribution field studies.

[43] Natural Haze levels for Class I areas and information calculation methodology can be found at: *http://vista.cira.colostate.edu/improve/Data/IMPROVE/summary_data.htm.*

[44] 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 Interagency Monitoring of Protected Visual Environments (IMPROVE), Colorado State University, Cooperative Institute for Research in the Atmosphere, Fort Collins, Colorado, available at *http://vista.cira.colostate.edu/improve/publications/GrayLit/016_IMPROVEeqReview/IMPROVEeqReview.htm* 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, available at *http://vista.cira.colostate.edu/improve/Publications/GrayLit/029_NaturalCondII/naturalhazelevelsIIreport.ppt.*

b. Estimating Baseline Visibility Conditions

As required by section 51.308(d)(2)(i) of the RHR and consistent with EPA's 2003 Natural Visibility Guidance,[45] the 309(g) SIP submittal calculates baseline visibility conditions for the eight additional Class I areas. The baseline condition calculation begins with the calculation of light extinction, using the IMPROVE equation. The IMPROVE equation sums the light extinction[46] resulting from individual pollutants, such as sulfates and nitrates. As with the natural visibility conditions calculation, NMED chose to use the new IMPROVE equation.

The period for establishing baseline visibility conditions is 2000–2004, and baseline conditions must be calculated using available monitoring data. 40 CFR 51.308(d)(2). NMED calculated the baseline conditions at the Class I areas on the 20 percent worst days and 20 percent best days using available monitoring data for each Class I area. We have reviewed NMED's estimation of baseline visibility conditions and propose to find it acceptable.

c. Natural Visibility Impairment

To address the requirements of 40 CFR 51.308(d)(2)(iv)(A), the 309(g) SIP submittal also calculated the number of deciviews by which baseline conditions exceed natural visibility conditions at the State's Class I areas. These results are summarized in Table 7. We have reviewed NMED's estimate of the natural visibility impairment and propose to find it acceptable.

d. Uniform Rate of Progress

In setting the RPGs, the 309(g) SIP submittal analyzes and determines the Uniform Rate of Progress (URP) needed to reach natural visibility conditions by the year 2064 for the 20% worst days (Table 8). In so doing, NMED compared the baseline visibility conditions to the natural visibility conditions at each Class I area within the State (as described above) and determined the amount of improvement necessary to attain natural visibility conditions. The uniform rate of progress is calculated as the rate of improvement needed to attain natural visibility conditions for the 20% worst days by 2064 as described in Section 6.5 of the NM RH 309(g) SIP. NMED constructed the uniform rate of progress consistent with the requirements of the Regional Haze Rule and consistent with our 2003 Tracking Progress Guidance by plotting a straight graphical line from the baseline level of visibility impairment for 2000–2004 to the level of visibility conditions representing no anthropogenic impairment in 2064 for each New Mexico Class I area. The uniform rates of progress are summarized in Table 8 and further described below. We propose to find that NMED in its 309(g) SIP submittal has appropriately calculated the URP.

3. Evaluation of New Mexico's Reasonable Progress Goals

In order to establish reasonable progress goals for New Mexico's Class I areas and to determine the controls needed for the LTS, New Mexico followed the process established in the Regional Haze Rule. First, New Mexico identified the anticipated visibility improvement in 2018 in the New Mexico Class I areas using the WRAP Community Multi-Scale Air Quality (CMAQ) photochemical grid modeling results. This modeling identified the extent of visibility improvement from the baseline by pollutant for each Class I area. The modeling relied on projected source emission inventories, which included enforceable federal and state regulations already in place and assumptions of BART controls. New Mexico, through the WRAP, then identified the source categories that are major contributors to visibility impairment and evaluated controls for these sources based on a consideration of the factors identified in the CAA and EPA's regulations. See CAA 169A(g)(1) and 40 CFR 51.308(d)(1)(i)(A). Based on this analysis, the submitted 309(g) SIP sets the reasonable progress goals for each Class I area and compared the reasonable progress goals for each area to the 2018 uniform rate of progress.

• The submitted 309(g) SIP includes New Mexico's analysis and conclusion that reasonable progress will be made by 2018, including an analysis of pollutant trends, emission reductions, and improvements expected. The reasonable progress discussion and analyses are included in Chapter 11 of the NM RH 309(g) SIP. We have evaluated the 309(g) SIP submittal, and we are proposing to approve New Mexico's submitted reasonable progress goals as described more fully below. At the outset, however, we note that because we are not proposing action to approve or disapprove the submitted NO_X BART determination for SJGS, the RPGs are evaluated with the understanding that NO_X BART requirements for that source are presently satisfied by the requirements of 40 CFR § 52.1628. We expect future emission reductions will be achieved in compliance with the existing Federal implementation plan or in compliance with the terms of a future-approved NO_X BART determination for SJGS determined to be consistent with RHR requirements. In the absence of any proposed action on the submitted NO_X BART determination, we deem the RPGs to be approvable, as described more fully below. The reductions at the SJGS achieved in compliance with the existing Federal implementation plan or anticipated due to any other future-approved NO_X BART determination consistent with the RHR requirements will result in greater visibility improvements than projected in the WRAP modeling used to establish the reasonable progress goals included in the 309(g) SIP submittal. If the basis for evaluation of the RPGs were to change, as for example if we were to take final action approving or disapproving the submitted NO_X BART determination for SJGS, we recognize that a reevaluation of this proposal may be warranted.

a. WRAP Visibility Modeling

The primary tool WRAP relied upon for modeling regional haze improvements by 2018, and for estimating New Mexico's Reasonable Progress Goals, was the CMAQ model. The CMAQ model was used to estimate 2018 visibility conditions in New Mexico and all Western Class I areas, based on application of anticipated regional haze strategies in the various states' regional haze plans, including some assumed controls on BART sources.[47]

The Regional Modeling Center (RMC) at the University of California Riverside conducted the CMAQ modeling under the oversight of the WRAP Modeling Forum. The Regional Modeling Center developed air quality modeling inputs including annual meteorology and emissions inventories for: (1) A 2002 actual emissions base case, (2) a planning case to represent the 2000–2004 regional haze baseline period using averages for key emissions categories, and (3) a 2018 base case of projected emissions determined using factors known at the end of 2005. All emission inventories were spatially and

[45] Guidance for Estimating Natural Visibility Conditions Under the Regional Haze Rule, EPA–454/B–03–005, September 2003.

[46] The amount of light lost as it travels over one million meters. The haze index, in units of deciviews (dv), is calculated directly from the total light extinction, b_{ext} expressed in inverse megameters (Mm^{-1}), as follows: $HI = 10 \ln(b_{ext}/10)$.

[47] We provide a more detailed discussion on the WRAP modeling in section IV.E.3 below and in *Technical Support Document for Technical Products Prepared by the Western Regional Air Partnership (WRAP) in Support of Western Regional Haze Plans,* EPA Regions 6, 8, 9, and 10, February 28, 2011, available in the docket as Appendix A to the TSD.

temporally allocated using the Sparse Matrix Operator Kernel Emissions (SMOKE) modeling system. Each of these inventories underwent a number of revisions throughout the development process to arrive at the final versions used in CMAQ modeling. A description of the CMAQ modeling performed by WRAP can be found in Chapter 9 of the NM RH 309(g) SIP submittal (for details on the WRAP photochemical modeling refer to the WRAP Technical Support Document [48] and our review of the technical products developed by the WRAP for the States in the western region, in support of their RH SIPs [49]). A detailed discussion of the emission inventories and modeling is also included in a subsequent section on long term strategy.

b. NMED's Reasonable Progress ''Four Factor'' Analysis

Sections 51.309(g) and 51.308(d)(1)(i)(A) require that in establishing a reasonable progress goal for any mandatory Class I Federal area within the State, the State must: consider the costs of compliance, the time necessary for compliance, the energy and non-air quality environmental impacts of compliance, and the remaining useful life of any potentially affected sources, and include a demonstration showing how these factors were taken into consideration in selecting the goal. The four factor analysis is used to identify and evaluate potential emission control strategies for facilities. For SO_2, the State of New Mexico has addressed visibility impairment associated with this pollutant under the separate 309 SIP submitted to EPA and evaluated above. New Mexico's participation in the SO_2 emissions milestone and backstop trading program will result in reductions in SO_2 emissions. To evaluate any additional measures necessary to demonstrate reasonable progress, NMED relied on an analysis prepared for the WRAP for specific source types throughout the WRAP states.[50] The WRAP identified reciprocal internal combustion engines and turbines, oil and gas exploration and production field operations, natural gas processing operations, industrial boilers, cement kilns, sulfuric acid manufacturing plants, pulp and paper lime kilns, and oil refineries as the major emission sources in the WRAP states to analyze for potential controls under the four factor analysis. NMED did not identify any additional reductions in their evaluation of the WRAP analysis. In the RH 309(g) SIP submittal, NMED commits to conduct further research to evaluate non-BART sources for possible emission controls and retrofits for the next Plan update in 2013.[51]

NMED also requested an additional analysis be done on specific sources in New Mexico.[52] This analysis included evaluation of selected sources at 3 petroleum refineries in New Mexico, (1) Navajo Refining Co., Artesia Refinery—Fluid Catalytic Cracking Unit (FCCU) #1, catalyst regeneration and process heater, (2) Western Refining Southwest, Bloomfield Refinery—FCCU #1, catalyst regeneration and process heater, and (3) Western Refining Southwest, Gallup Refinery—CO Boiler Unit #1. After evaluation of the four factors (Section 11.2.3 of the NM RH 309(g) SIP), the 309(g) SIP submittal includes a determination that due to the controls currently installed at the FCCU at the Artesia Refinery and the low level of emissions, additional controls at this source are unnecessary at this time. The Bloomfield Refinery has been in suspended operations since November 2009. The Bloomfield FCCU is subject to NO_X and SO_2 reductions according to the Catalyst Additive Program required by an Amended Stipulation and Final Order (AFSO) [53] as the result of an enforcement action. The 309(g) SIP submittal includes a determination that additional controls to address regional haze are not necessary at this source at this time due to the stringent emission limits already required by the Catalyst Additive Program. The FCCU at the Gallup Refinery is also subject to the Catalyst Additive Program and was required to decrease FCCU NO_X to 20 ppmvd and SO_2 to 25 ppmvd (both at 0% O_2) by December 31, 2010. The boiler will meet an emission rate of 0.04 lb/MMBtu after modifications including Low-NO_X burners. The 309(g) SIP submittal includes a determination that additional controls at this source to address regional haze are unnecessary at this time due to the stringent emission limits already required by the Catalyst Additive Program.

The submitted 309(g) SIP includes an analysis that considered the four statutory factors under 40 CFR 51.308(d)(1)(i)(A) to evaluate the potential of controlling certain sources or source categories for addressing visibility impacts from man-made sources within its borders. We propose to find that the submitted 309(g) four factor analysis meets the requirements under 40 CFR 51.308(d)(1)(i)(A).

c. Establishment of the Reasonable Progress Goal

40 CFR 308(d)(1) of the Regional Haze Rule requires States to ''establish goals (in deciviews) that provide for reasonable progress towards achieving natural visibility conditions'' for each Class I area of the State. These reasonable progress goals are interim goals that must provide for incremental visibility improvement for the most impaired visibility days, and ensure no degradation for the least impaired visibility days. The reasonable progress goals for the first planning period are goals for the year 2018.

Based on (1) The results of the WRAP CMAQ modeling, (2) the results of the four-factor analysis of 3 New Mexico refineries and major source categories, and (3) the emission controls on New Mexico's one BART source and other BART sources in nearby States, the 309(g) SIP submittal establishes reasonable progress goals for the most impaired days for the New Mexico Class I areas.

NMED relied on the 2018 projected visibility conditions from the WRAP photochemical modeling to establish RPGs for the 20% best days and 20% worst days for each Class I area. NMED's RPGs establish a slower rate of progress than the URP for each Class I area. NMED has calculated the number of years it would take to attain natural visibility conditions under the rate of progress selected by the State as reasonable (Table 8). As we discuss below, NMED indicated that emissions from wildfires, windblown dust, and/or emissions from other states and Mexico, impede New Mexico's ability to meet the URPs. See the TSD and Section 11.3 of the NM RH 309(g) SIP for a detailed discussion of the RPGs.

[48] WRAP Regional Technical Support Document for the Requirements of § 309 of the Regional Haze Rule (64 **Federal Register** 35714—July 1, 1999) revised May 7, 2008.

[49] Our review of the technical products developed by the WRAP is available as *Technical Support Document for Technical Products Prepared by the Western Regional Air Partnership (WRAP) in Support of Western Regional Haze Plans,* Regions 6, 8, 9, and 10, February 28, 2011, Appendix A to the TSD to this action.

[50] Supplementary Information for Four Factor Analyses by WRAP States, prepared by EC/R Incorporated, May 4, 2009 and corrected April 20, 2010, available as Appendix E to the NM RH 309(g) SIP.

[51] For example, New Mexico is evaluating and testing control strategies for emissions associated with oil and gas exploration and production to incorporate in future SIP updates. Control options for ozone are being evaluated simultaneously and the State believes that many co-benefits from controlling emissions for ozone will supplement the regional haze program.

[52] Supplementary Information for Four-Factor Analyses for Selected Individual Facilities in New Mexico, prepared by EC/R Incorporated, May 5, 2009. Available as Appendix F to the NM RH 309(g) SIP.

[53] NMED Stipulation and Final Order No. AQCA 02–09 (CO) and No. AQCA 05–22 (CO), August 2, 2005.

TABLE 8—URP, RPG AND YEARS TO NATURAL CONDITIONS FOR 20% WORST DAYS

Class I area	Baseline (dv)	Projected 2018 (RPG)	Natural conditions	Uniform rate of progress (dv/yr)	Rate of improvement under RPG	Years to natural conditions
Bandelier	12.22	11.9	6.26	0.099	0.0229	261
Bosque del Apache	13.80	13.59	6.73	0.118	0.0150	397
Carlsbad Caverns	17.19	16.93	6.65	0.176	0.0186	321
Gila Wilderness	13.11	12.99	6.66	0.108	0.0086	695
Pecos Wilderness, Wheeler Park	10.41	10.23	6.08	0.072	0.0129	464
Salt Creek	18.03	17.33	6.81	0.187	0.0500	119
White Mountains	13.70	13.27	6.8	0.115	0.307	194

The WRAP's projections for the 20% best and 20% worst days represent the RPGs for the 20% best and 20% worst days for the Class I areas in New Mexico are shown in Table 11–8 of the NM RH 309(g) SIP and reproduced below in Table 9.

TABLE 9—NEW MEXICO'S RPGS FOR THE 20% BEST AND WORST DAYS IN 2018

Class I area	20% Worst days			20% Best days	
	Baseline (dv)	2018 Uniform progress goal (dv)	2018 RPG (dv)	Baseline (dv)	2018 RPG (dv)
Bandelier	12.22	10.83	11.9	4.95	4.89
Bosque del Apache	13.80	12.15	13.59	6.28	6.1
Carlsbad Caverns	17.19	14.73	16.92	5.95	6.12
Gila Wilderness	13.11	11.61	12.99	3.31	3.2
Pecos Wilderness, Wheeler Park	10.41	9.40	10.23	1.22	1.12
Salt Creek	18.03	15.41	[54] 17.31	7.84	7.43
White Mountains	13.70	12.09	13.26	3.55	3.41

40 CFR 308(d)(1) requires that the reasonable progress goals must provide for an improvement in visibility for the 20% worst days and ensure no degradation of visibility on the 20% best days. NMED established reasonable progress goals that show an improvement over baseline conditions on the 20% worst days at all 8 Class I areas. With the exception of Carlsbad Caverns, all Class I areas also show no degradation on the 20% best days.

For Carlsbad Caverns, NMED provided modeling data that demonstrates that significant projected growth in emissions by 2018 from Mexico are responsible for the degradation in visibility conditions on the 20% best days at this Class I area (Section 11.3.3 of the NM RH 309(g) SIP submittal). WRAP visibility modeling results with Mexico emissions held constant from 2002 to 2018 show a slight improvement in visibility conditions at Carlsbad Caverns on the 20% best days. NMED also provides results of the Weighted Emissions Potential (WEP) analysis preformed by the WRAP that is based on emissions and residence time, rather than modeling. This analysis shows that the projected 2018 emissions of sulfur dioxide that potentially impact Carlsbad on the 20% best days from Mexico are much greater than emissions from other regions (See figures 11–3 and 11–4 of the submitted NM RH 309(g) SIP). The WRAP WEP analysis is described in more detail in section V.N.4.c. below. NMED notes that IMPROVE Monitor data for the Carlsbad Caverns Class I area, however, shows improvement in visibility conditions on the 20% best days since the baseline period. Due to the high level of uncertainty in projected Mexico emissions, the monitored improvement, and the lack of jurisdictional control over these Mexican emissions, the submitted 309(g) SIP found this RPG for Carlsbad to be reasonable. We agree with this assessment.

As explained in the submitted 309(g) SIP, New Mexico believes the reasonable progress goals it established for the New Mexico Class I areas on the 20% worst days are reasonable, and that it is not reasonable to achieve the glide path in 2018. In support of this conclusion, New Mexico includes a discussion of the pollutant contributions and the sources of visibility impairment at each Class I area and compares the RPGs to the URP goal on a pollutant specific basis (see Section 11.3 of the NM RH 309(g) SIP). The factors that New Mexico considered are summarized as: (1) For all of New Mexico's Class I areas, the contribution to visibility impairment from organic mass carbon (OMC) and/or coarse mass (CM) from natural sources that cannot be controlled is significant. Section V.N.4.c below discusses the sources of visibility impairment at each Class I area and the percent contribution from OMC and CM; (2) Sources outside the modeling domain and in Mexico contribute significantly to nitrate and sulfate at New Mexico's Class I areas. Sources in Mexico are not under the control of New Mexico and are projected to increase by 2018. This increase restricts the amount of progress achievable, particularly at those Class I areas located in Southern New Mexico. Section V.N.4.c below discusses the sources of visibility impairment at each Class I area and the percent contribution from Mexico and outside the modeling domain; (3) Controls on oil and gas emission sources are being evaluated and are anticipated to be in place over the next ten years. These emission reductions will allow for increased improvement in visibility conditions at those Class I areas located near oil and gas production regions in the State; and

[54] Corrected from 17.07 dv in the NM RH 309 (g) SIP Table 11–8 based on model projections data from the WRAP TSS for Salt Creek based on the PRP18b emission inventory. Model results using the PRP18a emission inventory project visibility impairment at Salt Creek to be 17.07 dv in 2018.

(4) Reductions due to NO_X BART will further improve visibility at Class I areas.

d. Reasonable Progress Consultation

NMED relied on the WRAP as its main vehicle for facilitating collaboration with FLMs and other states in developing its RH 309 SIP. NMED was able to use WRAP generated products, such as regional photochemical modeling results and visibility projections, and source apportionment modeling to assist in identifying neighboring states' contributions to the visibility impairment at New Mexico's Class I areas. The technical analyses and emission inventories developed by the WRAP are documented in the WRAP TSD and available online at the WRAP Technical Support System.[55] [56]

New Mexico consulted through the WRAP, and relied on the technical tools, policy documents, and other products that all Western states used to develop their regional haze plans. The WRAP Implementation Work Group was one of the primary collaboration mechanisms. All the states relied upon similar emission inventories, results from source apportionment studies and BART modeling, review of IMPROVE monitoring data, existing state smoke management programs, and other information in assessing the extent to which each state contributes to visibility impairment in other states' Class I areas. 40 CFR 51.308(d)(3)(ii) of the Regional Haze Rule requires a state to demonstrate that its regional haze plan includes all measures necessary to obtain its fair share of emission reductions needed to meet reasonable progress goals. Based on the consultation described above, New Mexico identified no major contributions that supported developing new interstate strategies, mitigation measures, or emission reduction obligations. New Mexico determined that the implementation of BART and other existing measures in state regional haze plans were sufficient for the states to meet the reasonable progress goals for their Class I areas, and that future consultation would address any new strategies or measures needed, and all states participating in the consultations agreed. We are proposing to find that New Mexico has satisfied the requirement under sections 51.309(g) and 51.308(d)(1)(iv) to consult with other states that may reasonably be anticipated to cause or contribute to visibility impairment at New Mexico's Class I areas.

e. Our Conclusion on New Mexico's Reasonable Progress Goals

Section 11.3 of the NM RH 309(g) SIP provides NMED's demonstration that the RPGs established by NMED provide reasonable visibility improvement though they provide for less improvement than the uniform rate of progress. We evaluated the analysis provided by NMED along with the WRAP modeling results, WRAP emission inventories and other information in examining the RPGs established by NMED. We preliminarily reach the following conclusions:

- NMED's analysis demonstrates that the predominant pollutants that affect the State's ability to meet the URP goals are OMC, CM and sulfate (SO4). OMC and CM emissions are primarily from naturally occurring wildfires and wind-blown dust. Figure 11–12 of the NM RH 309(g) SIP submittal identifies the source categories that contribute to emissions of OMC and CM that impact the State's Class I areas. Over 70% of OMC emissions are due to natural fires. More than 65% of CM emissions are from wind-blown dust. The State has developed Natural Event Action Plans that include measures to address anthropogenic sources of windblown dust during high wind events. However, windblown dust emissions that are both directly associated with anthropogenic activities and are controllable have a minimal effect on visibility at New Mexico's Class I areas compared to other sources of windblown dust. Because the State has limited ability to control these sources of visibility impairment, OMC and CM emissions will continue to impact visibility at New Mexico's Class I areas and limit the visibility improvement achievable during the planning period. Because of the difficulty and uncertainty in estimating emissions of windblown dust and the limited ability to control these emissions, windblown dust emissions are held constant from 2002 to 2018. Other sources of CM including fugitive dust and road dust emissions are projected to increase by 2018, however, these increases contribute to only a 4% increase in total CM emissions in 2018. We also note that because visibility modeling performance for CM was poor, projected CM visibility impacts for 2018 were kept at 2002 levels.[57]
- In addressing visibility impairment due to sulfate emissions we analyzed the emission inventories developed by the WRAP. We note that New Mexico seeks approval for participation in the SO_2 emissions milestone and backstop trading program that applies to all stationary sources that emit greater than 100 tpy of SO_2 and will result in emission reductions of SO_2 between 2002 and 2018. Our analysis of the WRAP emission inventories used in the photochemical modeling to project visibility conditions revealed an overestimation of area source SO_2 emissions from New Mexico. In particular, emissions for Bernalillo County were much higher than current emissions and emission trends would suggest (See the TSD for a summary of Bernalillo County emission estimates). WRAP emission projections include a 200% increase in New Mexico's statewide area source SO_2 emissions, primarily in Bernalillo County, while no other WRAP state is projected to have an increase in area source SO_2 emissions greater than 50%. Bernalillo County emission estimates reported to the National Emission Inventory are much lower than those in the 2002 WRAP emission inventory and show a trend of decreasing emissions from 2002 to 2008. In development of the 2018 emission projections, WRAP used the EPA model EGAS to estimate growth for some area sources. This model can over predict area source growth by using a simple multiplier and does not take into account additional regulatory requirements, both federal and state, in the analysis. This over prediction in area source SO_2 emissions in New Mexico in the 2018 WRAP modeling results in overall less modeled visibility improvement than would be anticipated with the much lower rate of growth in emissions anticipated by 2018 and overestimates the contribution of New Mexico emissions to visibility impairment at Class I areas in 2018. Furthermore, these SO_2 emissions are also overestimated in the 2002 emission inventory and leads to an overestimate of the contribution of New Mexico emissions to visibility impairment at Class I areas in 2002. Refer to the TSD for detailed information on the WRAP emission estimates and source apportionment modeling for SO_2 area source emission at each Class I area.

[55] *http://vista.cira.colostate.edu/tss/.*

[56] *Technical Support Document for Technical Products Prepared by the Western Regional Air Partnership (WRAP) in Support of Western Regional Haze Plans,* EPA Regions 6, 8, 9, and 10, February 28, 2011, Appendix A to the TSD to this action.

[57] All CM relative response factors (RRF) were set to a value of 1 when projecting course matter visibility impacts to the future year 2018, regardless of the future year modeling results. For more information see our review of the technical products developed by the WRAP that is available as *Technical Support Document for Technical Products Prepared by the Western Regional Air Partnership (WRAP) in Support of Western Regional Haze Plans,* EPA Regions 6, 8, 9, and 10, February 28, 2011, Appendix A to the TSD for this action.

• Contributions of NO_X and SO_2 from Mexico point sources are also significant and are anticipated to increase by 2018. These emissions are not under the jurisdiction of NMED and will limit the rate of progress achievable on the 20% worst days. For the 20% best days, growth in emissions from Mexico results in a slight projected degradation in visibility conditions at the Carlsbad Caverns Class I area. We note that monitored data shows that visibility conditions have improved at this area from the baseline period.

• The San Juan Generating Station is by far the largest point source of NO_X and SO_2 emissions under NMED jurisdiction. Due to reductions required by the consent decree and by the implementation of BART, significant reductions in SO_2 and NO_X emissions from 2002 values will occur. Implementation of NO_X BART will result in more reductions than those included in the WRAP 2018 modeling. The FIP limits NO_X emissions to 0.05 lb/MMBtu, resulting in an approximate 83% reduction in NO_X from the emission limit the facility is currently complying with (0.3 lb/MMBtu). We note that NMED's submitted NO_X BART determination though not under review for this proposal and not legally effective unless it is approved would require control rates below the future year projected NO_X emissions for the source developed in the WRAP consultation process. The reductions at the SJGS achieved in compliance with the existing federal implementation plan or anticipated due to any other future-approved NO_X BART determination consistent with the RHR requirements will result in greater visibility improvements than projected in the WRAP visibility modeling relied upon to establish the reasonable progress goals included in the 309(g) SIP submittal. Through the WRAP consultation process, New Mexico provided the anticipated future year projected NO_X emissions from the SJGS to be 0.27 lb/MMBtu for units 1 and 3 and 0.28 lb/MMBtu for units 2 and 4. These values were used in the 2018 emission inventory and the WRAP modeling used to determine the RPGs. Consequently, implementation of NO_X BART at the SJGS will result in greater reasonable progress than is anticipated in the analysis included in the NM RH 309(g) SIP submittal.

• In addition to NO_X BART at SJGS, NO_X reductions at another large power plant within the State (Four Corners Power Plant) that lies on tribal lands, outside of the jurisdiction of NMED, are anticipated as the result of a BART determination that is part of a FIP. These two BART determinations represent significant reductions in NO_X emissions at the largest emission sources within the State.

Based on the above considerations, we propose to agree with New Mexico's conclusion that it is not reasonable to meet the uniform rate of progress for its Class I areas, and we propose approval of New Mexico's analysis and reasonable progress goals. In setting its RPGs for its Class I areas for the 20% worst days, New Mexico relied on certain NO_X emission reductions at the SJGS that may underestimate the reductions to be achieved. NO_X BART is an element of the long term strategy necessary to achieve the reasonable progress goals. Whether the existing federal implementation plan or another future-approved NO_X BART determination consistent with the RHR requirements is in place, we expect the state to include any corrections and updates to emission reductions in its next Regional Haze SIP with updated modeling to quantify the visibility improvement that results from all emission reduction measures in place by 2018.

4. Long-Term Strategy

As described in section III.L.3. of this action, the long-term strategy (LTS) is a compilation of state-specific control measures relied on by the state for achieving its RPGs. The LTS must include ''enforceable emissions limitations, compliance schedules, and other measures as necessary to achieve the reasonable progress goals'' for all Class I areas within, or affected by emissions from, the state. 40 CFR 51.308(d)(3). New Mexico's LTS for the first implementation period addresses the emissions reductions from federal, state, and local controls that take effect in the state from the end of the baseline period starting in 2004 until 2018. The New Mexico LTS was developed by NMED, in coordination with the WRAP RPO, through an evaluation of the following components: (1) Construction of a WRAP 2002 baseline emission inventory; (2) construction of a WRAP 2018 projected emission inventory, including reductions from WRAP member state controls required or expected under federal and state regulations (including BART); (3) modeling to determine visibility improvement and apportion individual state contributions; (4) state consultation; and (5) application of the LTS factors. The State's detailed long-term strategy is included in Chapter 12 of the NM RH 309(g) SIP.

a. Emissions Inventory

40 CFR 51.308(d)(3)(iii) requires that New Mexico document the technical basis, including modeling, monitoring and emissions information, on which it relied upon to determine its apportionment of emission reduction obligations necessary for achieving reasonable progress in each mandatory Class I Federal area it affects. New Mexico must identify the baseline emissions inventory on which its strategies are based. Section 51.308(d)(3)(iv) requires that New Mexico identify all anthropogenic sources of visibility impairment considered by the state in developing its long-term strategy. This includes major and minor stationary sources, mobile sources, and area sources. New Mexico addressed these requirements by relying on technical analyses developed by its RPO, WRAP and approved by all state participants, as described below.

