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WHEN: Tuesday, September 17, 2013
9 a.m.–12:30 p.m.

WHERE: Office of the Federal Register
Conference Room, Suite 700
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Washington, DC 20002

RESERVATIONS: (202) 741–6008

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Rules and Regulations

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

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 932

[Doc. No. AMS–FV–12–0076; FV13–932–1 FIR]

Olives Grown in California; Decreased Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Affirmation of interim rule as final rule.

SUMMARY: The Department of Agriculture (USDA) is adopting, as a final rule, without change, an interim rule that decreased the assessment rate established for the California Olive Committee (Committee) for the 2013 and subsequent fiscal years from $31.32 to $21.16 per ton of assessable olives handled. The Committee locally administers the marketing order for olives grown in California. Assessments upon olive handlers are used by the Committee to fund reasonable and necessary expenses of the program. The fiscal year begins January 1 and ends December 31. A decrease in the assessment rate was necessary because the 2012–13 crop was larger than last year's crop and the previous assessment rate would generate excess revenue.

DATES: Effective July 31, 2013.

FOR FURTHER INFORMATION CONTACT: Jerry L. Simmons or Martin Engeler, California Marketing Field Office, Marketing Order and Agreement Division, Fruit and Vegetable Program, AMS, USDA; Telephone: (559) 487–5901, Fax: (559) 487–5906, or Email: *Jerry.Simmons@ams.usda.gov* or *Martin.Engeler@ams.usda.gov.* Small businesses may obtain information on complying with this and other marketing order regulations by viewing a guide at the following Web site: *http://www.ams.usda.gov/MarketingOrdersSmallBusinessGuide;* or by contacting Jeffrey Smutny, Marketing Order and Agreement Division, Fruit and Vegetable Program, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250–0237; Telephone: (202) 720–2491, Fax: (202) 720–8938, or Email: *Jeffrey.Smutny@ams.usda.gov.*

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement No. 148 and Order No. 932, both as amended (7 CFR Part 932), regulating the handling of olives grown in California, hereinafter referred to as the ''order.'' The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Order 12866.

Under the order, California olive handlers are subject to assessments, which provide funds to administer the order. Assessment rates issued under the order are intended to be applicable to all assessable California olives for the entire fiscal period, and continue indefinitely until amended, suspended, or terminated. The Committee's fiscal period begins on January 1 and ends on December 31.

In an interim rule published in the **Federal Register** on April 29, 2013, and effective on April 30, 2013, (78 FR 24979, Doc. No. AMS–FV–12–0076, FV13–932–1 IR), § 932.230 was amended by decreasing the assessment rate established for California olives for the 2013 and subsequent fiscal years from $31.32 to $21.16 per ton of assessable olives handled. The decrease in the assessment rate was necessary because the 2012–13 crop was larger than last year's crop and the previous assessment rate would generate excess revenue.

Final Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612), the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities. Accordingly, AMS has prepared this final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf.

There are approximately 1,000 producers of California olives in the production area and two handlers subject to regulation under the marketing order. Small agricultural producers are defined by the Small Business Administration as those having annual receipts less than $750,000 and small agricultural service firms are defined as those whose annual receipts are less than $7,000,000 (13 CFR 121.201).

Based upon information from the industry and the California Agricultural Statistics Service, the average grower price for 2012 was approximately $1,150 per ton of assessable olives and total grower deliveries were 67,355 tons. Based on production, producer prices, and the total number of California olive producers, the average annual producer revenue is less than $750,000. Thus, the majority of olive producers may be classified as small entities. Neither of the handlers may be classified as small entities.

This rule continues in effect the action that decreased the assessment rate established for the Committee and collected from handlers for the 2013 and subsequent fiscal years from $31.32 to $21.16 per ton of assessable olives, a decrease of $10.16. The Committee unanimously recommended 2013 expenditures of $1,289,198. The quantity of assessable California olives for the 2012–13 season is 67,355 tons. However, the quantity of olives actually assessed is expected to be slightly lower because some of the tonnage may be diverted by handlers to exempt outlets on which assessments are not paid. The $21.16 rate should provide an assessment income adequate to meet this year's expenses.

Assessments are applied uniformly on all handlers, and some of the costs may be passed on to producers. However, decreasing the assessment rate reduces the burden on handlers, and may reduce the burden on producers.

In addition, the Committee's meeting was widely publicized throughout the California olive industry and all

interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the December 11, 2012, meeting was a public meeting. All entities, both large and small, were able to express views on this issue.

In accordance with the Paperwork Reduction Act of 1995, (44 U.S.C. Chapter 35), the order's information collection requirements have been previously approved by the Office of Management and Budget (OMB) and assigned OMB No. 0581–0178, Generic Vegetable Crops. No changes in those requirements as a result of this action are anticipated. Should any changes become necessary, they would be submitted to OMB for approval.

This action imposes no additional reporting or recordkeeping requirements on either small or large California olive handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

Comments on the interim rule were required to be received on or before June 28, 2013. No comments were received. Therefore, for the reasons given in the interim rule, we are adopting the interim rule as a final rule, without change.

To view the interim rule, go to: *http://www.regulations.gov/#!docket Detail;D=AMS-FV-12-0076.*

This action also affirms information contained in the interim rule concerning Executive Orders 12866 and 12988, and the E-Gov Act (44 U.S.C. 101).

After consideration of all relevant material presented, it is found that finalizing the interim rule, without change, as published in the **Federal Register** (78 FR 24979, April 29, 2013) will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 932

Marketing agreements, Olives, Reporting and recordkeeping requirements.

PART 932—OLIVES GROWN IN CALIFORNIA

■ Accordingly, the interim rule amending 7 CFR Part 932, which was published at 78 FR 24979 on April 29, 2013, is adopted as a final rule, without change.

Dated: July 24, 2013.

Rex A. Barnes,

Associate Administrator, Agricultural Marketing Service.

[FR Doc. 2013–18222 Filed 7–29–13; 8:45 am]

BILLING CODE 3410–02–P

BUREAU OF CONSUMER FINANCIAL PROTECTION

12 CFR Parts 1024 and 1026

[Docket No. CFPB–2013–0010]

RIN 3170–AA37

Amendments to the 2013 Mortgage Rules Under the Real Estate Settlement Procedure Act (Regulation X) and the Truth in Lending Act (Regulation Z)

Correction

In rule document 2013–16962, appearing on pages 44686–44728 in the issue of Wednesday, July 24, 2013, make the following correction:

§ 1026.43 Minimum Standards for Transactions Secured by a Dwelling [Corrected]

■ On page 44727, in the third column, on the eleventh line from the bottom, ''eligibility requirements for Fannie Mae products and loan terms'' should read ''The loan still meets eligibility requirements for Fannie Mae products and loan terms.''

[FR Doc. C1–2013–16962 Filed 7–29–13; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2012–1114; Directorate Identifier 2012–NE–21–AD; Amendment 39–17511; AD 2013–14–06]

RIN 2120–AA64

Airworthiness Directives; CFM International, S. A. Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for certain CFM International, S. A. (CFM) model CFM56–5 and CFM56–5B series turbofan engines. This AD was prompted by corrosion of the delta-P valve in the hydro-mechanical unit (HMU) fuel control caused by exposure to type TS–1 fuel. This AD requires cleaning, inspection, and repair of affected HMUs. We are issuing this AD to prevent seizure of the HMU, leading to failure of one or more engines and damage to the airplane.

DATES: This AD is effective September 3, 2013.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the AD as of September 3, 2013.

ADDRESSES: The Docket Operations office is located at Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.

For service information identified in this AD, contact CFM International Inc., Aviation Operations Center, 1 Neumann Way, M/D Room 285, Cincinnati, OH 45125; International phone: 513–552–3272; USA phone: 877–432–3272; International fax: 513–552–3329; USA fax: 877–432–3329; email: *geae.aoc@ge.com;* or CFM International SA, Customer Support Center, International phone: 33 1 64 14 88 66; fax: 33 1 64 79 85 55; email: *snecma.csc@snecma.fr.* You may view this service information at the FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA. For information on the availability of this material at the FAA, call 781–238–7125.

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Martin Adler, Aerospace Engineer, Engine Certification Office, FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; phone: 781–238–7157; fax: 781–238–7199; email: *martin.adler@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. The NPRM was published in the **Federal Register** on January 14, 2013 (78 FR

2644). The NPRM proposed to require cleaning, inspection, and repair of the affected HMUs.

Comments

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

Agreement With the Proposed AD

American Airlines supports the NPRM (78 FR 2644, January 14, 2013) and does not foresee being impacted by this AD now or in the future.

Request To Include Minimum Threshold for TS–1 Fuel Usage

Seven commenters requested that the NPRM (78 FR 2644, January 14, 2013) be modified to include a minimum threshold for TS–1 fuel usage similar to the service bulletins (SBs). The reason for this request is that the NPRM differs from the service information. The data does not support the more restrictive applicability called for by the NPRM. The European Aviation Safety Agency (EASA) AD 2012–0123, dated July 9, 2012, is less restrictive as well. There have been no events since implementation of the EASA AD and since the latest versions of the CFM SBs. Several carriers questioned whether the data supports having no threshold and if in-flight shutdown events truly apply to the worldwide fleet.

We partially agree with including a minimum usage threshold. We have no technical objections to the usage threshold utilized in the CFM SBs. However, since there are no U.S. operators using TS–1 fuel, there is no benefit to increasing the complexity of the AD. We did not change the AD.

Request To Reduce Applicability To Match EASA AD

Five commenters requested that the NPRM (78 FR 2644, January 14, 2013) be modified to reduce the applicability to match the EASA AD. The reason for this request is that the data does not support the more restrictive applicability called for by the NPRM. The EASA AD applicability is less restrictive. There have been no events since implementation of the EASA AD and the latest versions of the CFM SBs.

We do not agree. No U.S. operators use TS–1 fuel. Therefore, there is no benefit to increasing the complexity of the AD. We did not change the AD.

Request To Eliminate TS–1 Fuel Usage Recording

Five air carriers requested that the NPRM (78 FR 2644, January 14, 2013) be modified to eliminate TS–1 fuel usage recording. The reason for this request is that the additional record keeping will add cost and complexity. This will be a burden to the operators.

We do not agree. TS–1 fuel usage records are required for enforcement of the AD. In addition, many operators already track fuel usage for business purposes. The creation and retention of TS–1 fuel records required by this AD is not considered an undue burden. We did not change the AD.

Request To Delay Issuance of AD

CFM and Airbus requested that we delay issuing the AD until mid-2013. The reason for this request is that CFM is conducting additional testing and analysis to further validate the usage threshold called out in the SBs.

We do not agree. We have no technical objections to the usage threshold utilized in the CFM SBs. However, since there are no U.S. operators using TS–1 fuel, there is no benefit to increasing the complexity of the AD. We did not change the AD.

Request Clarification of Differences Between NPRM and EASA AD

Lufthansa Technik noted that there are significant differences between the NPRM (78 FR 2644, January 14, 2013) and the EASA AD. Lufthansa Technik questioned whether the agencies have differing opinions of the technical issue.

We do not agree. The technical understanding of the issue is consistent, but differences in procedure and policy result in the differences between the NPRM (78 FR 2644, January 14, 2013) and the EASA AD.

Request To Define Parameters for Recording TS–1 Fuel Usage

Lufthansa Technik pointed out that the specific parameters to record TS–1 fuel usage are not well defined and asked if it is the intention to track fuel volume or the number of fuel uploads. The reason for this request is to clarify units to be measured for TS–1 fuel usage.

We do not agree. The actions are required regardless of the amount of TS–1 exposure. The intent is to track if an HMU has been exposed to TS–1 fuel. We did not change the AD.

Request To Allow Earlier Versions of the SB To Be Used

Lufthansa Technik and Virgin America Airlines requested that use of earlier revisions of the SBs be allowed. Earlier revisions of the SB allow cleaning or replacement of the delta-P valve. The latest revisions only allow replacement of the delta-P valve. Cleaning has proven effective at eliminating the issue, so replacement in all cases is not required. Also, the general inspection procedure has not changed from the initial release of the SBs to the one called out by the AD.

We agree. Cleaining of the HMU delta-P valve is effective at mitigating the risk of this issue and should be allowed. We changed this AD to reference the following service information to do the inspection: paragraph 3.A(2) of CFM SB CFM56–5 S/B 73–0182, Revision 6, dated March 8, 2012; or CFM SB CFM56–5B S/B 73–0122, Revision 8, dated March 8, 2012.

Request To Clarify Reporting Requirements

TAP Portugal asks if the AD includes a usage threshold calculation, would time spent in storage be discounted from the calculation? The reason for this request is to seek clarification on threshold calculation.

We do not agree. The AD does not include a usage threshold. We did not change the AD.

Request Change to Applicability

TAP Portugal requested that the AD also apply to the CFM56–5C engine. The reason for this request is that there are many interchangable parts between CFM56–5C and the affected engines.

We do not agree. The data received for HMU corrosion and subsequent engine shutdown have all come from CFM56–5A and CFM56–5B engines, which are used on a different family of airplanes than CFM56–5C. At this time, there is insufficient data to support adding the CFM56–5C to the Applicability paragraph. We did not change the AD.

Request Clarification for the Definition of Overhaul

Air France requested that we clarify the definition of overhaul. HMU overhaul is defined in the Component Maintenance Manual as specific maintenance which may or may not align with the maintenance required by this AD. This could cause conflicts and confusion when attempting to comply with the AD.

We agree. The intent of the AD when referring to overhaul is anytime the HMU delta-P valve is inspected, cleaned, or replaced. We added the following defintion to the AD: ''For the purposes of this AD, overhaul is defined as HMU maintenance, which includes inspection, cleaning, or replacement of the HMU delta-P valve.''

Request Increase in Compliance Time

Rossiya Airlines requested an increase in initial compliance time for an HMU

with more than 8,000 hours to be 24 months or 4,200 hours. The utilization rate of Rossiya Airlines is above 3,800 hours per year. The current compliance equates to less than one year in which to fully comply with the AD. The reason for this request is that the number of spare and rotable engines does not support the compliance time rate requirement.

We partially agree with increasing the initial compliance time. The intent of the initial compliance time was to allow sufficient time for all of the high-time impacted HMUs to be replaced. The 2,000-hour allowance did not take into account the high-time utilization rates of some operators. The initial inspection compliance times are revised to allow up to 4,000 hours from the effective date of the AD. We disagree with increasing the initial inspection compliance times to 4,200 hours because that does not mitigate the unsafe condition.

Request To Delete Initial Cleaning Requirement

Lufthansa Technik noted that the lack of records for prior TS–1 fuel usage will make determination of usage extremely difficult. In addition, this determination will need to be made for all engines and HMUs worldwide. The reason for this request is that lease components, lease engines, and component pools transferred between operators might have exposed an HMU to TS–1 fuel. The exposed HMU might then get transferred to a region where TS–1 fuel is not used, such as the United States.

We do not agree. An initial inspection of the HMU is required unless it can be shown that the HMU has never been exposed to TS–1 fuel. We did not change the AD.

Request for Consideration of Costs to Worldwide Fleet

Air France requested that we include consideration for the costs to the worldwide fleet. The NPRM (78 FR 2644, January 14, 2013) stated that there is no impact to U.S. operators; however, European operators would be impacted. The reason for this request is to expand cost considerations to include the worldwide fleet.

We do not agree. The AD only applies to U.S.-registered aircraft. Foreign operators must comply with the regulations of their local authority. The cost considerations listed in the AD reflect the impact to U.S. operators only. We did not change the AD.

Conclusion

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

Costs of Compliance

We estimate that this AD will not affect any products of U.S. registry. Based on these figures, we estimate this AD to have no cost impact to U.S. operators.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

(3) Will not affect intrastate aviation in Alaska to the extent that it justifies making a regulatory distinction, and

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2013–14–06 CFM International, S. A.: Amendment 39–17511; Docket No. FAA–2012–1114; Directorate Identifier 2012–NE–21–AD.

(a) Effective Date

This AD is effective September 3, 2013.

(b) Affected ADs

None.

(c) Applicability

This AD applies to CFM International S.A. (CFM) model CFM56–5 and CFM56–5B series turbofan engines with any of the hydro-mechanical unit (HMU) fuel control part numbers (P/Ns) in paragraphs (c)(1) and (c)(2) of this AD, installed:

(1) CFM56–5: CFM P/Ns 1348M79P02; 1348M79P03; 1348M79P04; 1348M79P06; 1348M79P07; 1348M79P08; 1348M79P09; 1348M79P10; 1348M79P11; 1348M79P12; 1348M79P13; and 1348M79P14.

(2) CFM56–5B: CFM P/Ns: 1348M79P08; 1348M79P09; 1348M79P10; 1348M79P11; 1348M79P12; 1348M79P13; and 1348M79P14.

(d) Unsafe Condition

This AD was prompted by corrosion of the delta-P valve in the HMU fuel control caused by exposure to type TS–1 fuel. We are issuing this AD to prevent seizure of the HMU, leading to failure of one or more engines, and damage to the airplane.

(e) Compliance

Unless already done, do the following:

(f) Record Type TS–1 Fuel Usage

(1) From the effective date of this AD, record all TS–1 fuel usage.

(2) If the HMU never uses TS–1 fuel, no further action is required.

(g) Initial Inspection

If the HMU has operated on TS–1 fuel, inspect the HMU for corrosion as follows:

(1) For an HMU that has operated for fewer than 6,000 hours since new (HSN) or hours since last overhaul, inspect the HMU before 10,000 HSN or hours since last overhaul, whichever comes later.

(2) For an HMU that has operated for 6,000 or more HSN or hours since last overhaul, inspect the HMU within 24 months or 4,000 hours after the effective date of this AD, whichever comes first.

(3) Use paragraph 3.A(2) of CFM Service Bulletin (SB) No. CFM56–5 S/B 73–0182, Revision 6, dated March 8, 2012, or CFM SB No. CFM56–5B S/B 73–0122, Revision 8, dated March 8, 2012, to do the inspection.

(h) Repetitive Inspections

Repeat the inspection required in paragraph (g)(3) of this AD before 10,000 hours since last overhaul if, after last overhaul, the HMU is exposed to TS–1 fuel.

(i) Credit for Previous Actions

If the HMU has not been exposed to TS–1 fuel since the last overhaul, then the initial inspection in paragraph (g) of this AD is not required.

(j) Definitions

For the purposes of this AD, overhaul is defined as HMU maintenance, which includes inspection, cleaning, or replacement of the HMU delta-P valve.

(k) Paperwork Reduction Act Burden Statement

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

(l) Alternative Methods of Compliance (AMOCs)

The Manager, Engine Certification Office, may approve AMOCs for this AD. Use the procedures found in 14 CFR 39.19 to make your request.

(m) Related Information

(1) For more information about this AD, contact Martin Adler, Aerospace Engineer, Engine Certification Office, FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; phone: 781–238–7157; fax: 781–238–7199; email: *martin.adler@faa.gov.*

(2) Refer to European Aviation Safety Agency, AD 2012–0123, dated July 9, 2012, for more information. You may examine this AD on the Internet at *http://www.regulations.gov.*

(n) Material Incorporated by Reference

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

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

(i) CFM International, S. A. (CFM) Service Bulletin No. CFM56–5 S/B 73–0182, Revision 6, dated March 8, 2012.

(ii) CFM Service Bulletin No. CFM56–5B S/B 73–0122, Revision 8, dated March 8, 2012.

(3) For CFM International, S. A. service information identified in this AD, contact CFM International Inc., Aviation Operations Center, 1 Neumann Way, M/D Room 285, Cincinnati, OH 45125; International phone: 513–552–3272; USA phone: 877–432–3272; International fax: 513–552–3329; USA fax: 877–432–3329; email: *geae.aoc@ge.com;* or CFM International SA, Customer Support Center, International phone: 33 1 64 14 88 66; International fax: 33 1 64 79 85 55; email: *snecma.csc@snecma.fr.*

(4) You may view this service information at FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA. For information on the availability of this material at the FAA, call 781–238–7125.

(5) You may view this service information at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued in Burlington, Massachusetts, on July 9, 2013.

Robert J. Ganley,

Acting Assistant Manager, Engine & Propeller Directorate, Aircraft Certification Service.

[FR Doc. 2013–17296 Filed 7–29–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2013–0639; Directorate Identifier 2013–SW–020–AD; Amendment 39–17518; AD 2013–15–02]

RIN 2120–AA64

Airworthiness Directives; Bell Helicopter Textron Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule, request for comments.

SUMMARY: We are superseding Airworthiness Directive (AD) 2008–10–03 for Bell Helicopter Textron Helicopters (Bell) Model 204B, 205A, 205A–1, 205B, 210, 212, 412, 412CF, and 412EP helicopters. AD 2008–10–03 required certain checks and inspections of each tail rotor blade assembly (T/R blade) at specified intervals and repairing or replacing, as applicable, any cracked or damaged T/R blade. Since we issued AD 2008–10–03, an accident attributed to a T/R failure occurred. This new AD retains the requirements of AD 2008–10–03 and adds a second, more detailed inspection that allows for an earlier detection of a crack or other damage in a T/R blade. These actions are intended to prevent a failure of the T/R blade and subsequent loss of helicopter control.

DATES: This AD becomes effective August 14, 2013.

The Director of the Federal Register approved the incorporation by reference of certain documents listed in this AD as of August 14, 2013.

We must receive comments on this AD by September 30, 2013.

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

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

Examining the AD Docket

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

For service information identified in this AD, contact Bell Helicopter Textron, Inc., P.O. Box 482, Fort Worth, TX 76101; telephone (817) 280–3391; fax (817) 280–6466; or at *www.bellcustomer.com/.* You may review service information at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

FOR FURTHER INFORMATION CONTACT: Michael Kohner, Aviation Safety Engineer, Rotorcraft Certification Office, Rotorcraft Directorate, FAA, 2601 Meacham Blvd., Fort Worth, Texas 76137; telephone (817) 222–5170; email *7-AVS-ASW-170@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

This AD is a final rule that involves requirements affecting flight safety, and we did not provide you with notice and an opportunity to provide your comments prior to it becoming effective. However, we invite you to participate in this rulemaking by submitting written comments, data, or views. We also invite comments relating to the economic, environmental, energy, or federalism impacts that resulted from adopting this AD. The most helpful comments reference a specific portion of the AD, explain the reason for any recommended change, and include supporting data. To ensure the docket does not contain duplicate comments, commenters should send only one copy of written comments, or if comments are filed electronically, commenters should submit them only one time. We will file in the docket all comments that we receive, as well as a report summarizing each substantive public contact with FAA personnel concerning this rulemaking during the comment period. We will consider all the comments we receive and may conduct additional rulemaking based on those comments.

Discussion

On April 22, 2008, we issued AD 2008–10–03, Amendment 39–15509 (73 FR 24858, May 6, 2008) for Bell Model 204B, 205A, 205A–1, 205B, 210, 212, 412, 412CF, and 412EP helicopters. AD 2008–10–03 required certain checks and inspections of each T/R blade at specified intervals and repairing or replacing, as applicable, any unairworthy T/R blade. AD 2008–10–03 was prompted by eight reports of fatigue cracking of T/R blades installed on Bell Model 212 and 412 helicopters (three failures on the Bell Model 212 and five failures on the Bell Model 412) with a T/R blade, part number (P/N) 212–010–750–009, –105, and –107. Three of the Model 412 failures occurred during flight.

Actions Since AD 2008–10–03 Was Issued

Since we issued AD 2008–10–03 (73 FR 24858, May 6, 2008), an accident attributed to a T/R failure occurred. Because of this accident, we have determined that a superseding AD is necessary to require a second, more detailed inspection that allows for an earlier detection of a crack or other damage. These actions are intended to prevent failure of T/R blade and subsequent loss of helicopter control.

This superseding AD does not apply to Model 204B helicopters because those helicopters do not have the affected T/R blades installed and should not have been included in the applicability of AD 2008–10–03. We are no longer requiring a daily check of the T/R blades because we have determined that the additional, more detailed inspection and the sequence of the inspections provide an appropriate level of safety.

FAA's Determination

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

Related Service Information

On February 4, 2013, Bell issued Alert Service Bulletin (ASB) No. 205–13–109 for Model 205A and 205A–1 helicopters; ASB No. 205B–13–61 for Model 205B helicopters; ASB No. 212–13–147 for Model 212 helicopters; ASB 412–13–155 for Model 412 and 412EP helicopters; and ASB No. 412CF–13–52 for 412CF helicopters. All ASBs are dated February 4, 2013. Bell reported that it recently examined a fractured T/R blade and that the fracture originated from surface damage. ASB No. 205–13–109, No. 205B–13–61, and No. 412CF–13–52 describe procedures for a 3X magnifying glass inspection of the entire T/R blade surface for damage every 25 hours time-in-service (TIS), similar to that required by AD 2008–10–03 (73 FR 24858, May 6, 2008). ASB No. 212–13–147 and No. 412–13–155 do not include this 3X visual inspection, because that inspection has been incorporated into the maintenance manual for these models. All five of the ASBs introduce an additional local visual inspection with a10X magnifying glass of each T/R blade between blade station 20.00 to 35.00 from the leading edge to the trailing edge. Bell added a reminder to operators that it is critical to investigate any paint and skin imperfections should the inspection warrant such action. If any skin damage exceeds the limits in the applicable Maintenance Manual, the ASBs call for removing the T/R blade from service.

AD Requirements

This AD supersedes AD 2008–10–03 (73 FR 24858, May 6, 2008) and requires for any Model 205A, 205A–1, 205B, 210, 212, 412, 412CF, and 412EP helicopter with certain T/R blades the following actions:

Within 25 hours TIS or 30 days, whichever occurs first, and thereafter at intervals not to exceed 25 hours TIS or 30 days, whichever occurs first, cleaning and visually inspecting each T/R blade assembly for a crack, corrosion, nick, scratch, or dent using a 3X or higher power magnifying glass and a bright light; and

Visually inspecting certain parts of each T/R blade for a crack or other damage using a 10X or higher power magnifying glass and a bright light, and if damage exists, measuring the depth of any damage.

Before further flight, replacing any cracked T/R blade and repairing or replacing any damaged T/R blade.

Replacing a blade with T/R blade, P/N 412–016–100–111, on eligible helicopters is terminating action for the inspection requirements of this AD.

Differences Between the AD and the Service Information

This AD differs from the ASBs because we include Model 210 helicopters. The Model 210 helicopter has the same part-numbered blades as the other applicable helicopter models.

Costs of Compliance

We estimate that this AD affects 80 helicopters of U.S. Registry and that labor costs average $85 per work-hour. Based on these estimates, we expect the following costs to comply with this AD:

Visually inspecting a blade (2 per helicopter) for a crack or other damage will require .25 work-hour. No parts are needed. For the expected 12 annual inspections, the total cost per helicopter will be $510 a year, and $40,800 for the U.S. fleet.

Replacing a T/R assembly will require 6 work-hours for a labor cost of $510. Parts will cost $23,048, bringing the total cost to $23,558 per helicopter.

According to the Bell's service information, some of the cost may be covered under warranty, thereby reducing the cost impact on affected individuals. We do not control the warranty coverage by Bell. Accordingly, we have included all costs in our cost estimate.

FAA's Justification and Determination of the Effective Date

Providing an opportunity for public comments prior to adopting these AD requirements would delay implementing the safety actions needed to correct this known unsafe condition. Therefore, we find that the risk to the flying public justifies waiving notice and comment prior to the adoption of this rule because the required corrective actions must be accomplished within 25 hours TIS or 30 days, whichever comes first, a very short time period based on the average flight-hour utilization rate of these helicopters. These helicopters are

typically used for logging, firefighting, and lifting and carrying external loads.

Since an unsafe condition exists that requires the immediate adoption of this AD, we determined that notice and opportunity for public comment before issuing this AD are impracticable and that good cause exists for making this amendment effective in less than 30 days.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed, I certify that this AD:

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

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

3. Will not affect intrastate aviation in Alaska to the extent that it justifies making a regulatory distinction; and

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

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

List of Subjects in 14 CFR Part 39

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

The Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing airworthiness directive (AD) 2008–10–03, Amendment 39–15509 (73 FR 24858, May 6, 2008), and adding the following new AD:

2013–15–02 BELL HELICOPTER TEXTRON: Amendment 39–17518; Docket No. FAA–2013–0639; Directorate Identifier 2013–SW–020–AD.

(a) Applicability

This AD applies to Bell Helicopter Textron (Bell) Model 205A, 205A–1, 205B, 210, 212, 412, 412CF, and 412EP helicopters with a tail rotor blade assembly (T/R blade), part number (P/N) 210–010–001–(all dash numbers) or 212–010–750–(all dash numbers), certificated in any category.

(b) Unsafe Condition

This AD defines the unsafe condition as fatigue cracking of a T/R blade, which could lead to failure of the T/R blade and subsequent loss of control of the helicopter.

(c) Affected ADs

This AD supersedes AD No. 2008–10–03, Amendment 39–15509 (73 FR 24858, May 6, 2008).

(d) Effective Date

This AD becomes effective August 14, 2013.

(e) Compliance

You are responsible for performing each action required by this AD within the specified compliance time unless it has already been accomplished prior to that time.

(f) Required Actions

(1) Within 25 hours time-in-service (TIS) or 30 days, whichever occurs first, and thereafter at intervals not to exceed 25 hours TIS or 30 days, whichever occurs first:

(i) Clean each T/R blade by hand using a mild soap and cheesecloth (C–486) on both sides of the blade in a spanwise direction and dry thoroughly.

(ii) Using a 3X or higher power magnifying glass and a bright light, visually inspect the T/R blade skins, leading edge spar, doublers, grip plates, and trailing edge on both sides of each blade for a crack, corrosion (may be indicated by blistering, peeling, flaking, bubbling, or cracked paint), a nick, scratch, dent, or other damage. Pay particular attention to both sides of the T/R blade in the area located 16 to 35 inches from the T/R blade tip (blade station 20.00 to 35.00—the T/R blade tip is located at blade station 51) as shown by the shaded area of Figure 1 of Bell Alert Service Bulletin (ASB) No. 205–13–109; ASB No. 205B–13–61; ASB No. 212–13–147; ASB 412–13–155; or ASB No. 412CF–13–52, all dated February 4, 2013, as applicable to your helicopter. Also, pay particular attention to the inboard blade butt area near the attachment of the external balance weight and screws, and to any blade surface that was snagged by cheesecloth, as that may be an indication of a crack or paint chip that could lead to corrosion.

Note 1 to Paragraph (f) of this AD: Figure 1 of the Bell ASB No. 205–13–109; ASB No. 205B–13–61; ASB No. 212–13–147; ASB 412–13–155; and ASB No. 412CF–13–52, all dated February 4, 2013, show the shaded area as part of the 10X inspection only. This AD requires the shaded area to be inspected during both the 3X and 10X inspections.

(iii) Using a 10X or higher magnifying glass and a bright light, visually inspect both sides of each blade for a crack or other damage between blade station 20.00 to 35.00 as shown by the shaded area of Figure 1 of Bell ASB No. 205–13–109; ASB No. 205B–13–61; ASB No. 212–13–147; ASB 412–13–155; or ASB No. 412CF–13–52, all dated February 4, 2013, as applicable to your helicopter.

(iv) If any blistering, peeling, flaking, bubbling, or cracked paint is detected anywhere on the blade, remove the paint from the affected area by sanding in a spanwise direction with abrasive cloth or paper (C–406) 240-grit or finer, and a final sanding using abrasive cloth or paper (C–406) 400-grit or finer. Visually inspect the affected area for any corrosion or a crack using a 10X or higher magnifying glass and a bright light. If any corrosion is found, measure the depth of the damage. (A digital optical micrometer is one tool that can be used for this measurement.)

(v) If a nick, scratch, or dent is found anywhere on the blade, visually inspect for a crack using a 10X or higher power magnifying glass and a bright light. Measure the depth of the damage. (A digital optical micrometer is one tool that can be used for this measurement.)

(2) Before further flight:

(i) Replace with an airworthy blade any T/R blade that has a crack or that has any corrosion, nick, scratch, dent, or other damage that exceeds any of the maximum repair limits.

(ii) Repair or replace with an airworthy blade any T/R blade that has any corrosion, nick, scratch, dent or other damage that is within the maximum repair limits.

(3) Replacing a T/R blade with T/R blade, P/N 412–016–100–111, on eligible helicopter models is considered terminating action to this AD.

(g) Special Flight Permit

Special flight permits are prohibited.

(h) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Rotorcraft Certification Office, FAA, may approve AMOCs for this AD. Send your proposal to: Michael Kohner, Aviation Safety Engineer, Rotorcraft Certification Office, Rotorcraft Directorate,

FAA, 2601 Meacham Blvd., Fort Worth, Texas 76137; telephone (817) 222–5170; email *7-AVS-ASW-170@faa.gov.*

(2) For operations conducted under a 14 CFR part 119 operating certificate or under 14 CFR part 91, subpart K, we suggest that you notify your principal inspector, or lacking a principal inspector, the manager of the local flight standards district office or certificate holding district office before operating any aircraft complying with this AD through an AMOC.

(i) Subject

Joint Aircraft Service Component (JASC) Code: 6410, Tail Rotor Blades.

(j) Material Incorporated by Reference

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

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

(i) Bell ASB No. 205–13–109, dated February 4, 2013.

(ii) Bell ASB No. 205B–13–61, dated February 4, 2013.

(iii) Bell ASB No. 212–13–147, dated February 4, 2013.

(iv) Bell ASB No. 412–13–155, dated February 4, 2013.

(v) Bell ASB No. 412CF–13–52, dated February 4, 2013.

(3) For Bell service information identified in this AD, contact Bell Helicopter Textron, Inc., P.O. Box 482, Fort Worth, TX 76101; telephone (817) 280–3391; fax (817) 280–6466; or at *www.bellcustomer.com/.*

(4) You may view this service information that is incorporated by reference in the AD Docket on the Internet at *http://www.regulations.gov.*

(5) You may view this service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued in Fort Worth, Texas, on July 11, 2013.

Kim Smith,

Directorate Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 2013–18079 Filed 7–29–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2012–1303; Airspace Docket No. 12–ANM–29]

Amendment of Class E Airspace; Salt Lake City, UT

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies Class E airspace at Salt Lake City, UT, to accommodate aircraft using Area Navigation (RNAV) Global Positioning System (GPS) and Instrument Landing System (ILS) or Localizer (LOC) standard instrument approach procedures at Salt Lake City International Airport. This improves the safety and management of Instrument Flight Rules (IFR) operations at the airport. This action also adjusts the geographic coordinates of the airport, and makes a minor change to the legal description of Class E airspace extending upward from 1,200 feet above the surface, at Salt Lake City, UT.