Bernalillo County, New Mexico falls under the jurisdiction of the Albuquerque Air Quality Control Board (AQBC). The AQBC staff participated in meetings with the State of New Mexico staff to coordinate its efforts with the State of New Mexico in developing its separate 309 SIP. The WRAP emission inventory for New Mexico and source apportionment modeling results includes emissions from all of New Mexico, including Bernalillo County. For emission inventory data excluding Bernalillo County, refer to Chapter 8 of the NM RH 309(g) SIP submittal.

The emissions inventory used in the RH technical analyses was developed by WRAP with assistance from New Mexico using approved EPA methods. Emissions within New Mexico are both naturally occurring and man-made. Two primary sources of naturally occurring emissions in New Mexico include wildfires and windblown dust. An emissions inventory for each visibility impairing pollutant was developed by WRAP for New Mexico for the baseline year 2002 and for 2018, which is the first reasonable progress milestone. NMED and the WRAP developed an emission inventory for anthropogenic sources (point, stationary area, mobile, road dust, prescribed and agricultural fire) as well as other sources for the baseline year of 2002. See Chapter 8 and Appendix A of the NM RH 309(g) SIP submittal and Appendix A of our TSD for details on how the 2002 emissions inventory was constructed. The 2018 emissions inventory was then developed by projecting the 2002 emissions to 2018 and applying reductions expected from federal and state regulations affecting the emissions

of the visibility-impairing pollutants NO_X, SO_2,, volatile organic compounds (VOCs), primary organic aerosol (POA), elemental Carbon (EC), fine particulate matter (Soil—$PM_{2.5}$), CM, and ammonia (NH_3).

i. New Mexico's 2002 Emission Inventory

New Mexico's 2002 emissions inventory is summarized below in Table 10:

TABLE 10—NEW MEXICO'S 2002 EMISSIONS INVENTORY

[Including Bernalillo County]

Source category	SO_2	NO_X	VOCs	POA	EC	Soil	CM	NH_3
Point	37,918	100,398	17,574	978	13	1,180	2,286	75
Anthropogenic Fire	94	396	608	682	123	87	105	75
Natural Fire	2,729	8,613	18,846	16,272	3,293	1,223	5,400	1,875
Biogenic	0	42,139	1,016,487	0	0	0	0	0
Area	5,433	25,140	49,010	2,529	301	2,821	695	29,959
WRAP Area O&G	250	56,210	224,268	0	0	0	0	0
On-Road Mobile	2,066	67,835	38,768	653	756	0	403	2,132
Off-Road Mobile	3,846	45,311	13,580	563	1,526	0	0	26
Road Dust	4	1	0	114	9	1,305	11,074	0
Fugitive Dust	6	7	0	360	24	6,751	51,533	0
Wind Blown Dust	0	0	0	0	0	16,399	147,589	0
Total	52,347	346,050	1,379,410	22,151	6,046	29,765	219,086	34,141

We propose that New Mexico's 2002 emission inventory is acceptable for the purpose of developing the LTS. We note, however that some issues have been identified in the emission inventory as discussed above in Section V.N.3.e, that must be considered when analyzing the results of modeling analysis prepared using this inventory.

ii. New Mexico's 2018 Emission Inventory

In general, NMED used a combination of our Economic Growth Analysis System (EGAS 5), our mobile emissions factor model (MOBILE 6), our off-road emissions factor model (NONROAD), and the Integrated Planning Model (IPM) for electric generating units in constructing its 2018 emission inventory. More specifically, the WRAP developed emissions for a number of inventory source classifications: Point, area, non-road and on-road mobile sources, biogenic sources, anthropogenic and natural fire, road and fugitive dust, and area oil and gas emissions. The WRAP used its 2002 emission inventory, described above, to project emissions forward to 2018. Reductions expected from federal and state regulations were included in the inventory. See Chapter 8 of the NM RH 309(g) SIP and Appendix A of our TSD for more details on how the 2018 emissions inventory was constructed. The WRAP 2018 Base Case emission inventory (referred to as the Base18b emission inventory) reflects growth plus all controls ''on the books'' as of December 2004. The WRAP 2018 Preliminary Reasonable Progress Case (referred to as the PRP18b emission inventory) reflects refined growth estimates, all controls ''on the books'' as of 2007, and includes presumptive or known SO_2 BART controls. Emission inventory data summarized below is based on the PRP18b emission inventory. New Mexico's 2018 emissions inventory (including Bernalillo County emissions) is summarized in Table 11. Tables 12 and 13 summarize the projected change in emissions from 2002 to 2018 in the WRAP emission inventories.

TABLE 11—NEW MEXICO'S 2018 EMISSIONS INVENTORY

[Including Bernalillo County]

Source category	SO_2	NO_X	VOCs	POA	EC	Soil	CM	NH_3
Point	31,270	73,417	26,308	243	13	1,148	2,142	118
Anthropogenic Fire	72	263	388	442	85	44	63	42
Natural Fire	2,729	8,613	18,846	16,271	3,293	1,223	5,400	1,875
Biogenic	0	42,139	1,016,487	0	0	0	0	0
Area	16,285	33,931	70,566	2,848	374	3,644	1,231	30,233
WRAP Area O&G	12	74,648	267,846	0	0	0	0	0
On-Road Mobile	334	19,746	15,554	656	205	0	464	2,877
Off-Road Mobile	313	28,471	8,942	358	743	0	0	36
Road Dust	6	2	0	153	13	1,751	14,857	0
Fugitive Dust	7	7	0	366	25	7,026	56,533	0
Wind Blown Dust	0	0	0	0	0	16,399	147,589	0
Total	51,028	281,236	1,424,936	21,338	4,750	31,235	228,279	35,181

TABLE 12—CHANGE (TPY) IN NEW MEXICO EMISSIONS FROM 2002 TO 2018

[Including Bernalillo County]

Source category	SO_2	NO_X	VOCs	POA	EC	Soil	CM	NH_3
Point	−6,648	−26,981	8,734	−735	0	−32	−144	43
Anthropogenic Fire	−22	−133	−220	−240	−38	−43	−42	−33
Natural Fire	0	0	0	−1	0	0	0	0
Biogenic	0	0	0	0	0	0	0	0
Area	10,852	8,791	21,556	319	73	823	536	274
WRAP Area O&G	−238	18,438	43,578	0	0	0	0	0
On-Road Mobile	−1,732	−48,089	−23,214	3	−551	0	61	745
Off-Road Mobile	−3,533	−16,840	−4,638	−205	−783	0	0	10
Road Dust	2	1	0	39	4	446	3,783	0
Fugitive Dust	1	0	0	6	1	275	5,000	0
Wind Blown Dust	0	0	0	0	0	0	0	0
Total	−1,319	−64,814	45,796	−813	−1,296	1,470	9,193	1,040

TABLE 13—NET CHANGE (%) IN NEW MEXICO EMISSIONS FROM 2002 TO 2018

[Including Bernalillo County]

Source category	SO_2	NO_x	VOCs	POA	EC	Soil	CM	NH_3
Point	−18	−27	50	−75	0	−3	−6	58
Anthropogenic Fire	−24	−34	−36	−35	−31	−49	−41	−44
Natural Fire	0	0	0	0	0	0	0	0
Biogenic	0	0	0	0	0	0	0	0
Area	200	35	44	13	24	29	77	1
WRAP Area O&G	−95	33	19	0	0	0	0	0
On-Road Mobile	−84	−71	−60	0	−73	0	15	35
Off-Road Mobile	−92	−37	−35	−36	−51	0	0	38
Road Dust	50	100	0	34	44	34	34	0
Fugitive Dust	18	0	0	2	4	4	10	0
Wind Blown Dust	0	0	0	0	0	0	0	0
Total	−3	−19	3	−4	−21	5	4	3

The WRAP and NMED used New Mexico's and other states' 2018 emission inventories to construct visibility projection modeling for 2018. We propose to determine New Mexico's 2018 emission inventory is acceptable, while noting that some issues have been identified in the emission inventory as discussed above in Section V.N.3.e that must be considered when analyzing the results of modeling analysis prepared using this inventory.

Statewide, total NO_X and SO_2 emissions are projected to decrease from 2002 levels by 2018. NO_X emissions in the 2018 WRAP emission projections decrease by 19% primarily due to improvements in mobile sources and reductions at SJGS due to the 2005 consent decree. As discussed above, further reductions in NO_X emissions at the largest NO_X source in the state, the SJGS, due to implementation of BART are anticipated by 2018.

SO_2 mobile and point source emissions are also projected to decrease from 2002 to 2018. However, the large increase in area source SO_2 emissions (200%) is much larger than reasonably anticipated (see discussion above and our TSD). Increases in NO_X and VOC emissions are anticipated due to expansion of oil and gas production activities in the State. Much of the POA and EC emissions are due to natural fires that can fluctuate greatly in location and intensity from year to year. The 2018 emission inventory assumes that emissions from natural fires remain constant from 2002 levels. Anthropogenic sources of POA and EC are projected to decrease by 2018. We propose that New Mexico's 2018 emission inventory is acceptable for the purpose of developing the LTS. We note, however that some issues have been identified in the emission inventory as discussed above in Section V.N.3.e, that must be considered when analyzing the results of modeling analysis prepared using this inventory.

b. Visibility Projection Modeling

The WRAP performed modeling for the RH LTS for its member states, including New Mexico. The modeling analysis is a complex technical evaluation that began with selection of the modeling system. The WRAP used (1) The Mesoscale Meteorological Model (MM5) meteorological model, (2) the Sparse Matrix Operator Kernel Emissions (SMOKE) modeling system to generate hourly gridded speciated emission inputs, (3) the Community Multiscale Air Quality (CMAQ) photochemical grid model and (4) the Comprehensive Air Quality model with extensions (CAMx), as a secondary corroborative model. CAMx was also utilized with its Particulate Source Apportionment Technology (PSAT) tool to provide source apportionment for both the baseline and future case visibility modeling.

The photochemical modeling of RH for the WRAP states for 2002 and 2018 was conducted on the 36-km resolution national regional planning organization domain that covered the continental United States, portions of Canada and Mexico, and portions of the Atlantic and Pacific Oceans along the east and west coasts. The WRAP states' modeling was developed consistent with our guidance.[58]

[58] Guidance on the Use of Models and Other Analyses for Demonstrating Attainment of Air Quality Goals for Ozone, $PM_{2.5}$, and Regional Haze, (EPA–454/B–07–002), April 2007, located at *http://www.epa.gov/scram001/guidance/guide/final-03-pm-rh-guidance.pdf.*

Continued

The WRAP examined the model performance of the regional modeling for the areas of interest before determining whether the CMAQ model results were suitable for use in the RH assessment of the LTS and for use in the modeling assessment. The 2002 modeling efforts were used to evaluate air quality/visibility modeling for a historical episode—in this case, for calendar year 2002—to demonstrate the suitability of the modeling systems for subsequent planning, sensitivity, and emissions control strategy modeling. Model performance evaluation was performed by comparing the output from model simulations with ambient air quality data for the same time period to determine whether the model's performance was sufficiently accurate to justify using the model for simulating future conditions. Once the WRAP determined the model performance to be acceptable, it used the model to determine the 2018 RPGs using the current and future year air quality modeling predictions, and compared the RPGs to the URP. The results of this modeling are discussed below.

c. Sources of Visibility Impairment in New Mexico Class I Areas

Baseline period monitoring data was used to analyze the contribution of pollutants to light extinction. Table 14 below summarizes the baseline period monitored data found in Chapter 7 of the NM RH 309(g) SIP, showing the contribution of each species to visibility impairment at each Class I area on the 20 worst days.

TABLE 14—PERCENTAGE OF LIGHT EXTINCTION ON 20% WORST DAYS DURING THE BASELINE PERIOD

Class I area	SO4 (percent)	NO3 (percent)	OMC (percent)	EC (percent)	Soil (percent)	CM (percent)	Sea salt (percent)
Bandelier	22.33	8.09	45.95	10.03	3.56	9.39	0.65
Bosque del Apache	24.35	10.39	26.25	8.44	6.17	21.75	0.65
Carlsbad Caverns	33.81	7.79	13.73	2.66	9.02	32.79	0.20
Gila Wilderness	21.97	2.87	50.96	10.19	4.78	8.92	0.32
Pecos Wilderness, Wheeler Park	23.56	7.11	37.33	9.78	7.56	12.44	2.22
Salt Creek	31.75	21.10	14.26	4.73	6.27	21.86	0.38
White Mountains	31.72	9.06	27.19	5.44	5.74	20.24	0.60

Visibility impairment in Class I areas is the result of local air pollution as well as transport of regional pollution across long distances. In order to determine the significant emission source regions and emission source types contributing to haze in New Mexico's Class I areas, New Mexico relied upon two source apportionment analysis techniques developed by the WRAP. The first technique was regional modeling using CAMx and the PSAT tool, used for the attribution of sulfate and nitrate sources only. The second technique was the Weighted Emissions Potential (WEP) tool, used for attribution of sources of organic carbon, elemental carbon, $PM_{2.5}$, and PM_{10}. The WEP tool is based on emissions and residence time, not modeling. PSAT uses the CAMx air quality model to show nitrate-sulfate-ammonia chemistry and apply this chemistry to a system of tracers or ''tags'' to track the chemical transformations, transport, and removal of NO_X and SO_2. These two pollutants are important because they can be significant contributors to visibility impairment and much of the total mass of NO_X and SO_2 originates from anthropogenic sources. Therefore, the results from this analysis can be useful in determining contributing sources that may be controllable, both in-state and in neighboring states. The PSAT results presented below are derived from Section 12.3 of the NM RH 309(g) SIP and the WRAP Technical Support System (TSS).[59] Tables 15 and 16 show the percent contribution of nitrate and sulfate from the WRAP and other source regions to modeled visibility impairment on the 20% worst days for 2002. Also shown is the percentage of the WRAP contributions from New Mexico sources. The Central Regional Air Planning Association (CENRAP) region includes the states and tribal areas of Nebraska, Kansas, Oklahoma, Texas, Minnesota, Iowa, Missouri, Arkansas, and Louisiana. Some errors were discovered in the tables of Section 12.3 for the WRAP's percentage contribution of nitrate of the 20% worst days during the baseline period. Those errors have been corrected in Table 15 below. We note that the 2018 emission inventory used in this analysis (Base18b) is an earlier version that does not include emission reductions due to BART. In New Mexico and surrounding states, BART requirements and reductions through the SO_2 emission milestone trading program will result in additional NO_X and SO_2 reductions beyond than those assumed in the source apportionment modeling.

TABLE 15—PERCENTAGE OF NITRATE CONTRIBUTION TO VISIBILITY IMPAIRMENT DURING BASELINE FOR THE 20% WORST DAYS

Class I area	WRAP (percent)	New Mexico * (percent)	CENRAP (percent)	Canada (percent)	Eastern U.S. (percent)	Mexico (percent)	Pacific off shore (percent)	Outside domain (percent)
Bandelier	[60] 71	[61] 66	10	2	0	1	1	15
Bosque del Apache	61	61	26	3	0	1	1	8
Carlsbad Caverns	30	42	44	5	0	5	2	14
Gila Wilderness	58	3	2	0	0	2	5	33
Pecos Wilderness, Wheeler Park	57	64	28	3	2	1	1	8

Emissions Inventory Guidance for Implementation of Ozone and Particulate Matter National Ambient Air Quality Standards (NAAQS) and Regional Haze Regulations, August 2005, updated November 2005 (''our Modeling Guidance''), located at *http://www.epa.gov/ttnchie1/eidocs/eiguid/index.html,* EPA–454/R–05–001.

[59] WRAP technical products are available at *http://vista.cira.colostate.edu/tss/.*

TABLE 15—PERCENTAGE OF NITRATE CONTRIBUTION TO VISIBILITY IMPAIRMENT DURING BASELINE FOR THE 20% WORST DAYS—Continued

Class I area	WRAP (percent)	New Mexico * (percent)	CENRAP (percent)	Canada (percent)	Eastern U.S. (percent)	Mexico (percent)	Pacific off shore (percent)	Outside domain (percent)
Salt Creek	61	75	26	0	0	2	0	11
White Mountains	40	38	36	4	0	2	2	16

* New Mexico's percentage shown in the above table is the percent of the WRAP contribution and not a percent of the total contribution. For example, New Mexico's nitrate contribution at Bandelier is 66% of the WRAPS contribution of 71%. New Mexico's contribution to the total nitrate at Bandelier is 47% (66% of 71%).

TABLE 16—PERCENTAGE SULFATE CONTRIBUTION TO VISIBILITY IMPAIRMENT DURING BASELINE FOR 20% WORST DAYS

Class I area	WRAP (percent)	New Mexico * (percent)	CENRAP (percent)	Canada (percent)	Eastern U.S. (percent)	Mexico (percent)	Pacific Off shore (percent)	Outside domain (percent)
Bandelier	32	48	16	1	12	9	3	27
Bosque del Apache	21	32	23	1	20	14	2	19
Carlsbad Caverns	5	29	28	2	43	10	1	11
Gila Wilderness	18	23	19	1	18	20	4	20
Pecos Wilderness, Wheeler Park	34	42	17	2	6	10	4	27
Salt Creek	12	54	29	2	31	10	1	15
White Mountains	11	33	30	2	34	10	1	12

* New Mexico's percentage shown in the above table is the percent of the WRAP contribution and not a percent of the total contribution.

WEP is a screening tool that helps to identify source regions that have the potential to contribute to haze formation at specific Class I areas. Unlike PSAT, this method does not account for chemistry or deposition. The WEP combines emissions inventories, wind patterns, and residence times of air masses over each area where emissions occur, to estimate the percent contribution of different pollutants. Like PSAT, the WEP tool compares baseline values (2000–2004) to 2018 values, to show the improvement expected by 2018, for sulfate, nitrate, organic carbon, elemental carbon, $PM_{2.5}$, and PM_{10}. More information on the WRAP modeling methodologies is available in Appendix A to our TSD. The PSAT and WEP results presented below are derived from Chapter 9 and 12 of the NM RH 309(g) SIP and the WRAP TSS. More detailed information on sources of visibility impairment can be found in our TSD. Nitrate and sulfate source apportionment data presented below is based on the PSAT modeling results. WEP results of source type and region contributions are provided for other visibility impairing pollutants.

The submitted long-term strategy modeling also evaluates the sources of OMC and CM emissions. Figure 11–12 of the NM RH 309(g) SIP submittal identifies the source categories that contribute to emissions of OMC and CM that impact the State's Class I areas. Over 70% of OMC emissions are due to natural fires. More than 65% of CM emissions are from wind-blown dust. As discussed above, the State has developed Natural Event Action Plans that include measures to address anthropogenic sources of windblown dust during high wind events. However, windblown dust emissions that are both directly associated with anthropogenic activities and are controllable have a minimal effect on visibility at New Mexico's Class I areas, compared to other sources of windblown dust. A large portion of EC emissions are also due to natural fires, while mobile emission sources also contribute to the total EC emissions. EC emissions from mobile sources are expected to decrease significantly by 2018. These pollutants, primarily from natural sources, contribute significantly to visibility impairment in New Mexico.

i. Sources of Visibility Impairment in Bandelier Wilderness

Visibility impairment at Bandelier in 2002 on the worst 20% days is largely due to OMC and sulfate. OMC emissions are primarily from natural fires from NM and AZ. In 2002, the largest contributions of sulfate to Bandelier on the 20% worst days come from sources outside the modeling domain (26%), followed by point sources in CENRAP states (14%), the Eastern United States (11%), New Mexico (11%), and Mexico (8%). New Mexico area sources contribute 2% of the sulfate on these days.

The 2018 projections assume that natural fire emissions of OMC remain constant between 2002 and 2018. In 2018, visibility impairment is still primarily due to OMC from natural fires. New Mexico's emissions of OMC from anthropogenic fires are projected to decrease, while emissions from area sources are expected to increase. Visibility impairment due to sulfate is projected to decrease by 2018, due to large decreases in emissions in CENRAP states and the Eastern United States. Sulfate contributions to visibility impairment at Bandelier from Mexico will increase from 2002 levels due to increases in emissions from point sources in Mexico. Modeled sulfate contributions from New Mexico increase from 2002 levels due to projected increase in area source emissions in New Mexico. As discussed above, SO_2 emissions from area source emissions in New Mexico, particularly in Bernalillo County, are overestimated in the WRAP modeling. Bandelier is located only 83 km outside of Bernalillo County and is impacted by the WRAP's large assumed increase in SO_2 emissions. We also note that the PSAT results do not include NO_X and SO_2 reductions due to BART and the SO_2 milestone and emissions trading program. We anticipate additional visibility improvement in 2018 beyond the modeled visibility conditions due to

[60] Corrected from 17% in Table 12–4 of the NM RH 309(g) SIP submittal based on data from the WRAP TSS.

[61] Corrected from 58% in Table 12–5 of the NM RH 309(g) SIP submittal based on data from the WRAP TSS.

lower NO_X emissions from implementation of the existing federal implementation plan or another future-approved NO_X BART determination consistent with the RHR requirements and lower SO_2 area emissions than included in the WRAP 2018 modeling episode used in this analysis. See our TSD for additional data on visibility modeling results and emissions.

ii. Sources of Visibility Impairment in Bosque del Apache National Wildlife Refuge

Visibility impairment at Bosque del Apache in 2002 on the worst 20% days is mostly due to OMC, sulfate, CM and nitrate. OMC emissions are primarily from natural fires from NM and AZ. In 2002, the largest contributions of sulfate to Bosque del Apache on the 20% worst days come from point sources in CENRAP states (19%), sources outside the modeling domain (18%), point sources in the Eastern United States (18%), and Mexico (12%). New Mexico point and area sources contribute 4% and 1%, respectively, of the sulfate on these days. CM emissions impacting Bosque del Apache are primarily from windblown dust in New Mexico and neighboring CENRAP states. Contributions of nitrate are from mobile sources in New Mexico (19%) and CENRAP states (10%) along with contributions from New Mexico point sources (8%), CENRAP point sources (9%) and New Mexico area sources (7%).

The 2018 projections assume that natural fire emissions of OMC remain constant between 2002 and 2018. In 2018, visibility impairment is still largely due to OMC from natural fires. New Mexico's emissions of OMC from anthropogenic fires are projected to decrease, while emissions from area sources are expected to increase. CM emissions from windblown dust are held constant from 2002 levels and remain a significant contribution to visibility impairment in 2018. Visibility impairment due to sulfate is projected to decrease by 2018, due to large decreases in emissions in CENRAP states and the Eastern United States. Sulfate contributions to visibility impairment at Bosque del Apache from Mexico will increase from 2002 levels due to increases in emissions from point sources in Mexico. Modeled sulfate contributions from New Mexico increase from 2002 levels due to projected increase in area source emissions in New Mexico. As discussed above, SO_2 emissions from area source emissions in New Mexico, particularly in Bernalillo County, are overestimated in the WRAP modeling. Contributions of nitrate from CENRAP states and New Mexico from mobile sources are projected to decrease significantly, while contributions from area source emissions, including emissions from oil and gas production in New Mexico are projected to increase. We note that the PSAT results do not include NO_X and SO_2 reductions due to BART and the SO_2 milestone and emissions trading program. We anticipate additional visibility improvement in 2018 beyond the modeled visibility conditions due to lower NO_X emissions from implementation of the existing federal implementation plan or another future-approved NO_X BART determination consistent with the RHR requirements and lower SO_2 area emissions than included in the WRAP 2018 modeling episode used in this analysis. See our TSD for additional data on visibility modeling results and emissions.

iii. Sources of Visibility Impairment in Carlsbad Caverns National Park

Visibility impairment at Carlsbad Caverns in 2002 on the worst 20% days is largely due to sulfate and CM. The IMPROVE monitoring site for Carlsbad Caverns is located in Guadalupe Mountains National Park, Texas, south of Carlsbad Caverns National Park. In 2002, the largest contributions of sulfate to Carlsbad Caverns on the 20% worst days came from point sources in the Eastern United States (39%), CENRAP states (23%), and Mexico (9%). CM emissions impacting Carlsbad Caverns are primarily from windblown dust in New Mexico and neighboring CENRAP states. WEP results for organic carbon indicate that contributions are from area source emissions in CENRAP states and New Mexico as well as natural fires in New Mexico and Arizona and local New Mexico point sources.

Visibility impairment due to sulfate is projected to decrease by 2018, due to large decreases in point source emissions in CENRAP states and the Eastern United States. Sulfate contributions to visibility impairment at Carlsbad Caverns from Mexico will increase from 2002 levels due to increases in emissions from point sources. Contributions of nitrate from CENRAP states and New Mexico from mobile sources are projected to decrease significantly, while contributions from area source emissions, including emissions from oil and gas production in New Mexico and the CENRAP states are projected to increase. WEP results indicate that point source emissions of organic carbon in New Mexico impacting Carlsbad Caverns decrease significantly by 2018. CM emissions from windblown dust are held constant from 2002 levels and remain a significant contribution to visibility impairment in 2018. We note that the PSAT results do not include NO_X and SO_2 reductions due to BART and the SO_2 milestone and emissions trading program. We anticipate additional visibility improvement in 2018 beyond the modeled visibility conditions at Carlsbad Caverns due to lower SO_2 area emissions than included in the WRAP 2018 modeling episode used in this analysis. See our TSD for additional data on visibility modeling results and emissions.

iv. Sources of Visibility Impairment in Gila Wilderness

Visibility impairment at Gila Wilderness in 2002 on the worst 20% days is largely due to OMC and sulfate. OMC emissions are primarily from natural fires from NM and AZ and contribute to over 50% of the visibility impairment at Gila during the base period. In 2002, the largest contributions of sulfate to Gila Wilderness on the 20% worst days come from sources outside the modeling domain (20%), followed by point sources in the Eastern United States (17%), Mexico (17%), CENRAP states (16%), and Arizona (5%). We note that an error in data retrieval affected initial results for modeled visibility conditions at Gila Wilderness in 2002 and indicated that visibility would degrade from 2002 to 2018.[62] This error was corrected and the updated data was included in the NM RH SIP submitted to us.

The 2018 projections assume that natural fire emissions of OMC remain constant between 2002 and 2018. In 2018, visibility impairment is still primarily due to OMC from natural fires. Visibility impairment due to sulfate is projected to decrease by 2018, due to large decreases in point source emissions in CENRAP states and the Eastern United States. Sulfate contributions to visibility impairment at Gila from Mexico, Arizona, and New Mexico increase from 2002 levels due to increases in emissions from point sources.

v. Sources of Visibility Impairment in Pecos Wilderness and Wheeler Peak Wilderness

Similar to Bandelier, visibility impairment at Pecos/Wheeler Park in 2002 on the worst 20% days is largely due to OMC and sulfate. OMC emissions

[62] Correction of WRAP region Plan02d CMAQ visibility modeling results on TSS for Regional Haze Planning—Final Memorandum, June 30, 2011, available at: *http://vista.cira.colostate.edu/tss/help/plan02d_rev.pdf.*

are primarily from natural fires from NM and AZ. In 2002, the largest contributions of sulfate to Pecos/Wheeler Park on the 20% worst days come from sources outside the modeling domain (26%), followed by point sources in CENRAP states (15%), Mexico (9%), the Eastern United States (6%), and New Mexico (6%). Contributions from New Mexico natural fires are 6%. New Mexico area sources contribute 3% of the sulfate on these days.