DATES: Effective date, 0901 UTC, October 17, 2013. 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: Eldon Taylor, Federal Aviation Administration, Operations Support Group, Western Service Center, 1601 Lind Avenue SW., Renton, WA, 98057; telephone (425) 203–4537.

SUPPLEMENTARY INFORMATION:

History

On May 13, 2013, the FAA published in the **Federal Register** a notice of proposed rulemaking (NPRM) to modify controlled airspace at Salt Lake City, UT (78 FR 27872). Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received.

Subsequent to publication, the FAA's Aeronautical Products Office requested the phrase in the regulatory text ''. . . excluding that portion within Restricted Area R–6403.'' be moved from the 13,500 foot airspace and incorporated into the 1,200 foot airspace. With the exception of editorial changes and the changes described above, this rule is the same as that proposed in the NPRM.

Class E airspace designations are published in paragraph 6005, of FAA Order 7400.9W dated August 8, 2012, and effective September 15, 2012, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in that Order.

The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) Part 71 by modifying Class E airspace extending upward from 700 feet above the surface, at Salt Lake City International Airport, Salt Lake City, UT, to accommodate IFR aircraft executing RNAV (GPS) and ILS or LOC standard instrument approach procedures at the airport. This action removes reference to the exclusion of the Price, UT; Delta, UT; and Evanston, WY, airspace area, and the Bonneville, UT 1,200 foot Class E airspace area, and enhances the safety and management of aircraft operations at the airport. The geographic coordinates of the airport are adjusted in accordance with the FAA's aeronautical database.

The FAA has determined 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 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 only affects air traffic procedures and air navigation, it is certified this rule, when promulgated, does not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the U.S. Code. Subtitle 1, Section 106 discusses the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it modifies controlled airspace at Salt Lake City International Airport, Salt Lake City, UT.

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 14 CFR Part 71 continues to read as follows:

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9W, Airspace Designations and Reporting Points, dated August 8, 2012, and effective September 15, 2012 is amended as follows:

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

* * * * *

ANM UT E5 Salt Lake City, UT [Modified]

Salt Lake City International Airport, UT
(Lat. 40°47′18″ N., long. 111°58′40″ W.)

That airspace extending upward from 700 feet above the surface bounded by a line beginning at lat. 41°00′00″ N., long. 111°45′03″ W.; to lat. 40°22′30″ N., long. 111°45′03″ W.; to lat. 40°10′20″ N., long. 111°35′03″ W.; to lat. 40°03′30″ N., long. 111°48′33″ W.; to lat. 40°03′00″ N., long. 112°05′00″ W.; to lat. 40°25′00″ N., long. 112°06′30″ W.; to lat. 40°43′00″ N. long. 112°22′03″ W.; to lat. 41°00′00″ N., long. 112°22′03″ W., thence to the point of beginning; that airspace extending upward from 1,200 feet above the surface bounded on the north by lat. 41°00′00″ N., on the east by long. 111°25′33″ W., thence south to lat. 40°11′00″ N., thence east to lat. 40°06′00″ N., long. 110°15′00″ W., thence southwest to lat. 39°33′00″ N., long. 110°55′00″ W., thence southwest to lat. 39°04′00″ N., long. 112°27′30″ W., thence northwest to lat. 39°48′00″ N., long. 112°50′00″ W., thence west via lat. 39°48′00″ N., to the east edge of Restricted Area R–6402A, and on the west by the east edge of Restricted Area R–6402A, R–6402B and R–6406A and long. 113°00′03″ W., excluding that portion within Restricted Area R–6403; that airspace east of Salt Lake City extending upward from 11,000 feet MSL bounded on the northwest by the southeast edge of V–32, on the southeast by the northwest edge of V–235, on the southwest by the northeast edge of V–101 and on the west by long. 111°25′33″ W.; that airspace southeast of Salt Lake City extending upward from 13,500 feet MSL bounded on the northeast by the southwest edge of V–484, on the south by the north edge of V–200 and on the west by long. 111°25′33″ W.

Issued in Seattle, Washington, on July 22, 2013.

Christopher Ramirez,

Acting Manager, Operations Support Group, Western Service Center.

[FR Doc. 2013–18141 Filed 7–29–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2013–0282; Airspace Docket No. 13–AAL–3]

Amendment of Class E Airspace; Gustavus, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends Class E airspace at Gustavus Airport, Gustavus, AK. Decommissioning of the Gustavus Nondirectional Radio Beacon (NDB) has made this action necessary for the safety and management of Instrument Flight Rules (IFR) operations at the airport. This action also adjusts the geographic coordinates of the airport.

DATES: Effective date, 0901 UTC, October 17, 2013. 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: Eldon Taylor, Federal Aviation Administration, Operations Support Group, Western Service Center, 1601 Lind Avenue SW., Renton, WA, 98057; telephone (425) 203–4537.

SUPPLEMENTARY INFORMATION:

History

On May 28, 2013, the FAA published in the **Federal Register** a notice of proposed rulemaking (NPRM) to amend controlled airspace at Gustavus, AK (78 FR 31871). Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received.

Class E airspace designations are published in paragraph 6005, of FAA Order 7400.9W dated August 8, 2012, and effective September 15, 2012, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in that Order.

The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) Part 71 by amending Class E airspace extending upward from 700 feet above the surface, at Gustavus Airport, Gustavus, AK. Accordingly, segments extend from the 6.8-mile radius of the airport to 16.8 miles southwest and 24 miles southeast of the airport due to the decommissioning of the Gustavus NDB and cancellation of the NDB approach. Also, the geographic coordinates of the airport are updated to coincide with the FAA's aeronautical database. This action is necessary for the safety and management of IFR operations.

The FAA has determined 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 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 only affects air traffic procedures and air navigation, it is certified this rule, when promulgated, does not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the U.S. Code. Subtitle 1, Section 106 discusses the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it amends controlled airspace at Gustavus Airport, Gustavus, AK.

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 14 CFR Part 71 continues to read as follows:

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9W, Airspace Designations and Reporting Points, dated August 8, 2012, and effective September 15, 2012 is amended as follows:

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

* * * * *

AAL AK E5 Gustavus, AK [Amended]

Gustavus Airport, AK
(Lat. 58°25′31″ N., long. 135°42′27″ W.)

That airspace extending upward from 700 feet above the surface within a 6.8-mile radius of Gustavus Airport and within 4 miles each side of the 229° bearing of the airport extending from the 6.8-mile radius to 16.7 miles southwest of the airport, and within 3 miles northeast and 7 miles southwest of the airport 135° bearing extending from the 6.8-mile radius to 24 miles southeast of the airport.

Issued in Seattle, Washington, on July 22, 2013.

Christopher Ramirez,

Acting Manager, Operations Support Group, Western Service Center.

[FR Doc. 2013–18136 Filed 7–29–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 284

[Docket No. RM12–17–000; Order No. 781]

Revisions to Procedural Regulations Governing Transportation by Intrastate Pipelines

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule.

SUMMARY: In this Final Rule, the Federal Energy Regulatory Commission amends its regulations to provide optional notice procedures for processing rate filings by those natural gas pipelines that fall under the Commission's jurisdiction pursuant to the Natural Gas Policy Act of 1978 or the Natural Gas Act. The rule results in regulatory certainty and a reduction of regulatory burdens.

DATES: This rule is effective September 30, 2013.

FOR FURTHER INFORMATION CONTACT:
David Tishman (Legal Information), Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, (202) 502–8515, *David.Tishman@ferc.gov.*
James Sarikas (Technical Information), Office of Energy Market Regulation, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, (202) 502–6831, *James.Sarikas@ferc.gov.*

SUPPLEMENTARY INFORMATION: The Final Rule generally adopts the regulations proposed in the October 18, 2012, Notice of Proposed Rulemaking, published November 6, 2012, at 77 FR 66568, but revises that proposal in two respects. First, the Final Rule revises the Commission's periodic rate review requirement policy to allow intrastate pipelines with unchanged state-based rates to meet the requirement by certifying that the state-approved rates continue to satisfy the requirements of the Commission's regulations for using a state-based rate. Second, the Final Rule extends the deadline for interventions and initial comments to 21 days after the date of the filing or such other date established by the Secretary of the Commission. The Final Rule also makes technical corrections to the proposed rules.

144 FERC ¶ 61,034

Final Rule

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Before Commissioners: Jon Wellinghoff, Chairman; Philip D. Moeller, John R. Norris, Cheryl A. LaFleur, and Tony Clark.

(Issued July 18, 2013.)

1. In this Final Rule, the Commission revises its Part 284 regulations governing open access transportation service to include optional notice procedures which intrastate pipelines may elect to use when filing proposed rates or operating conditions pursuant to § 284.123 of the Commission's regulations.[1] The revised procedures are intended to result in regulatory certainty and a reduction of regulatory burdens on intrastate pipelines. The Final Rule generally adopts the regulations proposed in the Notice of Proposed Rulemaking.[2] However, the Final Rule revises the Commission's periodic rate review requirement policy to allow intrastate pipelines with unchanged state-approved rates to meet the periodic rate review requirement by certifying that their state-based rates continue to satisfy the requirements of § 284.123(b)(1) of the Commission's regulations for using state-based rates. The Final Rule also extends the deadline for interventions and initial comments to 21 days after the date of a filing under the optional notice procedures or such other date established by the Secretary of the Commission. The Commission clarifies that the optional notice procedures are not available for market-based rate filings by intrastate pipelines, i.e., seeking approval for market-based rates pursuant to § 284.503, or Hinshaw pipelines seeking approval of a blanket certificate and initial rates pursuant to § 284.224. The Final Rule also makes technical corrections to the proposed rules.

I. Background

2. Section 284.123 applies to filings by: (1) Intrastate pipelines providing interstate services pursuant to section 311 of the Natural Gas Policy Act of 1978 (NGPA)[3] and (2) Hinshaw[4] pipelines providing interstate services subject to the Commission's Natural Gas Act (NGA) jurisdiction pursuant to blanket certificates issued under § 284.224 of the Commission's regulations.[5] NGPA section 311 authorizes the Commission to allow intrastate pipelines to transport gas ''on behalf of'' interstate pipelines or local distribution companies served by interstate pipelines ''under such terms and conditions as the Commission may prescribe.''[6] NGPA section 601(a)(2) exempts transportation service authorized under NGPA section 311 from the Commission's NGA jurisdiction. Shortly after the adoption of the NGPA, the Commission authorized Hinshaw pipelines to apply for NGA section 7 certificates authorizing them to transport gas in interstate commerce in the same manner as section 311 pipelines may do under NGPA section 311.[7]

3. Subpart C of the Commission's Part 284 open access regulations (18 CFR 284.121–126 (2012)) implements the provisions of NGPA section 311 concerning transportation by intrastate pipelines. NGPA section 311 provides that the rates of intrastate pipelines performing transportation service under the NGPA shall be fair and equitable. Section 284.123 of the regulations provides procedures for section 311 and Hinshaw pipelines to establish fair and equitable rates for interstate services.

4. Section 284.123(b) allows intrastate pipelines an election of the methodology upon which to base their rates for interstate services. Section 284.123(b)(1) permits an intrastate pipeline to elect to base its rates on the methodology used by the appropriate state regulatory agency (1) to design rates to recover transportation or other relevant costs included in a then effective firm sales rate for city-gate service on file with the state agency; or (2) to determine the allowance permitted by the state agency to be included in a natural gas distributor's rates for city-gate natural gas service. Section 284.123(b)(1) also permits an intrastate pipeline to use the rates contained in one of its then effective transportation rate schedules for intrastate service on file with the appropriate state regulatory agency which the intrastate pipeline determines covers service comparable to service under Subpart C of Part 284.

5. If the intrastate pipeline does not make an election under paragraph (b)(1) of § 284.123, § 284.123(b)(2) requires

[1] 18 CFR 284.123 (2012).

[2] *Revisions to Procedural Regulations Governing Transportation by Intrastate Pipelines,* 77 FR 66568 (Nov. 6, 2012), FERC Stats. and Regs. ¶ 32,695 (2012) (NOPR).

[3] 15 U.S.C. 3372.

[4] Section 1(c) of the NGA exempts from the Commission's NGA jurisdiction pipelines which transport gas in interstate commerce if (1) they receive natural gas at or within the boundary of a state, (2) all the gas is consumed within that state, and (3) the pipeline is regulated by a state Commission. This exemption is referred to as the Hinshaw exemption after the Congressman who introduced the bill amending the NGA to include section 1(c). *See ANR Pipeline Co.* v. *Federal Energy Regulatory Comm'n,* 71 F.3d 897, 898 (1995) (*ANR* v. *FERC*) (briefly summarizing the history of the Hinshaw exemption).

[5] 18 CFR 284.224 (2012).

[6] 15 U.S.C. 3371(c).

[7] *Certain Transportation, Sales and Assignments by Pipeline Companies not Subject to Commission Jurisdiction Under Section 1(c) of the Natural Gas Act,* Order No. 63, FERC Stats. & Regs. ¶ 30,118, at 30,824–825 (1980).

that it ''apply for Commission approval, by order, of the proposed rates and charges'' pursuant to the procedures in that paragraph. Section 284.123(b)(2)(i) provides for the pipeline to file a petition for approval of the proposed rates and charges, as well as information showing the proposed rates and charges are fair and equitable. Upon filing the petition for approval, the intrastate pipeline is permitted to commence the transportation service and charge and collect the proposed rate, subject to refund. Section 284.123(b)(2)(ii) provides that the rate proposed in the application will be deemed to be fair and equitable and not in excess of an amount which interstate pipelines would be permitted to charge for providing similar transportation service, unless within the 150-day period after the date on which the Commission received a filed application, the Commission either extends the time for action, or institutes a proceeding in which all interested parties will be afforded an opportunity for written comments and for the oral presentation of views, data, and arguments. The Commission has extended this 150-day period when necessary, for example to allow settlement in contested proceedings or initiate proceedings in complex cases.

6. Section 284.123(e) requires that, within thirty days of commencement of a new service, any intrastate pipeline that engages in transportation arrangements under Subpart C of Part 284 must file with the Commission a statement that includes the pipeline's interstate rates, the rate election made pursuant to § 284.123(b) of that section, and a description of how the pipeline will engage in these transportation arrangements, including operating conditions, such as gas quality standards and the creditworthiness of the shipper. This statement is generally referred to as the pipeline's ''Statement of Operating Conditions'' (SOC). Section 284.123(e) also requires that, if the pipeline changes its operations, rates, or rate election, it must amend the SOC and file such amendments no later than thirty days after commencement of the change in operations or the change in rate election.

7. As part of its regulation of section 311 and Hinshaw pipelines, the Commission has a policy of requiring a review of the rates of both section 311 and Hinshaw pipelines every five years. While this periodic rate review requirement is not part of the Commission's regulations, the Commission has consistently imposed that requirement in its orders approving each rate filing by an intrastate pipeline. In Order No. 735, the Commission modified its previous triennial rate review policy in order to decrease the frequency of review from three to five years from the date the approved rates took effect.[8] The Commission imposes this requirement, both when the intrastate pipeline has chosen to elect a state-based rate pursuant to § 284.123(b)(1) or has proposed a rate for a Commission-approved rate pursuant to § 284.123(b)(2).[9]

8. Finally, currently, a request to withdraw a filing must be filed under the Commission's general Rules of Practice and Procedure.

A. The NOPR

9. On October 18, 2012, the Commission issued the NOPR, in which it proposed to add a new section 284.123(g) to its regulations to provide optional notice procedures for processing rate filings by section 311 and Hinshaw pipelines. The Commission proposed that an intrastate pipeline may elect to use these procedures for approval of a filing pursuant to § 284.123 of the Commission's regulations. The Commission proposed that, under this procedure, the intrastate pipeline's filing would be approved without any order of the Commission, if the filing is not protested within a specified period after notice of the filing or if any protests are resolved during a reconciliation period.

10. Specifically, the optional notice procedure as proposed in the NOPR would operate as follows: Proposed § 284.123(g)(3) provided that, within ten days after a filing by an intrastate pipeline pursuant to the optional notice procedure, the Secretary of the Commission would issue a notice of the filing, which would be published in the **Federal Register**. That notice would provide a deadline for interventions and initial comments fourteen days after the date of the filing, or such other date established by the Secretary. It would also provide a separate deadline for final comments and protests sixty days after the date of the filing or such other date established by the Secretary. As proposed, any person or the Commission's staff is permitted to file a protest prior to the 60-day protest deadline. If no protest is filed within the time allowed, the filing would be deemed approved without a Commission order, upon expiration of the time for filing protests, unless the intrastate pipeline has withdrawn, amended, or modified its filing or the filing is rejected prior to that date.

11. If a protest is filed, proposed § 284.123(g)(5) allows a reconciliation period for negotiations in a structured process to promote settlement of contested cases. Specifically, this section would permit the intrastate pipeline, the person who filed the protest in accordance with proposed § 284.123(g)(4), any intervenors, and staff thirty days from the deadline for protests to the pipeline's filing to resolve the protest and to convene informal settlement conferences to assist in resolving the protest. If all protests to the filing are withdrawn pursuant to proposed paragraph (g)(6) by the end of the reconciliation period, the filing would be deemed approved. Alternatively, proposed paragraph (g)(7) permits the pipeline to amend or modify a tariff record in order to resolve concerns raised in an initial comment or a protest. Proposed paragraph (g)(7) provides that such a filing will toll the notice periods established under paragraph (g)(3) of this section for the original filing, and the Secretary of the Commission will issue a notice establishing new deadlines for comments and protests for the entire filing pursuant to paragraph (g)(3). The intrastate pipeline may request a deadline for protests less than 60 days after the date of the filing. If there are no protests to the amendment or modification and any protests to the entire filing which have been filed are withdrawn, the amended filing would be deemed approved as of the day after the new deadline for protests established by the Secretary.

12. If a filing is still contested after the above procedures are completed, the filing would not be deemed approved and, within sixty days from the deadline for filing protests, the Commission would establish procedures to resolve the proceeding. The 150-day period in existing § 284.123(b)(2)(ii) under which filings are deemed approved unless the Commission acts within that period does not apply to filings pursuant to the new notice procedures.

13. The Commission also proposed in § 284.123(g)(9) to apply the Commission's existing periodic rate review policy to rates approved under the optional notice procedures. Therefore, proposed § 284.123(g)(9) requires that a NGPA section 311 intrastate pipeline whose rates are approved under the optional notice procedures file an application for rate

[8] *Contract Reporting Requirements of Intrastate Natural Gas Companies,* Order No. 735, 75 Fed. Reg. 29,404 (May 26, 2010), FERC Stats. & Regs. ¶ 31,310, at P 96 (2010) (Order No. 735), *order on reh'g,* Order No. 735–A, 75 Fed. Reg. 80,685 (Dec. 23, 2010), FERC Stats. & Regs. ¶ 31,318 (2010).

[9] Order No. 735, FERC Stats. & Regs. ¶ 31,310 at P 92 and cases cited.

approval under § 284.123 on or before the date five years following the date it filed the application for approval of the rates pursuant to § 284.123(g). Similarly, a Hinshaw pipeline whose rates are deemed approved under § 284.123(g) would be required to file either (1) cost and throughput data sufficient to allow the Commission to determine whether any change to the pipeline's rates should be ordered pursuant to section 5 of the Natural Gas Act or (2) a petition for rate approval pursuant to § 284.123, on or before the date five years following the date it filed the application for approval of rates pursuant to § 284.123(g).[10]

14. Finally, the Commission proposed in § 284.123(h) to codify the procedures for section 311 and Hinshaw pipelines to withdraw any filing under § 284.123 in its entirety prior to its approval, including filings made under the existing procedures in § 284.123. Section 284.123(h)(2) would make the pipeline's withdrawal of its filing effective at the end of 15 days from the date of filing the withdrawal motion, if no opposition to the motion is filed within that period and the Commission does not issue an order disallowing the motion. Proposed § 284.123(h)(1) would require the pipeline to acknowledge that any amounts collected subject to refund in excess of the rates authorized by the Commission will be refunded with interest and a refund report will be filed. The refunds must be made within sixty days of the date the withdrawal motion becomes effective. A shipper would have 15 days to respond to the pipeline's filing.

B. Comments

15. Comments on the NOPR were due on December 6, 2012. Thirteen parties filed comments.[11] In general, most commenters support the Commission's efforts to increase regulatory certainty and reduce regulatory burdens. However, some commenters either oppose the rule or request that the Commission modify or clarify the proposal. The comments are discussed below in the context of the relevant aspect of this Final Rule.

II. Whether To Adopt Optional Notice Procedures

A. The NOPR

16. In the NOPR, the Commission explained that it had proposed the new optional notice procedures in an effort to reduce burdens on regulated entities and provide regulatory certainty. The Commission stated that this proposal permitting a filing to be deemed approved without a Commission order under the conditions described above was part of its commitment to continually review its regulations and streamline or eliminate requirements that impose an unnecessary burden on regulated entities. The Commission further stated that it believes that these notice procedures would provide an expedited and less burdensome method of processing filings by section 311 and Hinshaw pipelines which present few, if any, contested issues. The Commission noted that many of the intrastate pipeline companies filing rates and/or statements of operating conditions pursuant to § 284.123 are small and have few interstate shippers. The Commission further noted that discount rate agreements are common, with the result that the pipeline often performs most of its interstate services at rates which are discounted substantially below its maximum rates for such services. The Commission stated that most § 284.123 filings are not protested by any shipper and, if protested, those protests often raise issues which are relatively amenable to settlement.

B. Comments

17. The commenters generally support adoption of the optional notice procedures, although several request clarifications or modifications to the regulations proposed in the NOPR. Generally, the commenters supporting the proposal, including AGA, MGTC, TPA, Dominion, Duke, Calpine, and Cranberry, support the proposal due to the expedited and less burdensome procedure which they believe will benefit intrastate pipelines. TPA states that it is a more rapid process than the existing procedures and will achieve certainty earlier at a reduced cost to the pipeline, shippers and the Commission. Dominion asserts that the proposal will expedite the regulatory filing and approval process in uncontested cases while at the same time ensuring that any contested matter receives full consideration and review by the Commission before a final determination is made.

18. However, Indicated Shippers, Indicated Marketers, and OIPA oppose the adoption of the proposed optional notice procedures. Indicated Shippers, Indicated Marketers, and OIPA argue that the proposed optional notice procedures improperly reduce or eliminate the Commission's statutory responsibilities and the independent staff review that is required for filings pursuant to § 284.123 of the Commission's regulations. Indicated Shippers argues that the proposed rule would, in fact, impermissibly permit automatic implementation of rates.

19. Indicated Marketers contends that, while the volume of protests may be small, this likely results from the section 311 market structure and the shippers' difficulty accessing capacity on large section 311 intrastate pipelines. Indicated Marketers argues[12] that the increase of large section 311 intrastate pipelines requires more oversight, especially with the increasing supply of shale gas.[13]

20. Indicated Marketers and OIPA argue that the proposed regulation shifts the burden of proof to shippers. Indicated Marketers contends that this proposal: (1) Lacks any provision for parties to conduct discovery; (2) fails to consider the fact that a shipper's commercial concerns may prevent it from filing a protest; and (3) fails to protect prospective shippers. Finally, Indicated Marketers argues that the Commission's expectation that all matters can be resolved through negotiations is unreasonable. Indicated Marketers contends that the changes to terms and conditions of service of intrastate pipelines (1) may be less likely to be resolved and involve policy issues or operational changes that require the Commission resolution and (2) may be implemented immediately and are not required to be filed until

[10] The courts have held that the Commission cannot require interstate pipelines subject to its NGA jurisdiction to make new rate filings under NGA section 4. *Public Service Commission of New York* v. *FERC,* 866 F.2d 487 (D.C. Cir. 1989). *Consumers Energy Co. v. FERC,* 226 F.3d 777 (6th Cir. 2000). Because the Commission regulates interstate services performed by Hinshaw pipelines under the NGA, the Commission gives them the option of filing a cost and revenue study every five years, instead of a new petition for rate approval. *Consumers Energy Co.,* 94 FERC ¶ 61,287 (2001).

[11] Comments were filed by Independent Petroleum Association of America (IPAA); American Gas Association (AGA); Duke Energy Ohio, Inc. and Duke Energy Kentucky, Inc. (Duke); The East Ohio Gas Company d/b/a Dominion East Ohio and Hope Gas Inc. d/b/a Dominion Hope (Dominion); Texas Pipeline Association (TPA); MGTC Inc. (MGTC); Enstor Operating Company, LLC (Enstor); Cranberry Pipeline Corporation (Cranberry); Calpine Corporation (Calpine); Apache Corporation, BP America Production Company, BP Energy Company, Noble Energy, Inc., and Occidental Energy Marketing, Inc. (Indicated Shippers); BG Energy Merchants, LLC and Marathon Oil Company (Indicated Marketers); Oklahoma Independent Petroleum Association (OIPA); and Dawn Hearty.

[12] Indicated Marketers at 9–13.

[13] Indicated Marketers cites the Notice of Inquiry (NOI) proceeding in Docket No. RM11–1–000, *Capacity Transfers on Intrastate Natural Gas Pipelines,* FERC Stats. & Regs. ¶ 35,567 (2010) (cross-referenced at 133 FERC ¶ 61,065 (2010)), which requested comments on whether and how holders of firm capacity on intrastate pipelines should be permitted to allow others to make use of their firm interstate capacity.

thirty days after the commencement of service.[14]

21. OIPA argues that the optional notice procedures together with lengthening of the periodic rate review to 5 years seem to be tilting the playing field in favor of intrastate pipelines.

22. While AGA supports adoption of the optional notice procedures, it requests that the Commission clarify that those procedures will not apply to rate filings seeking authorization to charge market-based rates.

C. Commission Determination

23. The Commission finds that the optional notice procedures, as modified herein, will provide an expedited and less burdensome method of processing the significant percentage of filings by section 311 and Hinshaw pipelines which present few, if any, contested issues. This will reduce burdens on section 311 and Hinshaw pipelines, particularly those performing relatively little interstate service, and their customers. It will also allow the Commission to devote more resources to cases where significant issues are raised.

24. The Commission rejects commenters' assertions that these procedural revisions would reduce or eliminate staff review of the subject filings or violate the Commission's statutory and regulatory obligations to ensure fair and equitable rates, terms and conditions of service. Contrary to the arguments of the commenters regarding the proposed opportunity to review and protest filings and asserted changes in the characteristics of intrastate pipelines and the natural gas markets, the Commission finds that nothing in the proposed rule, as modified herein, reduces the necessary review by the Commission or the opportunity for participation by shippers.[15] Staff will continue to thoroughly review intrastate pipeline filings under the revised procedures in the same manner as it reviews such filings under the existing procedures. Section 284.123(g)(4)(i) permits the Commission's staff to file a protest to an optional notice filing, even if no party files a protest.[16] In addition, there will be a full opportunity for interested parties to participate in filings pursuant to § 284.123(g). In fact, in some respects, shippers will have a greater ability to participate and contest the intrastate pipeline's filing. Section 284.123(g)(3), as revised below, gives shippers 21 days to submit initial comments and a 60-day period for final protests. The optional notice procedures approved in the Final Rule, including the 30-day reconciliation period after final protests are filed, provides a framework to resolve contested issues by agreement between the parties in an expeditious manner. If, however, a shipper continues to contest a filing after the reconciliation period, § 284.123(g)(8) provides that the filing will not be deemed approved, and instead the Commission will establish additional procedures to consider the contested issues.

25. Indicated Shippers argues that the proposed rule would impermissibly permit ''automatic'' implementation of rates[17] through light-handed regulation,[18] including permitting market-based rates without the required finding of a lack of market power. Similarly, Indicated Marketers[19] and OIPA argue that the burden of proof has been shifted to shippers. They assert that the proposed rules lack discovery procedures and ignore the fact a shipper's commercial concerns may prevent it from filing a protest. They further assert that the proposed rules also ignore prospective shippers.

26. The Commission disagrees. The proposed rules only eliminate the need for a Commission order in the limited circumstance where filings are unopposed. This does not lessen, in any manner, the requirements for approval of filings pursuant to § 284.123, and the pipeline will continue to have the burden of proof to support its proposed rates, terms and conditions. As described above, parties will continue to have a full opportunity to protest a § 284.123 filing. With regard to discovery procedures, the existing rules do not permit parties to conduct discovery, unless a case is set for hearing before an Administrative Law Judge. However, the Commission staff does issue data requests to obtain needed information,[20] and nothing in the proposed procedures would prevent the staff from continuing to issue such data requests, as needed.

27. Further, as provided in § 284.123(g)(1), the optional notice procedures are applicable only to filings seeking approval of rates, a statement of operating conditions, and any amendments thereto, pursuant to § 284.123. The Commission's regulations require that intrastate pipelines seeking approval for market-based rates must do so pursuant to § 284.503, and Hinshaw pipelines seeking approval of a blanket certificate and initial rates must do so pursuant to § 284.224. Therefore, the Commission clarifies the optional notice procedures are not available for market-based rate filings by intrastate pipelines or for blanket certificate applications by Hinshaw pipelines.

28. Finally, Indicated Marketers argue that Commission's expectation that all matters may be resolved through negotiation is unreasonable.[21] Indicated Marketers assert that terms and conditions of service may be less likely to be resolved than rates and may include policy issues which require resolution by the Commission. Indicated

[14] (Citing 18 CFR 284.123(e) (2012)).

[15] OIPA argues that while, as the NOPR recognizes (citing NOPR, FERC Stats. & Regs. ¶ 32,695 at P 9) that discount rates from the maximum rate are common for the intrastate pipelines, those discounts are charged to the cost-of-service in many instances and, therefore, maximum rate customers pay a higher maximum rate. However, the Commission's statement was made in the context of its discussion of the lack of contested issues in and protests to filings pursuant to section 284.123. Further, in any case, the approval without a Commission order under the optional notice procedure is limited to uncontested filings and, therefore, customers paying the maximum rate may protest a filing and prevent such approval.

[16] Indicated Marketers argues that there is little precedent for the ability of Commission staff to protest set forth in section 284.123(g)(4)(i). However, the Commission staff's use of protests in blanket certificate proceedings pursuant to a similar provision in section 157.205(e) of the prior notice procedures provides a precedent. The Commission believes that the ability of Commission staff to protest filings will be used to effectively assist the Commission in implementing its responsibilities under section 311.

[17] Indicated Shippers contends that the Commission must ''provide a reasonable justification for excluding'' an intrastate pipeline from a requirement that binds interstate pipelines and that the proposed rules would set a bad regulatory precedent. Indicated Shippers at 3, quoting *ANR* v. *FERC,* 71 F.3d 897, 902. The quoted language is directed to the Commission's failure provide a reasonable justification for rejection of objections by an intervenor in that case. However, the proposed optional notice procedure provides a full opportunity to present any objections by the intervenors or Commission staff and for appropriate resolution of any contested issues by the Commission.

[18] Indicated Shippers asserts that the proposed rules unnecessarily minimize regulatory oversight in conflict with the Commission's goal of fostering a national pipeline grid and the appropriate implementation of section 311 (citing *EPGT Texas Pipeline, L.P.,* 99 FERC ¶ 61,295, at 62,252 (2002)). However, as explained in this order, the proposed rules do not minimize the Commission's regulatory oversight and this assertion is rejected as unsupported.

[19] Indicated Marketers objects to the Commission's statement the proposed optional notice procedures would reduce regulatory burden similar to the prior notice procedures for interstate pipelines set forth in section 157.205 since it implies those procedures are applicable to the section 284.123 filings covered by these rules. However, the Commission's statement did not concern the applicability of the prior notice procedures to these section 284.123 filings. The Commission was referring to its belief regarding the similar result of these procedures in reducing regulatory burdens. NOPR, FERC Stats. & Regs. ¶ 32,695 at P 10.

[20] *See, e.g., Peoples Gas Light and Coke Co.,* 118 FERC ¶ 61,203 (2007); *Crosstex LIG, LLC,* 129 FERC ¶ 61,284 (2009).

[21] Indicated Marketers at 16–17.

Marketers further asserts that there is lack of protection for shippers because § 284.123(e) of the Commission's regulations does not require intrastate pipelines to file changes to an SOC until 30 days after commencement of the change.

29. The Commission does not believe that all contested issues under the proposed rules will be resolved through negotiations. While § 284.123(g)(5) designates a new structured 30-day reconciliation period after the deadline for filing protests to improve the opportunity to resolve any remaining contested issues, the Commission is required after the end of that period to establish procedures to resolve the proceeding when a contested filing has not been resolved within 60 days of the deadline for filing protests. The new procedures do not put the shipper at a greater disadvantage than the current procedures or reduce staff or Commission involvement and, in fact, they increase the opportunity for participation by both shippers and staff and to resolve contested issues in a new procedural framework. The Commission believes that specifying a thirty-day period reconciliation period will promote settlement of contested issues and increase the opportunity for the parties and the Commission staff to participate in the settlement process.

III. Time Periods Allowed To Intervene and Protest in a § 284.123(g) Proceeding

A. The NOPR

30. The proposed procedures provide deadlines of fourteen days for interventions and initial comments, and sixty days for final comments and protests from the date of the filing of a pipeline's proposed rate or operating conditions or such other date established by the Secretary of the Commission.

B. Comments

31. OIPA contends that the fourteen-day deadline for filing interventions and initial comments is too short in light of the ten-day period allowed for the Secretary to issue notice of a filing using the optional notice procedures. OIPA contends that it is extraordinarily difficult to discover and appropriately respond to an applicable rate filing within the four-day period between the ten-day period allowed to issue notices and the fourteen-day deadline for interventions and initial comments. As a result, OIPA contends, there will likely be more protests than the Commission anticipates.

32. TPA, on the other hand, argues that the sixty-day deadline for final comments and protests is too long. It contends that the NOPR's sixty-day deadline for protests results in a protest period substantially longer than the fourteen-day period the Commission currently allows for protests to filings by intrastate pipelines. TPA states that the Commission provides no explanation why such an extended protest period is warranted under the new optional notice procedures. Although an extended period may be intended to allow additional time for resolution before the filing of a final protest, TPA is concerned that the process will result in a short protest within the proposed fourteen-day deadline for initial comments and a lengthy final protest at the sixty-day deadline. TPA asserts this aspect of the proposed procedures conflicts with the Commission's efforts to expedite regulatory certainty.