The 2018 projections assume that natural fire emissions of OMC and SO_2 remain constant between 2002 and 2018. In 2018, visibility impairment is still primarily due to OMC from natural fires. New Mexico's emissions of OMC from anthropogenic fires are projected to decrease, while emissions from area sources are expected to increase. Visibility impairment due to sulfate is projected to decrease by 2018, due to large decreases in point source emissions in CENRAP states and the Eastern United States. Sulfate contributions to visibility impairment at Pecos/Wheeler Park from Mexico will increase from 2002 levels due to increases in emissions from point sources in Mexico. Modeled sulfate contributions from New Mexico increase from 2002 levels due to projected increase in area source emissions in New Mexico. As discussed above, SO_2 emissions from area source emissions in New Mexico, particularly in Bernalillo County, are overestimated in the WRAP modeling. We also note that the PSAT results do not include NO_X and SO_2 reductions due to BART and the SO_2 milestone and emissions trading program. We anticipate additional visibility improvement in 2018 beyond the modeled visibility conditions due to lower NO_X emissions from implementation of the existing federal implementation plan or another future-approved NO_X BART determination consistent with the RHR requirements and lower SO_2 area emissions than included in the WRAP 2018 modeling episode used in this analysis. See our TSD for additional data on visibility modeling results and emissions.

vi. Sources of Visibility Impairment in Salt Creek Wilderness

Visibility impairment at Salt Creek in 2002 on the worst 20% days is largely due to sulfate, nitrate, OMC and CM. In 2002, the largest contributions of sulfate to Salt Creek on the 20% worst days come from point sources in the Eastern United States (28%), CENRAP states (24%), Mexico (9%), and New Mexico (6%). Contributions of nitrate are primarily from area, mobile and point sources in New Mexico and CENRAP states. CM emissions impacting Salt Creek are primarily from windblown dust in New Mexico and neighboring CENRAP states. WEP results for organic carbon indicate that contributions are from area source emissions in CENRAP states and New Mexico as well as natural fires in New Mexico and Arizona and local New Mexico point sources.

Visibility impairment due to sulfate is projected to decrease by 2018, due to large decreases in emissions in CENRAP states and the Eastern United States. Sulfate contributions to visibility impairment at Salt Creek from Mexico increase from 2002 levels due to increases in emissions from point sources. Contributions of nitrate from CENRAP states and New Mexico from mobile sources are projected to decrease significantly, while contributions from area source emissions, including emissions from oil and gas production in New Mexico and the CENRAP states are projected to increase. WEP results indicate that point source emissions of organic carbon in New Mexico impacting Salt Creek decrease significantly by 2018. CM emissions from windblown dust are held constant from 2002 levels and remain a significant contribution to visibility impairment in 2018. We note that the PSAT results do not include NO_X and SO_2 reductions due to BART and the SO_2 milestone and emissions trading program. We anticipate additional visibility improvement in 2018 beyond the modeled visibility conditions at Salt Creek due to lower NO_X emissions and lower SO_2 area emissions than included in the WRAP 2018 modeling episode used in this analysis. See our TSD for additional data on visibility modeling results and emissions.

vii. Sources of Visibility Impairment in White Mountain Wilderness

Visibility impairment at White Mountain in 2002 and 2018 is similar to Salt Creek. Visibility impairment at White Mountain in 2002 on the worst 20% days is largely due to sulfate, nitrate, OMC and CM. Compared to Salt Creek, visibility impairment due to CM is higher at White Mountain, while impairment due to nitrate is less significant. In 2002, the largest contributions of sulfate to White Mountain on the 20% worst days come from point sources in the Eastern United States (30%), CENRAP states (25%), and Mexico (9%). Contributions of nitrate are primarily from area, mobile and point sources in New Mexico and CENRAP states. CM emissions impacting White Mountain are primarily from windblown dust in New Mexico and neighboring CENRAP states. WEP results for organic carbon indicate that contributions are from natural fires in New Mexico and Arizona and area source emissions in CENRAP states and New Mexico.

Visibility impairment due to sulfate is projected to decrease by 2018, due to large decreases in emissions in CENRAP states and the Eastern United States. Sulfate contributions to visibility impairment at White Mountain from Mexico increase from 2002 levels due to increases in emissions from point sources. Contributions of nitrate from CENRAP states and New Mexico from mobile sources are projected to decrease significantly, while contributions from area source emissions, including emissions from oil and gas production in New Mexico and the CENRAP states are projected to increase. CM emissions from windblown dust are held constant from 2002 levels and remain a significant contribution to visibility impairment in 2018. We note that the PSAT results do not include NO_X and SO_2 reductions due to BART and the SO_2 milestone and emissions trading program. We anticipate additional visibility improvement in 2018 beyond the modeled visibility conditions at White Mountain due to lower NO_X and SO_2 emissions than included in the WRAP 2018 modeling episode used in this analysis. See our TSD for additional data on visibility modeling results and emissions.

d. New Mexico's Contributions to Visibility Impairment at Class I Areas in Other States

CAMx PSAT results were also utilized to evaluate the impact of New Mexico emission sources in 2002 on visibility impairment at Class I areas outside of the state. Section 12.2 of the NM RH 309(g) SIP presents the contribution of New Mexico sources to nitrate and sulfate on the 20% worst days at the Class I areas in Colorado, Arizona, Nevada, Utah, Wyoming and Texas. New Mexico emissions are responsible for up to 60% of the nitrate and 43% of the sulfate at individual Class I areas in neighboring states on the 20% worst visibility days during the baseline period. The highest impact from New Mexico sources at other State's Class I areas occurs at Mesa Verde National Park and Weminuche Wilderness for both sulfate and nitrate. These two Class I areas are less than 100km from the SJGS. As discussed in the FIP, the SJGS has significant impacts on visibility conditions at a large number of surrounding Class I areas. Emissions

reductions as a result of implementation of the existing federal implementation plan or another future-approved NO_X BART determination consistent with the RHR requirements will lead to improvement in visibility conditions and a decrease in New Mexico's contributions to visibility impairment at the Class I areas in surrounding states by 2018. The SO_2 milestone emissions and trading program will result in a reduction of statewide SO_2 emissions by 2018. NO_X emissions from mobile sources are also anticipated to decrease significantly by 2018, reducing the impact of New Mexico sources on other Class I areas.

e. Consultation and Emissions Reductions for Other States' Class I Areas

As in the development of New Mexico's reasonable progress goals for its Class I areas, NMED used the WRAP as its main vehicle for facilitating collaboration with FLMs and other states in satisfying its LTS consultation requirement. This helped NMED and other state environmental agencies analyze emission apportionments at Class I areas and develop coordinated RH SIP strategies.

Section 51.308(d)(3)(i) requires that New Mexico consult with other states if its emissions are reasonably anticipated to contribute to visibility impairment at that state's Class I area(s), and that New Mexico consult with other states if their emissions are reasonably anticipated to contribute to visibility impairment at New Mexico's Class I areas. NMED's consultations with other states are described in section V.N.3.d above. As already discussed elsewhere, NM neither requested additional emission reductions from other states, nor made a commitment to other states for additional emission reductions beyond the coordinated emission management strategies developed through the WRAP consultation process and factored in the WRAP's 2018 visibility projections using photochemical grid modeling. New Mexico determined that the implementation of BART and other existing measures in state regional haze plans were sufficient for the states to meet the reasonable progress goals for their Class I areas, and that future consultation would address any new strategies or measures needed. All states participating in NM's consultation process agreed with this decision. New Mexico's evaluation relied upon NO_X BART and other reductions as described in the SIP. We are proposing to find that New Mexico satisfies the consultation requirements of 40 CFR 51.308(d)(3)(i).

Section 51.308(d)(3)(ii) requires that if New Mexico emissions cause or contribute to impairment in another state's Class I area, New Mexico must demonstrate that it has included in its RH SIP all measures necessary to obtain its share of the emission reductions needed to meet the progress goal for that Class I area. Section 51.308(d)(3)(ii) also requires that since New Mexico participated in a regional planning process, it must ensure it has included all measures needed to achieve its apportionment of emission reduction obligations agreed upon through that process. As we state in the RHR,[63] New Mexico's commitments to participate in the WRAP bind it to secure emission reductions agreed to as a result of that process, unless it proposes a separate process and performs its consultations on the basis of that process. 64 FR 35735 (July 1, 1999).

While States are not bound by the results of a regional planning effort, nor can the content of their SIPs be dictated by a regional planning body, we expect that a coordinated regional effort will likely produce results the States will find beneficial in developing their regional haze implementation plans. Any State choosing not to follow the recommendations of a regional body would need to provide a specific technical basis that its strategy nonetheless provides for reasonable progress based on the statutory factors. At the same time, we cannot require States to participate in regional planning efforts if the State prefers to develop a long-term strategy on its own. We note that any State that acts alone in this regard must conduct the necessary technical support to justify their apportionment, which generally will require regional inventories and a regional modeling analysis. Additionally, any such State must consult with other States before submitting its long-term strategy to EPA.

The emission limits and schedule of compliance that New Mexico relied on as required by section 51.308(d)(3)(ii) as part of its long-term strategy to achieve the reasonable progress goals includes projected reductions from a NO_X BART determination for SJGS that is not under review in this proposed action. The reductions at the SJGS achieved in compliance with the emission limits and schedule of compliance in the existing federal implementation plan or anticipated due to any other future-approved NO_X BART determination consistent with the RHR requirements will result in greater visibility improvements than projected in the WRAP modeling used to establish the reasonable progress goals included in the 309(g) SIP submittal. In the absence of a proposal on that component of the submittal, we propose to find that the already effective BART requirements for that source sufficiently support our proposed finding that the requirements of section 51.308(d)(3)(ii) have been met.

f. Mandatory Long Term Strategy Factors

Section 51.308(d)(3)(v) requires that New Mexico minimally consider certain factors in developing its long-term strategy (the LTS factors). These include: (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 reasonable progress goal; (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 long-term strategy. For the reasons outlined below, we propose to find that New Mexico has satisfied all the requirements of Section 51.308(d)(3)(v).

i. Reductions Due to Ongoing Air Pollution Programs

In addition to its PM BART determination for the SJGS and the SO_2 emission milestone and trading program, New Mexico's LTS incorporates emission reductions due to a number of ongoing air pollution control programs.

The two primary regulatory tools for addressing visibility impairment from industrial sources are BART and the Prevention of Signification Deterioration (PSD)/New Source Review (NSR) rules. The New Mexico PSD rules protect visibility in Class I areas from new major industrial sources and major changes to existing sources.[64] New Mexico's PSD SIP rules (20.2.74 NMAC) contain requirements for review of visibility impact assessment from new and modified major stationary sources within 100 km of a Class I area. New

[63] 64 FR 35735.

[64] 20.2.79 NMAC, the provisions for permitting in nonattainment areas, is not referenced in the state's discussion, but those provisions also address visibility impairment. The state presently has one designated nonattainment area.

Mexico's Construction Permits SIP rule (20.2.72 NMAC) addresses construction or modifications of sources, including minor sources, and assures compliance with ambient air quality standards. New Mexico's Operating Permit Program (20.2.70 NMAC) consolidates all air quality regulatory requirements and provides for appropriate compliance assurance monitoring and an opportunity for participation by the public, EPA, and other States in the permitting process. NMED issues permits to all major and the majority of minor point sources in New Mexico, and each permit contains enforceable limitations on emissions of various pollutants, including those which cause or contribute to RH at the Class I areas in New Mexico. New Mexico also periodically incorporates by reference Federal New Source Performance Standards (20.2.77 NMAC) and Federal National Emission Standards for Hazardous Air Pollutant (20.2.78 NMAC), and determines case-by-case Maximum Achievable Control Technology (MACT) under 20.2.82 NMAC which may result in reductions of emissions of visibility impairing pollutants.

We approved New Mexico's Visibility Protection Plan for Phase I, Parts I and II, as a SIP revision on January 27, 2006. See 71 FR 4490. This plan contains short and long-term strategies for reasonable progress related to addressing reasonably attributable visibility impairment in New Mexico's Class I areas through visibility monitoring and control strategies. It includes PSD requirements for visibility protection and applying BART to existing sources if certified as causing RAVI.

Mobile source annual emissions show a major decrease in NO_X in New Mexico from 2002 to 2018. This reduction will result from numerous ''on the books'' Federal mobile source regulations. This trend is expected to provide significant visibility benefits. Beginning in 2006, we mandated new standards for on-road (highway) diesel fuel, known as ultra-low sulfur diesel. This regulation dropped the sulfur content of diesel fuel from 500 parts per million (ppm) to 15 ppm. Ultra-low sulfur diesel fuel enables the use of cleaner technology diesel engines and vehicles with advanced emissions control devices, resulting in significantly lower emissions. Diesel fuel intended for locomotive, marine, and non-road (farming and construction) engines and equipment was required to meet a low sulfur diesel fuel maximum specification of 500 ppm sulfur in 2007 (down from 5,000 ppm). By 2010, the ultra-low sulfur diesel fuel standard of 15 ppm sulfur applied to all non-road diesel fuel. Locomotive and marine diesel fuels are required to meet the ultra-low sulfur diesel standard beginning in 2012, resulting in further reductions of diesel emissions. New Mexico also considered ongoing federal mobile source regulations including the Tier 2 Vehicle Emission Standards, federal low-sulfur gasoline, national low emissions vehicle standards, heavy-duty vehicle standards and other federal Non-Road measures in developing its LTS.

In December of 2007, NMED adopted 20.2.88 NMAC—Emission Standards for New Motor Vehicles, which incorporates California emission standards for new passenger cars, light-duty trucks and medium duty vehicles sold in New Mexico beginning with model year 2011.

New Mexico also considered programs established to address the PM_{10} NAAQS. This includes Natural Events Action Plans developed for Dona Ana and Luna Counties. The plans outline procedures to utilize control measures to reduce anthropogenic sources of wind-blown dust.

ii. Measures To Mitigate the Impacts of Construction Activities

Section 51.308(d)(3)(v)(B) requires that New Mexico consider measures to mitigate the impacts of construction activities in developing its LTS. New Mexico considered developing a rule to address fugitive dust. New Mexico conducted a survey to gather public comments on regulation of dust sources in New Mexico. We note that the earlier discussed programs developed to address the PM_{10} NAAQS, including the Natural Events Action Plans developed for Dona Ana and Luna Counties contain procedures for the use of control measures for anthropogenic sources of wind-blown dust. These control measures include the use of dust suppressants, phased construction, and stopping or slowing construction activities during high winds to mitigate the impacts of construction activities on visibility impairment. We also note that Bernalillo County, which falls under the jurisdiction of the AQCB, has a fugitive dust rule (20.11.20 NMAC) that addresses fugitive emissions from construction activities within the City of Albuquerque and Bernalillo County. New Mexico did not go forward to adopt the rule that was under consideration at the time the 309(g) SIP was developed. The State has the opportunity to provide an updated analysis of the issue in the progress report and in any needed, future SIP revisions, as contemplated by the requirements of Section 309. We are proposing to find that New Mexico satisfies this component of LTS to consider measures to mitigate the impacts of construction activities.

iii. Emission Limitations and Schedules of Compliance

40 CFR 51.308(d)(3)(v)(C) requires that in developing its LTS, New Mexico consider emissions limitations and schedules of compliance to achieve the RPGs. The SIP contains emission reduction milestones and a backstop trading program that addresses SO_2 emissions from point sources in the State. The backstop trading program provides emission limits and schedules of compliance for SO_2 emissions from point sources. As previously stated, the NO_X BART component of the submittal that applies to SJGS is not here under review and not within the scope of our proposal to ensure all remaining RH requirements are in place for the state of New Mexico. The NO_X BART requirements for SJGS are presently satisfied by 40 CFR 52.1628, though this would not preclude its withdrawal following any future approval of an alternative BART determination found to comply with the requirements of the RHR.

iv. Source Retirement and Replacement Schedules

The State does not anticipate any specific major source retirements or replacements. Replacement of existing facilities will be managed accordingly through the existing Prevention of Signification Deterioration program. As NMED becomes aware of such actions, they will be factored into future reviews. We are proposing to find that the NMED properly addressed the requirements of 40 CFR 51.308(d)(3)(v)(D) in the development of its LTS.

v. Agricultural and Forestry Smoke Management Techniques

40 CFR 51.308(d)(3)(v)(E) requires that New Mexico consider smoke management techniques for agricultural and forestry management purposes in developing its LTS. New Mexico's smoke management plan and Smoke Management Rule (20.2.65 NMAC) are described in Section V.H of this notice. We propose to find that the smoke management plan appropriately contains smoke management techniques for agricultural and forestry management purposes, and we are proposing to approve 20.2.65 NMAC that was submitted as a SIP revision in 2003.

vi. Enforceability of New Mexico's Measures

Section 51.308(d)(3)(v)(F) requires that New Mexico ensure the enforceability of emission limitations and control measures used to meet reasonable progress goals. With the exception of the NO_X BART limit included in the FIP, all existing emission limitations and control measures used to meet the RPGs for which the State is responsible are enforceable by the State either through New Mexico Administrative Code or the SIP measures previously approved by EPA. Future emission limitations will be enforceable through NSR permit conditions (that automatically become part of the SIP) or EPA approved SIP measures. The NO_X BART requirements for SJGS must be included by NMED in a Part 70 air quality permit whether they draw from 40 CFR 52.1628 or from any submitted determination that, on EPA approval, replaces those requirements. See 70 FR at 39172.

vii. Anticipated Net Effect on Visibility Due to Projected Changes

40 CFR 51.308(d)(3)(v)(G) requires that in developing its LTS, New Mexico consider the anticipated net effect on visibility due to projected changes in point, area, and mobile source emissions over the period addressed by the long-term strategy. The anticipated net effect on visibility due to projected changes in point, area, and mobile source emissions during this planning period was analyzed using the WRAP visibility modeling for 2018 and is addressed in Chapter 9 of the NM RH 309(g) SIP submittal and elsewhere in this proposal. We are proposing to find that New Mexico satisfies this component of LTS.

g. Our Conclusion on New Mexico's Long Term Strategy

We propose to approve New Mexico's long-term strategy. The long-term strategy satisfies the requirements of 40 CFR 51.308(d)(3). Taking into account that NO_X BART requirements for SJGS are presently satisfied by the requirements of 40 CFR 52.1628 and may only be alternatively satisfied by an approvable determination that also complies with the Regional Haze Rule, we propose to also agree that additional controls and analysis are not presently warranted.

5. Monitoring Strategy and Other SIP Requirements

Section 51.308(d)(4) requires the SIP contain a monitoring strategy for measuring, characterizing, and reporting of RH 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 Section 51.305 for reasonably attributable visibility impairment. As Section 51.308(d)(4) notes, compliance with this requirement may be met through participation in the IMPROVE network. Since the monitors at the New Mexico Class I areas are IMPROVE monitors, we propose to determine the 309(g) SIP submittal has satisfied this requirement. See Chapter 4 of the NM RH 309(g) SIP and the TSD for details concerning the IMPROVE network.

Section 51.308(d)(4)(i) requires the establishment of any additional monitoring sites or equipment needed to assess whether reasonable progress goals to address RH for all mandatory Class I Federal areas within the state are being achieved. Table 4–1 of the NM RH 309(g) SIP submittal shows the IMPROVE monitor site locations, elevations, start date, and the Class I area to which the monitored visibility data corresponds. Chapter 4 of the NM RH 309(g) SIP submittal describes the location of each monitor. Monitors for Bandelier, Guadalupe Mountains (representative of Carlsbad), and Gila Wilderness were installed between 1988 and 1994. New monitors were established at Bosque del Apache, Salt Creek and Wheeler Peak (representative of both Wheeler Peak and Pecos Wilderness) in mid-2000. The monitor at White Mountain Wilderness began operation in early 2002. New Mexico has not identified the need for any additional monitors and we agree with this conclusion. We propose to find the 309(g) SIP submittal has satisfied this requirement.

Section 51.308(d)(4)(ii) requires that RH SIPs establish procedures by which monitoring data and other information are used in determining the contribution of emissions from within a state to RH visibility impairment at mandatory Class I Federal areas both within and outside the state. The IMPROVE monitoring program is national in scope, and other states have similar monitoring and data reporting procedures, ensuring a consistent and robust monitoring data collection system. As section 51.308(d)(4) indicates, participation in the IMPROVE program constitutes compliance with this requirement. We therefore propose that the 309(g) SIP submittal has satisfied this requirement by virtue of its participation in the IMPROVE program.

Section 51.308(d)(4)(iv) requires that RH SIPs provide for the reporting of all visibility monitoring data to the Administrator at least annually for each mandatory Class I Federal area in the state. To the extent possible, New Mexico should report visibility monitoring data electronically. Section 51.308(d)(4)(vi) also requires that NMED provide for other elements, including reporting, recordkeeping, and other measures, necessary to assess and report on visibility. We propose to determine that New Mexico's participation in the IMPROVE network ensures the monitoring data is reported at least annually, is easily accessible, and therefore the 309(g) SIP submittal complies with this requirement.

Section 51.308(d)(4)(v) requires that NMED 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 state must also include a commitment to update the inventory periodically. Please refer to section V.N.4.a., above, where we discuss NMED's emission inventory. The 309(g) SIP submittal provides a stated commitment to update the New Mexico statewide emissions inventories periodically and review periodic emissions information from other states and future emissions projections. We propose to determine the RH SIP submittal satisfies this requirement.

VI. EPA's Conclusions and Proposed Action

EPA is proposing to approve New Mexico State Implementation Plan (SIP) revisions received July 5, 2011 and December 1, 2003, addressing the regional haze requirements for the mandatory Class I areas under 40 CFR 51.309 and the separate submittal for the regional haze requirements under 40 CFR 51.309(g). EPA is proposing to determine that the submittals meet the requirements of 40 CFR 51.309. We note that we are not, however, proposing action on one component of these submittals: the submitted NO_X BART determination for the San Juan Generating Station. We are also proposing to approve various companion regulations submitted to us as SIP revisions for our consideration alongside the state's Regional Haze plan, specifically: new sections 20.2.81 NMAC, 20.2.65 NMAC, 20.2.60 NMAC, and submitted revisions to the previously approved 20.2.73.300.F NMAC.

EPA is taking this action under section 110 of the CAA.

VII. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely proposes to approve state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Does not provide the EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and the EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law. Consistent with EPA policy, EPA nonetheless is offering consultation to Tribes regarding this rule making action.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur dioxides, Visibility, Regional haze, Best available control technology.

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

Dated: May 31, 2012.

Samuel Coleman,

Acting Regional Administrator, Region 6.

[FR Doc. 2012–14247 Filed 6–14–12; 8:45 am]

BILLING CODE P

FEDERAL REGISTER

Vol. 77 Friday,

No. 116 June 15, 2012

Part III

Federal Housing Finance Agency

12 CFR Part 1254

Enterprise Underwriting Standards; Proposed Rule

FEDERAL HOUSING FINANCE AGENCY

12 CFR Part 1254

RIN 2590–AA53

Enterprise Underwriting Standards

AGENCY: Federal Housing Finance Agency.

ACTION: Notice of proposed rulemaking; request for comments.

SUMMARY: The Federal Housing Finance Agency (''FHFA'') hereby issues this Notice of Proposed Rulemaking (NPR) concerning underwriting standards for the Federal National Mortgage Association (Fannie Mae), and the Federal Home Loan Mortgage Corporation (Freddie Mac), (together, the Enterprises) relating to mortgage assets affected by Property Assessed Clean Energy (''PACE'') programs.

The NPR reviews FHFA's statutory authority as the federal supervisory regulator of the Enterprises, reviews FHFA's statutory role and authority as the Conservator of each Enterprise, summarizes issues relating to PACE that are relevant to FHFA's supervision and direction of the Enterprises, summarizes comments received on subjects relating to PACE on which FHFA has considered alternative proposed rules, sets forth FHFA's responses to issues raised in the comments, presents the proposed rule and alternatives FHFA is considering, and invites comments from the public.

DATES: Written comments must be received on or before July 30, 2012.

ADDRESSES: You may submit your comments, identified by regulatory information number (RIN) 2590–AA53, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov:* Follow the instructions for submitting comments. If you submit your comment to the *Federal eRulemaking Portal,* please also send it by email to FHFA at *RegComments@fhfa.gov* to ensure timely receipt by FHFA. Please include ''RIN 2590–AA53'' in the subject line of the message.
- *Email:* Comments to Alfred M. Pollard, General Counsel may be sent by email to *RegComments@fhfa.gov.* Please include ''RIN 2590–AA53'' in the subject line of the message.
- *U.S. Mail, United Parcel Service, Federal Express, or Other Mail Service:* The mailing address for comments is: Alfred M. Pollard, General Counsel, Attention: Comments/RIN 2590–AA53, Federal Housing Finance Agency, Eighth Floor, 400 Seventh Street SW., Washington, DC 20024.
- *Hand Delivered/Courier:* The hand delivery address is: Alfred M. Pollard, General Counsel, Attention: Comments/RIN 2590–AA53, Federal Housing Finance Agency, Eighth Floor, 400 Seventh Street SW., Washington, DC 20024. The package should be logged at the Seventh Street entrance Guard Desk, First Floor, on business days between 9 a.m. and 5 p.m.

FOR FURTHER INFORMATION CONTACT: Alfred M. Pollard, General Counsel, (202) 649–3050 (not a toll-free number), Federal Housing Finance Agency, Eighth Floor, 400 Seventh Street SW., Washington, DC 20024. The telephone number for the Telecommunications Device for the Hearing Impaired is (800) 877–8339.

SUPPLEMENTARY INFORMATION:

Executive Summary

The Federal Housing Finance Agency (''FHFA'') hereby issues this Notice of Proposed Rulemaking (NPR) concerning underwriting standards for the Federal National Mortgage Association (Fannie Mae), and the Federal Home Loan Mortgage Corporation (Freddie Mac), (together, the Enterprises) relating to mortgage assets affected by Property Assessed Clean Energy (''PACE'') programs.

FHFA is an independent federal agency created by the Housing and Economic Recovery Act of 2008 (HERA) to supervise and regulate the Enterprises and the twelve Federal Home Loan Banks (the ''Banks''). FHFA is the exclusive supervisory regulator of the Enterprises and the Banks. Both Enterprises presently are in conservatorship under the direction of FHFA as Conservator.

PACE programs involve local governments providing property-secured financing to property owners for the purchase of energy-related home-improvement projects. PACE programs have been encouraged by investment firms that intend to provide financing for local governments to support their lending programs. Homeowners repay the amount borrowed, with interest, over a period of years through ''contractual assessments'' secured by the property and added to the property tax bill. Repayment goes either to a county or other funding source or to pay principal and interest on bonds. Under most state statutory PACE programs enacted to date, the homeowner's obligation to repay the PACE loan becomes in substance a first lien on the property, thereby subordinating or ''priming'' the mortgage holder's security interest in the property. On July 6, 2010, FHFA issued a Statement concerning such first-lien PACE programs (the Statement), which directed the Enterprises and the Banks to take certain prudential actions to limit their exposure to financial risks associated with first-lien PACE programs. In a directive issued February 28, 2011 (the Directive), FHFA reiterated the direction provided to the Enterprises in the Statement and expressly directed the Enterprises not to purchase mortgages affected by first-lien PACE obligations.

Several parties brought legal challenges to the process by which FHFA issued the Statement and the Directive, as well as to their substance. The United States District Courts for the Northern District of Florida, the Southern District of New York, and the Eastern District of New York all dismissed lawsuits presenting such challenges. The United States District Court for the Northern District of California (the California District Court), however, allowed such a lawsuit to proceed and has issued a preliminary injunction ordering FHFA ''to proceed with the notice and comment process'' in adopting guidance concerning mortgages that are or could be affected by first-lien PACE programs. Specifically, the California District Court ordered FHFA to ''cause to be published in the **Federal Register** an Advance Notice of Proposed Rulemaking relating to the statement issued by FHFA on July 6, 2010, and the letter directive issued by FHFA on February 28, 2011, that deal with property assessed clean energy (PACE) programs.'' The California District Court further ordered that ''[i]n the Advance Notice of Proposed Rulemaking, FHFA shall seek comments on, among other things, whether conditions and restrictions relating to the regulated entities' dealing in mortgages on properties participating in PACE are necessary; and, if so, what specific conditions and/or restrictions may be appropriate.'' The California District Court also ordered that ''After considering any public comments received related to the Advance Notice of Proposed Rulemaking, * * * FHFA shall cause to be published in the **Federal Register** a Notice of Proposed Rulemaking setting forth FHFA's proposed rule relating to PACE programs.'' The California District Court neither invalidated nor required FHFA to withdraw the Statement or the Directive, both of which remain in effect.

In response to and in compliance with the California District Court's order, FHFA sought comment through an Advanced Notice of Proposed

Rulemaking, published in the **Federal Register** at 77 FR 3958 (January 26, 2012), on whether the restrictions and conditions set forth in the July 6, 2010 Statement and the February 28, 2011 Directive should be maintained, changed or eliminated, and whether other restrictions or conditions should be imposed. FHFA has appealed the California District Court's order to the U.S. Court of Appeals for the Ninth Circuit (the Ninth Circuit). Inasmuch as the California District Court's order remains in effect pending the outcome of the appeal, FHFA is proceeding with the publication of this NPR pursuant to and in compliance with that order. The Ninth Circuit has stayed, pending the outcome of FHFA's appeal, the portion of the California District Court's Order requiring publication of a final rule. FHFA will withdraw this NPR should FHFA prevail on its appeal and will, in that situation, continue to address the financial risks FHFA believes PACE programs pose to safety and soundness as it deems appropriate.