33. TPA contends that a shorter protest period than the proposed sixty-day protest period will help the Commission achieve its goals of increasing regulatory certainty and reducing the regulatory burden. TPA further contends that protests in substantially more complex interstate rate and tariff cases are due within twelve days of the filing and that there is no reason why simpler filings cannot be analyzed in the same time period. TPA prefers a single fourteen-day protest period, consistent with the existing practice of allowing fourteen days for any interventions or protests, and it asserts this would allow for a longer reconciliation period that can be used to achieve resolution. However, if the existing time period is lengthened, TPA believes that a single intervention or a protest period of thirty days to be a reasonable balance under the circumstances.

34. TPA argues that the proposed protest period with its two opportunities to protest will cause unnecessary delay and, therefore, should be consolidated into a single shorter period. TPA asserts that the Commission should consolidate these protest periods into a single period. TPA further asserts that a bifurcated protest period is unnecessary and has the potential to needlessly complicate the process. TPA further asserts that it is not aware of any other Commission regulation that allows a party two opportunities to protest, including the prior notice process under the existing blanket certificate regulations. TPA contends that a single shorter period would allow the reconciliation period to be increased, thus creating more time for the parties to resolve their differences which is more productive and ultimately will foster a more efficient administrative process.

35. TPA also argues that to expedite the rate approval process, the Commission should revise the NOPR to allow pipelines the opportunity to request a shorter notice period if a protest has been resolved within the reconciliation period as a result of the pipeline's agreement to modify or amend the proposed rate filing.

36. TPA contends that § 284.123(g)(7) requires the Secretary of the Commission to establish new deadlines for comments and protests pursuant to paragraph (g)(3) when a filing has been amended or modified, but without making any distinction as to the basis for the proposed amendment or modification. TPA, therefore, suggests that if the rate filing has been amended or modified to resolve a protest, pipelines should be allowed to petition the Secretary for a shorter notice period under paragraph (g)(3) and additional language should be included in paragraph (g)(7) to afford the pipelines the flexibility to request a new shortened comment period.

C. Commission Determination

37. The Commission rejects TPA's request to shorten the proposed 60-day deadline for final protests, and therefore § 284.123(g)(3) adopts the NOPR proposal to provide a 60-day deadline for final comments and protests to a filing under the optional notice procedures or such other date established by the Secretary of the Commission. However, in response to OIPA's comments regarding the time period allowed for interventions and initial comments, the Commission will revise the deadline for interventions and initial comments in § 284.123(g)(3) to allow a longer time period of 21 days for interventions and initial comments, or such other date established by the Secretary.

38. Consistent with the NOPR, § 284.123(g)(3), as adopted in this Final Rule, permits the Secretary a period of up to ten days in order to issue a notice of a filing under the optional notice procedures in the **Federal Register**. The Commission is permitting a period of up to ten days for noticing the filing, because § 284.123(g)(2) requires the Director of the Office of Energy Market Regulation to reject, within seven days of the date of filing, a filing which patently fails to comply with the requirements of § 284.123(e) or (f) without prejudice to the pipeline refiling a complete filing. Those two paragraphs describe the information intrastate pipelines must include in their filings and the electronic filing

requirements. As explained in the NOPR, immediate rejection of filings for failure to comply with these requirements should help streamline the processing of rate and other filings by intrastate pipelines by ensuring that filings must be complete before they are processed. The ten-day period for noticing a filing allows staff time to make an initial review of a filing to ensure that it complies with the §§ 284.123(e) and (f) filing requirements before it is noticed. However, the Commission recognizes that the ten-day period for the Secretary to notice the filing in conjunction with a 14-day deadline for filing interventions and initial comments could leave insufficient time for an interested party to determine whether it has concerns with a filing. Extending the deadline for interventions and initial comments to 21 days should address this concern.

39. The Commission finds that TPA's concerns about the 60-day period for filing final comments and protests are misplaced. TPA's assertions characterizing the proposed procedures as providing two deadlines for filing protests are mistaken. While a protest may be filed at any time during the period allowed for protests to the filing, there is only one sixty-day deadline for filing protests. The initial period allows intervenors to file initial comments to express their concerns about a filing without filing a formal protest. As TPA recognizes, the Commission proposed the sixty-day period before final protests are due in order to provide an opportunity for the applicant and potential protestors to resolve concerns raised in initial comments and any other questions prior to the protest deadline and thereby avoid the filing of any protest.[22] That would avoid the need for a reconciliation period after the deadline for filing protests and thus help expedite approval of the pipeline's filing. As explained in the NOPR, the Commission continues to believe that § 284.123(g), including the 60-day period before final protests are due, will create an improved framework in which to achieve settlement of contested cases.[23] Further, a longer time period allowed to protest a filing is appropriate in view of the approval of filings which are not protested in the proposed rules.

40. If an intrastate pipeline amends its filing in order to resolve concerns raised either in an initial comment or a final protest, paragraph (g)(7) requires the Secretary of the Commission to establish new deadlines for comments and protests pursuant to paragraph (g)(3), and paragraph (g)(3) allows the Secretary to provide for different deadlines than the deadlines ordinarily provided for in that section. Therefore, the intrastate pipeline or intervenors may petition the Secretary of the Commission pursuant to paragraph (g)(3) to allow a shorter time period for the filing of comments and protest on amendments to tariff records agreed to by the parties in order to resolve concerns raised in initial comments or a final protest. Accordingly, TPA's request for revision of paragraph (g)(7) to expressly permit such shorter deadlines is unnecessary.

IV. Procedures for Resolving Contested Cases

A. The NOPR

41. If a protest is not resolved within the thirty-day reconciliation period after the deadline for filing final protests, the pipeline's filing is not deemed approved under the optional notice procedures, and the Commission must issue an order resolving the contested issues with respect to the pipeline's filing. Section 284.123(g)(5) accordingly provides that, if a protest is not withdrawn or dismissed by the end of the reconciliation period, the Commission will ''establish procedures to resolve the proceeding'' within sixty days from the deadline to file protests.

B. Comments

42. TPA argues that proposed § 284.123(g)(5) may unnecessarily delay the rate application process and that to streamline the resolution of protests, the Commission should include a specific procedural method to resolve the protests and encourages the Commission to use the staff panel procedures allowed by § 284.123(b)(2)(ii) of the Commission's regulations.[24] Under that procedure, the Director of the Office of Energy Market Regulation designates a three-member staff panel to conduct an informal advisory proceeding in which all interested parties are afforded an opportunity to submit written comments and to make an oral presentation of views, data and arguments. The Commission then issues an order on the pipeline's filing based on the record developed in the staff panel proceeding.

43. TPA asserts that a staff panel procedure is familiar and affords parties an adequate opportunity to present oral views, data and arguments before Commission staff. TPA further contends that the staff panel procedures will increase regulatory certainty and allow elimination of the sixty-day period referred to in proposed § 284.123(g)(5).

C. Commission Determination

44. The Commission denies TPA's request to revise the proposed procedures to require the use of a staff panel process in cases where the pipeline's filing is not deemed approved under the prior notice procedures. The Commission believes that the proposed ability to determine the method of resolution of the contested issues based on the unique circumstances of each case will allow resolution of the cases in the most appropriate and expeditious manner. With respect to TPA's request to require that staff panel procedures be used in every case where the pipeline's filing is not deemed approved without an order, the Commission believes that use of these procedures may not be the most appropriate procedure to resolve every case. In some cases, it may be possible to resolve contested issues based solely on written pleadings without the need for any oral presentation of views, data, and argument as permitted under staff panel proceedings. In addition, while the Commission does not ordinarily establish formal evidentiary hearings before an Administration Law Judge in intrastate pipeline cases, the Commission has in rare cases determined that such a hearing, including the opportunity for the parties to conduct discovery, is necessary.[25] Therefore, requiring initiation of a staff panel in any given case may not necessarily be the best method to expeditiously resolve the contested issues and the Commission will not by rule restrict its ability to determine the most appropriate procedures for resolution of contested cases in each case based on the particular circumstances of that case.

V. Ex Parte Rules

A. The NOPR

45. In the NOPR, the Commission stated that once a proceeding filed pursuant to section 284.123(g) is contested, the Commission's *ex parte*

[22] TPA at 6.

[23] NOPR, FERC Stats. & Regs. ¶ 32,695 at P 10.

[24] Section 284.123(b)(2)(ii) allows the Commission to institute ''a proceeding in which all interested parties will be afforded an opportunity for written comments and for oral presentation of views, data and arguments.'' The Commission has generally done this through the staff panel procedures described above. However, section 284.123(b)(2)(ii) does not expressly refer to, or require, those procedures.

[25] *Consumers Power Co.,* 120 FERC ¶ 61,252 (2007).

rules governing off-the-record communications [26] will be applicable.

B. Comments

46. TPA contends that the Commission must modify the application of its *ex parte* rules in the Reconciliation Period to ensure that the ability to settle cases is not impaired. TPA requests that, in the Reconciliation Period, the *ex parte* rules would not be applicable to any communication made as part of a *bona fide* effort to resolve the protest, subject to two limitations. First, notice of the fact of the communication, but not its contents, would be required to be provided to other parties within two business days. TPA asserts that this limitation would allow the staff to continue to serve its role in facilitating settlements and discuss issues raised only by staff without running afoul of the spirit of the *ex parte* rules. Second, if a staff panel is established, the Commission would make clear in the order designating the staff panel members that hence forth they are decisional employees and the *ex parte* rules apply from that date to those individuals. TPA asserts that such modifications will not undermine the appropriate purpose of the *ex parte* rules. TPA states that it is open to other methods of facilitating the settlement process, and its goal is to avoid having the *ex parte* rules serve as an impediment to settlement.

C. Commission Determination

47. The Commission believes that TPA's request to modify the Commission's *ex parte* rules to limit their application during the processing of cases under the optional notice procedures conflicts both with the appropriate application and the purpose of those rules and, therefore the request is denied. The *ex parte* rules are designed to ensure ''the integrity and fairness of the Commission's decisional process'' [27] and apply whenever a case is contested. The *ex parte* rules have two primary purposes: (1) A hearing is not fair when one party has private access to the decision maker and can present evidence or argument that other parties have no opportunity to rebut; and (2) reliance on ''secret'' evidence may foreclose meaningful judicial review.[28] TPA's requested modification would conflict with these purposes. While TPA asserts that application of the *ex parte* rules could impede settlement, as the Commission pointed out in Order No. 607, the *ex parte* rules as clarified were not intended to reduce communications and, in fact, should improve the meaningful dialogue that is necessary for fair and informed decision making.[29] In fact, the *ex parte* rules are currently being applied in section 311 proceedings utilizing methods such as Commission staff data requests and conferences to provide communication to promote settlement resulting in resolution of the vast majority of contested issues. Therefore, TPA's request to modify the Commission's *ex parte* rules for the proposed proceedings where the proposed Reconciliation Period is applicable is denied as unsupported.[30]

VI. Market-Based Rates Which Must Be Revised to Cost-Based Rates

A. Comments

48. TPA argues that intrastate pipelines subject to market-based rates should be allowed to file under the optional notice procedures if the Commission subsequently determines the market-based rates for a service are no longer applicable after notice is given by the pipeline to the Commission of a significant change in market power status pursuant to § 284.504(b) of the Commission's regulations. TPA contends that, if the Commission determines that the change in market power requires a cost-based rate to be set, the Commission should allow the company to utilize any of the options available under the Commission's regulations, including the optional notice procedures. TPA asserts that, given the existing reporting requirements applicable to entities with market-based rates, there is no need for any additional filing requirements.

B. Commission Determination

49. When an intrastate pipeline must file for approval of cost-based rates for a service for which market-based rates were authorized, under the circumstances described by TPA, the intrastate pipeline may file pursuant to paragraph (g) if it solely files for that approval pursuant to § 284.123. However, the intrastate pipeline may be required to make such filing in conjunction with other provisions of the Commission's regulations, i.e., pursuant to the requirements of §§ 284.503 and 284.504 related to its other services which are market-based. Under such circumstances, as explained above, optional notice procedures are limited to filings seeking approval pursuant to § 284.123 and would not be available for such filings.

VII. Periodic Rate Review

A. The NOPR

50. The NOPR proposed to include a five-year periodic rate review requirement in the optional notice procedures consistent with the Commission's policy of including such a requirement in each order approving a rate filing by a section 311 or Hinshaw pipeline. Accordingly, the proposed regulations included a requirement that a NGPA section 311 intrastate pipeline whose rates are deemed approved under the optional notice procedures file an application for rate approval under § 284.123 on or before the date five years following the date it filed the application for approval pursuant to the optional notice procedures. Similarly, a Hinshaw pipeline would be required to file either (1) cost and throughput data sufficient to allow the Commission to determine whether any change to the pipeline's rates should be ordered pursuant to section 5 of the Natural Gas Act; or (2) a petition for rate approval pursuant to § 284.123, on or before the date five years following the date it made the optional notice procedures filing.

51. As described above, under § 284.123(b), intrastate pipelines are afforded two basic methods to establish fair and equitable rates for section 311 service: (1) Using a rate based on, or on file with, the pipeline's state commission, as provided for under § 284.123(b)(1); or (2) by applying to the Commission to set the rates by order, as provided for under § 284.123(b)(2). The Commission's regulations define an appropriate state regulatory agency as one that sets ''rates and charges on a cost-of-service basis.'' The Commission has applied its five-year periodic rate review requirement on all section 311 and Hinshaw pipeline rates, regardless of which of the two basic rate approval methods were used.

B. Comments

52. TPA argues that if a pipeline is using state-approved rates pursuant to § 284.123(b)(1) and those rates have not changed during the five-year period, the Commission should only require confirmation that the pipeline's underlying state-approved rates remain

[26] 18 CFR 385.2201 (2012).

[27] 18 CFR 385.2201(a) (2012).

[28] *Regulations Governing Off-the-Record Communications,* 63 FR 51312 (Sept. 25, 1998), FERC Stats. and Regs. ¶ 32,534, at 33,501 (1998).

[29] *Regulations Governing Off-the-Record Communications,* Order No. 607, 64 FR 51222 (Sept. 22, 1999) FERC Stats. & Regs. ¶ 31,079, at 30,880 (1999) (Order No. 607), *order on reh'g,* Order No. 607–A, 65 FR 71247 (Nov. 30, 2000), FERC Stats. & Regs. ¶ 31,112 (2000).

[30] As TPA notes, under the *ex parte* rules, the Commission may modify the rules for a proceeding to the extent permitted by law. However, TPA's request to modify the *ex parte* rules at this time for every optional notice proceeding is denied as speculative and unsupported.

valid and allow these state-approved rates to qualify under the proposed optional notice procedures. TPA also requests that the Commission utilize this certification process even if an applicant does not use the proposed optional notice procedures. TPA requests that, in the case of a pipeline that wishes to continue to use its established, unchanged section 311 rates based on its state-approved rates, the Commission should only require confirmation that the pipeline's underlying state approved rates have not changed by adding the phrase ''or a certification that a rate set under (b)(1) remains valid,'' to new paragraph (g)(9). TPA further requests that the Commission revise its periodic rate review policy for all such unchanged section 311 state-approved rates even if an applicant does not use the proposed optional notice procedures.

53. TPA also contends that the five-year period should be measured from the time the rate is approved, either by final Commission order or operation of law. TPA asserts that, in a contested case, the finally approved rate may be in effect for a significantly shorter period than five years and shippers are protected by the refund requirement of § 284.123(b)(2)(ii), but that any settlement that requires a refiling requirement five years from the date of the original filing does not provide the pipeline with five years of rate certainty.

54. TPA further argues that the satisfaction of the periodic review requirement by a cost and revenue study should not be limited to Hinshaw pipelines but also be applicable to all section 311 pipelines if no rate change is proposed. TPA asserts that section 311 rates are often deeply discounted and, in order to avoid needless rate change applications, pipelines with a rates established by the Commission that do not propose a rate change should be allowed the option to file a cost and revenue study. TPA further asserts that if the pipeline demonstrates that the costs of providing section 311 service exceed the revenues from that service that should end the matter. TPA contends that there is no reason not to allow the same cost and revenue study in lieu of a rate case for all the other section 311 entities. TPA further contends that the Commission has approved of interstate pipeline rate case settlements that require a cost and revenue study and that, after a cost and revenue study is noticed, if protested, the same procedures in the NOPR can be followed.

55. Several other parties request clarification of the periodic rate review requirement. MGTC requests that the Commission clarify that the optional notice procedures under paragraph (g) may be used to meet the periodic rate review requirement. AGA requests that the Commission clarify that the approval of operating conditions or terms and conditions of service without changing rates will not be subject to the periodic rate review requirement. Finally, Enstor seeks clarification that the periodic rate review requirement in paragraph (g)(9) will not be applicable to market-based rates.

C. Commission Determination

56. The Commission is modifying its periodic rate review policy with respect to rates based on those approved by the appropriate state regulatory agency for a comparable service consistent with § 284.123(b)(1) to permit section 311 and Hinshaw pipelines using state-based rates to certify that those rates continue to meet the requirements of § 284.123(b)(1), rather than filing a new rate petition or cost and revenue study. Paragraph (g)(9) of § 284.123, as adopted by the Final Rule, reflects this revised policy. This change further reduces the regulatory burden on intrastate pipelines.

57. The Commission finds that this change in its periodic rate review policy is consistent with our overall policy of permitting intrastate pipelines to base their rates on cost-based rates approved by their state regulatory agency. When an intrastate pipeline elects to use a state-approved rate, the Commission's examination of these § 284.123(b)(1) rate elections is limited to whether the rate meets the requirements of that section. Section 284.123(b)(1) permits an intrastate pipeline to elect to base its rates on the methodology used by the appropriate state regulatory agency (1) to design rates to recover transportation or other relevant costs included in a then effective firm sales rate for city-gate service on file with the state agency; or (2) to determine the allowance permitted by the state agency to be included in a natural gas distributor's rates for city-gate natural gas service. Section 284.123(b)(1) also permits an intrastate pipeline to use the rates contained in one of its then effective transportation rate schedules for intrastate service on file with the appropriate state regulatory agency which the intrastate pipeline determines covers service comparable to service under Subpart C of Part 284.

58. The Commission's analysis of whether the intrastate pipeline's state rate election under § 284.123(b)(1) satisfies these requirements focuses on whether the state rate or rate methodology elected by the pipeline is for the appropriate city-gate service or a transportation service comparable to the interstate serviced to be provided by the intrastate pipeline. The Commission does not look behind the state regulatory agency's cost and revenue findings to determine whether they are reasonably supported. Rather, as part of the Commission's regulation of intrastate pipelines performing interstate service, the Commission defers to the cost and revenue factual findings of the state regulatory agency. By contrast, when the intrastate pipeline files a petition for rate approval under § 284.123(b)(2), the Commission makes its own cost and revenue findings, based on data filed by the pipeline.

59. Nevertheless, under the Commission's current five-year periodic rate review policy, section 311 and Hinshaw pipelines are required to make the same application for rate approval or cost and revenue study after five years, regardless of what rate election they have chosen.[31] Currently, section 311 and Hinshaw pipelines using state-based rates typically meet the periodic review requirement by making a new filing with the state commission, and then filing the new rate approved by that commission with this Commission. Thus, our current periodic rate review policy has the effect of requiring the state regulatory agencies whose rates are used for interstate service to conduct new rate cases for the pipeline's intrastate services every five years. The Commission finds that it will be more consistent with our overall policy, in the context of § 284.123(b)(1) rate elections, of deferring to the cost and revenue determinations of state regulatory agencies to allow the state regulatory agencies to determine when rates need to be updated to reflect changes in costs and revenues.

60. Therefore, the Commission will revise its current policy for all section 311 and Hinshaw pipelines with state-approved rates which have not changed since the previous five-year filing to allow these intrastate pipelines to make a filing pursuant to the optional notice procedures in paragraph (g) certifying that those rates continue to meet the requirements of § 284.123(b)(1) on the same basis on which they were approved. However, the Commission will require that, if the state-approved rate used for the election is changed at any time, the section 311 or Hinshaw pipeline must file a new rate election pursuant to § 284.123(b) for its interstate rates not later than 30 days after the changed rate becomes effective. This

[31] Order No. 735, FERC Stats. & Regs. ¶ 31,310 at P 92.

will ensure that the state-based rates used for interstate services reflect the state regulatory agency's most current cost and revenue findings. Accordingly, this Final Rule includes this revised policy as part of the optional notice procedures in the added paragraphs (g)(9)(ii) and (g)(9)(iii). Certification filings will receive the same notice procedures as any other paragraph (g) filing.

61. The Commission denies TPA's request that the ability to meet the periodic rate review requirement through a cost and revenue study should be applicable to all section 311 pipelines if no rate change is proposed. As the Commission explained above,[32] the Commission gives Hinshaw pipelines the option of filing a cost and revenue study every five years, instead of a new petition for rate approval, because the courts have held that the Commission cannot require interstate pipelines subject to its NGA jurisdiction to make new rate filings under NGA section 4. However, the Commission has held that its conditioning authority under NGPA section 311(c) permits it to condition approval of rates under section 311 on a periodic rate refilling requirement.[33] Therefore, TPA's request that this option required by a statutory limitation be available to all section 311 pipelines is denied as unsupported.

62. TPA's request that the five-year periodic rate review requirement be revised to commence on the date that the rate is approved is also denied. Requiring periodic review rate filings with the Commission is the means by which the Commission can be assured that intrastate and Hinshaw pipeline rates approved by the Commission remain fair and equitable for interstate transportation. The Commission believes that the five-year period established in Order No. 735 measured from the date of the pipeline's request is an appropriate period to allow before requiring a review of the rates in order to determine if the information and data upon which the Commission based its approval of the pipeline's rate has become stale. Regardless of how soon after the intrastate pipeline's rate filing the Commission issues its order approving the rate, the Commission's rate determination will be based on data from the period before the pipeline made its rate filing. Therefore, granting TPA's request to measure the five-year period from the date the rates are ultimately approved could result in rates remaining in effect for a period significantly longer than the five-year period without an updating of cost and revenue data. Use of the date of the request results in regulatory certainty for intrastate pipelines that the requested rates may be proposed to be effective on the filing date and, if approved, the full five-year period will be available.

63. The Commission clarifies, as requested by MGTC, that intrastate pipelines may file for approval of rates or to certify state rates under § 284.123(g) pursuant to the optional notice procedures under paragraph (g) to meet the periodic rate review requirements in paragraph (g)(9). The proposed rules are revised to include the clarifying language ''under this section'' after the words ''either file'' in the second sentence of § 284.123(g)(9)(i). As requested by AGA, the Commission also clarifies that filings pursuant to this paragraph (g) for approval of operating conditions or terms and conditions of service without changing rates are not subject to the periodic rate review requirement in paragraph (g)(9).

64. Finally, as discussed above, the optional notice procedures do not apply to requests for approval of market-based rates. Therefore, as Enstor requests, the Commission clarifies that the periodic rate review requirement in paragraph (g)(9) is not applicable to market-based rates. This is consistent with the Commission's existing policy of not extending its periodic rate review requirement to intrastate pipelines with market-based rates.[34]

VIII. Miscellaneous

A. Section 284.123(g)(8)

1. The NOPR

65. Proposed § 284.123(g)(8)(i) states that a filing is approved ''effective on the day after time expires'' for filing a protest unless, among other things, the filing is rejected. Similarly, proposed § 284.123(g)(8)(ii) states that if a protest is withdrawn, the filing is approved ''effective upon'' the day after the withdrawal unless, among other things, the filing is rejected.

2. Comments

66. TPA argues that the word ''effective'' in those sections creates an ambiguity since transportation under 18 CFR 284.121 may commence without prior Commission approval. TPA asserts that, if no protest is filed, or one is withdrawn, the filing should be deemed effective on the date proposed by the pipeline. TPA contends that the Commission can correct this problem by deleting the word ''effective'' from proposed paragraphs (g)(8)(i) and (g)(8)(ii) and adding the following at the end of each paragraph: ''rates approved under this subparagraph are effective as of the date specified in the filing for approval.''

67. Dominion requests clarification of the proviso in paragraphs (g)(8)(i) and (g)(8)(ii) that the filing is approved after the listed conditions are met, ''unless the intrastate pipeline withdraws, amends, or modifies its filing *or the filing is rejected.''* (Emphasis supplied.) Specifically, Dominion requests clarification that the reference to rejection of the filing is limited to the initial 7-day rejection period only. Dominion requests that the Commission so clarify, by revising the last clause in paragraphs (g)(8)(i) and (g)(8)(ii) to read ''or the filing is rejected pursuant to paragraph (g)(2).''

3. Commission Determination

68. The Commission agrees that revisions to paragraphs (g)(8)(i) and (g)(8)(ii) regarding approval of the filing are appropriate to recognize that the rates may be collected subject to refund prior to Commission approval and to resolve any ambiguity with respect to the effectiveness of the approved rates. The Commission also clarifies the reference in these paragraphs to rejection of the filing.

69. Accordingly, the Commission removes the language following the word ''effective'' and substitutes the following language at the end of each paragraph: ''on the date proposed in the filing requesting approval unless the intrastate pipeline withdraws, amends, or modifies its filing or the filing is rejected pursuant to paragraph (g)(2) of this section.''

B. Section 284.123(g)(4)

1. The NOPR

70. Proposed paragraph (g)(4) states that, in addition to the Commission's staff, ''any person'' may file a protest prior to the 60-day protest deadline.

2. Comments

71. Dominion believes that it would be problematic and conflict with the goals of certainty and streamlined processing, if an entity could fail to intervene timely but have the rights of a protester. Therefore, the Dominion suggests that the phrase ''any person'' in proposed paragraph (g)(4) be revised to read ''Any intervenor or the Commission's staff.''

[32] *See* n.10 of this order.

[33] *See GulfTerra Texas Pipeline, L.P.,* 109 FERC ¶ 61,350, at P 10 (2004).

[34] *See, e.g., Louisville Gas and Electric Co.,* 99 FERC ¶ 62,040 (2002).

3. Commission Determination

72. The Commission rejects Dominion's request to revise paragraph (g)(4) of the proposed rule. Section 385.211(a)(1) of the Commission's Rules of Practice and Procedure, in part, allows ''any person'' to file a protest to any application or tariff or rate filing.[35] Further, consistent with that provision, § 157.205(e)(1) allows ''any person'' or the Commission staff to file a protest in the existing certificate prior notice procedures.[36] Therefore, Dominion has not presented a sufficient basis to grant its request to limit the ability to file a protest under these proposed procedures.

C. Clarifications

73. Paragraph (g)(1) is revised to remove the language after the word ''procedures'' in the second sentence which states ''on the first page of '' and replace it with the words ''in the.'' This revision is necessary to reflect the electronic filing requirements in § 284.123(f) which are applicable to all filings pursuant to § 284.123. The phrase ''of this chapter'' is added to paragraph (g)(6) after the reference to § 385.216 and paragraph (g)(9)(i) after the reference to § 154.313. Paragraph (g)(5) is revised to add the word ''Commission'' before the word ''staff.'' Finally, § 385.211(b)(1) of the Commission's regulations currently requires any protests which are filed to be served on the person against whom they are directed. Therefore, paragraph (g)(4)(i) is revised to remove as unnecessary the second sentence which required protests to filings pursuant to the optional notice procedures to be served on the Secretary of the Commission and the intrastate pipeline.

IX. Information Collection Statement

A. The NOPR

74. In the NOPR, in accordance with the requirements of the Office of Management and Budget (OMB), the Commission estimated that the average annual public reporting burden imposed on the section 311 and Hinshaw intrastate pipelines of making filings for rate approval under § 284.123 would not change. The preparation effort or the substance of a filing made pursuant to § 284.123(g) would be the same as for a filing made pursuant to existing §§ 284.123(b) and/or 284.123(e). A requirement of a pipeline using the new optional filing procedures is that the pipeline make a new rate approval filing under § 284.123 within five years of the date of the initial filing. Since the Commission has, as a matter of policy, routinely imposed that requirement on the section 311 industry in the context of individual rate cases, the Commission does not consider this a change in the burden being imposed.

75. The Commission as a part of this Final Rule is changing its policy with respect to five-year periodic rate review requirement for pipelines whose rates are based upon a state rate election under § 284.123(b)(1). The Commission will only require a pipeline with state-approved rates which have not changed since the previous five-year filing to certify that those rates continue to meet the requirements of § 284.123(b)(1) on the same basis on which they were approved. Concomitant with this policy change, the Commission will now require a pipeline with rates that are based upon a state rate election under § 284.123(b)(1) to file within thirty days of a change in its underlying state rates for approval of new rates under § 284.123. The pipeline may not wait to do this in conjunction with a filing under its five-year periodic rate review requirement. The Commission has observed that generally most pipelines file to revise rates based upon a state rate election whenever there is a change. The Commission estimates that this change in policy may result in three additional filings on an annual basis.

76. As noted in the NOPR, the Commission estimates that a single pipeline may, on an annual basis, use the new withdrawal filing requirements under § 284.123(h). This may result in an increase in burden of 12 hours per year for the new withdrawal filing requirements.

B. Comments

77. None of the parties commented on the burden estimates.

C. Commission Determination

78. The Commission has reviewed the burdens imposed by this rulemaking. The Commission's review finds that the proposed changes will not affect the burden on section 311 intrastate and Hinshaw pipelines of making an initial filing seeking approval of proposed rates or operating conditions pursuant to § 284.123. The preparation effort or the substance of a filing made pursuant to § 284.123(g) would be the same as for a filing made pursuant to existing §§ 284.123(b) and/or 284.123(e).

79. The Commission believes the change in policy to require a pipeline with rates that are based upon a state rate election to file for new rates within thirty days of a change in its underlying state rates would add only minimal burden to any intrastate pipeline.

80. The Commission believes the change in policy requiring pipelines new withdrawal procedure for filings made prior to their approval would add only minimal burden to any intrastate pipeline making a withdrawal filing.

81. The proposed changes will primarily affect the post-filing process and cost. The changes will reduce overall cost and delay for stakeholders; however that post-filing burden is beyond the scope of requirements of the Paperwork Reduction Act. The new optional procedures will provide both intrastate pipelines and their shippers greater regulatory certainty and a simpler process without any change in the upfront burden of preparing and making a filing.

82. The Commission's revised burden estimate is shown below. The revision to the table included in the NOPR includes three additional rate filings that would result from the policy change requiring pipelines to update rates using a state rate election whenever there is a change.

FERC–549 (OMB Control No. 1902–0086)	Number of respondents (a)	Burden hours per respondent per year (1 filing/year) (b)	Total annual burden hours (a × b)
Existing Inventory:			
Rates and Charges for Intrastate Pipelines (18 CFR 284.123(b) and (e))	67	12	804

[35] 18 CFR 385.211(a)(1) (2012).

[36] 18 CFR 205(e)(1) (2012).

FERC–549 (OMB Control No. 1902–0086)	Number of respondents (a)	Burden hours per respondent per year (1 filing/year) (b)	Total annual burden hours (a × b)
Final Rule in RM12–17–000:			
Rates and Charges for Intrastate Pipelines (18 CFR 284.123(b), (e) and (g))	70	12	840
Withdrawal of Filing prior to Approval (18 CFR 284.123(h))	1	12	12
FERC–549 Total	71	12	854

X. Environmental Analysis

83. The Commission is required to prepare an Environmental Assessment or an Environmental Impact Statement for any action that may have a significant adverse effect on the human environment.[37] The Commission has categorically excluded certain actions from these requirements as not having a significant effect on the human environment.[38] The actions proposed to be taken here fall within categorical exclusions in the Commission's regulations for rules that are corrective, clarifying or procedural, for information gathering, analysis, and dissemination, and for sales, exchange, and transportation of natural gas that requires no construction of facilities.[39] Therefore an environmental review is unnecessary and has not been prepared in this rulemaking.

XI. Regulatory Flexibility Act

84. The Regulatory Flexibility Act of 1980 (RFA)[40] generally requires a description and analysis of final rules that will have significant economic impact on a substantial number of small entities. The Commission is not required to make such an analysis if proposed regulations would not have such an effect.[41] Most companies regulated by the Commission do not fall within the RFA's definition of a small entity.[42]

85. This Final Rule should have no significant negative impact on those entities, be they large or small, subject to the Commission's regulatory jurisdiction under the NGA. Most companies to which the Final Rule applies do not fall within the RFA's definition of small entities. In addition, the Commission has identified two small entities as respondents to the requirements in the NOPR.[43] As explained above, the Commission estimates that the proposed § 284.123(g) regulations will serve as a substitute for filings currently done pursuant to §§ 284.123(b) and (e), and § 284.123(h) provides regulatory certainty if a pipeline decides to withdraw its filing. The Commission estimates that intrastate pipelines will experience little if any change in regulatory burden associated with making their filings, and pipelines will be able to avoid certain costs and delays post-filing due to the new streamlined process. Accordingly, the Commission certifies that this rule will not have a significant impact on a substantial number of small entities and no regulatory flexibility analysis is required.

XII. Document Availability

86. In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the Internet through FERC's Home Page (*http://www.ferc.gov*) and in FERC's Public Reference Room during normal business hours (8:30 a.m. to 5:00 p.m. Eastern time) at 888 First Street NE., Room 2A, Washington, DC 20426.

87. From FERC's Home Page on the Internet, this information is available on eLibrary. The full text of this document is available on eLibrary in PDF and Microsoft Word format for viewing, printing, and/or downloading. To access this document in eLibrary, type the docket number excluding the last three digits of this document in the docket number field.

88. User assistance is available for eLibrary and the FERC's Web site during normal business hours from FERC Online Support at 202–502–6652 (toll free at 1–866–208–3676) or email at *ferconlinesupport@ferc.gov,* or the Public Reference Room at (202) 502–8371, TTY (202) 502–8659. Email the Public Reference Room at *public.referenceroom@ferc.gov.*

XIII. Effective Date and Congressional Notification

89. The Commission did not propose a specific implementation schedule in the NOPR. The Commission will implement the new optional filing procedures 30 days from the date of OMB's approval of this Final Rule. The Secretary of the Commission will issue a revised list of Type of Filing Codes[44] to pipelines for filings made pursuant to paragraph (g) and withdrawals made pursuant to paragraph (h).

90. The Commission has determined, with the concurrence of the Administrator of the Office of Information and Regulatory Affairs of OMB, that this rule is not a ''major rule'' as defined in section 351 of the Small Business Regulatory Enforcement Fairness Act of 1996.

List of Subjects in 18 CFR Part 284

Natural gas, Reporting and recordkeeping requirement.

By the Commission.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

In consideration of the foregoing, the Commission amends part 284, Chapter I, Title 18, *Code of Federal Regulations,* as follows:

[37] *Regulations Implementing the National Environmental Policy Act of 1969,* Order No. 486, 52 FR 47897 (Dec. 17, 1987), FERC Stats. & Regs., Regulations Preambles 1986–1990 ¶ 30,783 (1987).

[38] 18 CFR 380.4 (2012).

[39] *See* 18 CFR 380.4(a)(2)(ii), 380.4(a)(5), and 380.4(a)(27) (2012).

[40] 5 U.S.C. 601–612 (2006).

[41] 5 U.S.C. 605(b) (2006).

[42] 5 U.S.C. 601(3) (citing section 3 of the Small Business Act, 15 U.S.C. 623 (2006)). Section 3 defines a ''small-business concern'' as a business which is independently owned and operated and which is not dominant in its field of operation.

[43] The U.S. Small Business Administration's (SBA) Table of Small Business Size Standards is found in 13 CFR 121.201. SBA's updated version of the size standards (effective March 26, 2012, and available at *http://www.sba.gov/sites/default/files/files/Size_Standards_Table.pdf*) defines a natural gas pipeline (contained in Subsector 486, Pipeline Transportation) as ''small'' when it has average annual receipts of $25,500,000 or less.

[44] *See* 18 CFR 375.302(z) (2012). The *Implementation Guide* describes the Type of Filing contents. The Type of Filing Code list is posted on the Commission's Web site at *http://www.ferc.gov/docs-filing/etariff/filing_type.csv.*

PART 284—CERTAIN SALES AND TRANSPORTATION OF NATURAL GAS UNDER THE NATURAL GAS POLICY ACT OF 1978 AND RELATED AUTHORITIES

■ 1. The authority citation for part 284 continues to read as follows:

Authority: 15 U.S.C. 717–717z, 3301–3432; 42 U.S.C. 7101–7352; 43 U.S.C. 1331–1356.

■ 2. Section 284.123 is amended by adding paragraphs (g) and (h) to read as follows:

§ 284.123 Rates and charges.

* * * * *

(g) *Election of Notice Procedures.* (1) *Applicability.* An intrastate pipeline filing for approval of rates, a statement of operating conditions, and any amendments or modifications thereto pursuant to this section may use the notice procedures in this paragraph. Any intrastate pipeline electing to use these notice procedures for a filing must clearly state its election to use these procedures in the filing. Such filing is approved and the rates deemed fair and equitable and not in excess of the amount that an interstate pipeline would be permitted to charge for similar transportation service if the requirements in paragraph (g)(8) of this section have been fulfilled.

(2) *Rejection of filing.* The Director of the Office of Energy Market Regulation or his designee shall reject within 7 days of the date of filing a request which patently fails to comply with the provisions of paragraph (e) or (f) of this section, without prejudice to the intrastate pipeline refiling a complete application. If such filing was required by this section, that filing must be refiled within 14 days of the date of the rejection.

(3) *Publication of notice of filing.* The Secretary of the Commission shall issue a notice of the filing within 10 days of the date of the filing, which will then be published in the **Federal Register**. The notice shall designate a deadline for filing interventions, initial comments, final comments, and protests to the filing. The deadline for interventions and initial comments shall be 21 days after the date of the filing or such other date established by the Secretary of the Commission. The deadline for final comments and protests shall be 60 days after the date of the filing or such other date established by the Secretary of the Commission.

(4) *Protests.* (i) Any person or the Commission's staff may file a protest prior to the deadline for protests.

(ii) Protests shall be filed with the Commission in the form required by Part 385 of this chapter including a detailed statement of the protestor's interest in the filing and the specific reasons and rationale for the objection and whether the protestor seeks to be an intervenor.

(5) *Effect of protest.* If a protest is filed in accordance with paragraph (g)(4) of this section, then the intrastate pipeline, the person who filed the protest, any intervenors and Commission staff shall have 30 days from the deadline for filing protests established by the Secretary of the Commission in accordance with paragraph (g)(3) of this section, to resolve the protest, and to file a withdrawal of the protest pursuant to paragraph (g)(6) of this section. Informal settlement conferences may be convened by the Director of the Office of Energy Market Regulation or his designee during this 30 day period. If a protest is not withdrawn or dismissed by end of that 30 day period, the filing shall not be deemed approved pursuant to this paragraph. Within 60 days from the deadline for filing protests established by the Secretary of the Commission in accordance with paragraph (g)(3) of this section the Commission will establish procedures to resolve the proceeding.

(6) *Withdrawal of protests.* The protestor may withdraw a protest by submitting written notice of withdrawal to the Secretary of the Commission pursuant to § 385.216 of this chapter and serving a copy on the intrastate pipeline, any intervenors, and any person who has filed a motion to intervene in the proceeding.

(7) *Amendments or modifications to tariff records prior to approval.* An intrastate pipeline may file to amend or modify a tariff record contained in the initial filing pursuant to the procedures under this paragraph (g) which has not yet been approved pursuant to paragraph (g)(8) of this section. Such filing will toll the notice period established in paragraph (g)(3) of this section and the Secretary of the Commission will issue a notice establishing new deadlines for comments and protests for the entire filing pursuant to paragraph (g)(3).

(8) *Final approval.* (i) If no protest is filed within the time allowed by the Secretary of the Commission under paragraph (g)(3) of this section, the filing by the intrastate pipeline is approved, effective on the date proposed in the filing requesting approval unless the intrastate pipeline withdraws, amends, or modifies its filing or the filing is rejected pursuant to paragraph (g)(2) of this section.

(ii) If any protest is filed within the time allowed by the Secretary of the Commission under paragraph (g)(3) of this section and is subsequently withdrawn before the end of the 30-day reconciliation period provided by paragraph (g)(5) of this section, the filing by the intrastate pipeline is approved effective on the date proposed in the filing requesting approval unless the intrastate pipeline withdraws, amends, or modifies its filing or the filing is rejected pursuant to paragraph (g)(2) of this section.

(9) *Periodic rate review.* Rates of pipelines approved by the Commission pursuant to this paragraph are required to be periodically reviewed.

(i) Any intrastate pipeline with rates so approved must file an application for rate approval under this section on or before the date five years following the date it filed the application for authorization of rates pursuant to this paragraph. Any Hinshaw pipeline that has been a granted a blanket certificate under § 284.224 of this chapter and with rates approved pursuant to this paragraph must on or before the date five years following the date it filed the application for authorization of the rates pursuant to this paragraph either file under this section cost, throughput, revenue and other data, in the form specified in § 154.313 of this chapter, to allow the Commission to determine whether any change in rates is required pursuant to section 5 of the Natural Gas Act or an application for rate authorization pursuant to this section.

(ii) An intrastate pipeline with rates approved pursuant to the rate election in paragraph (b)(1) of this section that remain unchanged during the five-year review period which were approved based on then effective state rates may file a certification with the Commission pursuant to this paragraph (g) that the rates continue to comply on the same basis with the requirements set forth in paragraph (b)(1) of this section. Such certification of rates will meet the periodic rate review requirement set forth in this paragraph (g)(9) unless the Commission determines that further proceedings concerning the rates are appropriate.

(iii) If the state rate used pursuant to paragraph (b)(1) of this section for approval of a rate pursuant to this paragraph (g) is changed, not later than 30 days after that changed rate becomes effective, the intrastate pipeline must file a new rate election pursuant to paragraph (b) of this section.

(10) *Withdrawal of filing prior to approval.* A pipeline may, pursuant to paragraph (h) of this section, withdraw in its entirety a filing made pursuant to paragraph (g) that has not been approved by filing a withdrawal motion with the Commission. A filing that is

withdrawn will not fulfill the requirements under paragraph (g)(8) of this section.

(h) *Withdrawal of filing.* A pipeline may withdraw in its entirety a filing pursuant to this section that has not been approved by filing a withdrawal motion with the Commission.

(1) The withdrawal motion must state that any amounts collected subject to refund in excess of the rates authorized the Commission will be refunded with interest calculated and a refund report filed with the Commission in accordance with § 154.501 of this chapter. The refunds must be made within 60 days of the date the withdrawal motion becomes effective.

(2) The withdrawal motion will become effective, and the filing will be deemed withdrawn at the end of 15 days from the date of filing of the withdrawal motion, if no order disallowing the motion is issued within that period. If an answer in opposition is filed within the 15-day period, the withdrawal is not effective until an order accepting the withdrawal is issued.

[FR Doc. 2013–17822 Filed 7–29–13; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2013–0633]

Drawbridge Operation Regulation; Atlantic Intracoastal Waterway (AICW), Elizabeth River, Southern Branch, Chesapeake and Portsmouth, VA

AGENCY: Coast Guard, DHS.

ACTION: Notice of deviation from drawbridge regulation.

SUMMARY: The Coast Guard has issued a temporary deviation from the operating schedule that governs the operation of the Belt Line Railroad Bridge, across the Elizabeth River Southern Branch, AICW, mile 2.6, at Chesapeake and Portsmouth, VA. This deviation is necessary to facilitate mechanical and electrical upgrades on the Belt Line Railroad drawbridge. This temporary deviation allows the drawbridge to remain in the closed to navigation position.

DATES: This deviation is effective from 1 p.m. on August 12, 2013 to 7 p.m. on August 15, 2013.

ADDRESSES: The docket for this deviation, [USCG–2013–0633] is available at *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 deviation. 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 deviation, call or email Mr. Jim Rousseau, Bridge Administration Branch Fifth District, Coast Guard; telephone (757) 398–6557, email *James.L.Rousseau2@uscg.mil*. If you have questions on reviewing the docket, call Barbara Hairston, Program Manager, Docket Operations, (202) 366–9826.

SUPPLEMENTARY INFORMATION: The Norfolk and Portsmouth Belt Line Railroad Company, who owns and operates this drawbridge, has requested a temporary deviation from the current operating regulations set out in 33 CFR 117.997(a) to facilitate replacement and update of the motor and drive system located in the bridge house.

Under the regular operating schedule, the Belt Line Railroad Bridge across the Elizabeth River Southern Branch, AICW mile 2.6, between Portsmouth and Chesapeake, VA, the draw normally is open and only closes for train crossings or periodic maintenance. The Belt Line Railroad Bridge has a vertical clearance in the closed to vessels position of 6 feet above mean high water.

Under this temporary deviation, the drawbridge will be maintained in the closed to navigation position, from 1 p.m. to 7 p.m., on Monday August 12, 2013 and each day from 8 a.m. to 7 p.m., on Tuesday, Wednesday, and Thursday, August 13, 14, and 15, 2013, respectively. The bridge will operate under its normal operating schedule at all other times. The bridge normally is maintained in the open to navigation position with several vessels transiting a week and only closes when trains transit. The Elizabeth River Southern Branch is used by a variety of vessels including military, tugs, commercial, and recreational vessels. The Coast Guard has carefully coordinated the restrictions with these waterway users.

Vessels able to pass under the bridge in the closed position may do so at anytime and are advised to proceed with caution. The bridge will be able to open for emergencies with a one hour advanced notification on marine channel 13 or calling 757–271–1741 or 757–633–2241. There is no immediate alternate route for vessels transiting this section of the Elizabeth River but vessels may pass before and after the closure each day. The Coast Guard will also inform additional waterway users through our Local and Broadcast Notices to Mariners of the closure periods for the bridge so that vessels can arrange their transits to minimize any impacts caused by the temporary deviation.

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: July 18, 2013.

Waverly W. Gregory, Jr.,

Bridge Program Manager, Fifth Coast Guard District.

[FR Doc. 2013–18226 Filed 7–29–13; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2013–0679]

Drawbridge Operation Regulation; Willamette River at Portland, OR

AGENCY: Coast Guard, DHS.

ACTION: Notice of deviation from drawbridge regulation.

SUMMARY: The Coast Guard has issued a temporary deviation from the operating schedule that govern four Multnomah County bridges: The Broadway Bridge, mile 11.7, the Burnside Bridge, mile 12.4, the Morrison Bridge, mile 12.8, and the Hawthorne Bridge, mile 13.1, all crossing the Willamette River at Portland, OR. This deviation is necessary to accommodate the annual Portland Providence Bridge Pedal event. This deviation allows the bridges to remain in the closed position to allow safe movement of event participants.

DATES: This deviation is effective from 5 a.m. on August 11, 2013 to 12:30 p.m. August 11, 2013.

ADDRESSES: The docket for this deviation, [USCG–2013–0679] is available at *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 deviation. 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 deviation, call or email Lieutenant Commander Steven Fischer, Bridge Specialist, Coast Guard Thirteenth District; telephone (206)220–7282, email *Steven.M.Fischer2@uscg.mil.* If you have questions on viewing the docket, call Barbara Hairston, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION: Multnomah County has requested a temporary deviation from the operating schedule for the Broadway Bridge, mile 11.7, the Burnside Bridge, mile 12.4, the Morrison Bridge, mile 12.8, and the Hawthorne Bridge, mile 13.1, all crossing the Willamette River at Portland, OR. The requested deviation is to accommodate the annual Providence Bridge Pedal event. To facilitate this event, the draws of the bridges will be maintained in the closed-to-navigation positions as follows: the Broadway Bridge, mile 11.7; the Burnside Bridge, mile 12.4; Morrison Bridge, mile 12.8; and the Hawthorne Bridge, mile 13.1, need not open for vessel traffic from 5 a.m. August 11, 2013 until 12:30 p.m. August 11, 2013. Vessels which do not require bridge openings may continue to transit beneath these bridges during the closure period. The Broadway Bridge, mile 11.7, provides a vertical clearance of 90 feet in the closed position, the Burnside Bridge, mile 12.4, provides a vertical clearance of 64 feet in the closed position, the Morrison Bridge, mile 12.8, provides a vertical clearance of 69 feet in the closed position, and the Hawthorne Bridge, mile 13.1, provides a vertical clearance of 49 feet in the closed position; all clearances are referenced to the vertical clearance above Columbia River Datum 0.0. The current operating schedule for all four bridges is set out in 33 CFR 117.897. The normal operating schedule for all four bridges state that they need not open from 7 a.m. to 9 a.m. and from 4 p.m. to 6 p.m. Monday through Friday. This deviation period is from 5 a.m. on August 11, 2013 through 12:30 p.m. August 11, 2013. The deviation allows the Broadway Bridge, mile 11.7, the Burnside Bridge, mile 12.4, the Morrison Bridge, mile 12.8, and the Hawthorne Bridge, mile 13.1, across the Willamette River, to remain in the closed position and need not open for maritime traffic from 5 a.m. through 12:30 p.m. on August 11, 2013. The four bridges shall operate in accordance to 33 CFR § 117.897 at all other times. Waterway usage on this stretch of the Willamette River includes vessels ranging from commercial tug and barge to small pleasure craft. Mariners will be notified and kept informed of the bridges' operational status via the Coast Guard Notice to Mariners publication and Broadcast Notice to Mariners as appropriate. The bridges will be required to open, if needed, for vessels engaged in emergency response operations during this closure period.

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

Dated: July 24, 2013.

Daryl R. Peloquin,

Acting Bridge Administrator.

[FR Doc. 2013–18229 Filed 7–29–13; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R08–OAR–2011–0724, FRL–9839–2]

Promulgation of State Implementation Plan Revisions; Infrastructure Requirements for the 1997 and 2006 $PM_{2.5}$ National Ambient Air Quality Standards; Montana

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is partially approving and partially disapproving the State Implementation Plan (SIP) submission from the State of Montana to demonstrate that the SIP meets the infrastructure requirements of the Clean Air Act (CAA) for the National Ambient Air Quality Standards (NAAQS) promulgated for fine particulate matter ($PM_{2.5}$) on July 18, 1997 and on October 17, 2006. The CAA requires that each state, after a new or revised NAAQS is promulgated, review their SIPs to ensure that they meet infrastructure requirements. The State of Montana submitted a certification of their infrastructure SIP for the 1997 and 2006 $PM_{2.5}$ NAAQS on February 10, 2010. EPA is acting separately on the portions of the February 10, 2010 submission relating to interstate transport of air pollution.

DATES: This final rule is effective August 29, 2013.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–R08–OAR–2011–0724. All documents in the docket are listed on the *www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, 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 Air Program, Environmental Protection Agency (EPA), Region 8, 1595 Wynkoop Street, Denver, Colorado 80202–1129. EPA requests that if at all possible, you contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section to view the hard copy of the docket. You may view the hard copy of the docket Monday through Friday, 8:00 a.m. to 4:00 p.m., excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Kathy Ayala, Air Program, U.S. Environmental Protection Agency (EPA), Region 8, Mail Code 8P–AR, 1595 Wynkoop Street, Denver, Colorado 80202–1129, (303) 312–6142, *ayala.kathy@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 initials *CBI* mean or refer to confidential business information.

(iii) The words or initials *Department* or *DEQ* mean or refer to the Department of Environmental Quality.

(iv) The words *EPA, we, us* or *our* mean or refer to the United States Environmental Protection Agency.

(v) The initials *NAAQS* mean or refer to national ambient air quality standards.

(vi) The initials *NSR* mean or refer to new source review.

(vii) The initials *PM* mean or refer to particulate matter.

(viii) The initials $PM_{2.5}$ mean or refer to particulate matter with an aerodynamic diameter of less than 2.5 micrometers (fine particulate matter).

(ix) The initials *ppm* mean or refer to parts per million.

(x) The initials *PSD* mean or refer to Prevention of Significant Deterioration.

(xi) The initials *SIP* mean or refer to State Implementation Plan.

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I. Background

II. Response to Comments
III. Final Action
IV. Statutory and Executive Order Reviews

I. Background

Infrastructure requirements for SIPs are provided in sections 110(a)(1) and (2) of the CAA. Section 110(a)(2) lists the specific infrastructure elements that a SIP must contain or satisfy. The elements that are the subject of this action are described in detail in our proposal of May 13, 2013 (78 FR 27891).

On May 13, 2013 (78 FR 27891), EPA published a notice of proposed rulemaking (NPR) to act on a February 10, 2010 infrastructure SIP submission from the State of Montana for the 1997 and 2006 $PM_{2.5}$ NAAQS. The NPR proposed approval of the submission for the following infrastructure elements for the 1997 and 2006 $PM_{2.5}$ NAAQS: CAA Section 110(a)(2)(A), (B), (C) with respect to the requirement to have a minor NSR program that addresses $PM_{2.5}$; (E)(i), (E)(iii), (F), (G), (H), (J) with respect to the requirements of CAA sections 121 and 127, (K), (L), and (M). The NPR proposed to disapprove the submissions for the following infrastructure elements for the 1997 and 2006 $PM_{2.5}$ NAAQS: CAA Section 110(a)(2)(E)(ii) concerning requirements for state boards under CAA section 128; and elements (C) and (J) with respect to the requirement to have a PSD program that meets the requirements of part C of Title I of the Act. Finally, the NPR proposed to take no action on the portion of the submission addressing infrastructure element 110(a)(2)(D) for the 1997 and 2006 $PM_{2.5}$ NAAQS, as that portion will be acted on separately.

We proposed to disapprove Montana's February 10, 2010 submission with respect to the requirements of three individual infrastructure elements. The first of these is element 110(a)(2)(E)(ii), relevant to CAA section 128 and state boards. The reasons for this disapproval are detailed within our proposal. In summary, the Montana SIP fails to include provisions which meet the explicit legal requirements of this requirement of the CAA. The second and third elements we proposed to disapprove are provisions required by elements 110(a)(2)(C) and (J), regarding requirements for PSD programs to treat nitrogen oxides as a precursor for ozone as detailed by the ozone phase 2 implementation rule (70 FR 71612). The analysis supporting this action is detailed in our proposal dated May 13, 2013 (78 FR 27891).

Under a Consent Decree that has been entered with a district court, we are required to take final action on this infrastructure SIP no later than July 15, 2013. We note that on June 18, 2013 EPA received revisions to the Montana SIP entitled, ''1997 Ozone NAAQS Implementation Rule Updates to Montana State Implementation Plan,'' which are intended to address the requirements of elements (C) and (J). That submission will be addressed in a timely manner in a future action. However, the impending consent decree deadline precludes the Agency from postponing this final action.

II. Response to Comments

No comments were received on the 5/13/2013 proposal.

III. Final Action

EPA is approving Montana's February 10, 2010 infrastructure SIP submission for the following infrastructure elements for the 1997 and 2006 $PM_{2.5}$ NAAQS: CAA Section 110(a)(2)(A), (B), (C) with respect to the requirement to have a minor NSR program that addresses $PM_{2.5}$; (E)(i), (E)(iii), (F), (G), (H), (J) with respect to the requirements of sections 121 and 127, (K), (L), and (M). EPA is disapproving Montana's February 10, 2010 infrastructure SIP submission for the following infrastructure elements for the 1997 and 2006 $PM_{2.5}$ NAAQS: CAA Section 110(a)(2)(E)(ii) concerning requirements for state boards under CAA section 128; and elements (C) and (J) with respect to the requirement to have a PSD program that meets the requirements of part C of Title I of the Act. Finally, EPA is taking no action on Montana's submission for infrastructure element 110(a)(2)(D) for the 1997 and 2006 $PM_{2.5}$ NAAQS as that portion of the submission will be acted on separately.

IV. 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 approves state law that meets Federal requirements and disapproves state law that 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 Clean Air Act; 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 Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 30, 2013. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: July 12, 2013.

Shaun L. McGrath,

Regional Administrator, Region 8.

40 CFR part 52 is amended to read as follows:

PART 52—[APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS]

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

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

Subpart BB—Montana

■ 2. Section 52.1394 is amended by designating the existing paragraph as (a) and adding paragraph (b) to read as follows:

§ 52.1394 Section 110(a)(2) Infrastructure requirements.

* * * * *

(b) On February 10, 2010, Brian Schweitzer, Governor, State of Montana, submitted a certification letter which provides the State of Montana's SIP provisions which meet the requirements of CAA section 110(a)(1) and (2), elements (A), (B), (C) with respect to the requirement to have a minor NSR program that addresses $PM_{2.5}$; (E)(i), (E)(iii), (F), (G), (H), (J) with respect to the requirements of sections 121 and 127, (K), (L), and (M).

[FR Doc. 2013–18192 Filed 7–29–13; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R08–OAR–2011–0726, FRL–9839–9]

Approval and Promulgation of State Implementation Plan Revisions; Infrastructure Requirements for the 1997 and 2006 $PM_{2.5}$ National Ambient Air Quality Standards; Prevention of Significant Deterioration Requirements for $PM_{2.5}$ Increments and Major and Minor Source Baseline Dates; State Board Requirements; North Dakota

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving the State Implementation Plan (SIP) submission from the State of North Dakota to demonstrate that the SIP meets the infrastructure requirements of the Clean Air Act (CAA) for the National Ambient Air Quality Standards (NAAQS) promulgated for fine particulate matter ($PM_{2.5}$) on July 18, 1997 and on October 17, 2006. The CAA requires that each state, after a new or revised NAAQS is promulgated, review their SIPs to ensure that they meet infrastructure requirements. The State of North Dakota submitted certifications of their infrastructure SIP on August 12, 2010 and May 22, 2012 for the 2006 $PM_{2.5}$ NAAQS. In addition, the State of North Dakota submitted a certification of their infrastructure SIP on May 25, 2012 for the 1997 $PM_{2.5}$ NAAQS. EPA is also approving SIP revisions that the State of North Dakota submitted that update the Prevention of Significant Deterioration (PSD) program and the SIP provisions regarding state boards.

DATES: *Effective Date:* This final rule is effective August 29, 2013.

ADDRESSES: EPA has established a docket for this action under Docket ID No.EPA–R08–OAR–2011–0726. All documents in the docket are listed on the *www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, 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 Air Program, Environmental Protection Agency (EPA), Region 8, 1595 Wynkoop Street, Denver, Colorado 80202–1129. EPA requests that if at all possible, you contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section to view the hard copy of the docket. You may view the hard copy of the docket Monday through Friday, 8:00 a.m. to 4:00 p.m., excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Kathy Ayala, Air Program, U.S. Environmental Protection Agency (EPA), Region 8, Mail Code 8P–AR, 1595 Wynkoop Street, Denver, Colorado 80202–1129, (303) 312–6142, *ayala.kathy@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 initials *CBI* mean or refer to confidential business information.
(iii) The word *Department* means or refers to the North Dakota Department of Health.
(iv) The words *EPA, we, us* or *our* mean or refer to the United States Environmental Protection Agency.
(v) The initials *NAAQS* mean or refer to national ambient air quality standards.
(vi) The initials *NSR* mean or refer to new source review.
(vii) The initials *PM* mean or refer to particulate matter.
(viii) The initials $PM_{2.5}$ mean or refer to particulate matter with an aerodynamic diameter of less than 2.5 micrometers (fine particulate matter).
(ix) The initials *PSD* mean or refer to Prevention of Significant Deterioration.
(x) The initials *SIP* mean or refer to State Implementation Plan.

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I. Background
II. Response to Comments
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I. Background

Infrastructure requirements for SIPs are provided in sections 110(a)(1) and (2) of the CAA. Section 110(a)(2) lists the specific infrastructure elements that a SIP must contain or satisfy. The elements that are the subject of this action are described in detail in our notice of proposed rulemaking (NPR), published on May 13, 2013 (78 FR 27898).

In the NPR, EPA proposed to approve North Dakota's submissions for the following infrastructure elements for the 1997 and 2006 $PM_{2.5}$ NAAQS: CAA section 110(a)(2)(A), (B), (C) with respect to minor NSR and PSD requirements, (D)(ii), (E), (F), (G), (H), (J), (K), (L), and (M). We proposed to

approve North Dakota's submissions for element (D)(i)(II) with respect to PSD requirements for the 2006 $PM_{2.5}$ NAAQS. In conjunction with our action on North Dakota's infrastructure SIP submittals, EPA also proposed to approve a portion of the State's January 24, 2013 submittal revising the State's PSD program: specifically, the portion incorporating by reference the text of 40 CFR part 52, section 21, paragraphs (b)(14)(i), (ii), and (iii); (b)(15)(i) and (ii); and paragraph (c) as those paragraphs existed on January 1, 2012. Additionally, EPA proposed to approve the portion of the April 8, 2013 submittal that revised Chapter 2, Section 2.15, Respecting Boards. Finally, EPA will act separately on infrastructure element (D)(i)(I) for the 2006 $PM_{2.5}$ NAAQS.

The approval of the above portion of the January 24, 2013 submittal incorporates the $PM_{2.5}$ increments into the State's PSD program and updates the program to meet the current requirements for all regulated NSR pollutants. As a result, North Dakota's SIP satisfies the PSD requirements in infrastructure elements (C) and (J). In addition, with our approval of the portion of the April 8, 2013 submittal regarding state boards, the North Dakota SIP meets the current requirements for section 128 and element (E)(ii) regarding disclosure requirements that apply to any person that approves permits or enforcement orders under North Dakota's implementation of the CAA.

II. Response to Comments

No comments were received on our May 13, 2013 NPR.

III. Final Action

EPA is approving the following infrastructure elements for the 1997 and 2006 $PM_{2.5}$ NAAQS: CAA 110(a)(2)(A), (B), (C) with respect to minor NSR and PSD requirements, (D)(ii), (E), (F), (G), (H), (J), (K), (L), and (M). EPA is approving (D)(i)(II) with respect to PSD requirements for the 2006 $PM_{2.5}$ NAAQS. EPA is approving a portion of the State's January 24, 2013 submittal revising the State's PSD program. Specifically, we are approving the inclusion into the North Dakota SIP of the text of 40 CFR part 52, section 21, paragraphs (b)(14)(i), (ii), and (iii); (b)(15)(i) and (ii); and paragraph (c) as those paragraphs existed on January 1, 2012. Additionally, EPA is approving the portion of the April 8, 2013 submittal revising Chapter 2, Section 2.15, Respecting Boards. Finally, EPA will act separately on infrastructure element (D)(i)(I) for the 2006 p.m. $_{2.5}$ NAAQS.

IV. 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 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 Clean Air Act; 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 Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 30, 2013. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: July 12, 2013.

Shaun L. McGrath,

Regional Administrator, Region 8.

40 CFR part 52 is amended to read as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart JJ—North Dakota

■ 2. Section 52.1820 is amended by:

■ a. Revising provision, 35–15–15–01.2 within table (c).

■ b. Revising table (e) item (1), and adding item (31) to table (e).

The revisions read as follows:

§ 52.1820 Identification of plan.

* * * * *

(c) * * *

STATE OF NORTH DAKOTA REGULATIONS

State citation	Title/subject	State effective date	EPA approval date and citation	Explanations
*	*	*	*	*
33–15–15 Prevention of Significant Deterioration of Air Quality				
*	*	*	*	*
33–15–15–01.2	Scope	10/27/10	9/27/12, 77 FR 64734	Also refer to 40 CFR 52.1829(c), (d).
*	*	*	*	*

* * * * *

(e) * * *

Name of nonregulatory SIP provision	Applicable geographic or non-attainment area	State submittal date/ adopted date	EPA approval date and citations	Explanations
(1) Implementation Plan for the Control of Air Pollution for the State of North Dakota.	Statewide	Submitted: 1/24/72; Adopted: 1/24/72.	5/31/72, 37 FR 10842	Excluding subsequent revisions, as follows: Chapters 1, 2, 6, 7, 9, 11, and 12; Sections 1.14, 2.11, 2.15, 3.7, 6.8, 6.10, 6.11, 6.13, 7.7, and 8.3; and Subsections 3.2.1, 5.2.1, 6.11.3, 7.8.1.A, 7.8.1.B, 7.8.1.C, and 8.3.1. Revisions to these non-regulatory provisions have subsequently been approved. See below.
*	*	*	*	*
(31) Revisions to Chapter 2, Section 2.15, Respecting Boards (revised).	Statewide	3/1/13	7/30/13 AND CITATION OF FINAL RULE].	

* * * * *

■ 3. Section 52.1829 is amended by adding paragraphs (c) and (d) as follows:

§ 52.1829 Prevention of significant deterioration of air quality.

* * * * *

(c) *Definitions.* For the purpose of this section:

(1) ''Major source baseline date'' means:

(i) In the case of PM_{10} and sulfur dioxide, January 6, 1975;

(ii) In the case of nitrogen dioxide, February 8, 1988; and

(iii) In the case of $PM_{2.5}$, October 20, 2010.

(2) ''Minor source baseline date'' means the earliest date after the trigger date on which a major stationary source or a major modification subject to 40 CFR 52.21 or to regulations approved pursuant to 40 CFR 51.166 submits a complete application under the relevant regulations. The trigger date is:

(i) In the case of PM_{10} and sulfur dioxide, August 7, 1977;

(ii) In the case of nitrogen dioxide, February 8, 1988; and

(iii) In the case of $PM_{2.5}$, October 20, 2011.

(3) The baseline date is established for each pollutant for which increments or other equivalent measures have been established if:

(i) The area in which the proposed source or modification would construct is designated as attainment or unclassifiable under section 107(d)(1)(A)(ii) or (iii) of the Act for the pollutant on the date of its complete application under 40 CFR 52.21 or under regulations approved pursuant to 40 CFR 51.166; and

(ii) In the case of a major stationary source, the pollutant would be emitted in significant amounts, or, in the case of a major modification, there would be a significant net emissions increase of the pollutant.

(4) ''Baseline area'' means any intrastate area (and every part thereof) designated as attainment or unclassifiable under section 107(d)(1)(A)(ii) or (iii) of the Act in which the major source or major modification establishing the minor source baseline date would construct or would have an air quality impact for the pollutant for which the baseline date is established, as follows: equal to or greater than 1 $\mu g/m^3$ (annual average) for SO_2, NO_2, or PM_{10}; or equal or greater than 0.3 $\mu g/m^3$ (annual average) for $PM_{2.5}$.

(5) Area redesignations under section 107(d)(1)(A)(ii) or (iii) of the Act cannot intersect or be smaller than the area of impact of any major stationary source or major modification which:

(i) Establishes a minor source baseline date; or

(ii) Is subject to 40 CFR 52.21 and would be constructed in the same state as the state proposing the redesignation.

(d) *Ambient air increments.* (1) In areas designated as Class I, II or III, increases in pollutant concentration over the baseline concentration shall be limited to the following:

Pollutant	Maximum allowable increase (micrograms per cubic meter)
Class I Area	
$PM_{2.5}$:	
Annual arithmetic mean	1
24-hr maximum	2
PM_{10}:	
Annual arithmetic mean	4
24-hr maximum	8
Sulfur dioxide:	
Annual arithmetic mean	2
24-hr maximum	5
3-hr maximum	25
Nitrogen dioxide:	
Annual arithmetic mean	2.5
Class II Area	
$PM_{2.5}$:	
Annual arithmetic mean	4
24-hr maximum	9
PM_{10}:	
Annual arithmetic mean	17
24-hr maximum	30
Sulfur dioxide:	
Annual arithmetic mean	20
24-hr maximum	91
3-hr maximum	512
Nitrogen dioxide:	
Annual arithmetic mean	25
Class III Area	
$PM_{2.5}$:	
Annual arithmetic mean	8
24-hr maximum	18
PM_{10}:	
Annual arithmetic mean	34
24-hr maximum	60
Sulfur dioxide:	
Annual arithmetic mean	40
24-hr maximum	182
3-hr maximum	700
Nitrogen dioxide:	
Annual arithmetic mean	50

(2) For any period other than an annual period, the applicable maximum allowable increase may be exceeded during one such period per year at any one location.

■ 4. Section 52.1833 is amended by adding paragraph (c) to read as follows:

§ 52.1833 Section 110(a)(2) infrastructure requirements.

* * * * *

(c) EPA is approving the following infrastructure elements for the 1997 and 2006 $PM_{2.5}$ NAAQS: CAA section 110(a)(2)(A), (B), (C) with respect to minor NSR and PSD requirements, (D)(ii), (E), (F), (G), (H), (J), (K), (L), and (M). EPA is approving (D)(i)(II) with respect to PSD requirements for the 2006 $PM_{2.5}$ NAAQS.