The NPR reviews FHFA's statutory authority as the federal supervisory regulator of the Enterprises, reviews FHFA's statutory role and authority as the Conservator of each Enterprise, summarizes issues relating to PACE that are relevant to FHFA's supervision and direction of the Enterprises, summarizes comments received on subjects relating to PACE on which FHFA has considered alternative proposed rules, sets forth FHFA's responses to issues raised in the comments, presents the proposed rule and alternatives FHFA is considering, and invites comments from the public.

I. Comments

Pursuant to the Preliminary Injunction, FHFA invites comments on all aspects of this NPR. Copies of all comments will be posted without change, including any personal information you provide, such as your name and address, on the FHFA Web site at *https://www.fhfa.gov.* In addition, copies of all comments received will be available for examination by the public on business days between the hours of 10 a.m. and 3 p.m. at the Federal Housing Finance Agency, Eighth Floor, 400 Seventh Street SW., Washington, DC 20024. To make an appointment to inspect comments, please call the Office of General Counsel at (202) 649–3804.

II. Background

A. FHFA's Statutory Role and Authority as Regulator

FHFA is an independent federal agency created by HERA to supervise and regulate the Enterprises and the Banks. 12 U.S.C. 4501 *et seq.* Congress established FHFA in the wake of a national crisis in the housing market. A key purpose of HERA was to create a single federal regulator with all the authority necessary to oversee Fannie Mae, Freddie Mac, and the Banks. 12 U.S.C. 4511(b)(2).

The Enterprises operate in the secondary mortgage market. Accordingly, they do not directly lend funds to home purchasers, but instead buy mortgage loans from original lenders, thereby providing funds those entities can use to make additional loans. The Enterprises hold in their own portfolios a fraction of the mortgage loans they purchase. The Enterprises also securitize a substantial fraction of the mortgage loans they purchase, packaging them into pools and selling interests in the pools as mortgage-backed securities. Traditionally, the Enterprises guarantee nearly all of the mortgage loans they securitize. Together, the Enterprises own or guarantee more than $5 trillion in residential mortgages.

FHFA's ''Director shall have general regulatory authority over each [Enterprise] * * *, and shall exercise such general regulatory authority * * * to ensure that the purposes of this Act, the authorizing statutes, and any other applicable law are carried out.'' 12 U.S.C. 4511(b)(2). As regulator, FHFA is charged with ensuring that the Enterprises operate in a ''safe and sound manner.'' 12 U.S.C. 4513(a). FHFA is statutorily authorized ''to exercise such incidental powers as may be necessary or appropriate to fulfill the duties and responsibilities of the Director in the supervision and regulation'' of the Enterprises. 12 U.S.C. 4513(a)(2). FHFA's Director is authorized to ''issue any regulations or guidelines or orders as necessary to carry out the duties of the Director * * *.'' *Id.* 4526(a). FHFA's regulations are subject to notice-and-comment rulemaking under the Administrative Procedure Act.

B. FHFA's Statutory Role and Authority as Conservator

HERA also authorizes the Director of FHFA to ''appoint the Agency as conservator or receiver for a regulated entity * * * for the purpose of reorganizing, rehabilitating or winding up [its] affairs.'' *Id.* 4617(a)(1), (2). On September 6, 2008, FHFA placed Fannie Mae and Freddie Mac into conservatorships. FHFA thus ''immediately succeed[ed] to all rights, titles, powers, and privileges of the shareholders, directors, and officers of the [Enterprises].'' *Id.* 4617(b)(2)(B).

In its role as Conservator, FHFA may take any action ''necessary to put the regulated entity into sound and solvent condition'' or ''appropriate to carry on the business of the regulated entity and preserve and conserve the assets and property of the regulated entity.'' *Id.* 4617(b)(2)(D). The Conservator also may ''take over the assets of and operate the regulated entity in the name of the regulated entity,'' ''perform all functions of the entity'' consistent with the Conservator's appointment, and ''preserve and conserve the assets and property of the regulated entity.'' *Id.* 4617(b)(2)(A), (B). The Conservator may take any authorized action ''which the Agency determines is in the best interests of the regulated entity or the Agency.'' *Id.* 4617(b)(2)(J). ''The authority of the Director to take actions [as Conservator] shall not in any way limit the general supervisory and regulatory authority granted'' by HERA. 12 U.S.C. 4511(c).

HERA also provided for assistance by the U.S. Department of the Treasury in the event that financial aid was needed by an Enterprise. On September 7, 2008, the Treasury Department executed Senior Preferred Stock Agreements (SPSAs) to provide such assistance following the imposition of conservatorships by FHFA. A purpose of the agreements was to maintain the Enterprises at a level above the statutory level of ''critically undercapitalized,'' which would trigger receivership and remove the Enterprises from providing market services as was the purpose of the conservatorships. In effect, the Enterprises maintain nominal positive net worth through the infusion of taxpayer funds by the Treasury Department; losses the Enterprises incur increase the draws they make under the SPSAs and the concomitant burden on taxpayers.

C. Issues Relating to PACE Programs Relevant to FHFA's Supervision and Direction of the Enterprises

PACE programs provide a means of financing certain kinds of home-improvement projects. Specifically, PACE programs generally permit local governments to provide financing to property owners for the purchase of energy-related home-improvement projects, such as solar panels, insulation, energy-efficient windows, and other technologies. Homeowners agree to repay the amount borrowed, with interest, over a period of years through ''contractual assessments'' paid to the municipality and often added to their property tax bill. Over the last three years, more than 25 states have enacted legislation authorizing local

governments to set up PACE-type programs. Such legislation generally leaves most program implementation and standards to local governmental bodies and, but for a few instances, provides no uniform requirements, standards, or enforcement mechanisms.

In most, but not all, states that have implemented PACE programs, the liens that result from PACE program loans have priority over mortgages, including pre-existing first mortgages.[1] In such programs, the PACE lender ''steps ahead'' of the mortgage holder (*e.g.,* a Bank, Fannie Mae, or Freddie Mac) in priority of its claim against the collateral, and such liens ''run'' with the property. As a result, a mortgagee foreclosing on a property subject to a PACE lien must pay off any accumulated unpaid PACE assessments (*i.e.,* past-due payments) and remains responsible for the principal and interest payments that are not yet due (*i.e.,* future payments) on the PACE obligation. Likewise, if a home is sold before the homeowner repays the PACE loan, the purchaser of the home assumes the obligation to pay the remainder. The mortgage holder is also at risk in the event of foreclosure for any diminution in the value of the property caused by the outstanding lien or the retrofit project, which may or may not be attractive to potential purchasers. Also, the homeowner's assumption of this new obligation may itself increase the risk that the homeowner will become delinquent or default on other financial obligations, including any mortgage obligations.[2]

Funding for PACE programs may come from local funds, grants, bond financing, or such other device as is available to a county or municipality. PACE programs generally anticipate that private-sector capital would flow through the local government to the homeowner-borrower (or the homeowner-borrower's contractors). While PACE programs may vary in the particular mechanisms they use to raise capital, in many instances private investors would provide capital by purchasing bonds secured by the payments that homeowner-borrowers make on their PACE obligations. From the capital provider's perspective, a critical advantage of channeling the funding through a local government, rather than lending directly to the homeowner-borrower or channeling the funds through a private enterprise, is that the local government utilizes the property-tax assessment system as the vehicle for repayment. Because of the ''lien-priming'' feature of most PACE programs authorized to date, the capital provider effectively ''steps ahead'' of all other private land-secured lenders (including mortgage lenders) in priority, thereby minimizing the financial risk to the capital provider while downgrading the priority and ultimate collectability of first and second mortgages, and of any other property-secured financial obligation.

Proponents of first-lien PACE programs have analogized the obligations to repay PACE loans to traditional tax assessments. However, unlike traditional tax assessments, PACE loans are voluntary and have other features not typical of tax assessments—homeowners opt in, submit applications, and contract with the city or county's PACE program to obtain the loan and repay it. Each participating property owner controls the use of the funds, selects the contractor who will perform the energy retrofit, owns the energy retrofit fixtures, and bears the cost of repairing the fixtures should they become inoperable, including during the time the PACE loan remains outstanding. PACE program loans are repaid and end on a set term determined for the specific PACE assessment. In contrast, the duration for or the number of installments for many other assessments for municipal improvements for a locality or a special assessment district are not specific to the affected parcel or property but are instead aggregated across all affected properties based on the structure of the bond or other financing vehicle. Further, each locality sets its own terms and requirements for homeowner and project eligibility for PACE loans; no national standards exist, nor, in many instances, are all standards uniform even for programs within the same state. Nothing in existing PACE programs requires that local governments adopt and implement nationally uniform financial underwriting standards, such as minimum total loan-to-value ratios that take into account either: (i) Total debt or other liens on the property; or (ii) the possibility of subsequent declines in the value of the property. Many PACE programs also fail to employ standard personal creditworthiness requirements, such as limits on credit scores or total debt-to-income ratio, although some include narrower requirements, such as that the homeowner-borrower be current on the mortgage and property taxes and not have a recent bankruptcy history.

Some local PACE programs communicate to homeowners that incurring a PACE obligation may violate the terms of their mortgage documents.[3] Similarly, some cities and counties provide forms that participants can use to obtain the lender's consent or acknowledgment prior to participation.[4] State laws may or may not be specific on whether such loans must be recorded.

The first state statutes authorizing PACE programs were enacted in 2008. As PACE programs were being considered by more states, FHFA began to evaluate the potential impact of these programs on the asset portfolios of FHFA-regulated entities. On June 18, 2009, FHFA issued a letter and background paper raising concerns about first-lien PACE programs. To better understand the risks presented by PACE programs to lenders and the Enterprises as well as borrowers, FHFA met over the next year with PACE stakeholders, other federal agencies, and state and local authorities around the country.

On May 5, 2010, in response to continuing questions and concerns about PACE programs, Fannie Mae and Freddie Mac issued advisories (Advisories) to lenders and servicers of mortgages owned or guaranteed by the Enterprises.[5] The May 5, 2010 Advisories referred to Fannie Mae's and Freddie Mac's jointly developed master uniform security instruments (USIs), which prohibit liens senior to that of the mortgage.[6]

[1] In at least four states—Maine, New Hampshire, Oklahoma, and Vermont—legislation provides that the PACE lien does not subordinate a first mortgage on the subject property. FHFA understands that under legislation now pending in Connecticut, PACE programs in that state also would not subordinate first mortgages.

[2] In many PACE programs, the allowable amount of a loan is based on assessed property value and may not consider the borrower's ability to repay. States have considered permitting loan levels of 10% to 40% of the assessed value of the underlying property.

[3] *See, e.g.,* Yucaipa Loan Application at 2–3, 10, *http://www.yucaipa.org/cityPrograms/EIP/PDF_Files/Application.pdf* (last visited Jan. 12, 2012); Sonoma Application at 2, *http://www.sonomacountyenergy.org/lower.php?url=reference-forms-new&catid=603* (document at ''Application'' link) (last visited Jan. 12, 2012).

[4] Sonoma Lender Acknowledgement, *http://www.sonomacountyenergy.org/lower.php?url=reference-forms-new&catid=606* (pp. 4–7 of document at ''Lender Info and Acknowledgement'' link) (last visited Jan. 12, 2012).

[5] Fannie Mae Lender Letter LL–2010–06 (May 5, 2010), *available at https://www.efanniemae.com/sf/guides/ssg/annltrs/pdf/2010/ll1006.pdf;* Freddie Mac Industry Letter (May 5, 2010), *available at http://www.freddiemac.com/sell/guide/bulletins/pdf/iltr050510.pdf.*

[6] The relevant provision appears in Section 4. *See, e.g.,* Freddie Mac Form 3005, California Deed of Trust, *available at http://www.freddiemac.com/uniform/doc/3005-CaliforniaDeedofTrust.doc;* Fannie Mae Form 3005, California Deed of Trust, *available athttps://www.efanniemae.com/sf/formsdocs/documents/secinstruments/doc/3005w.doc.*

Shortly after the Advisories were issued, FHFA received a number of inquiries seeking FHFA's position.[7] On July 6, 2010, FHFA issued the Statement, which provided:

> [T]he Federal Housing Finance Agency (FHFA) has determined that certain energy retrofit lending programs present significant safety and soundness concerns that must be addressed by Fannie Mae, Freddie Mac and the Federal Home Loan Banks. * * *
>
> First liens established by PACE loans are unlike routine tax assessments and pose unusual and difficult risk management challenges for lenders, servicers and mortgage securities investors. * * *
>
> They present significant risk to lenders and secondary market entities, may alter valuations for mortgage-backed securities and are not essential for successful programs to spur energy conservation.[8]

The Statement directed that the Advisories ''remain in effect'' and that the Enterprises ''should undertake prudential actions to protect their operations,'' including: (i) Adjusting loan-to-value ratios; (ii) ensuring that loan covenants require approval/consent for any PACE loans; (iii) tightening borrower debt-to-income ratios; and (iv) ensuring that mortgages on properties with PACE liens satisfy all applicable federal and state lending regulations. However, FHFA directed these actions on a prospective basis only, directing in the Statement that any prohibition against such liens in the Enterprises' USIs be waived as to PACE obligations already in existence as of July 6, 2010.

On February 28, 2011, following additional inquiries from the public, PACE supporters, and PACE opponents, the Conservator issued a Directive stating the Agency's view that PACE liens ''present significant risks to certain assets and property of the Enterprises—mortgages and mortgage-related assets—and pose unusual and difficult risk management challenges.'' FHFA thus directed the Enterprises to ''continue to refrain from purchasing mortgage loans secured by properties with outstanding first-lien PACE obligations.'' *Id.*

III. Summary of Responses to the Advance Notice of Proposed Rulemaking

A. Volume and General Nature of Comments

In response to the Advance Notice of Proposed Rulemaking of January 2012 (the ''ANPR'') issued pursuant to the Preliminary Injunction, FHFA received a large number of comments. Some 33,000 comments were short, one- or two- page, organized-response submissions, usually termed ''form letters.'' Some additional 400 comments came in the form of substantive response letters that fell into several categories that are described herein. Samples of the form letters and several hundred other comments were posted to FHFA's Web site.[9] FHFA notes that the majority of comments did not respond directly to the questions presented in the ANPR, a number responded directly to only a few questions, and only a few responded to all the questions.

1. Organized-Response Form Letters

The 33,000 organized-response form letters fell into five categories of comments, samples of which were posted to the FHFA Web site. Generally, these comments included support for PACE programs, noting their contribution to energy efficiency, environmental benefits, job creation, and other economic or climate benefits. The comments called for FHFA to withdraw its July 2010 directive. Others included assertions that PACE programs represent assessments, like those made by local governments for years, that they are not loans, and that these assessments pose ''minimal'' risks to lenders, investors, and homeowners. Some cited guidelines from the Council on Environmental Quality (CEQ),[10] the U.S. Department of Energy (DOE),[11] and legislation proposed in Congress regarding PACE programs (most frequently to legislation pending in the U.S. House of Representatives as H.R. 2599, the ''PACE Assessment Protection Act of 2011''). These comments contained little supporting information or results of any testing or data, and were generally limited to information from certain homeowners of their experiences with PACE programs or expressions of general support for such programs. The comments in the ''prepared input'' responses almost uniformly called on FHFA to change its position to permit the Enterprises to purchase such loans encumbered by PACE loans that created liens with priority over first mortgages.

2. Substantive Responses

The roughly 400 substantive responses (*i.e.,* submissions other than form letters) took various approaches. Most but not all expressed support for PACE programs. Some expressed only limited or qualified support for PACE programs, and a few expressed opposition to or reservations about first-lien PACE programs.

B. Specific Issues Raised in Comments

1. Financial Risks First-Lien PACE Programs Pose to Mortgage Holders and Other Interested Parties

Many commenters addressed the extent of incremental financial risk first-lien PACE programs pose to mortgage holders and other interested parties; some such submissions included direct responses to Questions 2 and 3 of the ANPR. PACE proponents generally asserted that first-lien PACE programs pose little, if any, incremental financial risk to mortgage holders. Examples of such submissions include the following:

- Letters submitted by Rep. Nan Hayworth and several other members of Congress, and by Sen. Michael Bennet and several other U.S. Senators each asserted that ''PACE assessments present minimal risks to lenders.''
- The Town of Babylon, NY reiterated that it had previously communicated to FHFA its view that: ''If you revisit and reevaluate the potential of ELTAPs {PACE obligations}, we believe you'll find they will enhance the value of participating homes and, in fact, reinforce, rather than 'impair', the first mortgages. In reality, these programs will help homeowners stay in their houses by reducing their utility bills while providing a hedge against rising energy costs in the future. Consider that if 5% of houses whose mortgages are guaranteed by Fannie Mae and Freddie Mac were retrofitted through Green Homes programs, the dollar amount would add up, approximately, to an infinitesimal 0.3% of the total guaranteed by Fannie and Freddie.''
- Sonoma County, CA asserted that ''There is no demonstrable risk to the Enterprises from the existing PACE programs; instead, it appears that the Enterprises are enjoying increased security on loans they own because of the added value of the improvements (over $45 million in Sonoma County); with de minimus exposure to risk on any individual project.'' The County also asserted that ''Participants in the PACE program have low tax

[7] Letter from Edmund G. Brown, Jr. to Edward DeMarco (May 17, 2010); Letter from Edmund G. Brown, Jr. to Edward DeMarco (June 22, 2010). These letters are available for inspection upon request at FHFA.

[8] FHFA Statement on Certain Energy Retrofit Loan Programs (July 6, 2010), *available at http://www.fhfa.gov/webfiles/15884/PACESTMT7610.pdf.*

[9] The comments can be viewed at *http://www.fhfa.gov/Default.aspx?Page=89* (1/26/2012 ''Mortgage Assets Affected by (Property Assessed Clean Energy) PACE Programs'' link).

[10] Council on Environmental Quality, Middle Class Task Force, Recovery Through Retrofit (October 2009), *available at http://www.whitehouse.gov/assets/documents/Recovery_Through_Retrofit_Final_Report.pdf.*

[11] Department of Energy, Guidelines for Pilot PACE Financing Programs (May 7, 2010) (hereinafter, ''DOE Guidelines''), *available at http://www1.eere.energy.gov/wip/pdfs/arra_guidelines_for_pilot_pace_programs.pdf.*

delinquency rates and low mortgage default rates. The PACE improvements add extra value, and thus extra security, to the mortgage.'' The County further asserted that it ''does not believe PACE assessments impose any additional risk on mortgage holders or investors in mortgage-backed securities. In fact, the total value of improvements, compared to the risk of possible default or delinquency, almost certainly leaves such investors better protected over all.''

• The Natural Resources Defense Council asserted that ''Even if we assume, against the weight of existing evidence, that the existence of a PACE lien on a property does create an incremental risk to mortgage holders, it can be shown that this risk is de minimis. If a property owner whose home is valued at $300,000 with a $250,000 mortgage is seeking $20,000 in PACE financing, at an interest rate of 7% and a 20-year assessment period, the annual PACE assessment would be $1,960. In the event of foreclosure, under the law of California and most states, and under the DOE Guidelines, only the amount of the PACE payment in arrears would be due and take priority over the first mortgage. Thus, if the owner had failed to pay their property taxes for a year, only $1,960 would be owed, and the new owner would be responsible for the remaining stream of assessments. Assuming an extremely high foreclosure rate of 10% across the Enterprises' portfolio of mortgages on properties with PACE financings and one year of delinquency on the assessment, the risk of loss to existing lenders from PACE liens would average $196 per home across the portfolio of PACE-financed properties. Assuming a more reasonable foreclosure rate of 5%, the risk to existing lenders from PACE liens across the PACE-financed portfolio would average less than $100 per home.''

• The Great Lakes Environmental Law Center asserted that ''The lien-priming feature of first-lien PACE obligations lowers the financial risks borne by holders of mortgages affected by PACE obligations or investors in mortgage-backed securities based on such mortgages. * * * PACE reduces Fannie Mae and Freddie Mac's exposure to risk and loss by encouraging private, market driven solutions for our nation's mortgage industry.''

• The Office of the Mayor of the City of New York noted that funding alternatives to PACE programs, such as utility bill financing, do not work because of high customer turnover and that PACE programs avoid this problem as the obligation runs with the land. The comment urged FHFA to adopt reasonable underwriting standards. The comment stated that, contrary to FHFA's statement that PACE liens lack ''traditional community benefits associated with taxing initiatives,'' PACE liens do provide community benefits such as improved air quality and aiding in the fight against climate change. Further, the letter noted that PACE default rates are ''vanishingly small.''

• The City of Palm Desert, CA asserted that ''The lien-priming feature of first-lien PACE obligations does not adversely affect the financial risks borne by holders of mortgages affected by PACE obligations or investors in mortgage-backed securities if appropriate underwriting standards and program designs are implemented. Indeed, given proper PACE program design, the financial risks borne by such mortgage holders may actually be decreased.''

• Placer County, CA asserted that ''[T]he installation of PACE improvements is anticipated to reduce property owners' utility costs (offsetting the contractual assessment installments), increases their property's value, and allows them to hedge themselves against rising fuel prices.'' The County also stated that ''the FHFA [should] adopt a rule to the effect that if a PACE program complies with the White House's policy framework and the Department of Energy's best practice guidelines, then the Enterprises * * * may purchase or insure a mortgage loan secured by a property that is encumbered by a PACE lien. * * *''. The letter noted that PACE programs present no greater risks than other assessments: ''The County has levied taxes and assessments to achieve important public purposes, such as the construction of schools, the installation of water and sanitary sewer systems and the undergrounding of public utilities, for more than 100 years. * * * PACE is a safe and sound financing mechanism for energy retrofitting the country's existing building stock.''

• Leon County, FL asserted that ''PACE programs increase property values, [and] they essentially provide an 'extra layer' of scrutiny on the borrower and the improvements proposed, because most programs, including LEAP, require positive cash flow. In short, PACE programs like LEAP will not authorize financing, and thus establish priority liens, on risky properties or property owners.'' The County further stated that its PACE program ''has minimized the financial risk to the holder of any mortgage interest because the specific types of information in the audit are prescribed to assure the estimated utility savings are known and the return on investment is fully disclosed to the applicant.''

• The Environmental Defense Fund asserted that ''PACE will simultaneously mitigate other, more significant risks'' such as energy price increases, ''to yield a net decline in the chance of mortgage default.''

Many such submissions provided little if any analysis to support such assertions, while others proffered discussion of some or all of the subjects noted below in paragraphs (a) through (e).

Other commenters asserted that first-lien PACE programs would pose material incremental financial risk to mortgage holders. For example,

• Freddie Mac asserted that ''The priority lien feature of many PACE programs has the impact of transferring the risk of loss, without compensation or underwriting controls, from the PACE lender to the mortgage lenders and investors who have neither priced for, nor accepted the risk * * *. In virtually all cases, our recovery in the event of a default would be lower than if the PACE loan did not have a priority lien. Potential losses to Freddie Mac could be substantial and would include payment of the outstanding loan amount, expenses associated with the possible extension of the foreclosure process, and the impact of the encumbrance on the resale value of the property.''

• Fannie Mae asserted that ''There are significant risks associated with PACE Programs because of the potential to increase the frequency and severity of credit losses to Fannie Mae (or any other mortgage loan investor), as well as other possible adverse consequences for borrowers. The most significant risks derive from the lien priority of PACE loans, potential increases in loss severity as a result of PACE loans, and increases in credit risk because of the limited assessment of a borrower's ability to repay a PACE loan.''

• The Federal Home Loan Bank of NY asserted that ''The automatic priority lien status typically granted to PACE lending undermines not only the FHLBNY member-lenders' lien priority but also therefore, the FHLBNY's pre-established lien priority which presents a key disruption to well-established first mortgage home lending.''

• The Joint Trade Association (American Bankers Association *et al.*) asserted that ''The lien-priming feature of first-lien PACE obligations greatly increases the credit exposure of mortgage-backed securities, to mortgage investors, taxpayers, and mortgage markets themselves. Mortgage investors rely on their lien position. Losing it

unknowingly, in exchange for nothing, substantially harms the value of mortgage investments. The GSEs so dominate the mortgage market today that losses from super-lien loans would be heavily concentrated in two GSEs.''

• The National Association of Realtors asserted that ''The presence or potential presence of a PACE loan, taking the first lien position ahead of the mortgage, invariably leads to the devaluation of the mortgage as a secured asset.''

• The National Association of Home Builders (NAHB) noted that first lien PACE programs would alter ''the valuations for mortgage-backed securities by increasing the severity of loss to the mortgage lender in the event a mortgage goes to foreclosure and the lender is obligated to pay past-due amounts outstanding on the PACE lien.''

• The National Multi Housing Counsel and National Apartment Association comment stated, ''First lien matters are fundamental and must be addressed if Property Assessed Clean Energy (PACE) programs are to move forward. As our industry relies on non-recourse loans subject to property cash-flow, protecting the lien holder interest is critical to maintaining cost-effective liquidity in the market. Any cloud on the lien through debt or local tax provisions that jeopardize the first lien could have material implications on a broad basis.''

• SchoolsFirst Federal Credit Union stated that ''The concern which we have with PACE relates to the lien-priming feature which typically attaches to these programs. In the event of foreclosure, this lien-priming could have a significant adverse impact on the holder of the first mortgage on the secured property. This is particularly true in the current market.'' The Credit Union further stated that ''short of obtaining a blanket insurance policy to insure against this risk (and assuming that one is available) we can think of no other protections short of retiring the lien * * *.''

• The Federal Home Loan Bank of Indianapolis noted that alteration of lien priority ''after the fact could have an adverse impact on the valuation of the Bank's collateral in jurisdictions with PACE programs, forcing the Bank to apply loan market value adjustments * * *.''

a. Effects of PACE–Funded Projects on the Value of the Underlying Property

Many commenters asserted that PACE-funded projects would add value to the underlying property, and suggested that such incremental value would protect mortgage holders. Such comments generally did not, however, assert that the purported increase in property value would exceed the amount of the PACE obligation. For example,

• Renewable Funding asserted that ''Numerous studies show that energy efficiency and renewable energy improvements increase a home's value.'' Renewable Funding's submission asserts that ''An April 2011 study of 72,000 homes conducted by the Lawrence Berkeley National Laboratory * * * showed an average $17,000 sales price premium for homes with solar P[hoto]V[oltaic] systems,'' and ''Another 2011 study published in the Journal of Sustainable Real Estate of homes with Energy Star ratings showed purchase prices to be nearly $9.00 higher per square foot for energy efficient homes.''

• Placer County, CA asserted that ''Efficiency and comfort generated from PACE improvements increase property value. A study by Earth Advantage Institute concluded that new homes certified for energy efficiency sold for 8% more than non-certified new homes, and existing homes with energy certification sold for 30% more during the period May 2010–April 2011. (*See* Commenter's Exhibit 1, *Banks may overlook value of energy efficiency, Harney, August 26, 2011, Tampa Bay Times*.).'' The County also asserted that ''There is wide recognition that the cost savings and comfort from PACE-type improvements adds value to property. A recent survey (*See* Commenter's Exhibit 1) of reliable sources identifies increased value related to PACE-type improvements. This survey did not find any instance of decreased value caused by PACE-type improvements.''

• Sonoma County, CA stated that it ''is not aware of *any* evidence that energy efficiency and renewable energy improvements cause a decline in property value'' and asserted that several ''studies support the conclusion that these improvements add value to property.''

• The Board of County Commissions for Leon County, Florida asserted that ''The overwhelming weight of the data reflects that energy efficiency and renewable energy improvements reduce homeowners' energy costs and increase property values. The State of Florida long has recognized the increase in property values caused by the installation of renewable energy projects.''

• Chris Fowle, a member of Environmental Entrepreneurs asserted that ''PACE can further reduce risk to existing lenders by improving the value of their properties. Numerous studies show that energy efficiency and renewable energy improvements increase a home's value. For example, an April 2011 study of 72,000 homes by the Lawrence Berkeley National Laboratory showed that homes with solar PV systems had an average $17,000 sales price premium.''

• California State Senator Fran Pavley and California Assembly member Jared Huffman asserted that, with energy efficiency retrofits, ''[p]roperty values go up, strengthening owners' financial position and increasing the value of a lender's collateral.''

• The City of Palm Desert, CA asserted that ''Studies have shown that energy efficiency and renewable energy measures increase a home's value. For instance, a 2011 statistical study published in the *Journal of Sustainable Real Estate* of homes with ENERGY STAR ratings showed purchase prices to be $8.66 higher per square foot than non-ENERGY STAR homes in the study area. An April 2011 statistical study of 72,000 California homes by the Lawrence Berkeley National Laboratory concludes that there is strong evidence that homes with photovoltaic (PV) systems in California have sold for a premium over comparable homes without PV systems, corresponding to a premium of approximately $17,000 for a 3,100 watt PV system. * * *''

• The Sierra Club asserted that ''Clean energy improvements often provide substantial increase in resale value to homes, thus lessening risk to homeowners.''

Other commenters questioned the net effect of PACE projects and liens on the value of the collateral available to protect mortgage holders. For example:

• Freddie Mac asserted that ''we are not aware of reliable evidence supporting a conclusion that energy efficiency improvements increase property values in an amount equal to the cost of the improvement. Rather, our experience with other home improvements suggests that any increase in property values is likely to be substantially less than such cost, meaning that homeowners who take on PACE loans are likely to increase the ratio of their indebtedness relative to the value of their properties.''

• The Joint Trade Association asserted that ''PACE loans decrease the value of the property by encumbering it with a lien. Non-equity forms of financing do not do so. * * * The cost of home improvements, energy-related or otherwise, are very often not reflected in the property's market value.'' The Association stated that in some states the ten percent fee permitted to localities for administering a PACE loan is subtracted from the financed amount,

potentially making the ''entire retrofit purchase a net financial loss to homeowners.'' The letter challenged an assertion by PACE supporters that home values increase ''$20 for each $1 in annual energy savings.'' The source of the statement was attributed to a 1998 study, conducted at a time when home costs were much greater; the comment considered the study, given current market conditions, to be obsolete.

Additional commenters asserted that market conditions and data limitations have made it difficult or impossible to determine the net effect of PACE-financed projects on the underlying property. For example:

- The U.S. Department of Energy noted that FHFA had expressed concern about ''The potential impact of PACE on residential property values.'' DOE then asserted that ''there is insufficient data and analysis available to provide conclusive answers.''
- Representatives of Malachite, LLC and Thompson Hine LLP asserted that ''Single-family home values remain in too great a state of flux to perform 'apples-to-apples' valuations of retrofitted versus non-retrofitted buildings,'' and ''additional research is necessary to more accurately determine the effect of energy-efficiency and green features on home values across a variety of markets and residential price points.''
- The National Association of Realtors asserted that ''Many markets are still determining what, if any, value green features add to real property,'' and that ''it is unclear at best whether the resulting improvements add enough value to compensate for the additional risks.''

b. Cash-Flow Effects of PACE-Funded Projects

Many commenters asserted that PACE programs are cost-effective and, if they are administered with the proper standards, a homeowner's PACE obligations would be offset by cost savings leading to increased free cash flow over the life of the project, thereby purportedly enhancing the borrower's ability to repay financial obligations and reducing the financial risk to mortgage holders. Such comments included responses to Questions 1, 2, 3, and 4 set forth in the ANPR. Examples of these comments include the following:

- Sonoma County, CA asserted that it ''strongly encourages applicants to engage a trained auditor to evaluate the most economic, cost-effective measures that can be taken to achieve the property owner's desired energy savings. Properly sized projects result in no additional annual cost to the property owner, and overall should achieve cost savings.''
- Placer County, CA asserted that: ''The installation of PACE improvements is anticipated to reduce property owners' utility costs (offsetting the contractual assessment installments), increases their property's value, and allows them to hedge themselves against rising fuel prices.''
- Boulder County, CO asserted that ''Savings: Because energy efficiency and renewable energy improvements reduce homeowners' energy bills, they are inherently safe investments for homeowners and lenders. * * * Cost Effective: Projects must pay for themselves by having a savings-to-investment ratio greater than one (SIR >1).''
- Renovate America stated ''homeowners already spend the equivalent of 25% of their mortgage payments on utility bills. With the PACE lien, at least to start, the payments should generally be offset by utility bill savings, so there is little or no increase in their overall expenses. Over time, the savings should increase as the utility rates increase, and the PACE lien has the potential to increase the homeowner's income or cash flow, not the reverse.''

Most such comments were not accompanied by supporting data, but instead relied upon the assumption that PACE-funded projects that are anticipated to provide cash-flow benefits will actually deliver those benefits.

Some comments recognized that the actual cash-flow effects of PACE-funded projects depend upon future contingencies.

- Leon County, FL stated that ''As energy prices are expected to rise for the foreseeable future, the difference between the cost of improvements and energy savings should widen positively. At the extremes, while a dramatic reduction in energy prices might negatively affect the cost/benefit analysis for energy efficient product purchases, a dramatic reduction in energy prices likely would make it easier for homeowners to afford mortgage payments through increased cash on hand and an improving economy. On the other hand, a dramatic increase in energy prices, which is more plausible than a dramatic reduction, would place a premium on energy efficient products and homes.''
- The City of Palm Desert, CA asserted that ''This strong upward trend'' in energy prices ''indicates that the risk of changes in energy prices adversely affecting the projected savings-to-investment ratio is relatively low. If anything, this data indicates that the energy prices are likely to change in a way that positively affects the projected savings-to-investment ration, therefore positively affecting the borrower's cash revenues and the safety and soundness of a mortgage loan.''

Other commenters questioned whether PACE can generate savings sufficient to make the retrofit cost-effective. Examples of these comments include the following:

- The Joint Trade Association asserted that ''Any disclosures about future utility costs are conjecture and are unreliable. It would be more appropriate and more accurate to disclose that any future savings are unknown. If a PACE loan does not produce the savings hoped for, the result is an increased risk of default on the PACE loan, the mortgage, or both because of the increased CLTV, a strong predictor of mortgage default.''
- The Joint Trade Association also asserted that ''PACE loan programs do not require that the loan proceeds be used in a cost-effective manner. * * * The amount of energy savings from one piece of equipment varies from building to building. The cost of electricity varies by location and sometimes by time of day. The cost of fuel can vary seasonally. The amount of electricity that air conditioners use varies by indoor and outdoor temperatures, and it varies during rainfall. A solar panel in sunny regions will produce different savings than one in cloudy areas, or in a location near tall buildings or trees. Its sun exposure varies by the angle at which it is installed. Whether an individual retrofit would be cost-effective would require an engineering analysis, but PACE programs do not require engineering analyses.''
- The National Association of Realtors asserted that ''The energy efficiency and renewable energy investments are designed to 'pay for themselves,' which is to say that the homeowner's utility bill goes down by more than their property tax bill goes up. However, it is difficult to measure the benefits of these improvements because the way an owner uses energy in a home may change over time, depending on variables such as weather and family composition and whether or not the energy efficiency retrofit has become technologically outdated, or was ever as efficient as it was supposed to be.''

c. Effect of Non-Acceleration of PACE Obligations Upon Default or Foreclosure

Many commenters asserted that the fact that PACE obligations do not accelerate upon default or in foreclosure

mitigates or eliminates any financial risk first-lien PACE programs would otherwise pose to mortgage holders. The economic reasoning advanced in such comments was generally that because the obligation is assumed by the successor owner, even in a foreclosure the mortgage holder will only be liable for the past-due payments, not the entire obligation. Such comments included responses to Questions 1 and 4 set forth in the ANPR. Examples of these comments include the following:

• Boulder County asserted that ''Non-Acceleration'' was a positive feature of PACE because ''Future, unpaid PACE assessments remain with a property upon sale or other transfer to a new owner, protecting lenders from total extinguishment of unsecured debt or home equity lines in defaults when a home is worth less than its outstanding mortgage balance.''

• Connecticut Fund for the Environment asserted that ''the non-acceleration design of PACE assessments means that in the unlikely case of a default only the amount past due would have seniority on the mortgage. The outstanding balance would remain with the property to be paid in due course.''

• City of Palm Desert, CA asserted that ''In California, payment of PACE assessments may not be accelerated by the local government if there is a delinquency in the payment of the assessment, similar [to] treatment of other property taxes in California. We believe non-acceleration of PACE assessments is [an] important condition for the protection of homeowners, mortgage lenders, and government-sponsored enterprises. Non-acceleration is an important mortgage holder protection because liability for the assessment in foreclosure is limited to any amount in arrears at the time; the total outstanding assessed amount is not due in full, therefore greatly mitigating the effect of the 'lien-priming' feature of the PACE assessment upon mortgage lenders and subsequent investors in mortgage interest.''

• Placer County, CA asserted that ''The County's PACE program also incorporates other safeguards. For example, California law does not permit acceleration of the unpaid principal amount of a contractual assessment; in the event of delinquencies in the payment of contractual assessment installments, the County is authorized to initiate judicial foreclosure of delinquent installments only (plus penalties and interest). This safeguard makes it more affordable for private lienholders to protect their liens in the event the County forecloses delinquent contractual assessment installments.''

• Sonoma County, CA asserted that ''most state laws, including California law, do not allow a local government to accelerate the amount due on an assessment in the event of a delinquency. Only the unpaid, overdue amount would be due. Lenders can protect their interest by paying this amount * * *.''

• The Natural Resources Defense Council explains that its calculations purporting to establish ''de minimis'' risk are based on the premise that ''[i]n the event of foreclosure, under the law of California and most states, and under the DOE Guidelines, only the amount of the PACE payment in arrears would be due and take priority over the first mortgage. Thus, if the owner had failed to pay their property taxes for a year, only $1,960 would be owed, and the new owner would be responsible for the remaining stream of assessments.''

• Florida PACE Funding Agency asserted that it ''does not believe that the PACE assessments in Florida will increase any financial risk to the holder of the mortgage or investors in mortgage backed securities. * * * Since the PACE assessments are not subject to acceleration (unlike many loans) the mortgage holder or investors in mortgage backed securities would look at each year's assessment amount, not the total principal of the assessment.''

• Jonathan Kevles asserted that ''The requirement for non-acceleration of the PACE bond payment in the event of foreclosure makes the downside of foreclosure to mortgage holders negligible.''

Other commenters asserted that the fact that PACE obligations do not accelerate upon default or in foreclosure does not insulate the mortgage holder from risk. Such comments included responses to Question 6 set forth in the ANPR. Examples of these comments include the following:

• The Appraisal Institute asserted that ''From a valuation perspective, it is important to understand whether a seller paid assessment influenced the sales price. The appraiser would have to look at the sales price and decide if the buyer assuming the loan affected the price paid by the buyer. The appraiser must ask whether the buyer paid a higher price because the seller paid off the loan amount. In the converse situation where the buyer assumes responsibility for the assessment, the appraiser would ask, did the buyer pay less because the buyer assumed the loan? * * * This is likely a form of sales or seller concession, and if so, recognized appraisal methodology would deduct this concession dollar for dollar under a 'cash equivalency' basis, or if the market suggests the amount is less than market based on a paired sales analysis, the market-derived adjustment would be applied.''

• Fannie Mae asserted that ''PACE loans would increase the severity of Fannie Mae's losses in the event of foreclosure on the mortgage loan. Subsequent owners of PACE-encumbered properties are liable for continuing payments on the PACE loan. In selling real estate owned (REO), Fannie Mae will need to: (i) Cure any arrearages on the PACE loan and keep it current to convey clear and marketable title to a purchaser; and (ii) in Fannie Mae's opinion, pay off the entire amount of the PACE loan to attract purchasers, given the number of properties on the market which are not encumbered by PACE loans.''

• The Joint Trade Association asserted that ''If a homeowner were to sell the property before the PACE lien is extinguished, the property value would be reduced accordingly, so the homeowner would realize less on the sale * * *. [PACE advocates] also argue[ ] that the PACE lien would be largely immaterial to the GSEs, even in a mortgage foreclosure, because PACE loans do not accelerate upon default. This ignores the fact that the property would retain an unsatisfied PACE lien that diminishes the property value. That diminished value would be a cost to the GSE.''

• The NAHB asserted that ''A home buyer who wants to purchase a home with a PACE first lien is at a disadvantage * * *. Potentially, the home cannot be sold or the sales price might be reduced by the amount necessary to pay off the PACE lien.''

d. Underwriting Standards for PACE Programs

Many commenters asserted that underwriting standards for PACE programs would mitigate or eliminate any financial risk first-lien PACE programs would otherwise pose to mortgage holders. Such comments included responses to Questions 14, 15, and 16 set forth in the ANPR.

• Placer County, CA asserted that ''The FHFA undervalues the measures built into the County's PACE program to protect private lienholders. The FHFA is inappropriately discounting the safeguards built into the County's PACE program. As explained above, the County's underwriting criteria are designed to protect the entire range of County constituents.''

• Sonoma County, CA asserted that ''Like every other PACE program,

Sonoma County has adopted a set of conditions and restrictions for eligibility for PACE programs. These restrictions and conditions appear to work well, and in our view adequately protect the interest of mortgage lenders.''

• The Florida PACE Funding Agency, an interlocal agreement between Flagler County and City of Kissimmee, cites no impact from PACE programs on the regulated entities, cites the legislative history of Florida's PACE statute, notes the ''prequalification'' standards that mirror the core ''consumer'' protections noted by other PACE supporters—no delinquent taxes, no involuntary liens, and no default notice and current on debt—and that lending is limited to 20% of the ''just value'' of the property, an appraised value that is reportedly less than fair market value. Property owners must provide holders or mortgage servicers 30 days prior notice of entering ''into a financing agreement.'' The Agency appended several studies on the attractiveness of energy-efficient properties, with many improvements as part of deferred property maintenance that reduces the impact of a PACE financing, as work would be required in any event. The Agency asserted that its guidelines for entering into a financing agreement is undertaken in a protected environment, noting that Florida's approach ''unlike the enabling legislation in most (if not all) of the other states which authorize PACE type programs, deliberately undertook the adoption of a statutory regimen designed to protect property owners, local governments and mortgage lenders.'' As to alternative programs, the comment letter advances that government grants can be a viable alternative, but that such programs are either not available or not available on a sustainable basis.

• The letters from Senators Bennet, Chris Coons, Jeff Merkley and Mark Udall indicated that while PACE assessments are not loans, and ''reasonable safety and soundness standards can be developed that both encourage widespread use of PACE, but also maintain the security of home mortgage lenders.''

Many such comments suggested that FHFA should adopt certain existing guidance as standards (often Guidelines published by the U.S. Department of Energy or set forth in H.R. 2599) or participate in initiatives with the government and private sector to develop appropriate standards.

• The City of Palm Desert, CA directed FHFA to ''the DOE Guidelines and H.R. 2599, for the factors recommended for eligible PACE financing.''

• Leon County, FL asserted that ''PACE program 'best practices' have been developed that ensure stability and manage risk for both governments and mortgage lenders concerning PACE programs. These best practices include: White House Policies, Department of Energy's ongoing Guidelines for Home Energy Professionals project establishing strong national standards for retrofit work, and efforts by states and local governments to develop their own best practices during PACE program implementation.''

• The Sierra Club asserted that ''DOE issued guidelines for PACE programs on May 7th, 2010 after meeting with Fannie Mae, Freddie Mac, financial regulators and PACE stakeholders. Further standards can be incorporated from H.R. 2599, the PACE Assessment Protection Act of 2011 from the current Congress.''

• The Solar Energy Industries Association indicated support for the DOE and White House guidelines for PACE as well as H.R. 2599. The comment adds that improvements to PACE programs could be made by allowing them to include ''pre-paid purchase agreements'' and leasing programs. For solar energy leasing, SEIA indicated that ''The system owner may be able to provide solar energy for less than it would cost the homeowner to purchase a system outright, thereby needing a lesser PACE lien.'' Both pre-paid purchase agreements and leases ''leave[] the homeowner with no additional costs to pay [for] monitoring, maintenance, and insurance of the system, as these elements are included within a PPA or lease contract.''

• PACE*Now* stated that FHFA ''fails to note that no such 'uniform national standards' exist for any other type of municipal assessment project and ignores the extensive efforts among PACE proponents, the White House, and the U.S. Department of Energy (among others) to do exactly that.'' PACE*Now* then proceeds to endorse standards set forth in H.R. 2599 that would establish certain standards, indicating that ''The risks of lenders and homeowners are clearly intertwined, and PACE programs have and can be designed to mitigate them.'' Similarly, the U.S. Department of Energy notes in a cover letter to its comment letter that it urges FHFA to work with the Department and others to ''ensure that pilot PACE programs are implemented with appropriate safeguards as outlined in the DOE Guidelines for Pilot PACE Financing Programs.''

• The DOE urged FHFA to work with the Department and others to ''ensure that pilot PACE programs are implemented with appropriate safeguards as outlined in the DOE *Guidelines for Pilot PACE Financing Programs.''*

• The Great Lakes Environmental Law Center asserted that ''if federal level conditions and restrictions should be found necessary, the Department of Energy (DOE) has already outlined ten PACE program design best practice guidelines in 2010 that minimize the risk to all parties.''

Other comments suggested specific underwriting criteria that the commenter asserted would be appropriate.

• The City of Palm Desert, CA asserted that ''One important underwriting standard we believe should be included in a national set of underwriting standards is an expected savings-to-investment ratio greater than one. Calculated as estimated savings on the borrower's cash flow due to the energy improvement, divided by the amount financed through the PACE assessment, a projected savings-to-investment ratio of greater than one increases the projected income of the borrower and places a mortgage lender in a more secure position than without the PACE participation.'' The City also asserted that ''In some respects, a projected savings-to-investment ratio for a PACE improvement, while not constituting a guarantee of results, may be more predictable than a borrower's continued level of income over the term of a mortgage,'' and that ''There are very minimal costs attendant to requiring PACE programs to include the protections of a savings-to-investment ratio of greater than one, a maximum term of the PACE assessment not exceeding the reasonably expected useful life of the financed energy improvements, non-acceleration of the PACE assessment, eligibility criteria for improvements that are climate-specific, and a minimum equity requirement such as the 15% requirement in H.R. 2599.''

Some comments asserted that common PACE program underwriting standards may not take into account common indicia of good credit or ability to repay the obligation out of income.

• A joint letter from the National Consumer Law Center and the Consumer Federation of America asserted that PACE underwriting to exclude bankruptcy was inadequate and PACE programs ''are usually not engaging in full underwriting nor assessing the homeowner's actual ability to pay.'' The letter notes that ''PACE proposals would require that estimated energy savings equal or exceed the monthly PACE obligations, but these are estimates only.''

e. Empirical Data Relating to Financial Risk

Many commenters suggested that existing data and metrics support PACE programs, while others asserted that the absence of reliable metrics and data supports the need to implement PACE programs, including as pilot programs.

Submissions by PACE proponents often asserted that the default experience of existing PACE programs suggests that first-lien PACE programs do not materially increase the financial risks borne by mortgage holders. For example:

• Sen. Leahy, Sen. Sanders, and Congressman Welch asserted that ''a study by the American Council for an Energy-Efficient Economy demonstrated that default rates by participants in energy efficiency finance programs are 'extremely low.' ''

• Sonoma County, CA asserted that ''Actual experience of existing programs does not support FHFA's assumption of added risk. Rather, Sonoma County's experience demonstrates that properties enrolled in PACE programs have fewer tax and mortgage delinquencies than the general public * * * The County took the initiative to review any changes in the mortgage status of properties with PACE assessments. Of the 1,459 assessments placed on properties in Sonoma County, only 16 properties showed recorded documents demonstrating uncured mortgage defaults, an average of 1.1%. During the same timeframe (2009 through 2011), the average mortgage delinquency rate in Sonoma County varied from 8% to over 10%. As compared, then, the default rate of properties with a PACE assessment was much lower in comparison with overall properties.'' The County also asserted that ''given the very low tax delinquency rate and mortgage default rate on PACE properties, the County does not believe PACE assessments impose any additional risk on mortgage holders or investors in mortgage-backed securities. In fact, the total value of improvements, compared to the risk of possible default or delinquency, almost certainly leaves such investors better protected over all.''

• City of New York, Office of the Mayor asserted that ''The value of PACE-financed energy installations (less than $9,000 on average, or some 10% of the value of a typical underlying property) relative to residential mortgage debt levels also illustrates the very small risk posed by PACE programs to the senior lien status enjoyed by GSEs and other mortgage lenders. As was noted in the comments of others received in this proceeding, the American Council for an Energy-Efficient Economy conducted a study that demonstrates that default rates by PACE program participants are 'extremely low.' ''

• Jordan Institute asserted that ''Early evidence suggests that there is a very low risk of default for PACE assessments. Since many of New Hampshire's loan programs are in their infancy, it is difficult to obtain true default rate numbers. However, anecdotal evidence in New Hampshire indicates that default rates for energy loans in general are low or non-existent. People's United Bank has a current default rate of 0% for their commercial loan program. Additionally, a study conducted for the New Hampshire legislature showed that neighboring state energy loan programs had default rates much lower than the typical unsecured default rate of 3.5% and concluded that the data shows that, 'the perception that energy loans carry an unacceptable level of risk is incorrect.' ''

• The Natural Resources Defense Council asserted that ''Early data from existing PACE programs appears to support the proposition that energy improvements made through a PACE program will improve the position of the first-mortgage holder. PACE administrators from residential PACE programs in Babylon, New York, Palm Desert, California, Sonoma, California, and Boulder, Colorado, report that of 2,723 properties with PACE liens there have been 24 known defaults, translating to a default rate of 0.88%. In comparison, the national percentage of mortgage loans in foreclosure at the end of the fourth quarter 2011 was 4.38%.''

• Placer County, CA stated that ''A survey of reliable sources (*See* Commenter's Exhibit 1) indicates that there is no evidence to suggest that PACE programs are greater risks than other types of assessments.''

• Leon County, FL asserted that ''In a recent study, the American Council for an Energy-Efficient Economy ('ACEEE') found that energy efficiency financing programs 'have one of the lowest default rates of any loan program.' The ACEEE study analyzed 24 different loan programs and found default rates ranging from zero to three percent, which it noted 'compares very favorably with residential mortgage default rates of 5.67 percent.' ''

Other submissions made reference to studies of mortgage default rates on properties with energy-efficient characteristics that may or may not have been financed through a PACE program.

• Placer County, CA stated that ''According to a report by the Institute for Market Transformation *Removing Impediments to Energy Efficiency from Mortgage Underwriting and Appraisal Policy,* 'Mortgages on Energy Star homes have an 11% lower default and delinquency rate than do comparable mortgages on other homes.' ''

However, some submissions recognized that the lack of a substantial track record for first-lien PACE programs limits the amount of reliable data available.

• The U.S. Department of Energy stated that ''Because there is insufficient data and analysis available to provide conclusive answers, DOE seeks FHFA cooperation to facilitate work with government-sponsored entities in the housing sector that would inform answers with appropriate data analysis.'' DOE further asserted that ''Insufficient data and analysis is available to validate a view that implementation of PACE programs would increase financial risk to mortgage lenders or that it would decrease financial risk to mortgage lenders.''

• The Environmental Defense Fund, in its comment letter, indicated that analytic standards are absent for PACE programs and suggested that FHFA's analysis ''may be hamstrung as a consequence of the lack of analytic standards for projecting, ensuring, and measuring/verifying the anticipated and realized energy savings in residential PACE programs nationwide.'' The comment continued, ''Our experience has led us to identify the lack of uniform, accepted methods as a crucial barrier to such financing by banks in several other sectors, including large commercial buildings and multifamily residential buildings.'' The Fund then explored its efforts in support of an Investor Confidence Project to develop specifications for baseline energy use and other measuring devices and ''a more uniform approach to project engineering [which] can be expected to generate more comparable data, facilitating the actuarial-level analysis that the Agency and other interested parties will want to perform * * *. We recommend the promulgation of best practices for M&V [measurement and verification].'' The Fund calls on FHFA to use its powers to ''advance the understanding of energy and climate risks as well as the value and cost of mitigation measures * * *''

• The Town of Babylon, NY asserted that: ''FHFA has pointed out that over two dozen states have passed PACE enabling legislation. No note was taken, however, that but a handful of PACE programs have gone operational. This consequence is due primarily to various statements issued by Fannie Mae and

Freddie Mac in May of 2010 followed by warnings issued by FHFA and OCC on July 6, 2010. Therein lies the Catch-22; FHFA requires a caliber of credible data that can only be forthcoming from clinical trials which it has, effectively, prohibited.''

2. PACE Programs and the Market for Financing Energy-Related Home-Improvement Projects

Many commenters asserted that PACE programs address a market failure by overcoming barriers to financing cost-effective projects, most frequently citing the high up-front costs of energy-efficiency improvement and the possibility that a homeowner would move before the payback period of such a project was complete as barriers that PACE would overcome. Such comments included responses to Questions 5, 6, 7, and 8 set forth in the ANPR. Examples of these comments include the following:

• The California Attorney General asserted that California's legislature, in authorizing PACE programs, had found that ''The upfront cost of making residential, commercial, industrial, or other real property more energy efficient prevents many property owners from making those improvements.''

• The Natural Resources Defense Council asserted that ''Compared to other available energy efficiency and renewable energy financing mechanisms, PACE is attractive to homeowners because it provides for 100% of the upfront costs for home energy improvements and PACE liens are transferable to subsequent owners in the event of sale or transfer of the property.'' The Council stated ''In contrast to 'home equity' financing or traditional asset-backed debt, PACE financings provide full upfront costs for the energy improvements and, by design, in the event of sale or transfer of the property, the remaining balance on the PACE lien can be transferred to subsequent owners or paid off in full. This will be attractive to some property owners who would otherwise be concerned that they would be responsible for paying off the full PACE lien when subsequent owners will be the beneficiaries of the energy improvements. Moreover, equity and traditional debt both require some financial outlay from property owners (such as down payments), but neither of those options nor are necessarily or automatically transferable to subsequent owners.''

• Sonoma County, CA asserted that ''Although * * * there are energy mortgage products available, they do not appear to have captured any significant market segment. Thus in the current market there appears to be a stark choice: If PACE programs can proceed, energy improvement projects can be done.''

• Leon County, FL asserted that ''Without access to private capital, there will be limited funding for efficiency retrofits * * * The single family residential sector is not restricted by a lack of financial products. Numerous unsecured second[-] and first-lien products are available to finance energy efficiency improvements. However, the sector is restricted by: (1) High interest rates associated with the financing; and (2) the fact that many of these financing products are cumbersome and difficult to access.'' The County also asserted that ''Because of the extended payback periods of many energy efficiency retrofits and because many energy efficiency lending products come with lending terms of less than 10 years, it is difficult or impossible to offer borrowers positive cash flow (in which periodic energy savings exceed debt service payments) as soon as they install their retrofits. As a result, a homeowner rarely will purchase an energy efficiency retrofit based only on energy savings. Long loan terms and low interest rates are the 'answer,' which PACE programs provide.''

• Boulder County, CO asserted that ''Many residents are unwilling to take on debt for energy efficiency upgrades because the benefits of the investment do not follow them if they decide to sell in the future. Unlike traditional financing, PACE-financed improvements have the notable advantage that the assessment stays with the property upon sale * * *. This overcomes one of the strongest traditional barriers to implementing energy efficiency and renewable energy projects in American homes today.''

• Alliance to Save Energy *et al.* asserted that ''The primary lien provides further assurance to investors and is a much safer investment than an unsecured loan, allowing for lower interest rates and better access to secondary markets; most other financing programs require subsidization to get to workable financial terms. As the financing is tied to the property, rather than to the property owner, the owner can consider payback periods that may be longer than his or her tenure at the property.''

• Renewable Funding LLC asserted that ''PACE is uniquely attractive as a financing tool because it solves the two big problems that have prevented wide scale adoption of energy efficiency and renewable energy retrofit projects: [1] Upfront Cost: PACE financing eliminates the high upfront cost of energy efficiency and renewable energy upgrades and provides attractive long-term financing that makes projects cost effective much sooner. [2] Transfer on Sale: Because the average homeowner moves every 5–7 years, many are reluctant to invest in large energy upgrades unless they are certain they will remain in their home. Because PACE, like other municipal assessments, stays with the property upon sale, the new owner will assume the assessment payments if the property is sold.''

• National Association of Realtors asserted that ''PACE is an innovative approach that helps to resolve on[e] [of] the major obstacles to market-wide spread of energy efficiency improvements—*i.e.,* the split incentives market failure: Owners opt not to invest because they are afraid they won't be able to recoup the full investment if they are planning to sell the property. By having access to financing that conveys with the sale of the property, there is a potential to improve the energy efficiency of homes.''

• The Sierra Club asserted that PACE reduces ''uncertainty for a homeowner that does not know how long they will remain in their home.''

Other commenters asserted that there are alternatives to first-lien PACE programs in the existing marketplace for credit-worthy borrowers to finance cost-effective projects.