[FR Doc. 2013–18039 Filed 7–29–13; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R08–OAR–2012–0347; FRL–9839–1]

Approval and Promulgation of State Implementation Plans; State of Montana; Interstate Transport of Pollution for the 2006 $PM_{2.5}$ NAAQS

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is taking final action to partially approve and partially disapprove portions of a State Implementation Plan (SIP) submission from the State of Montana that are intended to demonstrate that its SIP meets certain interstate transport requirements of the Clean Air Act (''Act'' or ''CAA'') for the 2006 fine particulate matter (''$PM_{2.5}$'') National Ambient Air Quality Standards (''NAAQS''). Specifically, EPA is partially approving and partially disapproving the portion of the Montana SIP submission that addresses the CAA requirement prohibiting emissions from Montana sources from significantly contributing to nonattainment of the 2006 $PM_{2.5}$ NAAQS in any other state or interfering with maintenance of the 2006 $PM_{2.5}$ NAAQS by any other state. EPA is also partially approving and partially disapproving the portion of Montana's submission that addresses the CAA requirement that SIPs contain provisions to insure compliance with specific other CAA requirements relating to interstate and international pollution abatement. These partial disapprovals will not trigger an obligation for EPA to promulgate a Federal Implementation Plan (FIP) to address these interstate transport requirements as EPA is determining that the existing SIP is adequate to meet the specific CAA requirements.

DATES: *Effective Date:* This final rule is effective August 29, 2013.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–R08–OAR–2012–0347. All documents in the docket are listed on the *www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, 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 Air Program, Environmental Protection Agency (EPA), Region 8, 1595 Wynkoop Street, Denver, Colorado 80202–1129. EPA requests that if at all possible, you contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section to view the hard copy of the docket. You may view the hard copy of the docket Monday through Friday, 8:00 a.m. to 4:00 p.m., excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Adam Clark, Air Program, U.S. Environmental Protection Agency, Region 8, Mailcode 8P–AR, 1595 Wynkoop, Denver, Colorado 80202–1129, (303) 312–7104, *clark.adam@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 *NAAQS* mean or refer to National Ambient Air Quality Standards.

(iv) The initials *SIP* mean or refer to State Implementation Plan.

(v) The initials *MDEQ* mean or refer to the Montana Department of Environmental Quality.

(vi) The words *Montana* and *State* mean the State of Montana.

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I. Background
II. Response to Comments
III. Final Action
IV. Statutory and Executive Order Reviews

I. Background

On October 17, 2006 EPA promulgated a new NAAQS for $PM_{2.5}$, revising the level of the 24-hour $PM_{2.5}$ standard to 35 μg/m³ and retaining the level of the annual $PM_{2.5}$ standard at 15 μg/m³. (71 FR 61144). By statute, SIPs meeting the ''infrastructure'' requirements of CAA sections 110(a)(1) and (2) are to be submitted by states within three years after promulgation of a new or revised standard. Among the

infrastructure requirements of section 110(a)(2) are the ''interstate transport'' requirements of section 110(a)(2)(D).

CAA section 110(a)(2)(D)(i) identifies four distinct elements related to the evaluation of impacts of interstate transport of air pollutants. In this action for the state of Montana, EPA is addressing the first two elements of section 110(a)(2)(D)(i) with respect to the 2006 $PM_{2.5}$ NAAQS.[1] The first element of section 110(a)(2)(D)(i) requires that each SIP for a new or revised NAAQS contain adequate provisions to prohibit any source or other type of emissions activity within the state from emitting air pollutants that will ''contribute significantly to nonattainment'' of the NAAQS in another state. The second element of CAA section 110(a)(2)(D)(i) requires that each SIP for a new or revised NAAQS contain adequate provisions to prohibit any source or other type of emissions activity in the state from emitting pollutants that will ''interfere with maintenance'' of the applicable NAAQS in any other state.

EPA is also addressing the requirements of section 110(a)(2)(D)(ii) with respect to the 2006 $PM_{2.5}$ NAAQS. Section 110(a)(2)(D)(ii) requires each SIP to contain adequate provisions to insure compliance with the applicable requirements of sections 126 and 115 of the Act. Section 126 pertains to notification to nearby states and petitions from states to EPA regarding interstate transport of pollution. Section 115 pertains to international transport of pollution.

On February 10, 2010, the Montana Department of Environmental Quality (MDEQ) provided a submission to EPA certifying that Montana's SIP is adequate to implement the 2006 $PM_{2.5}$ NAAQS for all the infrastructure requirements of CAA section 110(a)(2). This submission included a brief analysis to support the conclusion that Montana's SIP meets the interstate transport requirements of CAA section 110(a)(2)(D)(i)(I) for this NAAQS.[2]

On May 13, 2013 (78 FR 27883), EPA proposed to partially approve and partially disapprove MDEQ's February 2010 submission with regard to the infrastructure requirements of CAA section 110(a)(2)(D)(i)(I) and 110(a)(2)(D)(ii). As explained in that action, we proposed to partially disapprove these elements of Montana's submission because the submission did not include any technical analysis to support its conclusion regarding section 110(a)(2)(D)(i)(I), and did not to address section 110(a)(2)(D)(ii). (78 FR 27885) However, we also proposed to partially approve elements 110(a)(2)(D)(i)(I) and 110(a)(2)(D)(ii) of Montana's submission based on our supplemental analysis, through which we concluded that the existing SIP for the State of Montana is adequate to satisfy the requirements of CAA section 110(a)(2)(D)(i)(I) and 110(a)(2)(D)(ii). The details of our supplemental analysis are provided in our notice of proposed rulemaking.

II. Response to Comments

EPA received one anonymous public comment on the proposed action. The commenter expressed concern about the potential for particulate matter pollution from what the commenter called the ''slash and burn policies'' of the U.S. Forest Service (USFS). The commenter alleged that the USFS had created an air pollution violation, but did not identify any particular provision of the Act or the Montana SIP that the USFS had violated.

As discussed in our proposal notice, the scope of our action was to evaluate Montana's submission that the Montana SIP is adequate to prevent sources in Montana from significantly contributing to nonattainment or interfering with maintenance of the 2006 $PM_{2.5}$ NAAQS in any other state. To the extent that the commenter is concerned that the SIP is inadequate with respect to interstate transport impacts of $PM_{2.5}$ created by intentional burns by the USFS, EPA disagrees with that concern. Our technical analysis confirmed that emissions from Montana in total, including emissions from prescribed burns, do not significantly contribute to nonattainment or interfere with maintenance of the 2006 $PM_{2.5}$ NAAQS in any other state. The commenter did not identify any issues with this analysis.

The commenter also expressed concern that the Regulations.gov site was inaccessible on a particular day. In our notice, we provided alternative means of commenting: email, fax, postal mail, and hand delivery. We also provided an address, phone number, and email contact for further information. However, the commenter did not attempt to use any of these alternative means to comment or to inform us of the problem. While we acknowledge the commenter's concerns, we find that the public had adequate opportunity to comment on our action.

III. Final Action

EPA is partially approving and partially disapproving the 110(a)(2)(D)(i)(I) and 110(a)(2)(D)(ii) portions of Montana's February 10, 2010 submission. We are partially disapproving the 110(a)(2)(D)(i)(I) portion of the submission because it relies on irrelevant factors and lacks any technical analysis to support the State's conclusion with respect to interstate transport. However, we are also partially approving this portion of the submission based on EPA's supplemental evaluation of relevant technical information, which supports a finding that emissions from Montana do not significantly contribute to nonattainment or interfere with maintenance of the 2006 24-hour $PM_{2.5}$ NAAQS in any other state and that the existing Montana SIP is, therefore, adequate to meet the requirements of CAA section 110(a)(2)(D)(i)(I) for the 2006 24-hour $PM_{2.5}$ NAAQS. We conclude that any FIP obligation resulting from this partial disapproval is satisfied by our determination that there is no deficiency in the SIP to correct. This disapproval also does not require any further action on Montana's part given EPA's conclusion that the SIP is adequate to meet the requirements of CAA section 110(a)(2)(D)(i)(I) for the 2006 24-hour $PM_{2.5}$ NAAQS.

Similarly, EPA is partially disapproving the 110(a)(2)(D)(ii) portion of Montana's submission because it fails to address or discuss this CAA requirement. However, we are partially approving this portion of the submission based on the conclusion that the State's existing SIP is adequate to meet the requirements of CAA section 110(a)(2)(D)(ii) for the 2006 24-hour $PM_{2.5}$ NAAQS. For similar reasons to those noted above for the 110(a)(2)(D)(i)(I) requirement, the partial disapproval of the submission for the 110(a)(2)(D)(ii) requirement does not require any further action from Montana or create any additional FIP obligation for EPA.

IV. 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 approves state law that meets Federal requirements and disapproves state law

[1] This action does not address the two elements of the transport SIP provision (in CAA section 110(a)(2)(D)(i)(II)) regarding interference with measures required to prevent significant deterioration of air quality or to protect visibility in another state. We will act on these elements in a separate rulemaking.

[2] MDEQ's certification letter, dated February 10, 2010, is included in the docket for this action.

that 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 Clean Air Act; 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 Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 30, 2013. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: July 12, 2013.

Shaun L. McGrath,

Regional Administrator, Region 8.

40 CFR part 52 is amended to read as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart BB—Montana

■ 2. Section 52.1393 is amended by revising section heading, designating existing paragraph as (a) and adding paragraph (b) to read as follows:

§ 52.1393 Interstate transport requirements.

* * * * *

(b) On February 10, 2010, Montana Governor Brian Schweitzer submitted a letter certifying, in part, that Montana's SIP is adequate to meet the interstate transport requirements of CAA section 110(a)(2)(D)(i)(I) for the 2006 $PM_{2.5}$ NAAQS.

[FR Doc. 2013–18156 Filed 7–29–13; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[EPA–HQ–SFUND–1983–0002; FRL–9840–3]

National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List: Deletion of the Craig Farm Drum Superfund Site

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct Final Rule.

SUMMARY: The Environmental Protection Agency (EPA) Region III is publishing a direct final Notice of Deletion for the Craig Farm Drum Superfund Site (Site) located in Perry Township, Armstrong County, Pennsylvania, from the National Priorities List (NPL). The NPL, promulgated pursuant to Section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended, is an appendix of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP). This direct final deletion is being published by EPA with the concurrence of the Commonwealth of Pennsylvania, through the Pennsylvania Department of Environmental Protection (PADEP), because EPA has determined that all appropriate response actions under CERCLA, other than operation, maintenance, and Five Year Reviews, have been completed. However, this deletion does not preclude future actions under Superfund.

DATES: This direct final deletion is effective September 30, 2013 unless EPA receives adverse comments by August 29, 2013. If adverse comments are received, EPA will publish a timely withdrawal of the direct final deletion in the **Federal Register** informing the public that the deletion will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID no. EPA–HQ–SFUND–1983–0002, by one of the following methods:

- *http://www.regulations.gov.* Follow on-line instructions for submitting comments.
- *Email: Epps.John@epa.gov.*
- *Fax:* (215) 814–3002.
- *Mail:* John Epps, 1650 Arch Street, Mail Code 3HS22, Philadelphia, PA 19103.

• *Hand Delivery:* John Epps, 1650 Arch Street, Mail Code 3HS22, Philadelphia, PA 19103; Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID no. EPA–HQ–SFUND–1983–0002. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or email. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through *http://www.regulations.gov*, your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, e.g., CBI or other information the disclosure of which is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in the hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at: EPA Administrative Records Room, 1650 Arch Street, Philadelphia, PA 19103, (215) 814–3157; *Hours:* Monday through Friday, 8:00 a.m. to 4:30 p.m.; by appointment only. Karns City Area High School Office, 1446 Kittanning, Karns City PA 16041, (726) 756–2030; Please call to schedule an appointment.

FOR FURTHER INFORMATION CONTACT: John Epps, Remedial Project Manager, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Mail Code 3HS22, Philadelphia, PA 19103, (215) 814–3144, Email: *Epps.John@epa.gov*.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction
II. NPL Deletion Criteria
III. Deletion Procedures
IV. Basis for Site Deletion
V. Deletion Action

I. Introduction

EPA Region III is publishing this direct final Notice of Deletion of the Craig Farm Drum Superfund Site from the National Priorities List (NPL). The NPL constitutes Appendix B of 40 CFR Part 300 which is the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), which EPA promulgated pursuant to Section 105 of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) of 1980, as amended. EPA maintains the NPL as the list of sites that appear to present a significant risk to public health, welfare, or the environment. Sites on the NPL may be the subject of remedial actions financed by the Hazardous Substance Superfund (Fund). As described in 40 CFR 300.425(e)(3) of the NCP, sites deleted from the NPL remain eligible for Fund-financed remedial actions if future conditions warrant such actions.

Because EPA considers this action to be noncontroversial and routine, this action will be effective September 30, 2013 unless EPA receives adverse comments by August 29, 2013. Along with this direct final Notice of Deletion, EPA is co-publishing a Notice of Intent to Delete in the ''Proposed Rules'' section of the **Federal Register**. If adverse comments are received within the 30-day public comment period on this deletion action, EPA will publish a timely withdrawal of this direct final Notice of Deletion before the effective date of the deletion, and the deletion will not take effect. EPA will, as appropriate, prepare a response to comments and continue with the deletion process on the basis of the Notice of Intent to Delete and the comments already received. There will be no additional opportunity to comment.

Section II of this document explains the criteria for deleting sites from the NPL. Section III discusses procedures that EPA is using for this action. Section IV discusses the Craig Farm Drum Superfund Site and demonstrates how it meets the deletion criteria. Section V discusses EPA's action to delete the Site from the NPL unless adverse comments are received during the public comment period.

II. NPL Deletion Criteria

The NCP establishes the criteria that EPA uses to delete sites from the NPL. In accordance with 40 CFR 300.425(e), sites may be deleted from the NPL where no further response is appropriate. In making such a determination pursuant to 40 CFR 300.425(e), EPA will consider, in consultation with the State, whether any of the following criteria have been met:

i. Responsible parties or other persons have implemented all appropriate response actions required;

ii. All appropriate Fund-financed response under CERCLA has been implemented, and no further response action by responsible parties is appropriate; or

iii. The remedial investigation has shown that the release poses no significant threat to public health or the environment and, therefore, the taking of remedial measures is not appropriate.

Pursuant to CERCLA Section 121(c) and the NCP, EPA conducts Five Year Reviews to ensure the continued protectiveness of remedial actions where hazardous substances, pollutants, or contaminants remain at a site above levels that allow for unlimited use and unrestricted exposure. EPA conducts such Five Year Reviews even if a site is deleted from the NPL. EPA may initiate further action to ensure continued protectiveness at a deleted site if new information becomes available that indicates it is appropriate. Whenever there is a significant release from a site deleted from the NPL, the deleted site may be restored to the NPL without application of the hazard ranking system.

III. Deletion Procedures

The following procedures apply to deletion of the Site:

(1) EPA consulted with the Commonwealth of Pennsylvania prior to developing this direct final Notice of Deletion and the Notice of Intent to Delete co-published today in the ''Proposed Rules'' section of the **Federal Register**.

(2) EPA has provided the Commonwealth 30 working days for review of this notice and the parallel Notice of Intent to Delete prior to their publication today, and the Commonwealth, through PADEP, has concurred on the deletion of the Site from the NPL in a letter dated May 1, 2013.

(3) Concurrently with the publication of this direct final Notice of Deletion, a notice of the availability of the parallel Notice of Intent to Delete is being published in a major local newspaper, the Butler Eagle. The newspaper notice announces the 30-day public comment period concerning the Notice of Intent to Delete the Site from the NPL.

(4) The EPA placed copies of documents supporting the proposed deletion in the deletion docket and made these items available for public inspection and copying at the Site information repositories identified above.

(5) If adverse comments are received within the 30-day public comment period on this deletion action, EPA will publish a timely notice of withdrawal of this direct final Notice of Deletion before its effective date and will prepare a response to comments and continue with the deletion process on the basis of the Notice of Intent to Delete and the comments already received.

Deletion of a site from the NPL does not itself create, alter, or revoke any individual's rights or obligations. Deletion of a site from the NPL does not in any way alter EPA's right to take enforcement actions, as appropriate. The NPL is designed primarily for informational purposes and to assist EPA management. Section 300.425(e)(3) of the NCP states that the deletion of a site from the NPL does not preclude eligibility for future response actions, should future conditions warrant such actions.

IV. Basis for Site Deletion

The following information provides EPA's rationale for deleting the Site from the NPL:

Site Background and History

The Craig Farm Drum Superfund Site (the Site), CERCLIS ID PAD980508527, consists of approximately 117 acres located in Perry Township, in the vicinity of the village of Fredericksburg, near the western border of Armstrong County, Pennsylvania. The Site is located approximately two miles east of the Borough of Petrolia and approximately four miles south of the town of Parker and the Allegheny River. Land use surrounding the Site is primarily agricultural and limited residential.

The Site was historically operated as a strip mine, resulting in two abandoned mine pits following the cessation of operations, prior to 1958. Typical of strip mining operations in the vicinity of the Site, the mining pits were cut into a hillside where the coal seam outcropped or subcropped. The pit walls were formed by the working face (highwall) of the mine and the spoil piles were staged away from the working face.

From 1958 through 1963, 55-gallon drums containing still bottom residue from the manufacturing of Resorcinol at the nearby Koppers Chemical Company (Koppers) plant were deposited in the abandoned former strip mine pits, hereinafter known as the north and south disposal pits. Resorcinol, also known as 1,3-benzenediol, m-benzenediol, 1,3-dihydroxybenzene, m-dihydroxybenzene, 3-hydroxyphenol, or m-hydroxyphenol, is an organic compound used as an adhesive enhancer in the production of automobile tires and in pharmaceuticals.

The residue, consisting of resorcinol and other higher polymers, is characterized as a CERCLA hazardous substance but not as a Resource Conservation and Recovery Act (RCRA) hazardous waste. Approximately 2,500 tons of material were placed in the disposal pits by Mr. Herman Craig, Site owner Paul Craig's brother. During deposition and during the time the drums were stored on-site, many drums were damaged, resulting in a release of the residue to the environment.

The Site was proposed for placement on the National Priorities List (NPL) on December 30, 1982 (47 FR 58476 (1982–12–30)), and listed on the NPL on September 8, 1983 (48 FR 40658 (1983–09–08)).

Currently, the Site is undeveloped, with the exception of the components of the remedy. No proposed redevelopment plan currently exists for the Site. At the time of the Record of Decision (ROD) in 1989, it was anticipated that the Site may be used in the future for recreational purposes. Due to the extremely rural location and steeply sloping nature of the Site, commercial or residential development potential is limited.

Remedial Investigation and Feasibility Study (RI/FS)

An Environmental Assessment (EA) of the Site was conducted in 1983 prior to the final listing of the Site on the NPL and consisted of the following components:

- Hydrogeologic study;
- Surface water sampling study;
- Stream biological study;
- Air quality survey.

Additionally, test pits were installed in 1984 in the vicinity of the disposal pits to determine the extent and condition of the drums containing still-bottom residue. The investigation indicated that the majority of the drums were crushed, broken, or without lids.

Following the listing of the Site on the NPL in September 1983, the RI/FS was conducted from February 1986 through November 1987 and consisted of the following components:

- Biological survey;
- Biota survey;
- Surface water and sediment characterization;
- Groundwater characterization.

Additional groundwater monitoring wells were installed in November 1988 to further delineate the extent of groundwater contamination.

Test pits installed in the vicinity of the disposal pits in 1984 prior to the RI/FS indicated the still bottom residue consisted of black to pink semisolid material with some hardened masses. The north disposal pit was observed to be approximately 1.2 to 1.5 acres in lateral extent and the south disposal pit was observed to be approximately 0.8 to 1.0 acres in lateral extent. Analytical data of samples collected during test pit installation indicated that the source material in the disposal pits was located approximately 2.5 and 6.0 feet below ground surface (bgs). Contaminated soil was also observed in the vicinity of the disposal pits during test pit installation, particularly in down-slope areas.

Groundwater quality data collected during the RI/FS indicated the presence of impacted groundwater in three water bearing zones at the Site; the unconsolidated materials zone, the upper bedrock (shale) aquifer, and the lower sandstone aquifer.

The biological survey conducted during the RI/FS indicated that macroinvertebrate communities located downstream from the Site in the Unnamed Creek were stressed due to site-related compounds. The stress was characterized as a lack of macroinvertebrate species that are typically an indicator of good water quality. However, analysis of tissue samples from macroinvertebrates in the Unnamed Creek did not detect any bioaccumulation or biomagnification of site-related compounds. No stress was detected in fish species within Valley Run and the macroinvertebrate community recovered within one mile of the confluence of Valley Run and the Unnamed Creek.

The total non-carcinogenic hazard indices (HIs) calculated for each of the potential receptors were less than 1, indicating that the there was no excess risk of non-carcinogenic health impacts.

The excess individual cancer risk to future miners, based on potential exposure to benzene in groundwater, was lower than EPA's acceptable risk

range of 10^{-4} to 10^{-6}. Excess individual cancer risk was not calculated for future off-site domestic well users because potentially carcinogenic compounds are not present in the lower sandstone aquifer, which is the only aquifer that could potentially be developed for drinking water supply. This evaluation indicated that there was no excess risk of cancer based on the evaluated exposure pathways.

In summary, the risk characterization indicated that the overall threat to human health posed by the Craig Farm Drum Site was negligible, primarily due to the limited exposure likelihood based on the current and future Site uses. The evaluation of potential environmental exposure pathways indicated that aquatic life within the Unnamed Creek is being impacted by site-related COCs. Therefore, the selection of the remedy for the Site was based on the Site's impact to the environment only, and not on the impact to human health. The Site was determined to present an imminent and substantial endangerment to the environment as set forth in Section 106 of CERCLA, 42 U.S.C. Section 9606.

Selected Remedy

The ROD for the Site was issued on September 29, 1989. The following Remedial Action Objectives (RAOs) were identified:

- Minimize risk to human health and the environment from direct contact with contaminated material;
- Control the migration of contaminants into nearby surface waters;
- Control the migration of contaminants into groundwater.

The ROD divided the Site into three Operable Units (OUs). OU–1 consisted of the resorcinol residue material in the former disposal pits and an adjacent contaminated soils containing detectable concentrations (>50 mg/kg) of resorcinol. OU–2 consisted of clean soils that needed to be moved to access OU–1 material. OU–3 consisted of two contaminated seeps, identified as Seeps A and B, located downgradient of the former disposal pits.

In order to address these OUs and meet the RAOs, the Selected Remedy in the ROD consisted of the following components:

- Excavation of 32,000 cubic yards of material from the disposal pits and surrounding areas;
- On-site solidification of excavated material;
- Placement of the solidified material in an newly constructed on-site RCRA equivalent, double lined, fenced landfill;
- Wetland delineation and subsequent construction of a one-acre on-site wetland to replace wetlands destroyed in construction of the on-site landfill;
- Implementation of institutional controls alerting property owners of contamination;
- Passive collection of groundwater using a seep interceptor system with off-site treatment;
- Monitoring of both on-site and off-site groundwater and surface water.

The 1989 ROD indicated that the completeness of the remedy would be determined by using an EPA-approved bioassay test procedure. The bioassay testing has historically been performed on both Seeps A and B as discussed in the sections below.

The 1989 ROD also required that a Groundwater Verification Study be performed during Remedial Design (RD) in to determine if groundwater at the Site would require further remediation. The Groundwater Verification Study was conducted in 1991 and indicated that contaminant levels in groundwater did not differ significantly from those detected during the RI and would therefore not pose a significant risk to human health. Based on the results of the Groundwater Verification Study, no additional groundwater remediation was required.

Historically, groundwater collected by the seep interceptor system was taken to a Beazer-owned off-site facility for treatment. However, that facility was planned to be shut down in 2010. Therefore, from March 2007 through September 2008, Beazer conducted a Focused Feasibility Study (FFS) to evaluate additional remedial alternatives for the wastewater collected by the seep interceptor system (OU–3). As a result of the FFS, the Selected Remedy was modified by a September 18, 2009 Explanation of Significant Differences (ESD), consisting of the following components:

- Installation of an impermeable cap on the 3-acre, former north pit area to reduce infiltration of clean water through north pit materials (referred to as the Seep A Cap);
- Excavation/fill of existing ground surface in vicinity of former north pit to required grade;
- Installation of bioswales or other infiltration features to direct clean surface water flow from capped area;
- Installation of groundwater infiltration system into deep bedrock upgradient of the former north pit to prevent upgradient groundwater from flowing through north pit materials [1];
- Continued maintenance of the Seep A collection trench, piping, and storage tank to collect contaminated overburden groundwater;
- Treatment of collected Seep A water at an alternative off-site treatment facility;
- The Seep B collection trench would remain in place but valves would be closed so that the system no longer collected water;
- Clarification of the requirements for the institutional controls selected in the 1989 ROD.

Response Actions

The Selected Remedy from the 1989 ROD was implemented from May 1994 through December 1995 in accordance with the September 27, 1993 Remedial Design and October 9, 1990 Consent Decree (CD). The final inspection was conducted on December 15, 1995 and completion of the Remedial Action was documented in the Remedial Action Completion Report, accepted by EPA on April 26, 1994.

EPA issued a Final Close Out Report (FCOR) on December 27, 1995 to document completion of the remedy specified in the 1989 ROD. The FCOR documented Construction Completion rather than Site Completion because institutional controls were not in place at the time of the FCOR. Additional response actions were also required by the 2009 ESD following the issuance of the 1995 FCOR, as described below. The institutional controls were implemented in 2004 in accordance with the recommendations of the Second Five Year Review and the requirements for the institutional controls were clarified in the 2009 ESD. Institutional controls are discussed in additional detail in the Operations and Maintenance section below.

The remedy modification in the 2009 ESD was implemented from May through August 2010 in accordance with the June 4, 2010 Final Design Report. The final inspection was conducted on September 20, 2010 and completion of the remedy modification was documented in the November 30, 2010 Remedial Action Report, accepted by EPA on December 22, 2010.

[1] Although the groundwater infiltration system was selected as a component of the remedy modification, groundwater monitoring following the installation of the Seep A Cap indicated that the infiltration system would not be necessary and the system was not installed. A Preliminary Design Investigation was conducted to evaluate the feasibility of installing the system, as documented in the June 4, 2010 Final Design Report included in the Deletion Docket.

EPA issued a Revised FCOR on June 19, 2013 to summarize the findings of the 1995 FCOR, describe the implementation of institutional controls, and document the additional response actions performed in accordance with the 2009 ESD.

Cleanup Goals

The RAOs established in the 1989 ROD have been achieved by the Selected Remedy, as modified by the 2009 ESD.

The RAO of minimizing the risk to human health and the environment from direct contact with contaminated material has been achieved via the excavation and solidification of material from the disposal pits, placement of the solidified material in a newly constructed on-site landfill, and installation of the seep interceptor system. Potential direct contact was further minimized via installation of the Seep A Cap over the north disposal pit area.

Furthermore, although not a component of the remedy, the Site is located within the Bear Creek Area Chemical Site (BCACS). The BCACS consists of multiple Sites that are impacted by contaminants primarily related to resorcinol manufacturing and are being addressed by either EPA or PADEP. Between 2003 and 2007, PADEP connected residents within the BCACS to public water and required communities therein to institute public water connection ordinances. The location of the Site within the BCACS therefore further reduces the potential for direct contact with Site-related contaminants in groundwater.

The RAO of controlling the migration of contaminants into nearby surface water bodies, primarily the Unnamed Creek, has been achieved via the installation of the seep interceptor system and enhanced by the installation of the Seep A Cap. Demonstration of achievement of this RAO with respect to numerical performance standards is discussed in additional detail below.

As discussed above in the summary of the RI/FS, the contaminants of concern (COCs) at the Site consist of the following compounds:

- Benzene;
- Resorcinol;
- Benzene metadisulfonic acid (m-BDSA);
- Benzene sulfonic acid (BSA);
- p-Phenol sulfonic acid (p-PSA);
- Trihydroxydiphenyl (THD).

Phenol, m-phenol sulfonic acid (m-PSA), and multiple metals were also identified as Site COCs in the 1989 ROD, however, these compounds were eliminated as Site COCs following the Groundwater Verification Study in 1991. No PADEP Water Quality Criteria for Toxic Substances (PADEP WQC) existed at the time of the ROD for resorcinol, m-BDSA, BSA, p-PSA, or THD and no numerical performance standards were established for these compounds in the 1989 ROD in surface water. Benzene has not been detected in surface water since 1987 during the RI for the Site and has therefore achieved the PADEP WQC.

PADEP WQC were proposed for resorcinol, m-BDSA, BSA, and p-PSA in February 2012 as show in the table below. No PADEP WQC was proposed for THD due primarily to the difficulty in analyzing for that compound. Instead, the remaining resorcinol-related compounds are considered indicator parameters for THD.

Compound	Fish and aquatic life criteria		Human health criteria (µg/L)
	Chronic WQC criterion continuous concentration (µg/L)	Acute WQC criterion maximum concentration (µg/L)	
Resorcinol	7200	28000	2700
m-BDSA	1600000	2600000	N/A
BSA	1200000	2000000	N/A
p-PSA	1400000	3500000	N/A

The Unnamed Creek was considered the receptor for Site-related contaminants in the 1989 ROD due to the observed impact to macroinvertebrates in the creek. As discussed above, the ROD includes an RAO to control migration of contaminants into the creek. In order to determine if this RAO has been achieved, analytical data from the Unnamed Creek was compared to the PADEP WQC presented above.

Sampling of the Unnamed Creek was historically conducted on a quarterly basis for the first year following construction of the remedy in 1995, on a semi-annual basis for the second year following construction, and annually during the third year following construction. Historic sampling did not indicate the presence of Site-related contaminants in the Unnamed Creek at that time and sampling of the creek was discontinued in 1998.

In order to evaluate the effectiveness of the remedy modification selected in the 2009 ESD, two additional sampling events were conducted in the Unnamed Creek in March 2011 and January 2012. During those sampling events, m-BDSA was detected in the Unnamed Creek at a concentration of 97 µg/L in March 2011 and 77 µg/L in January 2012, below the criteria listed above by multiple orders of magnitude. THD was detected at a concentration of 70 µg/L during the January 2012 sampling event and was not detected in March 2011. No other Site COCs were detected in the Unnamed Creek during either of the sampling events conducted since the installation of the Seep A cap.

Additionally, the 1989 ROD indicated that completeness of the remedy will be determined by performing bioassay testing. Bioassay testing has been performed on water collected from Seep A and Seep B, but not on water from the Unnamed Creek. In the 2009 ESD, EPA determined that water collected by Seep B no longer exhibited toxicity based on the bioassay testing data. Current data from the Unnamed Creek indicate that Site COC concentrations are either non-detect or are below the concentrations detected in Seep B. Therefore, the water in the Unnamed Creek also does not exhibit toxicity according to the bioassay criteria. Because the Unnamed Creek is considered the receptor for Site-related contamination, the remedy for OU–3 can be considered complete. Water collected by Seep A continues to exhibit toxicity based on recent bioassay sampling and will continue to be collected as an O&M task until the bioassay criteria are reached in order to prevent contaminated groundwater from discharging to the Unnamed Creek. Based on current contaminant trends in Seep A water, the bioassay criteria are

expected to be reached in approximately two years.

Based on a comparison to currently proposed PADEP WQC and Site-specific bioassay criteria, the remedy has achieved the RAO of controlling contaminant migration into the Unnamed Creek as specified in the 1989 ROD.

The RAO of controlling the migration of contaminants into groundwater has been achieved via the installation of the seep interceptor system and enhanced by the installation of the Seep A Cap. At the time of the ROD, it was determined that the concentrations of Site COCs in groundwater did not present a current or potential future risk to human health. Additionally, no Maximum Contaminant Levels (MCLs) for Site COCs existed at the time of the 1989 ROD and no MCLs currently exist or are proposed. Although not selected as an Applicable or Relevant and Appropriate Requirement (ARAR) in the 1989 ROD, since the ROD was issued, PADEP promulgated a State-Wide Health Standard (SHS) Medium Specific Concentration (MSC) for resorcinol in groundwater of 73,000 µg/L for residential use and 200,000 µg/L for non-residential use. Groundwater monitoring was historically conducted on a semi-annual basis from 1999 through 2010. The highest detection of resorcinol during the monitoring period was 50,600 µg/L in February of 2000, below the PADEP SHS MSCs and concentrations have continued to decline. Groundwater monitoring has been conducted three times since 2010. In the three most recent sampling events conducted in March 2011, January 2012, and July 2012 the highest detection of resorcinol was 27,100 µg/L, below the PADEP SHS MSCs. The concentrations of all Site COCs in groundwater have significantly decreased, in most cases by an order of magnitude, since the 1989 ROD was issued. Therefore, the current concentrations of Site COCs in groundwater do not present a current or potential future risk to human health. Based on this information, the remedy has achieved the RAO of controlling contaminant migration into groundwater as specified in the 1989 ROD.

The remedy is currently protective of human health and the environment and all RAOs specified in the 1989 ROD have been achieved. Operation and maintenance of the remedy and institutional controls, as described below, will ensure the long-term protection of human health and the environment.

Operation and Maintenance

Long-term monitoring and maintenance at the Site is conducted in accordance with the Operations and Maintenance Plan (O&M Plan) initially dated July 14, 1993 and revised on April 15, 2013 following the completion of the remedy modification and subsequent initial monitoring. The O&M Plan, as revised, consists of the following components:

- Annual site inspection of the following: on-site landfill/cap, former south disposal pit area, Seep A collection piping, above ground storage tank, Seep A cap/bioswale/stormwater swale, and ancillary facilities.
- Groundwater sampling and analysis;
  - Landfill Wells—Hydraulic monitoring and sampling every five years to coincide with Five Year Reviews;
  - Groundwater Monitoring Wells—Annual hydraulic monitoring, sampling every five years to coincide with Five Year Reviews.
- Surface water sampling and analysis;
  - Annual sampling through 2014, after which samples will be collected every five years to coincide with Five-Year Reviews.
- Seep water collection and disposal (seep interceptor system Seep A);
  - Off-site disposal as needed;
  - Periodic sampling to determine if collected water (Seep A) meets bioassay criteria.
- Leachate collection and disposal (on-site landfill);
  - Pumping, collection, and off-site disposal as needed.
- Progress reporting;
  - Reporting every five years to coincide with Five Year Reviews.

The 1989 ROD for the Site required that institutional controls be placed on the Site to ensure the protectiveness of the remedy. The 2004 Second Five Year Review indicated that the institutional controls were not yet in place, and subsequently the institutional controls were implemented on September 23, 2004 in the form of a deed restriction consisting of the following:

- No groundwater beneath the Site may be used and no wells may be installed on the Site for human consumption, irrigation, or other purpose that may bring it into contact with humans, except for testing purposes as required by law, remedial action/design, or the terms of the Consent Decree;
- No structure may be placed on the Site that would disturb the cap or stabilized contents of the landfill or would otherwise disturb any component of the remedial action/design without prior written approval of the Site owner and EPA;
- The Site may not be used for the purposes of living, dwelling, or overnight accommodations of any type;
- No action may be taken that will interfere with, obstruct, or disturb the performance of any remedial response, including O&M;
- Any Site owner must provide any purchaser with notice of the terms of the Consent Decree prior to transferring any interest in the Site.