• The Joint Trade Association comment noted that ''For homeowners with the means to finance an energy retrofit project without a PACE loan, the alternative financing likely would have a lower cost and much more flexibility, such as a shorter term and the ability to prepay the loan. A shorter term and the ability to prepay the loan would both reduce its cost. This flexibility would also permit the homeowner to sell the property without diminishing the sales price to reflect the outstanding PACE loan * * *. PACE loans, then, are directed at those who cannot qualify for non-PACE financing. These are the borrowers for whom PACE loans would be the most dangerous.'' The comment also noted that alternative financing would likely have lower costs, more flexibility in loan term periods and lower risk to homeowners; the comment cited alternatives such as the Section 203(k) insured home improvement loan from the Federal Housing Administration and other energy efficient mortgage products. The comment criticized any PACE program that prohibited pre-payments as running contrary to the spirit of Dodd-Frank Act limitation on pre-payment penalties.

• A joint letter from the National Consumer Law Center and the Consumer Federation of America asserted that PACE loan rates were not that competitive and a survey found that ''many homeowners with equity in their homes would likely have been able to borrow against their home equity at lower rates.'' The comment also stated ''Homeowners who could take out a PACE loan may also have other routes for borrowing funds which do not raise the same concerns as PACE loans do.'' Finally, the comment stated, ''we are concerned that state and local governments will be unequal to the task of monitoring the sales tactics and behavior of the many contractors who will no doubt be attracted by the availability of PACE financing * * *. With PACE loans having a senior position, [consumer] ownership of their homes could be jeopardized.''

3. Legal Attributes of PACE Assessments

Many commenters asserted that PACE assessments reflect a legally proper use of state taxing authority.

• Boulder County, CO asserted that ''Other special districts allow property owners to act voluntarily and individually to adopt municipally financed improvements to their property that are repaid with assessments. PACE special assessment districts are not significantly distinguishable from special assessment districts in other contexts, including special assessment districts designed to fund septic systems, sewer systems, sidewalks, lighting, parks, open space acquisitions, business improvements, seismic improvements, fire safety improvements, and even sports arenas. Such special districts have been in existence since 1736, and are typically created at the voluntary request of property owners who vote to allow their local governments to finance improvements that serve a public purpose, such as energy efficiency improvements. * * * All special assessments collected for special improvement districts are secured by liens which are senior to the first mortgage, and therefore FHFA's characterization of PACE as having a 'lien-priming' feature is misleading.''

• Alliance to Save Energy et al. asserted that ''While the FHFA frequently has referred to PACE assessments as 'loans,' they are, in fact, property assessments. Much of the rationale offered against PACE financing could be applied to a range of traditional property tax assessments upon which municipalities depend for critical infrastructure projects. As such, the precedent set by the FHFA's rejection of the PACE financing model raises serious concerns for other land-secured financing, *e.g.* for municipal sewer upgrades or seismic strengthening, which have a long history in the United States and have been consistently upheld by courts.''

• Placer County, CA asserted that ''The County's PACE program involves assessments of the type that have been lawful in California and in use in the County since the 1800s. * * * Chapter 29 authorizes the use of these assessments to finance the installation of renewable energy, energy efficiency and water efficiency improvements * * * on private property. The County PACE program simply represents the County's exercise of its long-held and used tax and assessment power for a public purpose. * * * The FHFA's response is unprecedented. The County has levied taxes and assessments to achieve important public purposes, such as the construction of schools, the installation of water and sanitary sewer systems and the undergrounding of public utilities, for more than 100 years. The FHFA's response to the County's exercise of its taxing power, as evidenced by the Statements and the Advance Notice of Proposed Rulemaking, is an unprecedented interference with the County's exercise of its taxing power to achieve valid and important public purposes.''

• Sonoma County, CA asserted ''FHFA's objection to PACE programs begins with the assumption that PACE assessments are different than 'traditional' assessments. This assumption is incorrect.'' The County also stated ''FHFA contends that PACE assessments are different because a property owner voluntarily joins the program and agrees to install the energy improvements. This is no different from many existing assessment statutes. Generally, initiation of assessment proceedings requires a petition by some percentage of affected property owners.'' The County advanced that ''FHFA contends [PACE] financing is a loan, therefore requiring treatment and evaluation as a loan, with focus on the creditworthiness of the borrower. However, as a matter of law, the PACE transaction is an assessment, not a loan. It is a land-based and land-secured transaction.''

• Leon County, FL asserted ''The authorization for these land-secured assessments and the creation of districts to effectuate those purposes is a function of state law. State legislatures have the power to create tax liens and determine their priority relative to that of other types of liens and property interests, even if the tax lien was created after other property interests came into existence. Under Florida law, a local government is expressly authorized to levy assessments for 'qualifying improvements,' including energy efficiency and related improvements. There is longstanding precedent in federal and state law regarding a local government's authority to levy non ad valorem or special assessments. Recasting these assessments as 'loans' runs counter to these long-established principles of law protecting local governments' rights to create PACE programs.''

Several of the comments asserted that the voluntary nature of a PACE transaction does not distinguish PACE assessments from other, more traditional assessments.

• The Natural Resources Defense Council noted that ''As of 2007, there were more than 37,000 special assessment districts in the United States. For decades, municipalities have utilized these districts to create financing mechanisms for voluntary improvements to private property that serve a public purpose.'' The NRDC stated that ''Given this long-standing existence of special assessment districts which mirror the intent and structure of PACE, the legality of PACE programs rests on firm legal and historical precedent. FHFA's effort to single out PACE programs for disapproval, alone out of all the other special assessment programs that exist across the country, is illogical and unsupportable.''

• The Sierra Club asserted that ''The ability to opt-in [is] not a distinguishing feature of land secured municipal finance. Many past programs have allowed participation according to preference, without requiring it to gain full benefit.''

• Vote Solar asserted that ''In 1988, the City of Torrance, California, created a special assessment district which allowed private property owners to voluntarily apply to receive funding for seismic retrofits on their buildings. Assessments were made only against parcels for which the property owner applied to become a part of the district, and the property owners individually contracted for the projects.'' The commenter also asserted that ''Under the Massachusetts 'Community Septic Management Plan,' the purpose of which is to prevent water pollution, property owners can voluntarily undertake upgrades to their septic systems and receive financing from the local government, and assessments, secured by a property lien, are placed on the participating owners' parcels. And since 2001 in Hamburg Township, Michigan, property owners can apply to

receive financing for the cost of connecting to the local sewer system by agreeing to participate in a 'Contract Special Assessment District.' ''

• Renewable Funding asserted that ''recent examples include voluntary programs for septic upgrades in Virginia and seismic strengthening for homes in California.''

Other commenters found the voluntary nature of PACE assessments to be a distinguishing feature.

• The Real Estate Roundtable asserted that ''As a voluntary program to finance retrofits of private buildings, PACE is unlike other common forms of tax assessment financing.''

Additional commenters asserted that first-lien PACE programs present challenges to the legal structures and processes associated with residential property transfers.

• The American Land Title Association (ALTA) asserted that the ''priority priming feature of PACE loans introduces a new level of risk above and beyond the scope of the standard title insurance policy.'' ALTA noted that PACE statutes are unclear on the recording of PACE obligations in local property records and that loans or refinancing may be delayed as searches would have to be undertaken to find indication of whether a PACE loan had been placed upon the property.

• Further, ALTA noted that ''Without establishing standards for determining title to property, PACE loans run the risk of significant losses due to fraud. In addition to harming PACE participants, it also damages the accuracy of local property records, and results in increased cost of underwriting, claims, escrow services and compliance for the land title industry.

• ALTA also raised the issue of whether the Real Estate Settlement Procedures Act should apply to PACE financing as pursuant to 12 U.S.C. 2602(1)(B)(ii) any assistance by the federal government to a PACE program, including federal tax benefits for the interest paid by the borrower or interest earned by an investor on a bond backed by PACE loans may require compliance with RESPA because such benefits would make the PACE financing a ''federally related mortgage loan.''

• The National Association of Realtors asserted that ''Because these PACE loans runs with the property and not with the property owner, the information on the tax assessment about the loan will need to be explained for each new buyer. If we assume that the average home is sold every five years, and the average length of the PACE loan is 20 years, then the Realtor will be responsible for explaining this special tax assessment an average of four times over the life of the loan. Once the prospective buyer learns about this new cost to purchasing the home, this information may cause delays in the completion of the transaction or even a cancellation.''

4. Public Policy Implications of PACE Programs

a. Environmental Implications of PACE Programs

Many commenters asserted that PACE programs are environmentally beneficial.

• Citizens Climate Lobby advanced that ''There are significant environmental impacts that must be fully evaluated and mitigated for the project rule making. FHFA's rule to prohibit PACE programs nationwide results in measureable and significant air pollution emissions that impact human health and the environment. Blocking the PACE Program nationwide has resulted in significant losses in otherwise saved energy efficiency. The significant air pollution emissions discriminately impact poorer communities of color living closer to the energy combustion sources nationwide. In the alternative of not prohibiting PACE programs measurable GHG emissions reductions would have been realized and climate change mitigated. This is a critical concern because there is scientific support showing that we closely approach a tipping point to unredeemable destruction.''

• Placer County, CA stated that ''The California Legislature and the County believe that PACE will accelerate the installation of PACE improvements and, as a result, accelerate the environmental benefits achieved by PACE improvements. Many of our constituents, including contractors who install PACE improvements and have been frustrated by the absence of affordable financing for PACE improvements, share this expectation.''

• Center for Biological Diversity noted that ''PACE programs are critical tools in addressing climate change because energy related home improvements reduce greenhouse gas emissions. Reduction of greenhouse gas emissions protects biological diversity, the environment, and human health and welfare.''

• Ygrene Energy Fund asserted that with respect to ''recent weather disasters,'' ''hurricane and tidal surges,'' ''heat waves and associated fires,'' and ''long term public health issues,'' ''PACE programs can reduce the occurrence of such tragedies and loss by providing a means for making homes more energy efficient from something as simple as better insulation and modern heating units. This directly furthers the stated FHFA goal of maintaining or increasing both asset value and actual property protection.''

• Decent Energy Incorporated noted that the environmental impact of energy efficiency measures should be identical without regard to the financing mechanism, except where lower cost financing permits a homeowner to expand the number of improvements. The commenter supported energy audits performed by auditors certified by the Building Performance Institute and present prospective financial information on the performance of renewable energy systems. He cited the absence of strong protections for homeowners with respect to home improvement projects, which PACE might address. Finally the commenter noted the value of using the National Renewable Energy Lab BESTEST–EX, an energy analysis tool, developed for DOE.

Other commenters asserted that environmental effects flow from the underlying projects, not the method of finance.

• The Joint Trade Association comment letter challenged whether financing methods have anything to do with environmental benefits. Other financing methods might prove ''more advantageous'' for homeowners and the environment.

b. Implications of PACE Programs on Energy Security and Independence

Many commenters asserted that PACE programs support goals relating to United States energy security and independence.

• Metropolitan Washington Council of Governors asserts that ''PACE is an essential state and local public policy tool that promises to conserve natural resources, increase energy security, reduce the health and environmental impacts of energy consumption, stabilize residential energy spending, and promote economic growth in our communities.'' The Council continues, urging FHFA ''to reconsider your position on PACE programs to enable use of this innovative municipal financing tool, thereby encouraging homeowners to increase our nation's energy independence and clean energy generation.''

• Board of Supervisors, County of Santa Clara, CA asserts that ''PACE financing * * * is a means to grow the green economy that now drives the economic expansion of other countries, to promote energy efficiency and independence, and to redirect

unnecessary energy expenditures to the pressing needs of families.''

• Renewable Funding LLC asserted that ''PACE also helps achieve important state and local government energy policy goals that may include: * * * [1] Energy independence from foreign sources; [2] Energy security for states by limiting reliance on inter-state energy transfers and strain on distribution systems; [3] Avoided costs of building new power plants; [4] Lower demand on the energy grid * * *.''

c. Macroeconomic Implications and Effects of PACE Programs

Many commenters asserted that PACE programs would bring macroeconomic benefits such as increased domestic employment generally and/or employment in specific sectors such as ''green jobs.''

• Boulder County, CO asserted that Boulder's ClimateSmart Program ''generated green-collar jobs and stimulated the local and state economy. Nearly $6 million of the total money distributed in 2009 funded energy efficiency upgrades and almost $4 million went to renewable energy projects, all of which boosted the local economy and provided job opportunities for more than 290 installers, contractors and vendors. In addition, 75% of the ClimateSmart Program bonds were sold locally, providing excellent local green investment opportunities. Finally, given that a vast majority of the work was completed by the local workforce, we believe that recirculation of project dollars within our community has occurred, producing a positive economic ripple effect. In contrast, approximately 75 cents on the dollar currently leaves the Boulder County community when residents and businesses pay their utility bills.''

• Boulder County, CO asserted that ''according to a May 2011 Department of Energy study, the Boulder County ClimateSmart Program created more than 290 jobs, generated more than $20 million in overall economic activity, and reduced consumers' energy use by more than $125,000 in the first year alone. In developing a rule that serves the public interest, the FHFA should weigh perceived risks associated with this lending model against the proven economic benefits that may reduce default rates.''

• Renewable Funding LLC noted that ''A national study conducted by Portland-based economics consulting firm EcoNorthwest concluded that if $1 million were spent on PACE improvements in each of four American cities, it would generate $10 million in gross economic output; $1 million in combined Federal, state and local tax revenue; and 60 jobs. A simple extrapolation from this study shows that if just 1% of America's 75 million homeowners completed a typical PACE project, it would create more than 226,000 jobs, generate more than $4 billion in Federal, state and local tax revenue and stimulate more than $42 billion in new economic activity.''

• CA Energy Efficiency Industry Council: ''If PACE is fully implemented, tens of thousands of much-needed green jobs will be created, and the financial health of our residential mortgage portfolio will be improved.''

• The National Resources Defense Council noted that it ''recognizes that retrofitting our existing building stock can be a key driver of economic recovery in the United States through the proliferation of green jobs and by saving property owners (including NRDC's members) thousands of dollars annually on energy bills.''

• The Sierra Club asserted that ''PACE programs can potentially provide significant economic benefits to communities * * * [and] [l]ocal government can implement these programs through long-accepted land secured municipal finance districts.

IV. FHFA's Response to Issues Raised in the Comments

FHFA appreciates the time and effort of the commenters in preparing the submissions, and has considered the comments carefully. The many perspectives and varied information offered in the comments have assisted FHFA in its consideration, pursuant to the Preliminary Injunction, of whether the restrictions and conditions set forth in the July 6, 2010 Statement and the February 28, 2011 Directive should be maintained, changed or eliminated, and whether other restrictions or conditions should be imposed. FHFA's views and judgments as to the principal substantive issues raised in the comments are set forth below.

A. Risks PACE Programs Pose to Mortgage Holders and Other Interested Parties

FHFA's supervisory judgment continues to be that first-lien PACE programs would materially increase the financial risks borne by mortgage holders such as the Enterprises.

1. Effects of PACE-Funded Projects on the Value of the Underlying Property

Having reviewed the comments, FHFA is of the opinion that first-lien PACE programs allocate additional risk to mortgage holders such as the Enterprises because it is uncertain whether PACE-funded projects add value to the underlying property that is commensurate to the amount of the senior property-secured PACE obligation and that could be realized in a sale (including a sale resulting from a foreclosure). Because of the lien-priming attribute of first-lien PACE programs, if the dollar amount of a first-lien PACE obligation exceeds the amount which the PACE-funded projects increases the value of the underlying property, the collateral has been impaired, which causes the mortgage holder to bear increased financial risk.

Many commenters asserted that PACE-funded improvements increase the value of the underlying property. Several such comments cited studies suggesting that the presence of energy-efficient features or improvements correlates positively with property value as reflected in sales price data. *See, e.g.,* Vote Solar submission at 6–7 & nn. 20–22. However, these studies did not directly compare the purported value increment with the cost of the underlying project, and, therefore, these studies do not directly address the question of the net (rather than gross) valuation effects of such projects. FHFA considers net valuation effects (*i.e.,* the increment in the value of the property less the amount of the additional obligation) to be of far greater relevance to the issue of the financial risk posed to mortgage holders.

Having reviewed the cited studies, FHFA's judgment is that the available information does not reliably indicate that PACE-funded projects will generally increase the value of the underlying property by an amount commensurate with their cost. As Freddie Mac stated in its submission, ''We are not aware of reliable evidence supporting a conclusion that energy efficiency improvements increase property values in an amount equal to the cost of the improvement. Rather, our experience with other home improvements suggests that any increase in property value is likely to be substantially less than such cost, meaning that homeowners who take on PACE loans are likely to increase their ratio of indebtedness relative to the value of their properties.'' Freddie Mac submission at 4.

A publicly available cost-versus-value report illustrates the point. *See* Remodeling/NAR Cost-vs.-Value Survey 2011–12.[12] That report indicates that

[12] *Available at http://www.remodeling.hw.net/2011/costvsvalue/national.aspx* (last visited June 11, 2012).

window-replacement projects—which are approved for financing under many PACE programs—typically add less than 70% of the cost of the project to the value of the property. *Id.* More specifically, the survey reports that, as a national average for 2011, mid-range wood window-replacement projects cost about $12,200 while adding only about $8,300 of value to the property. *Id.* A PACE-financed window-replacement project with those cost and value effects would diminish the amount of property value securing the mortgage by about $3,900—the difference between the $12,200 cost and the $8,300 increment to value.

Moreover, FHFA's judgment is that PACE-funded projects create financial risk and uncertainty for mortgage holders because the future value of the project depends on an array of events and conditions that cannot be predicted reliably. In part, this is because the principal channel by which PACE projects could affect property value is by reducing the homeowner's utility expense. The amount of any such reduction depends, in large part, on the level of energy prices over the life of the project. Energy prices are variable and unpredictable, and therefore any forward-looking estimate of utility-cost savings is inherently speculative. *See* NRDC, PACE*Now,* Renewable Funding, LLC, and The Vote Solar Initiative, *PACE Programs White Paper* (May 3, 2010) at 18 (noting that because ''the PACE assessment remains fixed,'' cash-flow ''benefits'' to homeowners depend upon movements in the ''cost of energy'').[13] Further, whether the retrofit equipment is effective, is maintained by the homeowner or is covered by hazard insurance are important factors in the valuation of an improvement. Accordingly, the effect a PACE-financed project might have on property values is likely to be similarly variable and speculative. Additional discussion of the cash-flow effects of PACE-funded projects appears *infra* in section IV.A.2.

In addition, the effect a PACE-financed project will have over time on the value of the underlying property also depends on the preferences of potential home purchasers, which can change over time. Indeed, prominent PACE advocates have publicly acknowledged ''uncertainty as to whether property buyers will pay more for efficiency improved properties.'' *See* PACE Finance Summary Sheet at 1.[14] Many PACE-financed projects, such as solar panels or replacement windows, have a relatively long engineering life, and technological advances or changing aesthetic preferences will likely affect their desirability to potential homebuyers. If such features fall out of favor or become obsolete, any positive contribution to property value could dissipate, and indeed the presence of such features could reduce the value of the property. As the Joint Trade Association explained, ''Early in the life of a PACE loan, the technology used in a retrofit application may become obsolete, but the PACE loan would remain because it is not prepayable. As technology advances, consumers' preferences will change. A solar panel that seemed attractive at first but that became obsolete will hurt property liquidity and value, both because the property has an undesirable and obsolete solar panel, and because the PACE lien would still be outstanding.'' For example, many buyers do not want solar systems or other expensive energy improvements because the assumed savings may not materialize, and they may have concerns about the aesthetics, maintenance requirements, or technology that may become outdated or fall in price. The cost of solar systems has come down substantially in recent years; if prices continue to fall, a homeowner that locked-in a higher cost system would have difficulty getting a buyer to assume that higher balance assessment, without a pricing concession.

Many commenters also assert that the fact that PACE obligations do not accelerate upon default mitigates the risk to mortgage holders, since only the past due amounts rather than the entire obligation would become immediately due in foreclosure. *See supra* Section III.B.1.c (summarizing comments). FHFA believes that such comments are based on flawed economic analysis; whether PACE obligations are accelerated in a foreclosure is, in FHFA's judgment, of limited economic irrelevance. Upon any transfer of a property to which a PACE obligation has attached, the new owner assumes the continuing obligation to pay the PACE assessments as they come due. Accordingly, the new owner—*i.e.,* the purchaser in a foreclosure sale—will reduce the amount he or she bids for a given property to account for his or her assumption of the continuing obligation to pay PACE assessments. A rational purchaser will treat the PACE obligation as a component of their cost, and will reduce their cash bid correspondingly. Because the cash paid by the new owner is the source of all funds the mortgage holder will realize upon foreclosure, the reduction in purchase price corresponding to the PACE debt will be borne entirely by the foreclosing mortgage holder, not by the new owner.

2. Cash-Flow Effects of PACE-Funded Projects

FHFA believes first-lien PACE programs allocate risk to mortgage holders such as the Enterprises because it is uncertain whether PACE-funded projects increase the borrower's free cash flow. If the borrower's free cash flow does not increase, then (all else equal) his or her ability to service financial obligations including the mortgage and the PACE obligation does not increase. Some solar systems or geothermal systems with life cycle periods that may exceed the term of a loan, which PACE advocates favorably cite, may require intervening replacement of system elements and repairs; these further highlight the need for a free cash flow analysis that is positive for homeowners. Having reviewed the comments and the sources cited therein, FHFA's judgment is that the available information does not reliably indicate PACE-funded projects will generally increase the borrower's ability to repay his or her financial obligations, including mortgage loans.

First, estimating utility cost savings is inherently uncertain due to the variability and unpredictability of energy prices, as PACE advocates have previously acknowledged to FHFA. *See* Memo from Tannenbaum to PACE Federal Regulatory Executives (June 8, 2010) at 4.[15] Indeed, the May 7, 2010 DOE Guidelines (which many commenters urge FHFA to adopt) concede that computing the ''Savings-to-Investment Ratio,'' or ''SIR,'' which is meant to determine whether ''projects * * * 'pay for themselves' * * * over the life of the assessment, depends upon assumptions about future energy prices.'' DOE Guidelines for Pilot PACE Financing Programs (May 7, 2010) at 2 & n.4. Many commenters asserted that energy retrofits will be economic and will not fail to produce benefits due to rising energy costs, but no guarantee exists that energy costs will increase; even a period of energy price stability or moderation could significantly affect the value of an energy retrofit. *See, e.g.,* Comments of the Joint Trade Associations (asserting that ''The price of natural gas has fallen since the advent of extracting it from shale rock,'' and that energy prices ''can depend on

[13] *Available at http://pacenow.org/documents/PACE%20White%20Paper%20May%203%20update.pdf.*

[14] *Available at http://pacenow.org/documents/PACE%20Summary%20Description%20for%20Legislators.pdf* (last visited June 11, 2012).

[15] This document is available for inspection upon request at FHFA.

international and domestic politics and technology advances''); Decent Energy (acknowledging that the ''direction and magnitude of energy prices are uncertain''); Great Lakes Environmental Law Center (acknowledging that energy costs are ''highly volatile'').

Second, accurately estimating in advance the energy savings that would result from a particular PACE project at a particular property is difficult because of design and construction features of the existing property that may not be apparent until the retrofit project is undertaken. As the United States Department of Energy explained in a publicly available document:

> It is extremely difficult (and potentially expensive) to guarantee the forecasted level of savings for residential efficiency projects * * *. You can encourage quality retrofits by requiring specialized training for contractors and having an aggressive quality assurance program that checks the work. However, there is a tradeoff between ensuring quality and ensuring affordability. If work is faulty (not performing as designed), contractors need to be either fix their work or face consequences (such as ineligibility to participate in the program).[16]

Similarly, as the University of California's Renewable and Appropriate Energy Laboratory, which favors PACE, explained in a publicly available document, ''Homeowners and businesses may not trust that the improvements will save them money or have the other benefits claimed.'' *See* Univ. of Cal. Renewable and Appropriate Energy Laboratory, Guide to Energy Efficiency and Renewable Energy Financing Districts at 6 (Sept. 2009).[17] *See also, e.g.,* comments of the Joint Trade Associations (''disclosures about future utility costs are conjecture and are unreliable''); National Association of Realtors (''it is difficult to measure the benefits of these improvements because the way an owner uses energy in a home may change over time, depending on variables such as weather and family composition and whether or not the energy efficiency retrofit has become technologically outdated, or was ever as efficient as it was supposed to be'').

Third, some homeowners may choose to consume rather than monetize energy efficiency gains, as by adjusting their thermostat to realize efficiency gains as comfort rather than as monetary savings. As the U.S. Department of Energy explained in a publicly available document, ''There is great variation in how occupants respond to a retrofit (some may turn up the heat for example), and behavior is a large factor especially in residential energy use.'' [18] Similarly, as the National Association of Realtors noted more generally, ''the way an owner uses energy in a home may change over time.'' Hence, the possibility that PACE-financed projects—even projects as to which the savings-to-investment ratio as computed at the planning stage exceeds one—will reduce rather than enhance the homeowner's free cash flow and consequent ability to repay his or her existing obligations cannot be disregarded. Reducing the homeowner's ability to repay his or her existing obligations plainly increases default risk and thereby reduces the value of those obligations—which include mortgages—to their holders.

Fourth, PACE advocates have publicly acknowledged that it may take several years before projected cash-flow effects turn positive. For example, the City of Palm Desert California published a flyer promoting its PACE program, which included a ''How Does It Actually Work?'' section setting forth an example involving installation of ''a 3.1 kW photovoltaic system for a net cost of $20,000.'' According to that document, ''The monthly loan cost of $160 exceeds the initial monthly utility savings of $120.'' Palm Desert adds that ''However, by the seventh year, savings exceed costs.'' Palm Desert, ''A Pathway to Energy Independence.'' [19] In FHFA's judgment, undertaking first-lien PACE financed projects expected to have negative cash-flow effects for the first several years in hopes that they will generate positive cash-flow effects thereafter will not reliably enhance homeowner ability to pay financial obligations including mortgage loans.

Comment letters favorable to PACE programs cited economic and other benefits with recent studies. Many such comments cited studies purporting to summarize benefits of solar systems. One of the weaknesses of the cited studies was whether they compared the cost-effectiveness of solar to that of other sources of energy. Despite the rapid fall in the price for solar panels since 2008 (due to lower raw material costs, large-scale production in Asia and excess supply), solar is still more expensive than electricity produced from coal, oil, natural gas, nuclear, or wind. The studies did not take into account the substantial government subsidies for new solar installations. Tax incentives and other subsidies are generally necessary for solar to be affordable for homeowners. The main federal subsidy covers 30 percent of the total solar installation costs. Other subsidies from the states and local governments can increase the total subsidy to more than 50 percent. Thus, the true benefit of an energy retrofit involving solar may omit certain key factors that may or may not remain in place. The studies generally did not compare PACE financing of solar systems to alternative methods of financing, such as cash payments or leasing. Financing alternatives have varying cost structures, and may include administrative costs, finance charges, and maintenance charges as part of the package. In addition, any cost analysis of solar must account for the particular energy dynamics for the specific solar installation. The benefits to be realized are site specific (roof orientation and pitch, tree shading, sun hours), and region specific (electricity costs vary greatly throughout the country, as well as the state or local subsidy levels); general or typical performance metrics may not be applicable for a given property.

Commenters advance that the Savings to Investment Ratio (SIR) is the most relevant measure for comparing the costs and benefits of PACE-funded projects, but SIR is an assumption-driven estimate that, in FHFA's judgment, does not adequately reflect changes that a PACE-funded project may cause in the borrower's ability to repay financial obligations, especially in early periods after the project installation. For any financing, the ability of a homeowner to repay clearly is an established approach that has been found to be the most appropriate safeguard. Further discussion relating to SIR is presented below in Section IV.A.3.

3. Underwriting Standards for PACE Programs

Many comments favorable to PACE programs asserted that the existence of appropriate underwriting guidance or guidelines for PACE programs would serve to protect homeowners and lenders, reducing the risk of default or loss. Three primary documents were referenced—the Council on Environmental Quality: Middle Class Task Force ''Recovery Through Retrofit'' (October 2009) [CEQ]; the Department of Energy, Guidelines for Pilot PACE Financing Programs (May 7, 2010) [DOE Guidelines]; and, H.R. 2599, the PACE

[16] U.S. Department of Energy, Q&A from the November 18[, 2009] Energy Financing Webinar, *available at http://www1.eere.energy.gov/wip/solutioncenter/pdfs/pace_webinar_qa_111809.pdf.*

[17] *Available at http://rael.berkeley.edu/sites/default/files/old-site-files/berkeleysolar/HowTo.pdf.*

[18] U.S. Department of Energy, Q&A from the November 18[, 2009] Energy Financing Webinar, *available at http://www1.eere.energy.gov/wip/solutioncenter/pdfs/pace_webinar_qa_111809.pdf.*

[19] *Available at http://rael.berkeley.edu/files/berkeleysolar/PalmDesertBrochure.pdf.*

Assessment Protection Act of 2011 [H.R. 2559]. FHFA believes that these documents show that the underwriting standards PACE advocates propose are complex, incomplete, and impractical to implement, and that they would not adequately protect mortgage holders such as the Enterprises from financial risk.