The 2009 Third Five Year Review indicated that the requirement for institutional controls was in the declaration portion of the 1989 ROD only and not in the remedy selection portion. Therefore, EPA included a clarification of the requirement for institutional controls in the 2009 ESD to ensure that the controls remain in place and effective.

Five-Year Reviews

Three Five Year Reviews have been conducted at the Site in 1999, 2004, and 2009. The Protectiveness Statement in the 2009 Third Five Year Review was as follows:

> ''The remedy at the Craig Farm Drum Site is protective of human health and the environment in the short and long term. Physical construction is complete and institutional controls have been implemented.
>
> Protection of human health and the environment has been achieved by the installation of a RCRA-equivalent landfill to contain waste (OU–1) and a seep interceptor system to collect contaminated groundwater for off-site treatment (OU–3). Additionally, protection of human health is enhanced due to the location of the Site within the Bear Creek Area Chemical Site (BCACS), in which all residents are required to connect to public water. Currently, design is underway for the modification of the seep interceptor system by the addition of an impermeable cap and groundwater infiltration system to reduce overburden groundwater flow through contaminated material, further enhancing the protectiveness of the remedy. Finally, the remedy is protective of both human health and the environment in the long-term due to the implementation of institutional controls alerting current and future Site owners of the contaminants on-site and restricting landfill and groundwater use. The requirements for the institutional controls at the Site will be clarified in an ESD to further ensure long-term protectiveness.''

As previously indicated, the ESD referenced above was issued to clarify the institutional controls in September 2009. The next Five Year Review is scheduled to be completed in June 2014.

Community Involvement

The Site is located in an extremely rural area and few residents live in close proximity to the Site. Historically, community involvement activities consisted of a public meeting in 1989 to present the Proposed Remedial Action Plan (PRAP) for the 1989 ROD, availability sessions during construction of the remedy in 1993 and 1994, and public notices prior to conducting Five Year Reviews in 1999, 2004, and 2009.

In accordance with the requirements of 40 CFR 300.425(e)(4), EPA's community involvement activities associated with this deletion will consist of placing the deletion docket in the local site information repository and placing a public notice (of EPA's intent to delete the site from the NPL) in a local newspaper of general circulation.

Determination That the Site Meets the Criteria for Deletion in the NCP

Construction of the remedy at the Site has been completed in accordance with the 1989 ROD and 2009 ESD, institutional controls are in place, and O&M is being conducted in accordance with the O&M Plan. All RAOs, performance standards, and cleanup goals established in the 1989 ROD have been achieved and the remedy is protective of human health and the environment in both the short and long term. No further Superfund response, other than operation, maintenance, and Five Year Reviews, is necessary to protect human health and the environment.

The Site Deletion procedures specified in 40 CFR 300.425(e) have been followed for the deletion of the Site.

V. Deletion Action

The EPA, with concurrence of the Commonwealth of Pennsylvania through PADEP, has determined that all appropriate response actions under CERCLA, other than operation, maintenance, and Five Year reviews have been completed. Therefore, EPA is deleting the Site from the NPL.

Because EPA considers this action to be noncontroversial and routine, EPA is taking it without prior publication. This action will be effective September 30, 2013 unless EPA receives adverse comments byAugust 29, 2013. If adverse comments are received within the 30-day public comment period, EPA will publish a timely withdrawal of this direct final notice of deletion before the effective date of the deletion, and it will not take effect. EPA will prepare a response to comments and continue with the deletion process on the basis of the notice of intent to delete and the comments already received. There will be no additional opportunity to comment.

List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous waste, Hazardous substances, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Dated: July 10, 2013.

W.C. Early,

Acting Regional Administrator, Region III.

For the reasons set out in this document, 40 CFR part 300 is amended as follows:

PART 300—[AMENDED]

■ 1. The authority citation for part 300 continues to read as follows:

Authority: 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601–9657; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; E.O. 12580, 52 FR 2923; 3 CFR, 1987 Comp., p. 193.

■ 2. Table 1 of Appendix B to part 300 is amended by removing Craig Farm Drum Superfund Site, Parker, Pennsylvania.

[FR Doc. 2013–18189 Filed 7–29–13; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 67

[Docket ID FEMA–2013–0002]

Final Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Final rule.

SUMMARY: Base (1% annual-chance) Flood Elevations (BFEs) and modified BFEs are made final for the communities listed below. The BFEs and modified BFEs are the basis for the floodplain management measures that each community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The date of issuance of the Flood Insurance Rate Map (FIRM) showing BFEs and modified BFEs for each community. This date may be obtained by contacting the office where the maps are available for inspection as indicated in the table below.

ADDRESSES: The final BFEs for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

FOR FURTHER INFORMATION CONTACT: Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–4064, or (email) *Luis.Rodriguez3@fema.dhs.gov.*

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) makes the final determinations listed below for the modified BFEs for each community listed. These modified elevations have been published in newspapers of local circulation and ninety (90) days have elapsed since that publication. The Deputy Associate Administrator for Mitigation has resolved any appeals resulting from this notification.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR part 67. FEMA has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR part 60.

Interested lessees and owners of real property are encouraged to review the proof Flood Insurance Study and FIRM available at the address cited below for each community. The BFEs and modified BFEs are made final in the communities listed below. Elevations at selected locations in each community are shown.

National Environmental Policy Act. This final rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. An environmental impact assessment has not been prepared.

Regulatory Flexibility Act. As flood elevation determinations are not within the scope of the Regulatory Flexibility Act, 5 U.S.C. 601–612, a regulatory flexibility analysis is not required.

Regulatory Classification. This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 13132, Federalism. This final rule involves no policies that have federalism implications under Executive Order 13132.

Executive Order 12988, Civil Justice Reform. This final rule meets the

applicable standards of Executive Order 12988.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 67 is amended as follows:

PART 67—[AMENDED]

■ 1. The authority citation for part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.;* Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.11 [Amended]

■ 2. The tables published under the authority of § 67.11 are amended as follows:

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in feet (MLLW) Modified	Communities affected
City and Borough of Juneau, Alaska Docket No.: FEMA–B–1182			
Auke Bay	At Smugglers Cove, approximately 640 feet southeast of the intersection of Fox Farm Trail and Fritz Cove Road.	∧25	City and Borough of Juneau.
	Approximately 550 feet northeast of the intersection of Point Louisa Road and Glacier Highway.	∧27	
	At the Auke Bay ferry terminal	∧29	
Duck Creek	At the downstream side of Radcliffe Road	∧23	City and Borough of Juneau.
	Approximately 350 feet upstream of Taku Boulevard	∧52	
East Fork Duck Creek	Approximately 150 feet downstream of Nancy Street	∧34	City and Borough of Juneau
	Approximately 200 feet downstream of Trinity Drive	∧34	
Fritz Cove	At the southern end of Mendenhall Peninsula	∧23	City and Borough of Juneau.
	Approximately 870 feet south of the intersection of Fritz Cove Road and Fox Farm Trail.	∧26	
Gastineau Channel, Douglas Island Side.	At the north end of Douglas Island, opposite the airport	∧23	City and Borough of Juneau.
	At the west end of Douglas Island, west of North Douglas Road.	∧25	
	At the Paris Creek confluence	∧25	
	At the eastern end of Juneau Island next to Douglas Marina.	∧29	
Gastineau Channel, Juneau Side.	Approximately 0.3 mile southeast of the intersection of Engineers Cutoff Road and Mendenhall Peninsula Road.	∧25	City and Borough of Juneau.
	Approximately 0.5 mile southwest of the intersection of Point Lena Loop Road and Towers Road.	∧26	
	At the end of Thane Road, at the Little Sheep Creek confluence.	∧27	
	Approximately 0.55 mile southeast of the intersection of Mill Street and Thane Road.	∧28	
Jordan Creek	Approximately 1,080 feet downstream of Yandukin Drive	∧25	City and Borough of Juneau.
	Approximately 0.23 mile upstream of Egan Drive	∧31	
Lemon Creek	Approximately 0.27 mile downstream of Glacier Highway	∧23	City and Borough of Juneau.
	Approximately 1.4 miles upstream of Glacier Highway	∧106	
Mendenhall River	Approximately 1.14 miles downstream of Glacier Highway	∧23	City and Borough of Juneau.
	At the upstream side of Mendenhall Loop Road	∧56	
Unnamed Tributary to Duck Creek.	At the downstream side of El Camino Street	∧42	City and Borough of Juneau.
	At the upstream side of Mendenhall Loop Road	∧46	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Lower Low Water.

ADDRESSES

City and Borough of Juneau
Maps are available for inspection at 155 South Seward Street, Juneau, AK 99801.

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Dated: July 12, 2013.

Roy E. Wright,

Deputy Associate Administrator for Mitigation, Department of Homeland Security, Federal Emergency Management Agency.

[FR Doc. 2013–18248 Filed 7–29–13; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 67

[Docket ID FEMA–2013–0002]

Final Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Final rule.

SUMMARY: Base (1% annual-chance) Flood Elevations (BFEs) and modified BFEs are made final for the communities listed below. The BFEs and modified BFEs are the basis for the floodplain management measures that each community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The date of issuance of the Flood Insurance Rate Map (FIRM) showing BFEs and modified BFEs for each community. This date may be obtained by contacting the office where the maps are available for inspection as indicated in the table below.

ADDRESSES: The final BFEs for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

FOR FURTHER INFORMATION CONTACT: Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–4064, or (email) *Luis.Rodriguez3@fema.dhs.gov.*

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) makes the final determinations listed below for the modified BFEs for each community listed. These modified elevations have been published in newspapers of local circulation and ninety (90) days have elapsed since that publication. The Deputy Associate Administrator for Mitigation has resolved any appeals resulting from this notification.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR part 67. FEMA has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR part 60.

Interested lessees and owners of real property are encouraged to review the proof Flood Insurance Study and FIRM available at the address cited below for each community. The BFEs and modified BFEs are made final in the communities listed below. Elevations at selected locations in each community are shown.

National Environmental Policy Act. This final rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. An environmental impact assessment has not been prepared.

Regulatory Flexibility Act. As flood elevation determinations are not within the scope of the Regulatory Flexibility Act, 5 U.S.C. 601–612, a regulatory flexibility analysis is not required.

Regulatory Classification. This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 13132, Federalism. This final rule involves no policies that have federalism implications under Executive Order 13132.

Executive Order 12988, Civil Justice Reform. This final rule meets the applicable standards of Executive Order 12988.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 67 is amended as follows:

PART 67—[AMENDED]

■ 1. The authority citation for part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.;* Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.11 [Amended]

■ 2. The tables published under the authority of § 67.11 are amended as follows:

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL) Modified	Communities affected
La Porte County, Indiana, and Incorporated Areas Docket No.: FEMA–B–1155			
Lake Michigan	Entire shoreline within community	+585	Town of Michiana Shores, Unincorporated Areas of La Porte County.
Lake Michigan	Entire shoreline within community	+585	Town of Long Beach.
Lake Michigan	Entire shoreline within community	+585	City of Michigan City.
Otter Creek	At the confluence with Trail Creek	+592	Town of Pottawattamie Park.
	Approximately 1,000 feet downstream of Karwick Road	+598	
Trail Creek	At the confluence with Lake Michigan	+585	City of Michigan City.
	Approximately 1,100 feet upstream of E Street	+585	
Trail Creek	Approximately 1,100 feet upstream of Liberty Trail Road	+591	Town of Pottawattamie Park.
	At the confluence with Otter Creek	+592	

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL) Modified	Communities affected
White Ditch	Approximately 160 feet downstream of Michiana Drive	+604	Town of Michiana Shores, City of Michigan City, Unincorporated Areas of La Porte County.
	Approximately 1,840 feet upstream of Oakdale Drive	+607	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.

ADDRESSES

City of Michigan City
Maps are available for inspection at City Hall, 100 East Michigan Boulevard, Michigan City, IN 46360.
Town of Long Beach
Maps are available for inspection at the Town Hall, 2400 Oriole Trail, Long Beach, IN 46360.
Town of Michiana Shores
Maps are available for inspection at the Town Hall, 601 El Portal South Drive, Michiana Shores, IN 46360.
Town of Pottawattamie Park
Maps are available for inspection at the La Porte County Government Complex, 809 State Street, Suite 503A, La Porte, IN 46350.
Unincorporated Areas of La Porte County
Maps are available for inspection at the La Porte County Government Complex, 809 State Street, Suite 503A, La Porte, IN 46350.

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Dated: July 12, 2013.

Roy E. Wright,

Deputy Associate Administrator for Mitigation, Department of Homeland Security, Federal Emergency Management Agency.

[FR Doc. 2013–18250 Filed 7–29–13; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

49 CFR Parts 172 and 173

[Docket No. PHMSA–2010–0201 (HM–254)]

RIN 2137–AE62

Hazardous Materials: Approval and Communication Requirements for the Safe Transportation of Air Bag Inflators, Air Bag Modules, and Seat-Belt Pretensioners (RRR)

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: Final rule.

SUMMARY: The Pipeline and Hazardous Materials Safety Administration is amending the Hazardous Materials Regulations applicable to air bag inflators, air bag modules, and seat-belt pretensioners. The revisions incorporate the provisions of two special permits into the regulations. In addition, PHMSA is amending the current approval and documentation requirements for a material classified as a UN3268 air bag inflator, air bag module, or seat-belt pretensioner. These revisions are intended to reduce the regulatory burden on the automotive industry and facilitate commerce, while continuing to maintain an equivalent level of safety.

DATES: *Effective date:* August 29, 2013. *Voluntary compliance date:* PHMSA is authorizing voluntary compliance beginning July 30, 2013.

FOR FURTHER INFORMATION CONTACT: Matthew Nickels, Standards and Rulemaking Division, Office of Hazardous Materials Safety, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, telephone (202) 366–8553.

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I. Executive Summary

In this final rule, the Pipeline and Hazardous Materials Safety Administration (PHMSA) is amending the Hazardous Materials Regulations (HMR) applicable to the transportation of air bag inflators, air bag modules, and seat-belt pretensioners in § 173.166. This rulemaking is responsive to one petition for rulemaking submitted by an industry representative: P–1523, asking that PHMSA remove unnecessary burdens on the industry that do not advance safety. Further, this final rule is incorporating into the HMR the provisions of two widely used and longstanding special permits with established safety records (DOT–SP 12332 and DOT–SP 13996). These revisions are intended to reduce the regulatory burden on the automotive industry and facilitate commerce, while continuing to maintain an equivalent level of safety.

This rulemaking specifically finalizes revisions to five regulatory initiatives. The first initiative modifies the approval process and documentation requirements associated with classifying air bag inflators, air bag modules, and seat-belt pretensioners. The second initiative incorporates provisions of DOT–SP 12332 into the HMR by excepting Class 9 air bag inflators, air bag modules, or seat-belt pretensioners assigned to UN3268 from the requirement to provide the EX number on the shipping paper. The third initiative is a simple clarification that a safety restraint device that is installed in a vehicle or vehicle component is not subject to the HMR. The fourth initiative incorporates provisions of DOT–SP 13996 into the HMR by authorizing the use of non-DOT specification, reusable containers manufactured from high-strength plastic, metal, or other suitable material, or other dedicated handling devices, for transportation of air bag inflators, air bag modules, and seat-belt pretensioners. The fifth initiative permits several additional types of packaging to maintain alignment with the 17th revised edition of the UN Model Regulations.

The costs and benefits of the amended regulations are dependent on the level of preexisting compliance with the two special permits and the overall effectiveness of the amended regulations (e.g., flexibility provided when incorporating portions or whole special permits). Additionally, we believe that this rulemaking will benefit the automobile industry because it will reduce the burden in how air bag inflators, air bag modules, and seat-belt pretensioners are authorized for shipment by eliminating the necessity to submit approval applications to PHMSA, and thus provide a significant cost savings.

The costs associated with the rule are negligible due to minor revisions to the recordkeeping requirements. DOT explosives test labs that test and examine air bag inflators, air bag modules, or seat-belt pretensioners will be required to provide the manufacturer a detailed report on each tested design. The DOT explosives test labs already provide manufacturers with test reports for classification purposes, but the amended reporting requirements will require minimal additions to the report (e.g., unique product identifier, etc.). Outside of this marginal impact, this rulemaking provides numerous benefits. PHMSA is currently spending/expending an estimated $82,800 per year to process and review special permits and approvals associated with Class 9 airbags and seat-belt pretensioners. Further, industry incurs an estimated $165,000 per year to prepare and submit applications for special permits and approvals, and $890,000 per year to provide the EX numbers on shipping papers. Combined, these costs total $1,137,800 per year. Since the objective of the rule is to eliminate these costs, the benefits that can be achieved are estimated to be $1,137,800 per year.

However, notwithstanding the data above, because of the difficulty of and uncertainty associated with forecasting industry effects into the far future, we assumed a 10-year timeframe to outline, quantify, and monetize the costs and benefits of the rulemaking and to demonstrate the net effects of the rulemaking.

The net benefits of the rule are calculated by subtracting the costs from the benefits. Since the costs are assumed to be negligible, the first-year net benefits are estimated to be $1.14 million. Based upon the market analysis presented in the regulatory impact assessment (RIA), it's assumed these benefits will grow at an annual average rate of 5 percent.[1] Calculating the present value of this net benefit over ten years produces an estimated benefit of between ten and twelve million dollars, using the discount rates of 7 percent and 3 percent, respectively. A summary of the expected annualized costs and benefits is provided in the table below.

Annualized benefit (in 2013 $).	$1.14 million.
Annualized Cost (in 2013 $).	$0 (negligible).
Benefit-Cost Ratio	All benefits.
10-Year Benefits at 7% and 3% Discount Rates.	$10–12 million.

With this in mind, PHMSA has concluded that the aggregate benefits justify the final rule. For additional information and review of the analysis underlying these estimates, as well as possible approaches to reduce the costs of this rule while maintaining or increasing the benefits, please review the RIA available at the public docket for this rulemaking.

II. Background

The Pipeline and Hazardous Materials Safety Administration (PHMSA) issued a notice of proposed rulemaking (NPRM) on March 26, 2012 [77 FR 17394] under Docket No. PHMSA–2010–0201 (HM–254) to amend the Hazardous Materials Regulations (HMR; 49 CFR Parts 171–180) applicable to the transportation of air bag inflators, air bag modules, and seat-belt pretensioners in § 173.166. This NPRM was part of an ongoing review by PHMSA to identify widely used and longstanding special permits with established safety records for adoption into HMR. The numbers of the special permits considered for incorporation in the NPRM were DOT–SP: 12332 and 13996. PHMSA identified these special permits as implementing operational techniques that achieve a safety level that corresponds to or exceeds the safety level required under the HMR. In addition, this rulemaking addresses petition for rulemaking P–1523, dated June 24, 2008 (P–1523) and two addendums submitted on February 26, 2009 and June 14, 2011 by the North American Automotive Hazmat Action Committee (NAAHAC). NAAHAC represents numerous automobile manufacturers and component suppliers located in North America as well as in Asia and Europe. NAAHAC's petition requested revisions to requirements in the HMR applicable to safety restraint systems (e.g., air bag inflators, air bag modules, and seat-belt pretensioners). NAAHAC suggested that subjecting Class 9, UN3268 safety restraint systems to the EX approval process in accordance with § 173.56 imposed an unnecessary burden on the industry that does not advance safety. Therefore, NAAHAC requested that PHMSA remove the requirement for manufacturers to apply for and receive an EX approval number for the shipment of Class 9, UN3268 safety restraint systems.

In addition, NAAHAC suggested that PHMSA incorporate the following long-standing special permits into the HMR:

- *DOT–SP 12332*—This special permit provides relief from § 173.166(c) in that it allows the devices to be shipped without listing the EX-approval numbers or product names on the shipping papers, and from § 173.166(e) in that an alternative packaging method is authorized. The special permit has been in effect since 2000, and has been utilized by more than 2,100 grantees with no known safety problems. A review of the Hazardous Materials Incident Data library did not reveal any incidents related to this special permit since the date of its issuance. This special permit applies to Class 9, UN3268 materials that are packaged using either of the two following methods:

a. Non-specification steel drums with a wall and lid thickness not less than 20 gauge. The lid must be securely affixed

[1] In its recent report, ''Global Automotive Airbag Market 2011–2015,'' TechNavio is forecasting that the global airbag market will grow at a compounded annual average annual growth rate of 11.54 percent. Given the maturity of the airbag market in the United States, we believe the growth rate in the U.S. market will be less than the global growth rate and therefore assumed 5 percent for the U.S. market.

with a lever-locking or bolted-ring assembly. The threaded bung closure in the top of the drum must be removed prior to shipment and the bung opening covered with waterproof plastic tape or a waterproof soft plastic cap that must easily provide ventilation of the drum contents in the event of a fire. The drum may be filled with any combination of air bag inflators, air bag modules, or seat-belt pretensioner devices to a capacity not greater than fifty (50) percent of the drum's total volume; inner packagings are not necessary; or

b. Outer packagings that are UN Standard 4H2 solid plastic boxes or non-specification rugged reusable plastic containers with either trays or cushioning material in the containers to prevent movement of articles during transportation. Inner packagings are static-resistant plastic bags or trays.

• *DOT–SP 13996*—This special permit provides relief from § 173.166(e)(4) in that it authorizes the transportation, under certain conditions, of Class 9, UN3268 air bag inflators, air bag modules, and seat-belt pretensioners in reusable containers manufactured from high-strength plastic, metal, or other suitable material, or other dedicated handling devices. The special permit has been in effect since 2005, and has been utilized by 31 grantees with no known safety problems. A review of the Hazardous Materials Incident Data library did not reveal any incidents related to this special permit since the date of its issuance.

As stated above, in addition to NAAHAC's petition suggesting that subjecting Class 9, UN3268 safety restraint systems to the EX approval process in accordance with § 173.56 imposes an unnecessary burden on the industry that does not advance safety, the petition also suggested that PHMSA incorporate these two long-standing special permits into the HMR. PHMSA agrees with the petition and proposed to amend the HMR to incorporate certain requirements based on these two special permits issued under 49 CFR Part 107, Subpart B (§§ 107.101 to 107.127).

III. Amendments Adopted in Final Rule

PHMSA agrees with the petitioner that requiring documentation for Class 9 air bag inflators, air bag modules, and seat-belt pretensioners to be submitted to PHMSA and assigned an EX Number is unnecessarily burdensome. PHMSA believes that eliminating this requirement will not adversely affect safety since the devices will still continue to be sent to the explosive test labs for classification purposes and assigned a unique product identifier by the lab, but the documentation will no longer be forwarded to PHMSA and issued an EX Number (please see A. Approval Process below for further discussion). Further, PHMSA agrees that incorporating the terms of DOT–SP 12332 and DOT–SP 13996 into the HMR will promote compliance and safety. As a result, PHMSA proposed to revise § 173.166 to address the concerns highlighted in NAAHAC's petition. PHMSA believed that changes proposed by the NPRM promoted the safe transportation of Class 9 air bag inflators, air bag modules, and seat-belt pretensioners, while significantly reducing the financial burden on the overall automotive industry (and the device manufacturers specifically) for shipping these devices. The amendments adopted by this final rule are summarized below.

A. Approval Process

In the NPRM, PHMSA proposed to allow manufacturers of air bag inflators, air bag modules, or seat-belt pretensioners to receive a classification of Class 9 (UN3268) for new designs that pass Test series 6(c) of the UN Manual of Tests and Criteria, which is currently required by Special Provision 160. As was proposed, an air bag inflator, air bag module, or seat-belt pretensioner would be classed as Class 9 (UN3268) if the air bag inflator, air bag module, or seat-belt pretensioner design is examined and successfully tested by a person or agency (authorized testing agency) who is authorized by the Associate Administrator to perform such examination and testing of explosives under 173.56(b)(1).

As was proposed in the NPRM, persons who test and examine air bag inflators, air bag modules, or seat-belt pretensioners would be required to provide a detailed report on each tested design to the manufacturer. Key components of the report include a description of the design; explanation of the tests performed and results; and a recommended classification for tested designs. The manufacturer must retain the report for as long as the design is in production and for 15 years thereafter. Additionally, the manufacturer must make the report available to Department officials upon request. This record retention requirement ensures that a detailed test report of each air bag inflator, air bag module, or seat-belt pretensioner design is maintained and available for the useful life of the device. These records may be used to verify the accuracy and validity of the tests and classification recommendation.

In summary, the proposed NPRM amendments provided manufacturers of air bag inflators, air bag modules, or seat-belt pretensioners with the option to utilize new designs that are proven to meet the criteria of a Class 9 through established test criteria, without receiving an EX approval from PHMSA. The result would be a significant cost savings and no change in the level of safety. Additionally, we proposed to permit manufacturers to continue to receive EX approval by submitting their designs for examination and testing in accordance with § 173.56(b) if they so choose.

If an air bag inflator, air bag module, or seat-belt pretensioner fails Test series 6(c) of the UN Manual of Tests and Criteria, as provided by Special Provision 160, then the device must continue to be approved by PHMSA in accordance with the explosive examination, classification, and approval process in § 173.56(b).

B. Shipping Papers

PHMSA proposed in the NPRM to except Class 9 air bag inflators, air bag modules, or seat-belt pretensioners assigned to UN3268 from the requirement to provide the EX number on the shipping paper. As suggested by NAAHAC, the documentation requirement imposes a cost burden, but does not provide a safety benefit.

C. Safety Restraint Systems Installed in Vehicles

In the NPRM, PHMSA proposed to clarify that a safety restraint device that is installed in a vehicle or vehicle component is not subject to the HMR. This change made it clear that the exception will continue to apply to Class 9, UN3268 materials that are not approved by the Associate Administrator.

D. Packaging

In the NPRM, PHMSA also proposed to authorize the use of non-DOT specification, reusable containers manufactured from high strength plastic, metal, or other suitable material, or other dedicated handling devices, for transportation of air bag inflators, air bag modules, and seat-belt pretensioners. This change would incorporate the provisions of Special Permit DOT–SP 13996 into the HMR.

Special Permit DOT–SP 13996 allows the specified packaging to be used for transportation from the manufacturing facility to an intermediate handling location; from an intermediate handling location to the assembly facility; from the assembly facility to an intermediate handling location; from the intermediate handling location back to the manufacturing facility; or from the

assembly facility directly to the manufacturer with no intermediate facility involved. As proposed in the NPRM, there would be no limit on the use of the authorized packaging to transportation between specific destinations. However, no modifications or changes may be made to the original package, and the transportation must be made by private or contract carrier. By prohibiting modifications to the original package, this would ensure that adequate packaging and handling considerations are maintained.

In the NPRM, PHMSA also proposed to authorize additional packaging alternatives for air bag inflators, air bag modules, and seat-belt pretensioners that have been removed from, or were intended to be used in, a motor vehicle that meets the requirements for use in the United States. The proposed change would incorporate the provisions of Special Permit DOT–SP 12332 into the HMR. In accordance with the special permit, this additional packaging option would be limited to devices that are offered for transportation and transported domestically by highway.

E. Shipments for Recycling/Reuse

In the NPRM, we did not propose any changes to the requirements for shipping air bag modules or seat-belt pretensioners for recycling. In the current HMR, when offered for domestic transportation by highway, rail freight, cargo vessel or cargo aircraft, a serviceable air bag module or seat-belt pretensioner removed from a motor vehicle that was manufactured as required for use in the U.S. may be offered for transportation and transported without compliance with the shipping paper requirement prescribed in § 173.166(c), but the word ''Recycled'' must be entered on the shipping paper immediately after the basic description prescribed in § 172.202. However, we believed that the word ''Reuse'' might be a more appropriate description for the actual action that is taking place. We requested comments regarding a potential change from the word ''Recycled'' to ''Reuse'' that would appear on shipping papers in accordance with an altered § 173.166(d)(4).

F. Additional Packaging Authorizations

To maintain alignment of the HMR with international requirements, in the NPRM, we proposed to incorporate changes based on the Seventeenth revised edition of the UN Model Regulations. Specifically, in addition to the packagings authorized currently in § 173.166(e)(1), (e)(2), and (e)(3), we proposed to permit 1N2 and 1D drums, 3B2 jerricans, and 4A, 4B, 4N, and 4H1 boxes.

IV. Comments Submitted Regarding the NPRM and PHMSA's Response to Those Comments

In response to PHMSA's March 26, 2012 NPRM (77 FR 17394), PHMSA received comments from seven organizations, associations, and individuals. While the majority of commenters supported the proposals in the NPRM, some commenters had suggestions for additional revisions to the regulatory text. The comments, as submitted to this docket, may be accessed via *http://www.regulations.gov* and were submitted by the following entities:

(1) Hapag-Lloyd America; PHMSA–2010–0201–0002.

(2) United Parcel Service (UPS); PHMSA–2010–0201–0003.

(3) International Vessel Operators Dangerous Goods Association (IVODGA); PHMSA–2010–0201–0004.

(4) North American Automotive Hazardous Materials Action Committee (NAAHAC); PHMSA–2010–0201–0005.

(5) National Fire Protection Association (NFPA); PHMSA–2010–0201–0006.

(6) National Automobile Dealers Association (NADA); PHMSA–2010–0201–0007.

(7) Council on Safe Transportation of Hazardous Articles, Inc. (COSTHA); PHMSA–2010–0201–0008.

The two special permits addressed in this final rule that authorize the transportation in commerce of certain air bag inflators, air bag modules, and seat-belt pretensioners under the HMR were initially issued to members of industry associations or similar organizations. They have well established safety records, and therefore PHMSA has determined that they are excellent candidates for incorporation into the HMR. Incorporating these special permits into the HMR will eliminate the need for over 2,100 current grantees to reapply for the renewal of two special permits every four years and for PHMSA to process the renewal applications, thereby eliminating a significant paperwork burden both on industry and the government.

Below is a discussion of comments we received regarding specific provisions proposed in the NPRM, and PHMSA's position regarding those comments. As discussed above, commenters were supportive of this rulemaking, and those comments within the scope of this rulemaking are discussed below.

A. Comments on Paragraph (b) of § 173.166

Paragraph (b) of § 173.166 provides for the classification requirements of an air bag inflator, air bag module, or seat-belt pretensioner. In the NPRM, PHMSA proposed to allow manufacturers of air bag inflators, air bag modules, or seat-belt pretensioners to receive a classification of Class 9 (UN3268) to new designs that pass Test series 6(c) of the UN Manual of Tests and Criteria—currently required by Special Provision 160. We also proposed that, an air bag inflator, air bag module, or seat-belt pretensioner may be classed as Class 9 (UN3268) if the air bag inflator, air bag module, or seat-belt pretensioner design is examined and successfully tested by a person or agency (authorized testing agency) who is authorized by the Associate Administrator to perform such examination and testing of explosives under 173.56(b)(1). PHMSA received comments in support of these proposed amendments because these changes would simplify the classification process. However, commenters did provide PHMSA with some modifications to the proposed language in paragraph (b).

One commenter suggested:

We would point out that at the present time there are air bag inflator designs which utilize a flammable gas mixture, and while these devices have tested out of Class 1 they have never been included in Class 9/UN3268. They have, instead, been classified as Class/Division 2.1. While we believe it would certainly be appropriate to allow flammable gas mixtures to be classed as 1.4G if the devices did not meet the criteria for exclusion from Class 1, we do not feel that they should be included in Class 9 as they meet the characteristics of a flammable gas.

We agree with the commenters point and revised the language in paragraph (b)(1) to reflect this in this final rule.

Another commenter suggested: ''We ask that the reference to 'maximum parameters of each design' continue to be included in the regulation, as it is key to understanding that the approvals issued are not specific to individual part numbers but rather to design types.'' We agree with the commenters point and revised the language in both paragraph (b)(1) and (b)(2) to reflect this in this final rule.

Regarding § 173.166(b)(2), one commenter suggested:

We would ask the complete reference to 173.56(b)(1) be included rather than just to 173.56. This will match the similar reference contained in paragraph (b)(1) above. We are requesting this so that all parties who read both portions of the regulations are clearly pointed to 173.56(b)(1) which specifies those agencies authorized by the DOT, and particularly that they are US citizens.

We agree with the commenter's point and revised the language in paragraph (b)(2) to reflect this in this final rule.

B. Comments on Paragraph (c) of § 173.166

Paragraph (c) of § 173.166 provides for Class 9 air bag inflators, air bag modules, or seat-belt pretensioners assigned to UN3268 to be excepted from the requirement to provide the EX number on the shipping paper. As suggested by the original NAAHAC petition, the documentation requirement imposes a cost burden, but does not provide a safety benefit. PHMSA received comments in support of these proposed amendments because these changes would simplify the hazard communication process. However, commenters did provide PHMSA with some modifications to the proposed language in paragraph (c).

One commenter suggested: ''We find the wording of this paragraph extremely confusing, and we would ask that the language be made clearer to ensure compliance.'' Another commenter suggested that: ''PHMSA may simply be able to eliminate the proposed 173.166(c)(1) and create a new 173.166(c) by adapting the language found in the proposed 173.166(c)(2).'' After reviewing the regulatory text from the NPRM, we agree partially with the commenters' issue and revised the language in paragraph (c) to reflect this in this final rule.

C. Comments on Paragraph (d) of § 173.166

Paragraph (d) of § 173.166 provides for certain exceptions for Class 9 air bag inflators, air bag modules, or seat-belt pretensioners. In the NPRM, PHMSA proposed to clarify that a safety restraint device that is installed in a vehicle or vehicle component is not subject to the HMR. PHMSA determined that this change makes it clear that the exception will continue to apply to Class 9, UN3268 materials that are not approved by the Associate Administrator. PHMSA received comments in support of these proposed amendments because these changes would simplify the exceptions provided. However, commenters did provide PHMSA with some modifications to the proposed language in paragraph (d).

Regarding § 173.166(d)(1), one commenter suggested:

We are asking for the inclusion of the term 'inflator' in the exceptions so as to harmonize with the 17th Revised Edition of the Recommendations on the Transport of Dangerous Goods, UN Model Regulations, Special Provision 289. We also feel that it is important to clarify that in order to utilize the exception offered in this paragraph in the U.S., the devices must have been classified as Class 9 per the 49 CFR. This is clear for the 1.4G's but not for the Class 9's. Additionally, we commend the DOT for clarifying that this relief applies to both the Class 9 and 1.4G devices.

We agree with the commenters points and revised the language in paragraph (d)(1) to reflect this in this final rule.