For example, H.R. 2599 includes dozens of sections and subsections purporting to create standards for acceptable PACE projects, many of which involve complex calculations based on unstated assumptions and unspecified methodologies. One of the principal standards that H.R. 2599 would impose is that ''The total energy and water cost savings realized by the property owner and the property owner's successors during the useful lives of the improvements, as determined by [a mandatory] audit or feasibility study, * * * are expected to exceed the total cost to the property owner and the property owner's successors of the PACE assessment.'' But no methodology for actually computing the costs and savings is provided.

Such calculations would not, in FHFA's judgment, be simple or straightforward. As with any calculation of financial effects over time, simply summing up projected nominal costs and benefits without discounting to reflect the timing of their realization would be improper—a dollar of incremental income realized at a point some years in the future does not completely offset a dollar of incremental cost incurred today. For that reason, assumptions as to applicable discounts rates are significant and could be determinative—especially given that it may take a period of several years for benefits to exceed costs. Given the uncertainty associated with important elements of calculating the costs and benefits of PACE-funded projects (such as uncertainty as to the course of future energy prices, the costs of maintaining and repairing equipment, and the pace of advances in energy-efficiency technology), an effective standard incorporating financial metrics must be based on reasonable and accepted financial methodologies for computing those metrics. In FHFA's judgment, neither H.R. 2599 nor any of the comments suggesting that FHFA adopt its substance provided sufficient guidance concerning the appropriate discount rates or rates to be applied in the calculation (or suggested a sufficient methodology for determining such rates).

In addition, H.R. 2599 proposed that standards should deny loans to homeowners where property taxes are not current, where recent bankruptcy filings have occurred, or where the homeowner is not current on all mortgage debt. This definition of the ability-to-repay is not that of normal credit extension, but a reflection of the standard already employed by certain PACE programs. In FHFA's judgment, these criteria do not adequately address the significant ability-to-repay element of normal credit underwriting, a critical element cited in the 2010 Dodd Frank Wall Street Reform and Consumer Protection Act. Moreover, H.R. 2599 permits PACE loans to include expenses of homeowners such as undertaking mandated energy audits; this, in addition to administrative fees of up to ten percent of the loan amount, further lowers the amount of the energy improvement that may be purchased or requires a higher PACE loan, adding more exposure of lenders to financial risks in a subsequent sale of the property. Finally, H.R. 2599 endorses a cap of ten percent of the estimated value of the property, which (in the absence of a complementary ability-to-repay standard) is collateral based lending. The subprime crisis of recent has demonstrated such lending to present different, and in FHFA's judgment, greater risks than lending based on ability to repay supplemented by the protection of adequate collateral.

Similarly, the DOE Guidelines (attached to DOE's submission and referenced by numerous commenters) set forth a formula for computing the Savings-to-Investment Ratio (SIR), and suggest that PACE programs should adopt an underwriting standard that SIR be ''greater than one.'' DOE's definition of SIR incorporates an ''appropriate discount rate,'' but offers no guidance for determining what such a rate would be.[20] Moreover, DOE's definition of SIR permits ''quantifiable environmental and health benefits that can be monetized'' to be treated as ''savings'' for purposes of the calculation. The Guidelines do not define ''quantifiable environmental and health benefits that can be monetized,'' nor do they explain whether such benefits must have a real, rather than a potential or theoretical, effect on the borrower's actual cash-flows in order to be factored into the calculation. Accordingly, FHFA perceives uncertainty as to whether even those PACE projects that meet the DOE-recommended standard of SIR greater than one can reliably be expected to have an actual, positive effect on the borrower's net cash flow. The DOE Guidelines also specify that ''SIR should be calculated for [an] entire package of investments, not individual measures.'' [21] The Guidelines thereby suggest that projects with a SIR of less than one would nevertheless be eligible for PACE funding if they were ''package[d]'' with other projects at the same property that have a SIR sufficiently greater than one. *Id.* In FHFA's view, this undermines the utility of SIR as an underwriting criterion.

Without a reasonable, reliable, and consistent methodology for making the calculations that purport to determine whether proposed projects are financially sound (including a reasonable and reliable method for determining the applicable metrics and discount rate), a standard based on the purported financial soundness of PACE-funded projects would not, in FHFA's judgment, adequately protect the Enterprises from financial risk.

The DOE Guidelines illustrate other underwriting issues of concern to FHFA. *First,* the document provides ''best practice guidelines'' only; they have no force of law and are not backed by any supervisory or enforcement mechanism. States and localities may choose to adopt some, all, or none of the guidelines. Accordingly, the DOE guidance itself does not propose uniform, national standards.

Second, although the DOE Guidelines purport to incorporate ''Property Owner Ability to Pay'' into their ''Underwriting Best Practices,'' FHFA is concerned that the suggested practices almost entirely disregard ability-to-repay as a meaningful criterion. The only three ''precautions'' the DOE Guidelines recommend as a means of ensuring ''ability to pay'' are (1) ''[SIR] greater than one,'' (2) ''Property owner is current on property taxes and has not been late more than once in the past 3 years, or since the purchase of the house if less than three years,'' and (3) ''Property owner has not filed for or declared bankruptcy for seven years.'' DOE Guidelines at 6–7. As explained above, the DOE SIR calculation depends upon unstated assumptions, implements an unspecified methodology, and may treat items that have no actual effect on cash-flow as if they were real cash savings. Given the uncertainty that even PACE-funded projects with SIR greater than one will be cash-flow positive immediately upon implementation, or even for years thereafter, FHFA is

[20] The formula is ''SIR = [Estimated savings over the life of the assessment, discounted back to present value using an appropriate discount rate] divided by [Amount financed through PACE assessment].'' DOE Guidelines (May 7, 2010) at 2.

[21] DOE Guidelines at 3.

concerned that the DOE SIR criterion may not adequately reflect the immediate, real-world consequences of PACE-funded projects on borrowers' ability to repay their financial obligations, including their mortgage loans. To the same effect, while being current on property taxes and having a clean bankruptcy history provide some limited evidence of a borrower's ability to pay, FHFA is concerned that they are not sufficient to adequately protect mortgage holders from material increases in financial risk. As noted, many PACE commenters favorable to the program, while citing current ''standards, actually advocate additional standards be set forth by FHFA in any rulemaking. The omission by PACE advocates of such common credit metrics as debt-to-income ratios and credit scores from their proposed underwriting standards suggests to FHFA that PACE programs are relying principally on the value of the collateral and their prime lien position, rather than on the borrower's ability to service its debt obligations out of income, as assurance of repayment. In FHFA's judgment, this reflects collateral-based lending that could tend to increase the financial risk borne by subordinate creditors such as mortgage holders. Indeed, the promotional materials for Boulder County, Colorado's PACE program state that ''You may be a good candidate for a ClimateSmart Loan Program loan if you: Are not likely to qualify for a lower-interest loan through a private lender (*e.g.* home equity loan) due to less-than-excellent credit. * * *'' [22]

Third, the DOE Guidelines specify that ''Estimated property value should be in excess of property owner's public and private debt on the property, including mortgages, home equity lines of credit (HELOCs), and the addition of the PACE assessment, to ensure that property owners have sufficient equity to support the PACE assessment.'' [23] This appears to permit the imposition of PACE liens that would leave the property owner with only nominal equity in the property. As recent experience has shown, circumstances in which homeowners have little or no equity in the property can be extremely risky for mortgage holders; FHFA does not believe that an underwriting criterion that allows a PACE project to reduce a homeowner's equity in the property to essentially zero provides adequate protection to mortgage holders.

The Council on Environmental Quality (''CEQ'') document indicates that the first priority of the CEQ was improving access for consumers to ''straightforward and reliable information on home energy retrofits * * *.'' CEQ then noted, ''Homeowners face high upfront costs and many are concerned that they will be prevented from recouping the value of their investment if they choose to sell their home. The upfront costs of home retrofit projects are often beyond the average homeowner's budget.'' The report then cites favorably municipal energy financing costs added to a property tax bill with ''payment generally lower than utility bill savings.'' This presupposes that such savings will be greater than increased property tax bills. But, of note, the CEQ continues and states ''Federal Departments and Agencies will work in partnership with state and local governments to establish standardized underwriting criteria and safeguards to protect consumers and minimize financial risks to the homeowners and mortgage lenders. Additionally, CEQ noted the need to ''* * * advance a standard home energy performance measure and more uniform underwriting procedures; develop procedures for more accurate home energy appraisals; and streamline the energy audit process.'' FHFA is unaware that any of these conditions attendant to the CEQ endorsement of municipal financing programs has been met. Regarding PACE, the report notes that ''DOE will be funding model PACE projects, which will incorporate the new principles for PACE program design * * * [and this f]unding will encourage pilots of PACE programs, with more developed homeowner and lender protections than have been provided to date.'' Again, the pilot and model projects, that do not impose risk on lenders, have not been developed, nor have the protections that were called for by CEQ been addressed.

Many commenters suggested that FHFA promulgate underwriting standards. In FHFA's judgment, such comments confirm the current absence of adequate consumer protection, program and contract requirements, energy product, contractor qualifications and performance requirements and the absence of uniformity of such standards and of an enforcement or compliance mechanisms. In FHFA's judgment, these circumstances would cause first-lien PACE programs to pose significant financial risk to the Enterprises. Mortgage products lacking in metrics, market performance and safeguards are routinely rejected for purchase by the Enterprises. Even the majority of PACE supporters endorse additional homeowner protections.

Moreover, FHFA considers such suggestions impractical for several reasons. *First,* FHFA notes the absence of many of the proposed standards, which commenters suggest could be developed by other regulators or standard-setting organizations. Many of the comments propose varying standards on a wide variety of subjects outside FHFA's field of expertise. For example the DOE Guidelines—which many commenters advocate FHFA should adopt—propose that PACE programs ''limit eligibility [for funding] to those measures with well-documented energy and dollar savings for a given climate zone.'' [24] However, FHFA as a financial institution regulator is not in a position to evaluate and reevaluate whether a given type of retrofit will consistently produce cost savings ''for a given climate zone,'' particularly in light of the fact that PACE programs have proliferated across the country. Moreover, as many commenters acknowledge, there is insufficient data to support reliable conclusions about the valuation and cash-flow effects of energy-retrofit projects. *See, e.g.,* comments of the Joint Trade Associations (''disclosures about future utility costs are conjecture and are unreliable''); National Association of Realtors (''it is difficult to measure the benefits of these improvements because the way an owner uses energy in a home may change over time, depending on variables such as weather and family composition and whether or not the energy efficiency retrofit has become technologically outdated, or was ever as efficient as it was supposed to be''). In the absence of such data FHFA would be challenged to formulate standards that will reliably protect the safety and soundness of the Enterprises' mortgage asset portfolios. *Second,* FHFA believes that many of the metrics underlying proposed standards depend upon assumptions and are of unproven reliability. For example, many commenters propose standards relating to the cash-flow effects of projects, but they do not provide a reliable methodology for projecting the determinants of such effects, such as future energy prices and homeowner behavioral changes. *Third,* FHFA does not establish standards for PACE programs. FHFA regulates the Enterprises and the Federal Home Loan Banks; PACE programs are established

[22] ClimateSmart Loan Program Eligibility FAQs, *available at http://climatesmartloanprogram.org/eligibility.htm (last visited June 2, 2012).*

[23] DOE Guidelines at 6.

[24] DOE Guidelines at 3.

with few standards and these are left to localities, in most cases, either to create or to enlarge. *Fourth,* FHFA believes that even if such standards could be devised, implemented, and applied, mortgage holders such as the Enterprises would still bear significant financial risk associated with future contingencies such as unexpected movements in energy prices, advances in energy-efficiency technology, and changes in the aesthetic and practical preferences of potential homebuyers.

4. Empirical Data Relating to Financial Risk

Many comments provide their own findings or conclusions about PACE, but without adequate data or support. The support that is provided in many cases is of a general nature addressing the benefits of energy retrofitting and energy savings. However, there was often no causal link established between the purported savings and the use of PACE as a financing vehicle. Most studies presented are estimations, not reports of actual findings.

As with any product or program brought to the Enterprises, proponents offer product descriptions, including safeguards, financing features, target markets, risk management procedures, prior experience in managing projects, test marketing or pilot programs, return on capital and profitability metrics and other details. Comment letters reflected an absence of such information even three years after the promulgation of PACE statutes. Commenters provided no data on the resale performance of PACE properties, and the sample size of the data repeatedly cited is likely too small to draw reliable conclusions in any event. Moreover, an analysis of resales in one area of the country may not reliably indicate resale performance in another area, since customer acceptance may vary greatly depending upon the penetration rate of solar or other types of retrofit projects within an area. The absence of such data would normally be a basis for rejection of a product or program by the Enterprises.

Many commenters pointed to high-level summaries of default data relating to PACE programs as support for their contention that PACE programs do not materially increase the risk borne by mortgage holders. FHFA finds the summaries of default data proffered in the comments generally unhelpful. As an initial matter, underlying data and definitions generally were not provided, leaving FHFA unable to determine such basic matters as whether the referenced ''defaults'' refer to non-payment of PACE assessments, other property tax obligations, or mortgage obligations. Nor is it apparent what criteria were used to define a default, *e.g.,* whether default requires a 30-day delinquency, a 90-day delinquency, some fixed number of missed payments, some fixed or relative amount of non-payment, or other indicia of default.

Moreover, serious methodological problems permeate the analysis of default data reflected in the comments. For example, the sample size was very small, with only a small number of defaults among the PACE homes during the limited term period, rendering the statistical reliability of the analysis doubtful. Further, PACE homes were likely subject to certain additional underwriting requirements, skewing the comparison, yet the summary presentations provided in the comments generally did not address this issue. It is likely that the PACE borrowers had a lower risk profile than the non-PACE borrowers, and that the projected energy savings did not factor materially into the lower default rate. PACE loans are also relatively new, so they have not been as affected by the economic downturn as the more seasoned non-PACE loans. A robust analysis would have matched the PACE sample to a group of non-PACE homes in the area having a similar set of risk attributes (*e.g.* LTV ratio, credit score, DTI ratio, product type, loan age, home value, borrower income, etc.). In the absence of such an analysis, FHFA cannot agree that the default experience of PACE jurisdictions provides sufficient support to the views of PACE supporters.

Most supporters of PACE that addressed default rates cited data provided by Sonoma County and the cities of Boulder and Palm Desert. PACE supporters have previously noted that these programs probably are not representative. For example, in a March 15, 2010 letter, PACE*Now* acknowledged that ''early PACE programs that were launched in 2008 and 2009—Berkeley, Boulder, Palm Desert, and Sonoma—were extremely small and all in fairly wealthy communities.'' [25] In its comment submission, Sonoma County, California makes a similar point: ''[I]t has been Sonoma's experience that delinquency and default rates on properties with PACE mortgages are extremely low, possibly reflecting a self-selecting group of participants * * *.'' Similarly, the Town of Babylon, NY noted in its submission that ''FHFA has, in its 1/26/12 request for comment, sought very exacting data on the operational soundness of PACE programs. Credible results can only be forthcoming from a wide, representative sample of programs that are all actually operating within a set of uniform parameters.''

The Town of Babylon comment is a clear assertion, with which FHFA concurs, that credible information does not exist. FHFA would differ in a conclusion, however, that deploying an unfettered array of programs that would impact potentially billions of dollars in existing home mortgages, and do so without uniform parameters and metrics is a method for securing such information.

FHFA believes that such comments cast doubt upon PACE advocates' assertions that first-lien PACE programs pose only ''minimal'' or ''immaterial'' risk to mortgage holders such as the Enterprises.

PACE program endorsements by certain federal agencies have been limited to calls for pilots, development of underwriting standards, production of metrics and creating no harm to homeowners or lenders. However, no document produced by PACE commenters or by any government agency has provided a fully specified plan for an actual pilot program. FHFA notes that programs such as Sonoma County's Energy Independence Program are continuing to fund energy-retrofit programs for homeowners that meet their underwriting guidelines. FHFA believes that these and other programs may create a track record of data that may permit further analysis of the energy and financial effects of PACE-funded projects.

B. PACE Programs and the Market for Financing Energy-Related Home-Improvement Projects

As noted above, many commenters asserted that PACE programs overcome barriers to financing energy-related home improvement projects. In FHFA's judgment, some of the barriers PACE programs purport to overcome actually reflect reasonable credit standards that operate to protect both homeowners and mortgage holders from financial risk. It is also FHFA's judgment, PACE is unlikely to overcome other of the purported barriers. Finally, FHFA notes that the U.S. Department of Energy, which is generally supportive of PACE programs, has identified factors other than available means of finance as inhibiting consumer acceptance of energy retrofit projects.

Many commenters cited ''high upfront cost'' as a barrier that PACE purportedly overcomes. But PACE is not unique in this regard; any method of finance that allows repayment over time overcomes

[25] *Available at http://pacenow.org/documents/PACE%20Concerns%20and%20White%20House%20Solutions.pdf* (last visited June 11, 2012).

the purported barrier of ''high up-front cost.'' Further, PACE program designs include up to a ten percent administrative fee for counties and financing of audit and inspections that represent very high up-front charges and reduce the amount of retrofit purchase by a homeowner. Accordingly, FHFA believes that in many instances, the more relevant barrier for homeowners is a lack of credible information, as noted by government entities as their first concern and, for those who wish to finance energy-efficiency retrofit projects, is poor credit or lack of demonstrable ability to repay the obligation. Several PACE programs have made public statements suggesting that they might appeal to borrowers with substandard credit. For example, as of May 2012, Sonoma County California's ''SCEIP'' program noted, in a presentation that it required potential borrowers to view, that ''No credit check [is] required'' and ''no income qualifications'' are applied.[26] Similarly, Boulder, Colorado has marketed its ''ClimateSmart'' PACE program in terms that appear to invite applicants with substandard credit: ''You may be a good candidate for a ClimateSmart Loan Program loan if you: Are not likely to qualify for a lower-interest loan through a private lender (*e.g.* home equity loan) due to less-than-excellent credit * * *.''[27] In any event, lending to applicants with ''less-than-excellent credit'' based on ''no credit check'' and ''no income qualifications'' amounts to collateral based lending, which the subprime crisis of the past several years has demonstrated to present different and, in FHFA's judgment, greater risks than lending based on ability to repay which may be supplemented by holding adequate collateral.

Relatedly, many commenters asserted that the relatively long payback periods associated with PACE-funded projects may present a barrier to homeowners who are not certain they will continue to reside at the property over the entire period. Some commenters referred to this as the ''split incentives'' problem. Commenters suggested that because PACE assessments ''run with the land,'' a successor purchaser would assume the obligation and the original borrower therefore need not be concerned about making a large upfront investment. FHFA believes that this economic reasoning is flawed. A successor purchaser of a property will consider the value of the PACE project and the amount of the PACE obligation he or she will assume in determining the purchase price. SchoolsFirst Federal Credit Union, which gave qualified support to PACE programs in the abstract, explained in its comment that ''subsequent purchasers may reduce the amount they would pay to purchase the property by the amount of the outstanding PACE obligation.'' The Credit Union stated that this is most likely to be the case where ''the subsequent purchaser could not obtain attractive financing * * *, [and t]he purchaser is likely to request an offset.'' In FHFA's judgment, that is correct—the proceeds the initial borrower will realize upon a sale of the property will reflect expectations about the future financial consequences of the PACE project. In effect, the buyer will require the seller to pay off some or all of the PACE obligation—either directly or by accepting a commensurately lower price—in exchange for the then-present value of the PACE project. For that reason, PACE financing should not, in FHFA's view, materially change the incentives of homeowners who may not expect to reside in the same property over the entire life of a PACE-financed project and the corresponding financial obligation.

The Department of Energy's publicly available Request for Information regarding the development of national energy ratings for home retrofits indicates that financing is not the only impediment to energy retrofits.[28] The DOE RFI notes that its goal was to ''* * *establish a rating program that could be broadly applied to existing homes and provide reliable information at a low cost to consumers.'' As the Department noted, ''Lack of access to credible, reliable information on home energy performance and cost effective improvement opportunities limit consumers from undertaking home energy retrofits.'' Even energy audits could be improved to provide information to consumers on what improvements were desirable. As the DOE RFI noted, ''Energy audits and assessment can provide useful information on the extent of energy savings possible from home improvements and recommendations for the types of improvement to make that are cost-effective* * * While recommendations for improvements are useful, there is not currently a standardized approach to providing and prioritizing these recommendations.'' Thus, consumer information based on uniform base data has not been available, leaving localities, utilities, auditors, inspectors and building contractors to provide advice, with various capacities and perspectives to provide such advice.

C. Legal Attributes of PACE Assessments

FHFA believes that the legal attributes of PACE programs are immaterial to the exercise of its supervisory judgment because FHFA's views as to the incremental financial risk first-lien PACE programs pose to the Enterprises does not depend upon a conclusion that PACE obligations are, in a legal sense, loans, tax assessments, or some hybrid of the two. Neither FHFA's existing directives relating to PACE nor the Proposed Rule nor any of the Alternatives challenge the legal authority of states and localities to implement first-lien PACE programs if they wish. Rather, FHFA is exercising its statutory mandate to protect the safety and soundness of the Enterprises by directing that they not purchase assets that create unacceptable incremental financial risk. The ability of other market participants such as banks, securities firms, independent investors and others to buy and hold or to buy and repackage for sale such loans is in no way affected. Indeed, FHFA made clear that PACE programs with liens accruing when recorded, as is the case for four states, would not run contrary to the FHFA position.

However, FHFA believes the commenters overlook important differences between PACE assessments and other, more traditional assessments. Most significantly, PACE assessments are voluntary obligations created in the course of a commercial transaction involving a single property. In that regard, they differ from more typical property-tax assessments, such as special assessments for sidewalks or other community-wide improvements that individual property owners generally cannot opt into or out of. As PACE advocate and commenter Renewable Funding explained in a prior, publicly available statement, under PACE programs, ''willing and interested property owners voluntarily elect to receive funding and have assessments made against their property. * * * This opt-in feature does not typically appear in local government

[26] SCEIP_Residential_Energy_Education Presentation at p. 6, *available at http://www.sonomacountyenergy.org/apply-for-financing.php,* ''Presentation'' link (last visited May 31, 2012).

[27] ClimateSmart Loan Program Eligibility FAQs, *available at http://climatesmartloanprogram.org/eligibility.htm* (last visited June 2, 2012).

[28] Department of Energy, Energy Efficiency and Renewable Energy, National Energy Rating Program for Homes, Request for Information (June 8, 2010), *available at http://apps1.eere.energy.gov/buildings/publications/pdfs/corporate/rating_rfi_6_2_10.pdf.*

improvement financing authority.'' [29] Accordingly, as PACE gained public attention, many states began ''pursuing enabling legislation,'' as one PACE advocate stated in a September 2009 report.[30] Commenters typically did not explain why new ''enabling legislation'' was necessary if PACE programs merely made use of pre-existing powers. As Fannie Mae explained in its comments, the voluntary or ''opt-in'' attribute is material to the risk borne by the mortgage holder and to the mortgage holder's ability to protect against such risk. ''Real estate taxes are known and accounted for at the time of mortgage origination. As a result, a mortgage lender can factor the tax payment into its underwriting analysis of the borrower's ability to repay the loan. * * * In contrast, PACE loans may be originated at any point during the term of a mortgage loan without the knowledge of the current servicer or investor, making escrowing for PACE loans practically impossible.''

PACE*Now* and other commenters cite a long-standing history of over 37,000 assessment districts nationwide that function efficiently. In those special districts, the liens also have priority over the single-family mortgage loans, and lenders have avoided additional losses. A voluntary assessment for a PACE project is different from a mandatory assessment for an essential service that cannot be easily purchased on an individual basis. Traditional assessments for water and sewer, sidewalks, street lighting, and other purposes add value to an entire community or special taxing district. A PACE assessment is simply an alternative means of financing energy improvements that is assumable. PACE ultimately does not change the consequences to the homeowner of purchasing a solar system in terms of the ability to recover the expended funds at resale. Unlike a home equity loan or leasing (which may also offer lower costs of financing), a PACE assessment shifts the risk to the lender in the event of default because of the lien-priming feature. A future buyer may prefer a home without the added assessment, despite any projected energy savings. While some buyers may be incented by the prospect of new technology, contributing to energy efficiency, and energy savings, other buyers may be disincented for a number of other reasons. Moreover, the rapid proliferation of PACE programs distinguishes the magnitude of the risks they pose to the Enterprises from that of the risks that may be associated with smaller, isolated assessment-based financing programs that PACE proponents assert involve similar voluntary transactions, such as programs for seismic upgrades in California or septic upgrades in Massachusetts, Virginia, and Michigan.

D. Public Policy Implications of PACE Programs

1. Environmental Implications of PACE Programs

As described above, many commenters cited possible environmental benefits of PACE programs. As a general matter, FHFA supports programs and financing mechanisms designed to encourage energy-efficient home improvements, as well as other environmentally-friendly initiatives. *See, e.g.,* Fannie Mae Selling Guide, Section B5–3.2–01 HomeStyle Renovation Mortgage: Lender Eligibility (May 15, 2012).[31] However, as some of the comments acknowledge, any environmental effects of an energy-efficiency retrofit flow from the retrofit itself, not from the method by which that retrofit is financed. *See, e.g.,* Decent Energy Inc. (''The environmental impact of the same set of energy efficiency measures should be identical without regard to financing mechanism.''); Joint Trade Association (''The environment does not react to the financing methods people elect.''). In other words, if a given retrofit is going to benefit the environment, it will produce the same benefit if funded by a PACE program or a traditional home equity loan. To the extent the commenters assert or suggest that PACE programs will result in retrofits that would not otherwise have been undertaken, thus creating a net increase in the number of retrofits and a net benefit to the environment, the comments have failed to demonstrate that PACE programs would cause such a net increase in energy-efficiency retrofits. Even if such a net increase were established, it would come at the expense of subordinating the financial interests of the Enterprises, lenders and holders of mortgage backed securities. *See* Joint Trade Association (noting that PACE programs ''may well cause more energy retrofits to be made, but it will also increase the risk and severity of defaults''). Accordingly, absent more information, FHFA cannot elevate purported environmental benefits over the financial interests of the Enterprises, which FHFA is statutorily bound to protect.

2. Implications of PACE Programs on Energy Security and Independence

As described above, many commenters cited energy security and independence as possible benefits of PACE programs. Though FHFA recognizes the importance of energy security and independence, FHFA also recognizes—as with any purported environmental benefits—that such a benefit flows (if at all) from the retrofit itself, not from the method by which that retrofit is financed. To the extent the comments assert or suggest that PACE programs will result in retrofits that would not otherwise have been undertaken, thus creating a net increase achieving energy security and independence, these comments fail to demonstrate that PACE programs would cause such a net increase in energy-efficiency retrofits. Even if such a net increase were established, it would come at the expense of subordinating the financial interests of the Enterprises. Accordingly, absent more information, FHFA cannot override the financial interests of the Enterprises, which FHFA is statutorily bound to protect, with purported environmental benefits.

3. Macroeconomic Implications and Effects of PACE Programs

As described above, many commenters assert that PACE programs will have macro-economic benefits, such as increasing the amount of ''green jobs'' in the United States. Placer County estimated that the suspension of its PACE program prevented the creation of 326 jobs and saving 36 billion BTU per year. Placer County contends that it complies with all applicable consumer protection laws for home improvement financing, including 3-day rescission rights and the PACE program requires energy efficiency training to help achieve maximum energy reductions.

Many comments cited a study that purported to conclude that PACE would facilitate an economic gain of $61,000 per home, and that $4 million in PACE spending will generate, on average, $10 million in gross economic output, $1 million in tax revenue, and 60 jobs. *See, e.g.,* Renewable Funding LLC 9. FHFA has concluded that these assertions are neither supported nor relevant.

First, the study simply attributes to PACE programs all of the economic

[29] Property Assessed Clean Energy (PACE) Enabling Legislation (Mar. 18, 2010) at 2, *available at http://pacenow.org/documents/PACE_enablinglegislation%203.18.10.pdf* (last visited June 11, 2012).