Regarding § 173.166(d)(2), one commenter suggested: ''During previous discussions with PHMSA in the summer of 2011, this topic was addressed informally and the industry has been operating within this policy since that time. We strongly feel that placing this into the regulation significantly enhances understanding and compliance.'' After reviewing the language provided, we agree with the commenters point and revised the language in paragraph (d)(2) to reflect this in this final rule.

Regarding § 173.166(d)(4), one commenter suggested:

This paragraph is the basis of the special permit DOT–SP 12332, which expanded upon this exception and offered additional packaging options. Both this paragraph and the areas where DOT–SP 12332 were incorporated into the regulation should address both disposal and recycling, not just recycling. This should apply to inflators, modules and pretensioners of either Class 9 or 1.4G.

We agree with the commenter's point and revised the language in paragraph (d)(4) to reflect this in this final rule.

Also, the same commenter suggested: 'We do not feel that the terms 'Reuse' or 'Reused' should be substituted for ''Recycle'' or ''Recycled''. The Automotive Safety Council (formerly Automotive Occupant Restraints Council—AORC) has gone on record many times against the reuse of airbags.'' We appreciate the feedback since we asked the question in the NPRM regarding using the term ''reuse'' v. ''recycled,'' and we agree with the commenter and will not be revising the language in paragraph (d)(4) in this final rule.

A commenter suggested: ''While we do feel it is helpful to have the word 'Recycled' following the basic description when shipping to a recycling location, we hope that the requirement to have the word 'waste' in association with the basic description will only come into play when required by 172.101(c)(9).'' We do agree with the commenter's point and note that while it doesn't affect the regulatory text in this final rule, shippers should use the word ''waste'' when required by § 172.101(c)(9).

Lastly, another commenter countered a previous point with:

In addition to this possible streamlining of the text, PHMSA may also be able to simplify the requirements for the shipment of recycled Air bag inflators, Air bag modules and Seat belt pretensioners that are assigned to Class 9. The current proposal retains the requirement to include the word 'Recycled' on the shipping paper immediately after the basic description. However, we submit there is no need for this additional text. The function of the word 'Recycled' is presumably to explain the absence of the EX number from a shipping paper. But the very purpose of the simplified procedures for Class 9 Air bag inflators, Air bag modules and Seat belt pretensioners appears to accomplish the same goal. By proposing to eliminate the need for inclusion of the EX number on a shipping paper associated with a Class 9 shipment of these articles, PHMSA eliminates the need to distinguish recycled Air bag inflators, Air bag modules and Seat belt pretensioners from those sent in new condition. We believe that with the changes proposed in Docket HM–254, there is no value in requiring the word 'Recycled' to appear on the shipping paper. It appears that PHMSA could simply delete the text of § 173.166(d)(4), and we respectfully requests that PHMSA consider this change.

While we do appreciate the feedback regarding the recycling provisions, we disagree on the statement that they provide no further value to the HMR; and, therefore we will not be further revising the language in paragraph (d)(4) in this final rule.

D. Comments on Paragraph (e) of § 173.166

Paragraph (e) of § 173.166 permits different types of packagings for Class 9 air bag inflators, air bag modules, or seat-belt pretensioners. In the NPRM, PHMSA proposed to authorize the use of non-DOT specification, reusable containers manufactured from high strength plastic, metal, or other suitable material, or other dedicated handling devices, for transportation of air bag inflators, air bag modules, and seat-belt pretensioners. PHMSA also proposed to authorize additional packaging alternatives for air bag inflators, air bag modules, and seat-belt pretensioners that have been removed from, or were intended to be used in, a motor vehicle that meets the requirements for use in the United States. PHMSA received comments in support of these proposed amendments because these changes would expand the options for shipping these products. However, commenters did provide PHMSA with some modifications to the proposed language in paragraph (e).

Regarding the introductory text of § 173.166(e), one commenter suggested:

During a meeting in 2011 with PHMSA, the Supplier Regulatory Workgroup of NAAHAC

explained that several of our OEMs (customers), have had difficulty with this paragraph in the past. The current wording of the regulation and the PHMSA's proposed wording do not clearly differentiate between the specification packagings in paragraphs 173.166(e)(1), (2) and (3) and the non-specification packagings in (4). With the changes suggested here any confusion would be eliminated. We are in complete agreement with the last sentence of this paragraph, as we believe it brings clarification to the issue of packaging dependent classifications.

After reviewing the introductory text to paragraph (e), we agree with the commenters point and revised the language to reflect this in this final rule.

Regarding § 173.166(e)(4)(i), one commenter suggested: ''The industry feels that the use of returnable packagings has proven quite safe over the many years of shipping Class 9/UN3268 products, and that there should be no limitations to the use of returnables that meet the performance criteria called out in 173.166(e)(4)(A)-(C).'' While we understand the commenter's point of view, after reviewing the issue, we have determined to keep the language as is in this final rule.

Regarding § 173.166(e)(4)(ii), one commenter suggested:

DOT–SP 13996 allowed for this type of activity—it was designed to accommodate both returns of production shipments from the OEM's to the supplier and for sequencers (intermediate handlers) to receive/open/store/re-pack and ship parts on to the customer. Without the change suggested here, or something similar, this new regulation is actually more restrictive than DOT–SP 13996.

We agree with the commenters point and revised the language in paragraph (e)(4)(ii) to reflect this in this final rule.

Regarding § 173.166(e)(5), one commenter suggested:

Since expiration dates for EX approvals are not required, it is unclear why specific approvals are being targeted for what we assume to be re-testing. In order for products to be shipped in packagings previously approved by the Associate Administrator, neither the products nor the packagings may be changed. The testing previously performed and the results would, therefore, not have changed. We strongly disagree with this restriction, and ask for its removal.

While we understand the commenters viewpoint, the intent of paragraph (e)(5) was not to single out specific approvals for re-testing but to continue to permit previously approved air bag inflators, air bag modules, or seat-belt pretensioners to remain in circulation. However, we do recognize the confusion that an end-date may cause industry and we agree with the commenters point and revised the language in paragraph (e)(5) to reflect this in this final rule.

Regarding § 173.166(e)(6), one commenter suggested:

As noted above, DOT–SP 12332 was intended to be an expansion of the packaging methods allowed for disposal or recycling. We would ask that a clear reference to both be included. Additionally, DOT–SP 12332 does not include 1.4G product, so we have excluded the 1.4G/UN0431 product here as well.

We agree with the commenters point and revised the language in paragraph (e)(6) to reflect this in this final rule.

Regarding § 173.166(e)(6)(i), one commenter suggested:

When DOT–12332 was originally issued, the inclusion of the steel drum packaging option was based on testing performed in steel drums with a void in the top of the drum—no inner packagings, no cushioning. The void area, in combination with the lid ventilation, is intended to provide space for the appropriate venting of gases in the case of a fire without rupture of the drum. Obviously this would allow for movement of the devices inside the drum if there were rough handling, but the safety benefit of the void far outweighs concerns about movement of devices. Movement of devices inside a steel drum would not constitute a safety hazard—not regarding spillage or inadvertent operation.

We agree with the commenters point and revised the language in paragraph (e)(6)(i) to reflect this in this final rule.

E. Comments on Paragraph (g) of § 173.166

Paragraph (g) of § 173.166 provides the recordkeeping requirements for Class 9 air bag inflators, air bag modules, or seat-belt pretensioners. In the NPRM, PHMSA proposed to require record retention requirement to ensure that a detailed test report of each air bag inflator, air bag module, or seat-belt pretensioner design is maintained and available for the useful life of the device. As such, these records would be used to verify the accuracy and validity of the tests and classification recommendation. PHMSA received comments in support of these proposed amendments because these changes would allow for better accountability of tracking test records. However, commenters did provide PHMSA with some modifications to the proposed language in paragraph (g).

Regarding § 173.166(g), one commenter suggested: ''While we see the need for the authorized testing agency to maintain test reports for a considerable period of time after testing, we feel it should be the manufacturer's responsibility to keep track of the duration of manufacture of a design type and maintain the test report for 15 years beyond manufacture.'' We agree with the commenters point in that a revision is needed to more clearly articulate a timeline for each stakeholder's recordkeeping requirements, and revised the language in paragraph (g) to reflect this in this final rule.

F. Additional Comments Outside of § 173.166

PHMSA also received some comments that did not directly pertain to the proposed regulatory text from the NPRM; however, is relevant to the discussion of air bag inflators, air bag modules, or seat-belt pretensioners. While the majority of commenters supported the proposals in the NPRM, some commenters had suggestions for new regulatory text not proposed in the NPRM.

Possible Revision to § 171.23(b)(2)

One commenter suggested:

To ensure that the exception from including the EX number on the shipping paper for Class 9 air bag inflators, air bag modules, or seatbelt pretensioners is crystal clear for international shipments, we recommend revising § 171.23(b)(2) to add the following statement at the end of the paragraph: This requirement does not apply to Class 9 air bag inflators, air bag modules, or seatbelt pretensioners.

While we do understand the commenters point of view and also strive to be as clear as possible, we believe the current text in § 171.23(b)(2) is sufficient. We believe that the current language directing shippers to § 173.166(c) is still appropriate since § 173.166(c)(1) discusses the requirements for 1.4G air bag inflators, air bag modules, or seat-belt pretensioners, while § 173.166(c)(2) excepts Class 9 air bag inflators, air bag modules, or seat-belt pretensioners from the EX number requirements. Therefore, the text in § 171.23(b)(2) will remain as currently written.

Possible Revision to § 172.102(c)(1)

Upon further PHMSA review, we noticed that there was no direct connection to the exception provided in § 173.166(d)(1) for air bag inflators, air bag modules, or seat-belt pretensioners that have been classed as a Division 1.4G and approved by the Associate Administrator and are installed in a motor vehicle, aircraft, boat or other transport conveyance or its completed components, such as steering columns or door panels. To rectify this, we are revising Special Provision 161 in § 172.102(c)(1) to direct stakeholders to § 173.166(d)(1) so that they are aware that these installed or completed components are not subject to the requirements of this subchapter

provided they comply with § 173.166(d)(1).

Possible Revision to § 175.33(a)

Another commenter suggested:

We believe revisions in Part 175 are needed to eliminate misunderstanding related to information required on the NOTOC. We are aware that PHMSA already believes that for an air carrier, the EX number for UN3268 need not be shown on the NOTOC. However, the regulations governing the NOTOC are, by PHMSA's own admission, ambiguous enough that UPS urges the agency to include a clarification in any Final Rule for Docket HM–254. Such a revision is discussed in a March 28, 2011 letter of interpretation (10–0194), in which PHMSA explains that it did not intend the EX number to be required in the NOTOC for shipments of UN3268 and mentions a future rulemaking in which a clarification will be proposed. Because there are numerous Class 9 Air bag inflators, Air bag modules and Seat belt pretensioners for which EX numbers have been issued, the HMR needs to be clear as to whether the EX number is a required part of the NOTOC. We believe that Docket HM–254 presents the needed opportunity for making this clarification to the requirements for the NOTOC. Prompt action is required, because FAA inspectors, perhaps unaware of PHMSA's view on the matter, have assessed civil penalties for missing EX numbers on the NOTOC. A simple adjustment to 49 CFR 175.33 would establish that the EX number for UN3268 is not required to be displayed on the NOTOC. In order to avoid any additional misunderstandings, a similar statement should be included explaining that the word 'Recycled' also is not required on the NOTOC. For example, a new subsection 175.33(a)(12) could be added, such as the following: (12) For articles classed as UN3268, notwithstanding the previous assignment of an EX number to any Air bag inflator, Air bag module or Seat belt pretensioner, the EX number is not required to be displayed on the notification of pilot-in-command. For a recycled Air bag inflator, Air bag module or Seat belt pretensioner assigned to Class 9, the word 'Recycled' is not required to be shown on the notification of pilot-in-command.

We appreciate the point that the commenter made, but this final rule specifically provides the exception in § 173.166(c)(2) where Class 9 air bag inflators, air bag modules, or seat-belt pretensioners are excepted from the EX number requirements on shipping papers. This specific revision to the way § 173.166(c) currently reads makes it clear that moving forward there are no EX numbers on Class 9 shipping papers. Therefore, the text in § 175.33(a) will remain as currently written.

V. Regulatory Analyses and Notices

A. Statutory/Legal Authority for This Rulemaking

This final rule is published under the authority of the Federal Hazardous Materials Transportation Law, 49 U.S.C. 5101 *et seq.* Section 5103(b) authorizes the Secretary to prescribe regulations for the safe transportation, including security, of hazardous material in intrastate, interstate, and foreign commerce. This final rule incorporates the provisions of two special permits regarding air bag inflators, air bag modules, and seat-belt pretensioners, which will allow shipments of these hazardous materials more quickly and efficiently, without compromising safety. Furthermore, section 5120(b) authorizes the Secretary of Transportation to ensure that, to the extent practicable, regulations governing the transportation of hazardous materials in commerce are consistent with standards adopted by international authorities.

B. Executive Order 13610, Executive Order 13563, Executive Order 12866, and DOT Regulatory Policies and Procedures

This final rule is not considered a significant regulatory action under section 3(f) of Executive Order 12866 and was not reviewed by the Office of Management and Budget (OMB). The final rule is not considered a significant rule under the Regulatory Policies and Procedures order issued by the Department of Transportation [44 FR 11034]. However, for those stakeholders who might be interested, a regulatory impact assessment (RIA) was developed for this final rule and is available for review in the public docket for this rulemaking.

Executive Order 13563 is supplemental to and reaffirms the principles, structures, and definitions governing regulatory review that were established in Executive Order 12866 Regulatory Planning and Review of September 30, 1993. Executive Order 13563, issued January 18, 2011, notes that our nation's current regulatory system must not only protect public health, welfare, safety, and our environment but also promote economic growth, innovation, competitiveness, and job creation.[2] Further, this executive order urges government agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public. In addition, federal agencies are asked to periodically review existing significant regulations, retrospectively analyze rules that may be outmoded, ineffective, insufficient, or excessively burdensome, and modify, streamline, expand, or repeal regulatory requirements in accordance with what has been learned.

Executive Order 13610, issued May 10, 2012, urges agencies to conduct retrospective analyses of existing rules to examine whether they remain justified and whether they should be modified or streamlined in light of changed circumstances, including the rise of new technologies.[3]

By building off of each other, these three Executive Orders require agencies to regulate in the ''most cost-effective manner,'' to make a ''reasoned determination that the benefits of the intended regulation justify its costs,'' and to develop regulations that ''impose the least burden on society.''

In this final rule, PHMSA is amending the HMR to incorporate alternatives this agency has permitted under widely used and longstanding special permits and competent authority approvals with established safety records that we have determined meet the safety criteria for inclusion in the HMR. Incorporation of these provisions into the regulations of general applicability will provide shippers and carriers with additional flexibility to comply with established safety requirements, thereby reducing transportation costs and increasing productivity. In addition, the final rule will reduce the paperwork burden on industry and this agency resulting from putting an end to the need for renewal applications for special permits. Taken together, the provisions of this final rule will promote the continued safe transportation of hazardous materials while reducing transportation costs for the industry and administrative costs for the agency.

PHMSA considered five potential regulatory alternatives.

- *Alternative 1: No Action.* Under this option, PHMSA would continue existing requirements for Special Permits to air bag inflators, air bag modules, and seat-belt pretensioners by taking no action. However, PHMSA believes that there are considerable benefits to taking action provided that a high level of safety is maintained. Furthermore, all costs and benefits are relative to this option.
- *Alternative 2: Expanding Provisions of DOT–SP 13996.* In incorporating the provisions of DOT–SP 13996, the final rule authorizes the use of certain types of packaging, as long as the transportation is conducted by private carrier or contract carrier. One alternative would be to extend that packaging options to common carriers

[2] See *http://www.whitehouse.gov/the-press-office/2011/01/18/improving-regulation-and-regulatory-review-executive-order.*

[3] See *http://www.gpo.gov/fdsys/pkg/FR-2012-05-14/pdf/2012-11798.pdf.*

as well. However, while this option may grant additional regulatory relief to industry beyond that being provided by the final rule, we believe that it does so at the expense of safety and is, therefore, not viable.

• *Alternative 3: Expanding Provisions of DOT–SP 12332.* In incorporating the provisions of DOT–SP 12332, the final rule authorizes the use of certain types of packaging but limits that option to products between transported domestically on highways. A second alternative would be to allow such packaging to be used when such products are transported by air or rail. However, while this option may grant additional regulatory relief to industry beyond that being provided by the final rule, we believe that it does so at the expense of safety and is, therefore, not viable.

• *Alternative 4: Relaxing New Packaging Options.* The new packaging options being permitted in this final rule could be further relaxed, or industry could be permitted to adhere to voluntary packaging standards for Class 9 airbags and seat-belt pretensioners. However, while this option may grant additional regulatory relief to industry beyond that being provided by the final rule, we believe that it does so at the expense of safety and is, therefore, not viable.

• *Alternative 5: Incorporate Two Special Permits and Reduce Burdensome/Extraneous Provisions.* Under this option, PHMSA would incorporate DOT–SP 13996 and DOT–SP 12332, and streamline the classification process for Class 9 air bag inflators, air bag modules, and seat-belt pretensioners. More specifically, the revisions include five regulatory initiatives: (1) Modifies the approval process and documentation requirements associated with classifying air bag inflators, air bag modules, and seat-belt pretensioners; (2) incorporates provisions of DOT–SP 12332 into the HMR by excepting Class 9 air bag inflators, air bag modules, or seat-belt pretensioners assigned to UN3268 from the requirement to provide the EX number on the shipping paper; (3) a simple clarification that a safety restraint device that is installed in a vehicle or vehicle component is not subject to the HMR; (4) incorporates provisions of DOT–SP 13996 into the HMR by authorizing the use of non-DOT specification, reusable containers manufactured from high-strength plastic, metal, or other suitable material, or other dedicated handling devices, for transportation of air bag inflators, air bag modules, and seat-belt pretensioners; and (5) permits several additional types of packaging to maintain alignment with the 17th revised edition of the UN Model Regulations.

The final rule adopts Alternative 5, ''Incorporate Two Special Permits and Reduce Burdensome/Extraneous Provisions.'' By amending the HMR with these requirements, PHMSA will be incorporating the provisions contained in two widely used or longstanding special permits that have established safety records. These revisions are intended to eliminate the need for future renewal requests, thus reducing paperwork burdens and facilitating commerce while maintaining an equivalent level of safety.

Current Compliance Costs

As noted previously, current compliance costs consist primarily of paperwork requirements for both industry and the Government. Paperwork burden is encountered in three different areas: in the class approval process, in the granting of special permits, and in providing the required information on shipping papers.

Based upon a review of our special permits and general approvals databases, it is estimated that PHMSA reviews approximately 200 applications per year for classification approvals, other general approvals, and special permits associated with Class 9 air bags inflators, air bag modules, and seat-belt pretensioners. Assuming that PHSMA spends $414 per application,[4] it's estimated the annual cost to the Government to be $82,800.

Industry also incurs a cost for preparing and submitting these applications, as well as retaining records. According to the Institute for the Makers of Explosives, industry spends approximately $825 to apply for each renewal, party status, or modification of a special permit that deals with the transportation of bulk explosives using multipurpose bulk trucks. Using this figure as a proxy for the cost to industry for preparing and submitting applications regarding air bag inflators, air bag modules, and seat-belt pretensioners, it's estimated the annual cost to the automobile industry to be $165,000. Grantees are currently required to retain a copy of their application and all supporting documentation, but these recordkeeping costs are assumed to be negligible; even at 1 cent per page per year and 100 pages of documentation, such costs would only amount to $200 per year.

The biggest cost to industry is assumed to be the cost of verifying and then transcribing the EX number on shipping papers. In its petition, NAAHAC estimated this cost to be approximately $890K per year.

Timeframe for the Analysis

PHMSA estimates that the economic effects of this rulemaking, once finalized and adopted, will be sustained for many years into the future. Notwithstanding this, because of the difficulty of and uncertainty associated with forecasting industry effects into the far future, PHMSA assumes a 10-year time period to quantify and monetize the costs and benefits and demonstrate the net effects of the proposal.

Costs of the Final Rule

Costs to the public and PHMSA accrue from the factors associated with the requirements set forth in the regulations and the enforcement methods and procedures adopted by the Federal Government for carrying out the objectives of the rules and regulations. Examples of costs include (but are not limited to): Goods and services required to comply with the regulation; measures of productivity, such as losses related to work time; increases in incident-related death, illness, or disability that can be attributed to the rule; and payments to standard-setting organizations for the standards.

In this analysis, we consider two different costs of the rule. The primary cost is likely to be the increased risk associated with streamlining the class approval process for air bags and seat-belt pretensioners. Removing DOT's review of the explosives lab test results increases the chance that a product that should be designated as Class 1.4 is designated as Class 9. It is difficult to quantify this cost, but we do not believe it to be significant for two reasons. A review of PHMSA's approvals database finds that PHMSA has denied or rejected only 1.7 percent of UN3268 approval applications it has received. These denials include requests for consideration that fall outside the scope of the test result and only 0.5 percent was denied for technical reasons. Therefore, the chance of an incorrect class assignment is likely to be less than 0.5 percent. Second, a review of PHMSA's incident database shows that there have only been four incidents involving properly packaged and declared UN3268 air bags or seat-belt pretensioners since 1996. Minimal damages were reported for all four incidents. Therefore, even if a product

[4] This figure is based on an estimate provided by the Special Permits and Approvals Division regarding the cost of reviewing special permits for bulk explosives (email dated July 17, 2012).

is incorrectly assigned as Class 9, the risks associated with it will be small.

The other costs associated with the rule are negligible due to minor revisions to the recordkeeping requirements. People who test and examine air bag inflators, air bag modules, or seat-belt pretensioners will be required to provide the manufacturer a detailed report on each tested design. Key components of the report include a description of the design, an explanation of the tests performed and results, and a recommended classification for tested designs. The manufacturer must retain the report for as long as the design is in production and for 15 years thereafter. Additionally, the manufacturer must make the report available to DOT officials upon request. This record retention requirement ensures that a detailed test report of each air bag inflator, air bag module, or seat-belt pretensioner design is maintained and available for the useful life of the device. These records may be used to verify the accuracy and validity of the tests and classification recommendation.

It should be noted that PHMSA currently requires industry to retain a copy of the classification application, all supporting documentation, and a copy of the approval, as well to make such materials available to DOT upon request. So while there may be a marginal increase in the amount of documentation retained, we believe the cost will be negligible.

Benefits of the Final Rule

Typically the benefits of rules are derived from their health and safety factors. Since the Federal Regulatory Agencies often design regulation to reduce risks to life, evaluation of the benefits of reducing fatality risks can be the key part of the analysis. Examples of benefits in the form of reduced expenditures include (but are not limited to): Private-sector savings, Government administrative savings, gains in work time, and reduced costs of compliance. In this case, most of the benefits from the rule will be derived from reduced compliance costs and Government workload.

As discussed previously, PHMSA is currently incurring an estimated $82,800 per year to process and review special permits and approvals associated with Class 9 air bags inflators, air bag modules, and seat-belt pretensioners. As shown above, industry incurs an estimated $165,000 per year to prepare and submit applications for special permits and approvals, and $890,000 per year to provide the EX number on shipping papers. Combined, these costs total $1,137,800 per year. Since the objective of the final rule is to eliminate these costs, the benefits that can be achieved are estimated to be $1,137,800 per year.

It should be noted that reductions in the costs of transporting air bag inflators, air bag modules, and seat-belt pretensioners could be passed on to automobile manufacturers, which would give rise to additional demand and lead to further implementation of the technology within the motor vehicle fleet. Such a possibility would presumably contribute to a reduction in injuries and fatalities, a benefit we are not able to quantify but believe to be small, given the small savings being realized.

Summary of Discounted Net Benefits of the Final Rule

The net benefits of the final rule are calculated by subtracting the costs from the benefits. Since the costs are assumed to be negligible, the first-year net benefits are estimated to be $1.14 million. Based upon the market analysis presented in Section 2.2 of the RIA, we assume these benefits will grow at an annual average rate of 5 percent.[5] Calculating the present value of this net benefit stream over a 10-year forecast horizon produces an estimate that ranges between $10 million and $12 million at 7 percent and 3 percent discount rates, respectively.

Overall, in this rulemaking effort we evaluated alternative proposals and ultimately chose to finalize the amendments presented in the NPRM. The amendments from this final rule promote retrospective analysis to modify and streamline existing requirements that are outmoded, ineffective, insufficient, or excessively burdensome.

C. Executive Order 13132

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13132 (''Federalism''), and the President's memorandum on ''Preemption'' published in the **Federal Register** on May 22, 2009 (74 FR 24693). This final rule would preempt State, local, and Indian tribe requirements but does not amend any regulation that has substantial direct effects on the States, the relationship between the national government and the States, or the distribution of power and responsibilities among the various levels of government. Therefore, the consultation and funding requirements of Executive Order 13132 do not apply.

The Federal hazardous materials transportation law, 49 U.S.C. 5101–5128, contains an express preemption provision (49 U.S.C. 5125 (b)) that preempts State, local, and Indian tribe requirements on the following subjects:

(1) The designation, description, and classification of hazardous materials;

(2) The packing, repacking, handling, labeling, marking, and placarding of hazardous materials;

(3) The preparation, execution, and use of shipping documents related to hazardous materials and requirements related to the number, contents, and placement of those documents;

(4) The written notification, recording, and reporting of the unintentional release in transportation of hazardous material; and

(5) The design, manufacture, fabrication, marking, maintenance, recondition, repair, or testing of a packaging or container represented, marked, certified, or sold as qualified for use in transporting hazardous material.

This final rule addresses subject areas (1), (3), and (5), above. With the adoption of this final rule, this rulemaking would preempt any State, local, or Indian tribe requirements concerning these subjects unless the non-Federal requirements are ''substantively the same'' as the Federal requirements. Furthermore, this final rule is necessary to update, clarify, and provide relief from regulatory requirements.

Federal hazardous materials transportation law provides at § 5125 (b)(2) that, if DOT issues a regulation concerning any of the covered subjects, DOT must determine and publish in the **Federal Register** the effective date of Federal preemption. The effective date may not be earlier than the 90th day following the date of issuance of this final rule and not later than two years after the date of issuance. PHMSA has determined that the effective date of Federal preemption for these requirements will be one year from the date of publication of this final rule in the **Federal Register**.

D. Executive Order 13175

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13175 (''Consultation and Coordination with Indian Tribal Governments'').

[5] In its recent report, ''Global Automotive Airbag Market 2011–2015,'' TechNavio is forecasting that the global airbag market will grow at a compounded annual average annual growth rate of 11.54 percent. Given the maturity of the airbag market in the United States, we believe the growth rate in the U.S. market will be less than the global growth rate and therefore assumed 5 percent for the U.S. market.

Because this final rule does not significantly or uniquely affect the communities of the Indian tribal governments and does not impose substantial direct compliance costs, the funding and consultation requirements of Executive Order 13175 do not apply.

E. Regulatory Flexibility Act, Executive Order 13272, and DOT Procedures and Policies

The Regulatory Flexibility Act (5 U.S.C. 601 et seq.) requires an agency to review regulations to assess their impact on small entities unless the agency determines the rule is not expected to have a significant impact on a substantial number of small entities. The final rule will not impose increased compliance costs on the regulated industry. Rather, the final rule incorporates current approval procedures for the transportation of air bag inflators, air bag modules, and seat-belt pretensioners into the HMR and provides additional flexibility for persons seeking to obtain such approval. In addition, the rulemaking excepts certain shipments from the specific documentation requirements of the HMR; these exception provisions will increase shipping options and reduce shipment costs. Overall, this final rule should reduce the compliance burden on the regulated industry without compromising transportation safety. Therefore, we certify that this final rulemaking will not have a significant or negative economic impact on a substantial number of small entities, and in reality should provide positive economic benefits (i.e., reduced compliance burden) for those small entities.

Consideration of alternative proposals for small businesses. The Regulatory Flexibility Act directs agencies to establish exceptions and differing compliance standards for small businesses, where it is possible to do so and still meet the objectives of applicable regulatory statutes. In the case of hazardous materials transportation, it is not possible to establish exceptions or differing standards and still accomplish our safety objectives.

The impact of this final rule is not expected to be significant. The amendments are generally intended to provide relief to shippers, carriers, and packaging manufactures and testers, including small entities. This relief will provide positive economic benefits to shippers, carriers, and packaging manufactures and testers, including small entities however; these benefits are not at a level that can be considered economically significant.

Therefore, this final rule will not have a significant economic impact on a substantial number of small entities. This rulemaking has been developed in accordance with Executive Order 13272 (''Proper Consideration of Small Entities in Agency Rulemaking'') and DOT's procedures and policies to promote compliance with the Regulatory Flexibility Act to ensure that potential impacts of draft rules on small entities are properly considered.

F. Paperwork Reduction Act

PHMSA currently has an approved information collection under Office of Management and Budget (OMB) Control Number 2137–0051, entitled ''Rulemaking, Special Permits, and Preemption Requirements,'' with an expiration date of April 30, 2014. This final rule will result in a decrease in the annual burden and costs under OMB Control Number 2137–0051 due to amendments to incorporate provisions contained in certain widely-used or longstanding special permits that have an established safety record.

PHMSA also has an approved information collection under OMB Control Number 2137–0557, entitled ''Approvals for Hazardous Materials,'' with an expiration date of May 31, 2014. While this final rule will result in a slight increase in the annual burden and cost to OMB Control Number 2137–0557 for the minor recordkeeping requirements under § 173.166, this final rule will result in an overall decrease in the annual burden and cost to OMB Control Number 2137–0557 due to the larger cost savings of reducing the number of approvals required by testers of air bags inflators and air bag modules.

PHMSA has an approved information collection under OMB Control Number 2137–0034, entitled ''Hazardous Materials Shipping Papers and Emergency Response.'' This final rule will result in a decrease in the annual burden and cost due to shippers no longer being required to put the EX numbers on shipping papers for air bag modules.

Under the Paperwork Reduction Act of 1995, no person is required to respond to an information collection unless it has been approved by OMB and displays a valid OMB control number. Section 1320.8(d), title 5, Code of Federal Regulations requires that PHMSA provide interested members of the public and affected agencies an opportunity to comment on information and recordkeeping requests.

This final rule identifies revised information collection requests that PHMSA will submit to OMB for approval based on the requirements in this final rule. PHMSA has developed burden estimates to reflect changes in this rule and estimates that the information collection and recordkeeping burdens would be revised as follows:

OMB Control No. 2137–0051:
Decrease in Annual Number of Respondents: 45
Decrease in Annual Responses: 45
Decrease in Annual Burden Hours: 360
Decrease in Annual Burden Costs: $18,000.00

OMB Control No. 2137–0557:
Decrease in Annual Number of Respondents: 207
Decrease in Annual Responses: 207
Decrease in Annual Burden Hours: 569.25
Decrease in Annual Burden Costs: $11,385.00

OMB Control No. 2137–0034:
Decrease in Annual Number of Respondents: 207
Decrease in Annual Responses: 15,500
Decrease in Annual Burden Hours: 285.33
Decrease in Annual Burden Costs: $5,706.60

PHMSA specifically requested comments on the information collection and recordkeeping burdens associated with developing, implementing, and maintaining these requirements for approval under the proposed rule; and we did not receive any comments disputing these numbers. Therefore, we are proceeding as is with these numbers.

G. Regulation Identifier Number (RIN)

A regulation identifier number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

H. Unfunded Mandates Reform Act of 1995

This final rule does not impose unfunded mandates under the Unfunded Mandates Reform Act of 1995. It does not result in costs of $141.3 million or more to either state, local or tribal governments, in the aggregate, or to the private sector, and is the least burdensome alternative that achieves the objective of the rule.

I. Environmental Assessment

The National Environmental Policy Act, 42 U.S.C. 4321–4375, requires that

federal agencies consider the consequences of major Federal actions and prepare a detailed statement on actions significantly affecting the quality of the human environment. The Council on Environmental Quality (CEQ) regulations require federal agencies to conduct an environmental review considering: (1) The need for the action; (2) alternatives to the action; (3) probable environmental impacts of the action and alternatives; and (4) the agencies and persons consulted during the consideration process (40 CFR 1508.9(b)).

Description of Action

Docket No. PHMSA–2010–0201 (HM–254), Final Rule

Transportation of hazardous materials in commerce is subject to requirements in the HMR, issued under authority of Federal hazardous materials transportation law, codified at 49 U.S.C. 5001 *et seq.* To facilitate the safe and efficient transportation of hazardous materials in international commerce, the HMR provide that both domestic and international shipments of hazardous materials may be offered for transportation and transported under provisions of the international regulations.

Purpose and Need

Promote regulatory relief for the classification and shipment of air bag inflators, air bag modules, and seat-belt pretensioners while maintaining safety. Respond to rulemaking petitions and provide efficiencies available to special permit holders to the air bag inflator, air bag module, and seat-belt pretensioner industry.

Alternatives Considered

No Action Alternative (1): Leave the previously-listed provisions in the HMR as is.

Alternative (2): Go forward with the proposed amendments to the HMR in the NPRM.

Our goal is to update, clarify and provide relief from certain existing regulatory requirements to promote safer transportation practices, eliminate unnecessary regulatory requirements, finalize outstanding petitions for rulemaking, and facilitate international commerce. Therefore, we rejected the no-action alternative and selected alternative 2.

Environmental Consequences

Hazardous materials are substances that may pose a threat to public safety or the environment during transportation because of their physical, chemical, or nuclear properties. The hazardous materials regulatory system is a risk management system that is prevention oriented and focused on identifying a hazard and reducing the probability and quantity of a hazardous materials release. Hazardous materials are categorized by hazard analysis and experience into hazard classes and packing groups. The regulations require each shipper to classify a material in accordance with these hazard classes and packing groups; the process of classifying a hazardous material is itself a form of hazard analysis. Further, the regulations require the shipper to communicate the material's hazards by identifying the hazard class, packing group, and proper shipping name on shipping papers and with labels on packages and placards on transport vehicles. Thus, the shipping paper, labels, and placards communicate the most significant findings of the shipper's hazard analysis. Most hazardous materials are assigned to one of three packing groups based upon its degree of hazard, from a high hazard Packing Group I material to a low hazard Packing Group III material. The quality, damage resistance, and performance standards for the packagings authorized for the hazardous materials in each packing group are appropriate for the hazards of the material transported.