[30] Renewable and Appropriate Energy Laboratory at the University of California, Berkeley, Guide to Energy Efficiency & Renewable Energy Financing Districts (September 2009), available at *http://rael.berkeley.edu/sites/default/files/old-site-files/berkeleysolar/HowTo.pdf,* at p. 40.

[31] *Available at https://www.efanniemae.com/sf/guides/ssg/sg/pdf/sel051512.pdf.*

activity related to PACE projects, but it does not examine how the economic resources employed in those projects would have been deployed in the absence of PACE programs. Accordingly, the study does not even purport to measure the incremental economic activity associated with PACE programs, which would be necessary if net economic effects were to be determined. True economic gains are more likely when energy improvements have short payback periods and appropriate reflect the existence and possible reduction or removal of government subsidies.

Additionally, the model used to estimate the jobs, taxes, and flow-through into the economy of PACE improvements contained a number of assumptions (50/50 split for solar/other energy efficiency projects, certain geographic localities, etc.), and sought to measure the economic impacts in a very broad way:

- Direct impacts (labor/materials for projects, taxes from installations including payroll taxes and income taxes on employees),
- Indirect impacts (supply-chain impacts since the direct purchase activity results in the purchase of goods/services from other businesses), and
- Induced impacts (the multiplier effect from the consumption expenses of those who enjoy income from the direct and indirect activities).

The study did not look at whether solar is economically cost effective compared to other sources of energy. Despite the rapid fall in the price for solar panels since 2008 (due to lower raw material costs, large-scale production in Asia, and excess supply), solar is still more expensive than electricity produced from coal, oil, natural gas, nuclear, or wind. *See, e.g.,* Citizens Climate Lobby 43 (acknowledging that the cost of solar ''is double to quadruple what most people pay for electricity from their utilities'').

The study also did not take into account the substantial government subsidies for new solar installations. In order for solar to be affordable for homeowners, it requires tax breaks and other subsidies.

- The main federal subsidy covers 30 percent of the total solar installation costs.
- Other subsidies from the states and local governments can increase the total subsidy to more than 50 percent.

Whether government subsidies are appropriately considered in a calculation of economic costs and benefits is questionable. To the extent they are considered, it is important to recognize the risk that changes in the public policy and/or political environment could affect their continued availability.

V. Discussion of the Proposed Rule and Alternatives Being Considered

In the ANPR, FHFA stated that its proposed action ''would direct the Enterprises not to purchase any mortgage that is subject to a first-lien PACE obligation or that could become subject to first-lien PACE obligations without the consent of the mortgage holder.'' In light of the factors discussed above, the Proposed Rule has been revised as reflected below. Pursuant to the preliminary injunction requiring APA rulemaking, FHFA is also considering a number of alternatives to mitigate the risks to the Enterprises resulting from the lien-priming feature of first-lien PACE programs. FHFA invites comments suggesting modifications to these alternatives or identification of other alternatives that FHFA has not considered, which would address FHFA's duty to ensure that the Enterprises operate in a safe and sound manner.

A. The Proposed Rule

The Proposed Rule would provide for the following:

1. The Enterprises shall immediately take such actions as are necessary to secure and/or preserve their right to make immediately due the full amount of any obligation secured by a mortgage that becomes, without the consent of the mortgage holder, subject to a first-lien PACE obligation. Such actions may include, to the extent necessary, interpreting or amending the Enterprises' Uniform Security Instruments.

2. The Enterprises shall not purchase any mortgage that is subject to a first-lien PACE obligation.

3. The Enterprises shall not consent to the imposition of a first-lien PACE obligation on any mortgage.

In light of the comments received in response to the ANPR and FHFA's responses to those comments, FHFA believes that the Proposed Rule is reasonable and necessary to limit, in the interest of safety and soundness, the financial risks that first-lien PACE programs would otherwise cause the Enterprises to bear.

B. Risk-Mitigation Alternatives

FHFA is considering three alternative means of mitigating the financial risks that first-lien PACE programs would otherwise pose to the Enterprises. FHFA solicits comments supported by reliable data and rigorous analysis showing that any of these alternatives, or any other alternative to the Proposed Rule, would provide mortgage holders with equivalent protection from financial risk to that of the Proposed Rule, and could be implemented as readily and enforced as reliably as the Proposed Rule.

1. First Risk-Mitigation Alternative—Guarantee/Insurance

The first such Risk-Mitigation Alternative is as follows:

a. The Enterprises shall immediately take such as actions as are necessary to secure and/or preserve their right to make immediately due the full amount of any obligation secured by a mortgage that becomes, without the consent of the mortgage holder, subject to a first-lien PACE obligation. Such actions may include, to the extent necessary, interpreting or amending the Enterprises' Uniform Security Instruments.

b. The Enterprises shall not purchase any mortgage that is subject to a first-lien PACE obligation, except to the extent that the Enterprise, if it already owned the mortgage, would consent to the PACE obligation pursuant to paragraph (c) below.

c. The Enterprises shall not consent to first-lien PACE obligations except those that (a) are (or promptly upon their creation will be) recorded in the relevant jurisdiction's public land-title records, and (b) meet any of the following three conditions:

i. Repayment of the PACE obligation is irrevocably guaranteed by a qualified insurer,[32] with the guarantee obligation triggered by any foreclosure or other similar default resolution involving transfer of the collateral property; or

ii. A qualified insurer insures the Enterprises against 100% of any net loss attributable to the PACE obligation in the event of a foreclosure or other similar default resolution involving transfer of the collateral property;[33] or,

iii. The PACE program itself provides, via a sufficient reserve fund maintained for the benefit of holders of mortgage interests on properties subject to senior obligation under the program,[34]

[32] The Enterprises shall determine reasonable criteria by which ''qualified insurers'' can be identified.

[33] Net loss attributable to the PACE obligation shall be the greater of (a) the amount of the outstanding PACE obligation minus any incremental value (which could be positive or negative) that the PACE-funded project contributes to the collateral property, as determined by a current qualified appraisal, or (b) zero.

[34] A ''sufficient reserve fund'' shall be a reserve fund that provides, on an actuarially sound basis, protection at least equivalent to that of a qualified insurer.

substantially the same coverage described in paragraph (ii) above.

In providing such consent, the Enterprises shall reserve the rights to revoke the consent in the event the subject PACE obligation ceases to meet any of the conditions, and to accelerate the full amount of the corresponding mortgage obligation so as to be immediately due in that event.

FHFA has reservations about the First Risk-Mitigation Alternative, including whether the referenced guarantees and/or insurance would be available in the marketplace. Moreover, even to the extent the referenced guarantees and/or insurance were available in the marketplace, the First Risk Mitigation Alternative might not effectively insulate the Enterprises from the range of material financial risks that first-lien PACE programs otherwise would force them to bear. For example, the Enterprises would be exposed to the risk that the insurance provider may fail, potentially leaving the Enterprises to bear the very risks they were to be insured against. While an appropriate definition of ''qualified insurer'' can reduce this risk, it cannot eliminate it.

Notwithstanding these reservations, and pursuant to the Preliminary Injunction, FHFA is considering the First Risk-Mitigation Alternative, and solicits comments regarding its potential benefits, detriments, and effects, as well as modifications that could make it more beneficial and effective or otherwise address FHFA's reservations.

2. Second Risk-Mitigation Alternative—Protective Standards

The second Risk-Mitigation Alternative is as follows:

a. The Enterprises shall take such actions as are necessary to secure and/or preserve their right to accelerate so as to be immediately due the full amount of any obligation secured by a mortgage that becomes, without the consent of the mortgage holder, subject to a first-lien PACE obligation. Such actions may include, to the extent necessary, interpreting or amending the Enterprises' Uniform Security Instruments.

b. The Enterprises shall not purchase any mortgage that is subject to a first-lien PACE obligation, except to the extent that the Enterprise, if it already owned the mortgage, would consent to the PACE obligation pursuant to paragraph (c) below.

c. The Enterprises shall not consent to first-lien PACE obligations except in instances where, based on the Enterprise's underwriting definitions, the following five conditions are met—

i. The PACE obligation is no greater than $25,000 or 10% of the fair market value of the underlying property, whichever is lower;

ii. Current combined loan-to-value ratio (reflecting all obligations secured by the underlying property, including the putative PACE obligation, and based on a current qualified appraisal [35]) would be no greater than 65%; and

iii. The borrower's adequately documented back-end debt-to-income ratio (including service of the putative PACE obligation) would be no greater than 35% using the calculation methodology provided in the Enterprises' guides;

iv. The borrower's FICO credit score is not lower than 720; and

v. The PACE obligation is (or promptly upon its creation will be) recorded in the relevant jurisdiction's public land-title records.

d. The Enterprises are to treat a home-purchaser's prepayment of an existing first-lien PACE obligation as an element of the purchase price in determining loan amounts and applying underwriting criteria.

FHFA has reservations about the Second Risk-Mitigation Alternative, including whether it would reduce but not eliminate the material financial risks that first-lien PACE programs would otherwise pose to the Enterprises. In particular, because the mechanism by which the Second Risk-Mitigation Alternative would protect the Enterprises is the imposition of a substantial equity cushion as a prerequisite to consent to creation of a senior PACE lien, market conditions in which equity is substantially eroded (*i.e.,* severe declines in home prices) would cause the risks associated with such liens and borne by the Enterprises to become even more material.

Notwithstanding these reservations, and pursuant to the Preliminary Injunction, FHFA is considering the Second Risk-Mitigation Alternative, and solicits comments regarding its potential benefits, detriments, and effects, as well as modifications that could make it more beneficial and effective or otherwise address FHFA's reservations.

3. Third Risk-Mitigation Alternative—H.R. 2599 Underwriting Standards

The third Risk-Mitigation Alternative would adopt the key underwriting standards set forth in H.R. 2599, which many commenters proffered as a reasonable source of standards FHFA could adopt, and is as follows:

a. The Enterprises shall take such actions as are necessary to secure and/or preserve their right to make immediately due the full amount of any obligation secured by a mortgage that becomes, without the consent of the mortgage holder, subject to a first-lien PACE obligation. Such actions may include, to the extent necessary, interpreting or amending the Enterprises' Uniform Security Instruments.

b. The Enterprises shall not purchase any mortgage that is subject to a first-lien PACE obligation, except to the extent that the Enterprise, if it already owned the mortgage, would consent to the PACE obligation pursuant to paragraph (c) below.

c. The Enterprises shall not consent to first-lien PACE obligations except those that (a) are (or promptly upon their creation will be) recorded in the relevant jurisdiction's public land-title records, and (b) meet all of the following conditions—

i. The PACE obligation is embodied in a written agreement expressing all material terms;

ii. The agreement requires that, upon payment in full of the PACE obligation, the PACE program promptly provide written notice of satisfaction to the owner of the underlying property and the holder of any mortgage on such property as reflected in the relevant jurisdiction's land-title records and take all necessary steps to extinguish the PACE lien;

iii. All property taxes and any other public assessments on the property are current and have been current for three years or the property owner's period of ownership, whichever period is shorter;

iv. There are no involuntary liens, such as mechanics liens, on the property in excess of $1,000;

v. No notices of default and not more than one instance of property-based debt delinquency have been recorded during the past three years or the property owner's period of ownership, whichever period is shorter;

vi. The property owner has not filed for or declared bankruptcy in the previous seven years;

vii. The property owner is current on all mortgage debt on the property;

viii. The property owner or owners are the holders of record of the property;

ix. The property title is not subject to power of attorney, easements, or subordination agreements restricting the authority of the property owner to subject the property to a PACE lien;

x. The property meets any geographic eligibility requirements established by the PACE program;

[35] A ''current, qualified appraisal'' shall be an appraisal that is (1) no more than 30 days old, and (2) in compliance with the Enterprises' published appraisal standards.

xi. The improvement funded by the PACE transaction has been the subject of an audit or feasibility study that:

a. Has been commissioned by the local government, the PACE program, or the property-owner and completed no more than 90 days prior to presentation of the proposed PACE transaction to the mortgage holder for its consent; and

b. Has been performed by a person who has been certified as a building analyst by the Building Performance Institute or as a Home Energy Rating System Rater by a Rating Provider accredited by the Residential Energy Service network; or who has obtained other similar independent certification; and

c. Includes each of the following:

1. Identification of recommended energy conservation, efficiency, and/or clean energy improvements;

2. Identification of the proposed PACE-funded project as one of the recommended improvements identified pursuant to paragraph 1. *supra;*

3. An estimate of the potential cost savings, useful life, benefit-cost ratio, and simple payback or return on investment for each recommended improvement; and,

4. An estimate of the estimated overall difference in annual energy costs with and without the recommended improvements;

xii. The improvement funded by the PACE transaction has been determined by the local government as one expected to be affixed to the property for the entire useful life of the improvement based on the expected useful lives of energy conservation, efficiency, and clean energy measures approved by the Department of Energy;

xiii. The improvement funded by the PACE transaction will be made or installed by a contractor or contractors determined by the local government to be qualified to make the PACE improvements;

xiv. Disbursal of funds for the PACE transaction shall not be permitted unless:

a. The property owner executes and submits to the PACE program a written document requesting such disbursement;

b. The property owner submits to the PACE program a certificate of completion, certifying that improvements have been installed satisfactorily; and

c. The property owner executes and submits to the PACE program adequate documentation of all costs to be financed and copies of any required permits;

xv. The total energy and water cost savings realized by the property owner and the property owner's successors during the useful lives of the improvements, as determined by the audit or feasibility study performed pursuant to paragraph xi. *supra* are expected to exceed the total cost to the property owner and the property owner's successors of the PACE assessment;

xvi. The total amount of PACE assessments for a property shall not exceed 10 percent of the estimated value of the property as determined by a current, qualified appraisal;

xvii. As of the effective date of the PACE agreement, the property owner shall have equity in the property of not less than 15 percent of the estimated value of the property as determined by a current, qualified appraisal and calculated without consideration of the amount of the PACE assessment or the value of the PACE improvements;

xviii. The maximum term of the PACE assessment shall be no longer than the shorter of a) 20 years from inception, or b) the weighted average expected useful life of the PACE improvement or improvements, with the expected useful lives in such calculations consistent with the expected useful lives of energy conservation and efficiency and clean energy measures approved by the Department of Energy.

In providing such consent, the Enterprises are to reserve the rights to revoke the consent in the event the subject PACE obligation ceases to meet any of the conditions, and to accelerate so as to be immediately due the full amount of the corresponding mortgage obligation in that event.

FHFA has reservations about the Third Risk-Mitigation Alternative, including whether it could practically be implemented by FHFA and the Enterprises given that certain elements of the alternative appear to be inherently vague and/or dependent upon assumptions that FHFA lacks a sound basis (and the requisite staff and resources) to provide or evaluate.

For example, while the alternative would require that ''The total energy and water cost savings realized by the property owner and the property owner's successors during the useful lives of the improvements, as determined by [a mandatory] audit or feasibility study * * * are expected to exceed the total cost to the property owner and the property owner's successors of the PACE assessment,'' no methodology for computing the costs and savings is provided. Assumptions as to applicable discounts rates are significant and indeed can be determinative—especially since PACE-funded projects may be cash-flow negative for the first several years. Given the uncertainty associated with important elements of calculating the costs and benefits of PACE-funded projects (such as uncertainty as to the course of future energy prices, the costs of maintaining and repairing equipment, and the pace of advances in energy-efficiency technology), determining an appropriate discount rate is a non-trivial undertaking, and FHFA lacks a sound basis to provide one. Without a reasonable, reliable, and consistent methodology for making the calculations that purport to determine whether proposed projects are financially sound (including a reasonable and reliable method for determining the applicable discount rate or rates), the alternative would not adequately protect the Enterprises from financial risk. Similarly, while the maximum term of the PACE obligation is determined with reference to a ''weighted average expected useful life of the PACE improvement or improvements,'' neither H.R. 2599 nor any of the commenters explained how the weights are to be determined, and most appear to assume that ''expected useful lives of energy conservation and efficiency and clean energy measures approved by the Department of Energy'' will be available and reliable for all PACE-funded projects, which FHFA believes is uncertain. Indeed, in many respects, the deployment of pilot programs tied to determining energy efficiency, providing metrics of such efficiency, training appraisers and inspectors, establishing standards based on such pilot programs in the area of energy efficiency and consumer protections and then providing a source of reliable information to consumers would appear more productive than selecting among financing mechanisms at this time. Additionally, a clear method for enforcing standards set forth in such a program would be beneficial.

Notwithstanding these reservations, and pursuant to the Preliminary Injunction, FHFA is considering the Third Risk-Mitigation Alternative, and solicits comments regarding its potential benefits, detriments, and effects, as well as modifications that could make it more beneficial and effective or otherwise address FHFA's reservations.

VI. Paperwork Reduction Act

The proposed rule does not contain any collections of information pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). Therefore, FHFA has not submitted any information to the Office of Management and Budget for review.

VII. Regulatory Flexibility Act

The proposed rule applies only to the Enterprises, which do not come within the meaning of small entities as defined in the Regulatory Flexibility Act (*See* 5 U.S.C. 601(6)). Therefore, in accordance with section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 605(b)), FHFA certifies that this proposed rule, if promulgated as a final rule, will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 12 CFR Part 1254

Government-sponsored enterprises, Housing, Lien-priming, Mortgages, Mortgage-backed securities, Property Assessed Clean Energy Programs.

For the reasons stated in the preamble, and under the authority of 12 U.S.C. 4526, the Federal Housing Finance Agency proposes to amend Chapter XII of Title 12 of the Code of Federal Regulations by adding a new part 1254 to subchapter C to read as follows:

PART 1254—ENTERPRISE UNDERWRITING STANDARDS

Sec.

1254.1 Definitions.
1254.2 Mortgage assets affected by first-lien Property Assessed Clean Energy (PACE) Programs.
1254.3 [Reserved]

Authority: 12 U.S.C. 4526(a).

§ 1254.1 Definitions.

As used in this part,

Consent means to provide voluntary written assent to a proposed transaction in advance of the transaction, and includes the documentation embodying such assent.

First-lien means having or taking a lien-priority interest ahead of or senior to a first mortgage on the same property, or otherwise subordinating the security interest of the holder of a first mortgage to that of another financial obligation secured by the property.

PACE obligation shall mean a financial obligation created under a Property Assessed Clean Energy (PACE) Program or other similar program for financing energy-related home-improvement projects through voluntary and/or contractual assessments against the underlying property.

§ 1254.2 Mortgage assets affected by first-lien Property Assessed Clean Energy (PACE) Programs.

(a) The Enterprises shall immediately take such as actions as are necessary to secure and/or preserve their right to make immediately due the full amount of any obligation secured by a mortgage that becomes, without the consent of the mortgage holder, subject to a first-lien PACE obligation. Such actions may include, to the extent necessary, interpreting or amending the Enterprises' Uniform Security Instruments.

(b) The Enterprises shall not purchase any mortgage that is subject to a first-lien PACE obligation.

(c) The Enterprises shall not consent to the imposition of a first-lien PACE obligation on any mortgage.

§ 1254.3 [Reserved]

Dated: June 12, 2012.

Edward J. DeMarco,

Acting Director, Federal Housing Finance Agency.

[FR Doc. 2012–14724 Filed 6–14–12; 8:45 am]

BILLING CODE 8070–01–P

FEDERAL REGISTER

Vol. 77 Friday,

No. 116 June 15, 2012

Part IV

The President

Notice of June 14, 2012—Continuation of the National Emergency With Respect to the Actions and Policies of Certain Members of the Government of Belarus and Other Persons To Undermine Belarus Democratic Processes or Institutions

Federal Register
Vol. 77, No. 116
Friday, June 15, 2012

Presidential Documents

Notice of June 14, 2012

Continuation of the National Emergency With Respect to the Actions and Policies of Certain Members of the Government of Belarus and Other Persons To Undermine Belarus Democratic Processes or Institutions

On June 16, 2006, by Executive Order 13405, the President declared a national emergency and ordered related measures blocking the property of certain persons undermining democratic processes or institutions in Belarus, pursuant to the International Emergency Economic Powers Act (50 U.S.C. 1701–1706). The President took this action to deal with the unusual and extraordinary threat to the national security and foreign policy of the United States constituted by the actions and policies of certain members of the Government of Belarus and other persons to undermine Belarus democratic processes or institutions, to commit human rights abuses related to political repression, including detentions and disappearances, and to engage in public corruption, including by diverting or misusing Belarusian public assets or by misusing public authority.

In 2011, the Government of Belarus continued its crackdown against political opposition, civil society, and independent media. The government arbitrarily arrested, detained, and imprisoned citizens for criticizing officials or for participating in demonstrations; imprisoned at least one human rights activist on manufactured charges; and prevented independent media from disseminating information and materials. These actions show that the Government of Belarus has taken additional steps backward in the development of democratic governance and respect for human rights.

The actions and policies of certain members of the Government of Belarus and other persons continue to pose an unusual and extraordinary threat to the national security and foreign policy of the United States. Accordingly, the national emergency declared on June 16, 2006, and the measures adopted on that date to deal with that emergency, must continue in effect beyond June 16, 2012. Therefore, in accordance with section 202(d) of the National Emergencies Act (50 U.S.C. 1622(d)), I am continuing for 1 year the national emergency declared in Executive Order 13405.

This notice shall be published in the **Federal Register** and transmitted to the Congress.

THE WHITE HOUSE,
June 14, 2012.

[FR Doc. 2012–14870
Filed 6–14–12; 2:15 pm]
Billing code 3295–F2–P

Reader Aids

Federal Register

Vol. 77, No. 116

Friday, June 15, 2012

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Federal Register/Code of Federal Regulations

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Laws	**741–6000**

Presidential Documents

Executive orders and proclamations	**741–6000**
The United States Government Manual	**741–6000**

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Privacy Act Compilation	**741–6064**
Public Laws Update Service (numbers, dates, etc.)	**741–6043**
TTY for the deaf-and-hard-of-hearing	**741–6086**

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FEDERAL REGISTER PAGES AND DATE, JUNE

32391–32880 1
32881–33062 4
33063–33288 5
33289–33594 6
33595–33944 7
33945–34178 8
34179–34780 11
34781–35240 12
35241–35616 13
35617–35806 14
35807–36114 15

CFR PARTS AFFECTED DURING JUNE

At the end of each month the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:
8829 32875
8830 32877
8831 32879
8832 33595
8833 33597
8834 33599
8835 33601
8836 33603
8837 35807

Administrative Orders:
Memorandums:
Memorandum of April 24, 2012 33945
Memorandum of May 23, 2012 32391
Memorandum of June 7, 2012 35241

Notices:
Notice of June 14, 2012 36113
Presidential Determinations:
No. 2012–07 of April 24, 2012 33947

5 CFR

Ch. LXXXIII 34179
9301 34179

Proposed Rules:
532 34854
1200 33663
1201 33663
1203 33663
1208 33663
1209 33663

6 CFR

5 33605

Proposed Rules:
5 33683

7 CFR

7 33063
28 33289
205 33290
319 34781
614 34186
930 33303
985 33076
1700 35245

Proposed Rules:
932 33104
1205 34855
1280 34868
3201 33270

9 CFR

11 33607
55 35542
81 35542
93 34783
94 34783
95 34783

10 CFR

26 33619
71 34194
73 34194
170 35809
171 35809

Proposed Rules:
430 .....33106, 35299
431 32916
1703 .....32433, 33980

12 CFR

1 .....35253, 35259
5 35253
16 35253
28 35253
160 .....35253, 35259
225 33949
241 32881
1236 33950

Proposed Rules:
1026 33120
1254 36086
1282 34263

14 CFR

39 .....32884, 32887, 32889, 32892, 33083, 33619, 33622, 34206
71 .....32393, 32895, 32896, 34208, 34209, 34210, 34211, 35617, 35618, 35836
97 .....33085, 33087
121 34784

Proposed Rules:
39 .....32433, 32437, 32439, 32918, 33125, 33127, 33129, 33332, 33334, 34281, 34283, 34870, 34872, 34874, 34876, 34878, 34881, 35304, 35306, 35888, 35890
71 .....32921, 33685, 33687
73 35308
121 32441

15 CFR

Proposed Rules:
740 33688
742 .....33688, 35310
774 .....33688, 35310
906 33980
1400 34883

16 CFR

Proposed Rules:
305 33337

17 CFR

46 35200

275 35263
Proposed Rules:
3 35892
23 35892
240 35625

19 CFR

12 33624
111 33964
163 33964

20 CFR

404 35264

21 CFR

179 34212
510 32897
516 35837
Proposed Rules:
172 35317

22 CFR

120 33089
123 33089
124 33089
126 33089
127 33089
129 33089
Proposed Rules:
121 ....33698, 35317

25 CFR

Proposed Rules:
543 32444
547 32465

26 CFR

1 ....34785, 34788
Proposed Rules:
1 ....34884, 34887

27 CFR

478 ....33625, 33630
Proposed Rules:
9 33985

29 CFR

4022 35838
4044 35838
Proposed Rules:
1206 33701

30 CFR

Proposed Rules:
917 34888
936 34890
944 34892
950 34894

31 CFR

344 33634
1010 33635
1020 33638

33 CFR

100 ....33089, 33337, 33967, 34215, 35266, 35839
117 ....32393, 32394, 33337, 34797, 35843
151 ....33969, 35268
165 ....32394, 32898, 33089, 33094, 33308, 33309, 33312, 33970, 34797, 34798, 35268, 35271, 35619, 35621, 35839, 35844, 35846, 35848, 35850, 35852, 35854, 35855, 35857, 35860, 35862
Proposed Rules:
100 ....33130, 35321
117 35897
165 ....34285, 34894, 35898, 35900, 35903, 35906

36 CFR

242 35482
Proposed Rules:
220 35323

37 CFR

Proposed Rules:
201 35643

38 CFR

3 34218
9 32397

39 CFR

20 33640
111 33314

40 CFR

51 33642
52 ....32398, 33642, 33659, 34218, 34801, 34808, 34810, 34819, 35273, 35279, 35285, 35287, 35862, 35866, 35870, 35873
81 ....34221, 34819
82 33315
85 34130
86 34130
97 34830
180 ....32400, 32401, 35291, 35295
271 34229
1039 34130
Proposed Rules:
52 ....32481, 32483, 32493, 33022, 33360, 33363, 33372, 33380, 34288, 34297, 34300, 34302, 34306, 34897, 34898, 34906, 35326, 35327, 35329, 35652, 35909, 35917, 36044
60 33812
63 33812
80 34915
85 34149
86 34149
122 ....34315, 34927
123 ....34315, 34927
124 ....34315, 34927
125 ....34315, 34927
725 35331
1039 34149

42 CFR

71 35873
417 32407
422 32407
423 32407
Proposed Rules:
88 35574
405 35917
411 35917
412 34326
413 34326
424 34326
476 34326
489 34326

45 CFR

Proposed Rules:
156 33133

46 CFR

25 33860
27 33860
28 33860
31 33860
34 33860
35 33860
62 33860
71 33860
76 33860
78 33860
91 33860
95 33860
97 33860
107 33860
108 33860
112 33860
115 33860
118 33860
119 33860
122 33860
131 33860
132 33860
147 33860
162 ....33860, 33969, 35268
167 33860
169 33860
176 33860
181 33860
182 33860
185 33860
189 33860
190 33860
193 33860
194 33860
196 33860
532 33971

47 CFR

1 33097
11 33661
15 33098
51 35623
54 ....33097, 35623
64 ....33662, 34233
73 32900
90 33972
Proposed Rules:
11 33995
54 33896
64 35336
73 33997

48 CFR

6 35624
15 35624
19 35624
201 35879
203 35879
204 35879
212 35879
213 35879
216 35883
217 35879
219 35879
222 35879
225 ....35879, 35883
233 35879
243 35879
252 ....35879, 35883
Proposed Rules:
211 35921
212 35921
218 35921
246 35921
252 35921

49 CFR

234 35164
371 32901
375 32901
386 ....32901, 34249
387 32901
390 34846
395 ....33098, 33331
396 34846
541 32903
Proposed Rules:
594 35338
595 33998
1572 35343

50 CFR

17 ....33100, 35118
100 35482
226 32909
622 ....32408, 32913, 32914, 34254
665 34260
679 ....33103, 34262, 34853
697 32420
Proposed Rules:
17 ....32483, 32922, 33142, 33143, 34338
20 34931
600 35349
665 ....34331, 34334
679 35925

LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "P L U S" (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.archives.gov/federal-register/laws*.

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S. 3261/P.L. 112–132
To allow the Chief of the Forest Service to award certain contracts for large air tankers. (June 13, 2012; 126 Stat. 379)
Last List June 13, 2012

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