Under the HMR, hazardous materials are transported by aircraft, vessel, rail, and highway. The potential for environmental damage or contamination exists when packages of hazardous materials are involved in transportation incidents. The need for hazardous materials to support essential services means transportation of highly hazardous materials is unavoidable. However, these shipments frequently move through densely populated or environmentally sensitive areas where the consequences of an incident could be loss of life, serious injury, or significant environmental damage. The ecosystems that could be affected by a hazardous materials release during transportation include atmospheric, aquatic, terrestrial, and vegetal resources (for example, wildlife habitats). For the most part, the adverse environmental impacts associated with releases of most hazardous materials are short term impacts that can be reduced or eliminated through prompt clean up and decontamination of the accident scene.

When developing potential regulatory requirements, PHMSA evaluates those requirements to consider the environmental impact of each amendment. Specifically, PHMSA evaluates the: (1) Risk of release and resulting environmental impact; (2) risk to human safety, including any risk to first responders; (3) longevity of the packaging; and (4) if the proposed regulation would be carried out in a defined geographic area, the resources, especially any sensitive areas, and how they could be impacted by any proposed regulations.

In this final rule, PHMSA revised the regulations to incorporate the terms of two special permits into the HMR. The revisions in this final rule involve the transportation of air bag inflators, air bag modules, or seat-belt pretensioners that have been classed as UN3268, miscellaneous hazardous materials (Class 9) and UN0431, Articles, pyrotechnic *for technical purposes,* Division 1.4G.

The Class 9 classification indicates that the material presents a hazard during transportation (but which does not meet the definition of any other hazard class in the HMR), a Class 9 material ranks last in all items regulated by the U.S. DOT in terms of hazard precedence and risk. The revisions in this final rule reflect that fact and will reduce the unnecessary burdens on not just the offerors of these UN3268 materials, but reduce PHMSA's own administrative costs from reviewing unnecessary approvals and special permits.

A Class 1 classification indicates that the material is any substance or article, including a device, which is designed to function by explosion (i.e., an extremely rapid release of gas and heat) or which, by chemical reaction within itself, is able to function in a similar manner even if not designed to function by explosion. The term explosive may also include a pyrotechnic substance or article, depending on its characteristics. The unique properties of Class 1 materials require them to be classed and approved in accordance with § 173.56 of the HMR. The revisions in this final rule reflect that fact and will still require Division 1.4G's to be classified by explosive test labs and submitted to PHMSA for review and issuance of EX number approvals.

The primary environmental risk associated with streamlining the class approval process for air bags and seat-belt pretensioners is misclassification of devices that should be designated as Class 1.4G could be designated as Class 9. Removing DOT's review of the explosives lab test results increases this risk. It is difficult to quantify this risk, but we do not believe it to be significant for two reasons. A review of PHMSA's approvals database finds that PHMSA has denied or rejected only 1.7 percent of UN3268 approval applications it has

received. These denials include requests for consideration that fall outside the scope of the test result and only 0.5 percent was denied for technical reasons. Therefore, the chance of an incorrect class assignment is likely to be less than 0.5 percent. Second, a review of PHMSA's incident database shows that there have only been four incidents involving properly packaged and declared UN3268 air bags or seat-belt pretensioners since 1996. Minimal damages were reported for all four incidents. Therefore, even if a product is incorrectly assigned as Class 9, the risks associated with it will be small.

In considering the potential environmental impacts of the final action, PHMSA does not anticipate that the incorporation of the listed special permits will result in any significant impact on the human environment because the process through which special permits are issued requires the applicant to demonstrate that the alternative transportation method or packaging proposed provides an equivalent level of safety as that provided in the HMR. PHMSA requested that commenters comment on foreseeable environmental impacts or risk associated with the incorporation of the proposed special permits, and we received no comments suggesting PHMSA overlooked any.

Agencies Consulted

This final rule would affect some PHMSA stakeholders, including hazardous materials shippers and carriers by highway, rail, and vessel, as well as manufacturers and test labs. PHMSA sought comment on the environmental assessment contained in the March 26, 2012, NPRM published under Docket PHMSA–2010–0201 [77 FR 17394] (HM–254) however, PHMSA did not receive any comments on the environmental assessment contained in that rulemaking. In addition, PHMSA sought comment from the following modal partners:

- Federal Aviation Administration
- Federal Motor Carrier Safety Administration
- Federal Railroad Administration
- United States Coast Guard

PHMSA did not receive any adverse comments on the amendments adopted in this final rule from these Federal Agencies.

Conclusion

PHMSA is making numerous amendments to the HMR in response to a petition for rulemaking and incorporation of two special permits. The amendments adopted in this final rule are intended to update, clarify, or provide relief from certain existing regulatory requirements to promote safer transportation practices; eliminate unnecessary regulatory requirements; finalize outstanding petitions for rulemaking; facilitate international commerce; and, in general, make the requirements easier to understand and follow.

Given that this rulemaking amends the HMR to incorporate provisions contained in certain widely-used or longstanding special permits that have an established safety record, these changes in regulation should in fact increase safety and environmental protections. Furthermore, while the net environmental impact of this rule will be positive, we believe there will be no significant environmental impacts associated with this final rule.

J. Privacy Act

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comments (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) which may be viewed at: *http://www.gpo.gov/fdsys/pkg/FR–2000–04–11/pdf/00–8505.pdf.*

K. Executive Order 13609 and International Trade Analysis

Under E.O. 13609, agencies must consider whether the impacts associated with significant variations between domestic and international regulatory approaches are unnecessary or may impair the ability of American business to export and compete internationally. In meeting shared challenges involving health, safety, labor, security, environmental, and other issues, international regulatory cooperation can identify approaches that are at least as protective as those that are or would be adopted in the absence of such cooperation. International regulatory cooperation can also reduce, eliminate, or prevent unnecessary differences in regulatory requirements.

Similarly, the Trade Agreements Act of 1979 (Pub. L. 96–39), as amended by the Uruguay Round Agreements Act (Pub. L. 103–465), prohibits Federal agencies from establishing any standards or engaging in related activities that create unnecessary obstacles to the foreign commerce of the United States. For purposes of these requirements, Federal agencies may participate in the establishment of international standards, so long as the standards have a legitimate domestic objective, such as providing for safety, and do not operate to exclude imports that meet this objective. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards.

PHMSA participates in the establishment of international standards in order to protect the safety of the American public, and we have assessed the effects of the final rule to ensure that it does not cause unnecessary obstacles to foreign trade. In this final rule, PHMSA is revising the HMR to align with international standards by: permitting several additional types of packaging to maintain alignment with the 17th revised edition of the UN Model Regulations. This amendment is intended to enhance the safety of international hazardous materials transportation through an increased level of industry compliance, ensure the smooth flow of hazardous materials from their points of origin to their points of destination, and facilitate effective emergency response in the event of a hazardous materials incident. Accordingly, this rulemaking is consistent with E.O. 13609 and PHMSA's obligations under the Trade Agreement Act, as amended.

L. National Technology Transfer and Advancement Act

The National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) directs federal agencies to use voluntary consensus standards in their regulatory activities unless doing so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g. specification of materials, test methods, or performance requirements) that are developed or adopted by voluntary consensus standard bodies. This final rule does not involve a technical standard; therefore, there are no issues in this rulemaking that comprise the National Technology Transfer and Advancement Act of 1995.

List of Subjects

49 CFR Part 172

Education, Hazardous materials transportation, Hazardous waste, Labeling, Markings, Packaging and containers, Reporting and recordkeeping requirements.

49 CFR Part 173

Hazardous materials transportation, Packaging and containers, Radioactive materials, Reporting and recordkeeping requirements, Uranium.

In consideration of the foregoing, PHMSA is amending 49 CFR Chapter I as follows:

PART 172—HAZARDOUS MATERIALS TABLE, SPECIAL PROVISIONS, HAZARDOUS MATERIALS COMMUNICATIONS, EMERGENCY RESPONSE INFORMATION, TRAINING REQUIREMENTS, AND SECURITY PLANS

■ 1. The authority citation for part 172 is revised to read as follows:

Authority: 49 U.S.C. 5101–5128, 44701; 49 CFR 1.81, 1.96 and 1.97.

■ 2. In § 172.102 in paragraph (c)(1), special provision 161 is revised to read as follows:

§ 172.102 Special provisions.

* * * * *

(c) * * *

(1) * * *

161 For domestic transport, air bag inflators, air bag modules or seat-belt pretensioners that meet the criteria for a Division 1.4G explosive must be transported using the description, ''Articles, pyrotechnic *for technical purposes,''* UN0431. See § 173.166(d)(1) of this subchapter for an exception regarding air bag inflators, air bag modules, or seat-belt pretensioners that are installed in a motor vehicle, aircraft, boat or other transport conveyance or its completed components, such as steering columns or door panels.

* * * * *

PART 173—SHIPPERS—GENERAL REQUIREMENTS FOR SHIPMENTS AND PACKAGINGS

■ 3. The authority citation for part 173 is revised to read as follows:

Authority: 49 U.S.C. 5101–5128, 44701; 49 CFR 1.81, 1.96 and 1.97.

■ 4. Section 173.166 is revised to read as follows:

§ 173.166 Air bag inflators, air bag modules and seat-belt pretensioners.

(a) *Definitions.* An *air bag inflator* (consisting of a casing containing an igniter, a booster material, a gas generant and, in some cases, a pressure receptacle (cylinder)) is a gas generator used to inflate an air bag in a supplemental restraint system in a motor vehicle. An *air bag module* is the air bag inflator plus an inflatable bag assembly. A *seat-belt pretensioner* contains similar hazardous materials and is used in the operation of a seat-belt restraining system in a motor vehicle.

(b) *Classification.* (1) An air bag inflator, air bag module, or seat-belt pretensioner, excluding those which contain flammable or toxic gases or mixtures thereof, may be classed as Class 9 (UN3268) if the air bag inflator, air bag module, or seat-belt pretensioner, or if more than a single air bag inflator, air bag module, or seat-belt pretensioner is involved then the representative of the maximum parameters of each design type, is examined and successfully tested by a person or agency who is authorized by the Associate Administrator to perform examination and testing of explosives under § 173.56(b)(1), and who:

(i) Does not manufacture or market explosives, air bag inflators, air bag modules, or seat-belt pretensioners, is not owned in whole or in part, or is not financially dependent upon any entity that manufactures or markets explosives, air bag inflators, air bag modules, or seat-belt pretensioners;

(ii) Performs all examination and testing in accordance with the applicable requirements as specified in Special Provision 160 (see § 172.102 of this subchapter); and

(iii) Maintains records in accordance with paragraph (g) of this section.

(iv) By adhering to all the provisions specified in paragraph (b)(1) of this section, the Class 9 (UN3268) air bag inflator, air bag module, or seat-belt pretensioner design is not required to be submitted to the Associate Administrator for approval or assigned an EX number;

(2) An air bag inflator, air bag module, or seat-belt pretensioner may be classed as Division 1.4G if the maximum parameters of each design type has been examined and successfully tested by a person or agency who is authorized by the Associate Administrator to perform such examination and testing of explosives under § 173.56(b)(1). For domestic transport, air bag inflators, air bag modules or seat-belt pretensioners that meet the criteria for a Division 1.4G explosive must be transported using the description, ''UN0431, Articles, pyrotechnic *for technical purposes''* as specified in Special Provision 161 (see § 172.102 of this subchapter). Further, as a Class 1 explosive, the manufacturer must submit to the Associate Administrator a report of the examination and assignment of a recommended shipping description, division, and compatibility group, and if the Associate Administrator finds the approval request meets the regulatory criteria, the explosive may be approved in writing and assigned an EX number; or

(3) The manufacturer has submitted an application, including a classification issued by the competent authority of a foreign government to the Associate Administrator, and received written notification from the Associate Administrator that the device has been approved for transportation and assigned an EX number.

(c) *EX numbers.* (1) When an air bag inflator, air bag module, or seat-belt pretensioner is classed and approved as a Division 1.4G and offered for transportation, the shipping paper must contain the EX number or product code for each approved inflator, module, or pretensioner in association with the basic description required by § 172.202(a) of this subchapter. Product codes must be traceable to the specific EX number assigned to the inflator, module, or pretensioner by the Associate Administrator. Further, if the EX number or product code is contained on the shipping paper then it is not required to be marked on the outside package.

(2) An air bag inflator, air bag module, or seat-belt pretensioner when classed as a Class 9 (UN3268) under the terms of paragraph (b)(1) of this section, is excepted from the EX number requirements of this paragraph (c).

(d) *Exceptions.* (1) An air bag inflator, air bag module, or seat-belt pretensioner that is classed as a Class 9 (UN3268) under the terms of paragraph (b)(1) of this section and is installed in a motor vehicle, aircraft, boat or other transport conveyance or its completed components, such as steering columns or door panels, is not subject to the requirements of this subchapter. An air bag inflator, air bag module, or seat-belt pretensioner that has been classed as a Division 1.4G and approved by the Associate Administrator and is installed in a motor vehicle, aircraft, boat or other transport conveyance or its completed components, such as steering columns or door panels, is not subject to the requirements of this subchapter.

(2) An air bag module containing an inflator that has been previously approved by the Associate Administrator for transportation is not required to be submitted for further examination or approval. For classifications granted after July 30, 2013, if the Class 9 designation for the inflator is contingent upon packaging or other special means specified by the authorized testing agency, the modules must be tested and certified separately to determine if they can be shipped as ''UN3268, Air bag modules, 9, PG III''.

(3) An air bag module containing an inflator that has previously been approved by the Associate Administrator as a Division 2.2 material is not required to be submitted for

further examination to be reclassed as a Class 9 material.

(4) *Shipments to recycling or waste disposal facilities.* When offered for domestic transportation by highway, rail freight, cargo vessel or cargo aircraft, a serviceable air bag inflator, air bag module, or seat-belt pretensioner classed as either Class 9 (UN3268) or Division 1.4G removed from a motor vehicle that was manufactured as required for use in the United States may be offered for transportation and transported without compliance with the shipping paper requirement prescribed in paragraph (c) of this section. However, when these articles are shipped to a recycling facility, the word ''Recycled'' must be entered on the shipping paper immediately after the basic description prescribed in § 172.202 of this subchapter. No more than one device is authorized in the packaging prescribed in paragraph (e)(1), (2) or (3) of this section. The device must be cushioned and secured within the package to prevent movement during transportation.

(e) *Packagings.* Rigid, outer packagings, meeting the general packaging requirements of part 173 are authorized as follows. Additionally, the UN specification packagings listed in paragraphs (e)(1), (2), and (3) of this section must meet the packaging specification and performance requirements of part 178 of this subchapter at the Packing Group III performance level. The packagings must be designed and constructed to prevent movement of the articles and inadvertent activation. Further, if the Class 9 designation is contingent upon packaging specified by the authorized testing agency, shipments of the air bag inflator, air bag module, or seat-belt pretensioner must be in compliance with the prescribed packaging.

(1) 1A2, 1B2, 1N2, 1D, 1G, or 1H2 drums.

(2) 3A2, 3B2, or 3H2 jerricans.

(3) 4A, 4B, 4N, 4C1, 4C2, 4D, 4F, 4G, 4H1, or 4H2 boxes.

(4) *Reusable high-strength containers or dedicated handling devices.* (i) Reusable containers manufactured from high-strength plastic, metal, or other suitable material, or other dedicated handling devices are authorized for shipment of air bag inflators, air bag modules, and seat-belt pretensioners from a manufacturing facility to the assembly facility, subject to the following conditions:

(A) The gross weight of the containers or handling devices may not exceed 1000 kg (2205 pounds). Containers or handling devices must provide adequate support to allow stacking at least three units high with no resultant damage;

(B) If not completely enclosed by design, the container or handling device must be covered with plastic, fiberboard, metal, or other suitable material. The covering must be secured to the container by banding or other comparable methods; and

(C) Internal dunnage must be sufficient to prevent movement of the devices within the container.

(ii) Reusable containers manufactured from high-strength plastic, metal, or other suitable material, or other dedicated handling devices are authorized for shipment of air bag inflators, air bag modules, and seat-belt pretensioners only to, between, and from, intermediate handling locations, provided they meet the conditions specified in paragraphs (e)(4)(i)(A) through (C) of this section and:

(A) The packages may be opened and re-packed by an intermediate handler as long as no modifications or changes are made to the packagings; and

(B) Transportation must be made by private or contract carrier.

(5) Packagings which were previously authorized in an approval issued by the Associate Administrator may continue to be used, provided a copy of the approval is maintained while such packaging is being used.

(6) *Devices removed from a vehicle.* When removed from, or were intended to be used in, a motor vehicle that was manufactured as required for use in the United States and offered for domestic transportation by highway to Recycling or Waste Disposal facilities, a serviceable air bag inflator, air bag module, or seat-belt pretensioner classed as Class 9 UN3268 may be offered for transportation and transported in the following additional packaging:

(i) Specification and non-specification steel drums with a wall and lid thickness not less than 20 gauge. The lid must be securely affixed with a lever-locking or bolted-ring assembly. The lid of the drum must provide ventilation of the drum contents in a fire. The drum may be filled with any combination of air bag inflators, air bag modules, or seat-belt pretensioner devices to a capacity not greater than fifty (50) percent of the drum's total volume. In addition, inner packagings or cushioning may not be used to fill the void space; or

(ii) Outer packaging consisting of 4H2 solid plastic boxes or non-specification rugged reusable plastic outer packaging and inner static-resistant plastic bags or trays. If not completely enclosed by design, the container or handling device must be covered with plastic, fiberboard, metal or other suitable material. The covering must be secured to the container by banding or other comparable methods. The articles must be packed to prevent movement within the container during transportation.

(f) *Labeling.* Notwithstanding the provisions of § 172.402 of this subchapter, each package or handling device must display a CLASS 9 label. Additional labeling is not required when the package contains no hazardous materials other than the devices.

(g) *Recordkeeping requirements.* (1) Following the examination of each new design type classed as a Class 9 in accordance with paragraph (b)(1) of this section, the person that conducted the examination must prepare a test report and provide the test report to the manufacturer of the air bag inflator, air bag module, or seat-belt pretensioner. At a minimum, the test report must contain the following information:

(i) Name and address of the test facility;

(ii) Name and address of the applicant;

(iii) Manufacturer of the device. For a foreign manufacturer, the U.S. agent or importer must be identified;

(iv) A test report number, drawing of the device, and description of the air bag inflator, air bag module, or seat-belt pretensioner in sufficient detail to ensure that the test report is traceable (e.g. a unique product identifier) to a specific inflator design;

(v) The tests conducted and the results; and

(vi) A certification that the air bag inflator, air bag module, or seat-belt pretensioner is classed as a Class 9 (UN3268).

(2) For at least fifteen (15) years after testing, a copy of each test report must be maintained by the authorizing testing agency. For as long as any air bag inflator, air bag module, or seat-belt pretensioner design is being manufactured, and for at least fifteen (15) years thereafter, a copy of each test report must be maintained by the manufacturer of the product.

(3) Test reports must be made available to a representative of the Department upon request.

Issued in Washington, DC on July 25, 2013, under authority delegated in 49 CFR part 1.

Cynthia L. Quarterman,

Administrator, Pipeline and Hazardous Materials Safety Administration.

[FR Doc. 2013–18263 Filed 7–29–13; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 120510052–3615–02]

RIN 0648–BC20

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Fishery of Puerto Rico and the U.S. Virgin Islands; Parrotfish Management Measures in St. Croix

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

ACTION: Final rule.

SUMMARY: NMFS issues this final rule to implement management measures described in Regulatory Amendment 4 to the Fishery Management Plan for the Reef Fish Fishery of Puerto Rico and the U.S. Virgin Islands (FMP), as prepared by the Caribbean Fishery Management Council (Council). This rule establishes minimum size limits for parrotfish in the exclusive economic zone (EEZ) off St. Croix in the U.S. Virgin Islands (USVI). The purpose of this final rule is to provide protection from harvest to parrotfish and to assist the stock in achieving optimum yield (OY).

DATES: This rule is effective August 29, 2013.

ADDRESSES: Electronic copies of the regulatory amendment, which includes an environmental assessment, a Regulatory Flexibility Act analysis, and a regulatory impact review may be obtained from the Southeast Regional Office Web site at *http://sero.nmfs.noaa.gov/sustainable_fisheries/caribbean/reef_fish/reg_am4/index.html*.

FOR FURTHER INFORMATION CONTACT: Britni Tokotch, Southeast Regional Office, NMFS, telephone 727–824–5305; email: *Britni.Tokotch@noaa.gov*.

SUPPLEMENTARY INFORMATION: The reef fish fishery of Puerto Rico and the USVI is managed under the FMP, which was prepared by the Council and implemented through regulations at 50 CFR Part 622 under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

On March 11, 2013, NMFS published a proposed rule for Regulatory Amendment 4 and requested public comment (78 FR 15338). The proposed rule and Regulatory Amendment 4 outline the rationale for the actions contained in this final rule. A summary of the actions implemented by this final rule is provided below.

Management Measure Contained in This Final Rule

This final rule establishes minimum size limits for parrotfish species in the EEZ off St. Croix. These limits apply to both the commercial and recreational sectors. This rule establishes a minimum size limit of 8 inches (20.3 cm), fork length, for redband parrotfish (*Sparisoma aurofrenatum*), and 9 inches (22.9 cm), fork length, for all other parrotfish. The current harvest prohibition for midnight, blue, and rainbow parrotfish remains in effect.

This rule implements a minimum size limit of 9 inches (22.9 cm) for all but one of the parrotfish species for which harvest is allowed, because this size limit best captures the range of sizes at maturity for these species. This rule sets a minimum size limit of 8 inches (20.3 cm), fork length, for redband parrotfish because they are relatively smaller fish and they reach maturity at a smaller size than the other managed parrotfish species. A minimum size limit reduces mortality of smaller (generally female) parrotfish, thereby enhancing spawning biomass and the supply of gametes (especially eggs), and ultimately increasing yield-per-recruit from the stock (assuming discard mortality is low). Parrotfish discard mortality is assumed to be low because spears are the predominant gear used to harvest parrotfish and therefore the fish are individually targeted. In addition, discard mortality of parrotfish harvested by trap is expected to be low because parrotfish are harvested in relatively shallow waters, thus reducing the threat of barotrauma related mortality. A minimum size limit also reduces the likelihood of recruitment overfishing that might otherwise lead to a stock biomass level below maximum sustainable yield. Therefore, this final rule sets a minimum size limit to increase the number of juvenile parrotfish that can reach sexual maturity and assist the stock in achieving OY.

Comments and Responses

NMFS received two comment submissions on Regulatory Amendment 4 and the proposed rule. NMFS received one submission that expressed general support for the actions contained in the proposed rule. We acknowledge this comment, but do not respond in detail. NMFS also received one submission from a Federal agency that included several specific comments. The comments from the Federal agency are summarized and responded to below.

Comment 1: The effects of the proposed size limits on the recreational and commercial sectors cannot be determined because of the admitted lack of information on the number of commercial and recreational fishers who harvest parrotfish in Federal waters. In addition, information on effort and catch per unit effort is not included in Regulatory Amendment 4, which means that catch and landings data cannot accurately be interpreted. This lack of information makes it impossible to determine whether the proposed size limits are necessary and appropriate for the conservation and management of the species.

Response: NMFS acknowledges that pertinent information on parrotfish biology, ecology, and harvest within the reef fish fishery in the U.S. Caribbean is limited. However, NMFS disagrees that this lack of information makes it impossible to determine whether the proposed minimum size limits are necessary and appropriate for the conservation and management of the species. National Standard 2 of the Magnuson-Stevens Act requires that NMFS and the Council use the best scientific information available. The maturity schedules used to inform the Council decisions on the appropriate minimum size limits for parrotfish species represent the best information presently available. Further, despite the level at which parrotfish may be harvested by any sector of the reef fish fishery, the Council concluded and NMFS agrees that the best scientific information available indicates that implementing the minimum size limits will help ensure that maturing females are given an opportunity to spawn at least once prior to potentially being harvested in the reef fish fishery. As more pertinent information becomes available, for any species of parrotfish presently managed in U.S. Caribbean Federal waters, the Council can reevaluate the minimum size limits and adjust them as necessary.

Comment 2: A report cited in Regulatory Amendment 4 as ''SERO–LAPP–2012–02'' was not available on the NMFS Southeast Regional Office Web site, making it difficult to determine where the numbers in the document originate.

Response: The final report in Regulatory Amendment 4 that is cited as SERO–LAPP–2012–02 describes analysis conducted by NMFS that estimates the percent reduction in landings that would occur if various minimum size limits were implemented in the U.S. Caribbean. This analysis was used in Regulatory Amendment 4 to evaluate some of the biological impacts

of establishing the various minimum size limits considered in the amendment, which is one of many factors the Council considers as required by applicable law. The report was inadvertently not posted on the Southeast Regional Office Web site but was readily available if requested. NMFS did not receive any requests for the report and it is now posted at *http://sero.nmfs.noaa.gov/sustainable_fisheries/caribbean/reef_fish/reg_am4/index.html.*

Comment 3: Regulatory Amendment 4 reads like a decision has already been made.

Response: When the Council voted to submit Regulatory Amendment 4 to NMFS for implementation, the Council was making a final decision on the preferred alternatives and the document submitted to NMFS reflects that decision. However, no final decision is made on whether to implement the actions in Regulatory Amendment 4 until NMFS determines that the regulations submitted by the Council are consistent with the FMP, the Magnuson-Stevens Act, and other applicable laws, considers comments on the proposed rule, and publishes a final rule.

Comment 4: With the previous implementation of Caribbean parrotfish annual catch limits (ACLs) and accountability measures (AMs), the proposed minimum size limits are not necessary to prevent recruitment overfishing and may focus harvest on the larger older mature fish. The Council and NMFS should ensure that implementation of the parrotfish minimum size limits does not reduce reproductive output to the point of recruitment overfishing.

Response: NMFS disagrees that implementation of the parrotfish ACLs and AMs makes it unnecessary to establish a minimum size limit. The ACLs and AMs are intended to prevent overfishing but do not address the proportion of immature fish that are removed as part of the allowable harvest. Thus, even if landings remain under the ACL, immature individuals could still be harvested, which may result in recruitment overfishing. NMFS agrees that a minimum size limit can result in increased fishing pressure on larger fish. However, establishing a minimum size limit increases the likelihood that smaller individuals have an opportunity to reach maturity and contribute to the reproductive output of the population.

With respect to ensuring that the minimum size limits do not result in recruitment overfishing, the Council acknowledged that there is some uncertainty regarding the consequences of establishing minimum size limits for parrotfish. However, the Council determined, and NMFS agrees, that if new information indicates that the minimum size limits are resulting in unintended consequences, the Council can reevaluate the size limits and take appropriate action.

Comment 5: The length and complexity of Regulatory Amendment 4 likely makes it difficult for busy fishermen to read and understand.

Response: NMFS agrees that Regulatory Amendment 4 may be considered lengthy and that some information in the amendment is complex. However, the information in Regulatory Amendment 4 is necessary to comply with the requirements of the Magnuson-Stevens Act and other applicable law, such as the National Environmental Policy Act. To assist interested persons in understanding the actions in the amendment, the Council held public hearings throughout the U.S. Caribbean in July 2012. In addition, the establishment of parrotfish minimum size limits was discussed at several Council meetings, each of which was announced in the **Federal Register**, open to the public, and included a public comment period. There was no indication during the development of Regulatory Amendment 4 that fishermen did not understand the proposed actions or the reasons why the Council selected the preferred alternatives.

Changes From the Proposed Rule

On April 17, 2013, NMFS published in the **Federal Register** an interim final rule to reorganize the regulations in 50 CFR part 622 for the Gulf of Mexico, South Atlantic, and the Caribbean (78 FR 22950). That interim final rule did not create any new rights or obligations; rather, it reorganized the existing regulatory requirements in the Code of Federal Regulations into a new format. This final rule incorporates this new format into the regulatory text; it does not change the specific regulatory requirements that were contained in the proposed rule. Therefore, as a result of this reorganization, the parrotfish minimum size limit regulatory text will be located at § 622.436(a) and (b) rather than § 622.37(a).

Classification

The Regional Administrator, Southeast Region, NMFS has determined that this final rule is necessary for the conservation and management of the species within Regulatory Amendment 4 and is consistent with the FMP, the Magnuson-Stevens Act, and other applicable law.

This final rule has been determined to be not significant for purposes of Executive Order 12866.

A Final Regulatory Flexibility Analysis (FRFA) was prepared. The FRFA incorporates the initial regulatory flexibility analysis prepared for the proposed rule. A description of the action, why it is being considered and the legal basis for the rule are contained in the preamble of the proposed rule and in the preamble of this final rule. A summary of the FRFA follows. None of the public comments concerned the IRFA, and there are no changes in this final rule as a result of public comment. Therefore, there are no changes in the estimates of either the number of small businesses affected or the potential adverse economic impacts.

This final rule will affect up to 80 percent (142) of St. Croix, USVI, licensed commercial fishermen, and every licensed fisherman is assumed to represent a small business in the Finfish Fishing Industry (NAICS 114111). The 142 small businesses are largely minority owned and managed businesses and are divided by full-time versus part-time enterprises and by gear used to catch fish.

Each of the small businesses will have to obtain a measuring tool and use it to ensure that the parrotfish species they keep and land are equal to or greater in size than the minimum size limit. Any individual fish less than the minimum size limit will have to be discarded. Thus, the adverse impacts of this rule are divided into four parts: (1) Cost of obtaining the measuring tool; (2) additional time-related trip costs to use the tool; (3) loss of revenue from fish that now have to be discarded because they are undersized; and (4) additional fuel, bait and gear costs if fishermen act to mitigate for above losses of revenue.

A measuring tool is estimated to cost from $5 to $10, and the total cost to 142 businesses to acquire the tool would be from $710 to $1,420. The use of the measuring tool will impose to the fishers an additional 4 to 5 seconds per parrotfish caught; however, the frequency of its use will be dependent on both the current sizes of parrotfish that are landed and the gear used to harvest parrotfish. Three different scenarios are presented to represent the range of the potential adverse economic impacts beyond the $5 to $10 cost of acquiring the tool.

In the first scenario, it is theorized that, as a result of the recently imposed St. Croix parrotfish ACL of 240,000 lb (108,863 kg), round weight, all commercial fishermen have foregone catching and landing smaller parrotfish so as to minimize the cost of producing

those 240,000 lb (108,863 kg) (76 FR 82404, December 30, 2011). In this scenario, all commercial fishermen are presently catching and landing larger parrotfish that are visibly greater than the minimum size limit and rarely, if at all, are catching any that will require a measurement. If true, the final rule will have little to no adverse economic impact beyond the $5 to $10 cost of acquiring a measuring tool and an additional 4 to 5 seconds needed to measure a rare small fish.

In the second scenario, it is assumed that commercial fishermen are not catching and landing larger parrotfish, and they cannot mitigate for losses of landings due to discarded undersized fish. If true, this final rule will result in an estimated total annual loss of parrotfish landings between 960 lb (435 kg) and 13,920 lb (6,314 kg). If the average ex-vessel price were $5 per pound, the total annual revenue loss would be between $4,800 and $69,600, and the average revenue loss per small business would be from approximately $34 to $490 per year. Added to the loss of annual revenue will be higher time-related trip costs, especially fuel costs, because it takes 4 to 5 seconds to measure each of the parrotfish that are caught. The magnitudes of the revenue loss and additional trip costs will not be distributed equally among parrotfish harvest methods. Because pot-and-trap fishermen have landed the greatest percentage of smaller parrotfish compared to other methods of harvest, they will experience the greatest percent losses of annual revenues and greatest increase in time-related trip costs.

In the third scenario, fishermen are presumed to act to mitigate for potential losses of parrotfish landings by increasing fishing time and any bait and/or gear costs so that they catch enough legally sized parrotfish or other species to offset the pounds discarded in undersized parrotfish. In this third scenario, annual landings and revenues from those landings will be the same as baseline landings and revenues, but the costs of producing the landings increase. It is expected that small businesses that use pots and traps will incur the greatest increases in fuel, bait, and gear costs to mitigate for potential losses of parrotfish landings and revenues.

The second and third scenarios show disproportionate adverse economic impacts on fishermen who use pots and traps to catch parrotfish. It is unknown if the disproportionate adverse impacts also represent disproportionate adverse impacts on small businesses that are either owned and/or managed by individuals of a specific race, ethnicity, or age, located within a small geographic area of St. Croix, or differentiated by business size.

Considered, but rejected, alternatives would have established larger minimum size limits for parrotfish in the St. Croix EEZ and caused larger adverse economic impacts. Also among the considered, but rejected, alternatives were establishing minimum size limits for parrotfish in the areas of the EEZ off Puerto Rico and St. Thomas/St. John, USVI, which would have increased the number of small businesses regulated and the magnitude of the adverse economic impacts.

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that, for each rule or group of related rules for which an agency is required to prepare a FRFA, the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as small entity compliance guides. As part of the rulemaking process, NMFS prepared a fishery bulletin, which also serves as a small entity compliance guide. The fishery bulletin will be sent to all interested parties.

List of Subjects in 50 CFR Part 622

Fisheries, Fishing, Minimum size limit, Parrotfish, St. Croix, Virgin Islands.

Dated: July 25, 2013.

Alan D. Risenhoover,

Director, Office of Sustainable Fisheries, performing the functions and duties of the Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 622 is amended as follows:

PART 622—FISHERIES OF THE CARIBBEAN, GULF OF MEXICO, AND SOUTH ATLANTIC

■ 1. The authority citation for part 622 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

■ 2. In § 622.436, paragraph (a) is revised and paragraphs (b) and (c) are added to read as follows:

§ 622.436 Size limits.

* * * * *

(a) *Yellowtail snapper.* The minimum size limit for yellowtail snapper is 12 inches (30.5 cm), TL.

(b) *Parrotfishes.* The minimum size limit for parrotfishes, except for redband parrotfish, in the St. Croix Management Area only (as defined in Table 2 of Appendix E to Part 622) is 9 inches (22.9 cm), fork length. See § 622.434(c) for the current prohibition on the harvest and possession of midnight parrotfish, blue parrotfish, or rainbow parrotfish.

(c) *Redband parrotfish.* The minimum size limit for red band parrotfish in the St. Croix Management Area only (as defined in Table 2 of Appendix E to Part 622) is 8 inches (20.3 cm), fork length.

[FR Doc. 2013–18260 Filed 7–29–13; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 120109034–2171–01]

RIN 0648–XC782

Fisheries of the Northeastern United States; Northeast Multispecies Fishery; Trimester Closure for the Common Pool Fishery

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

ACTION: Temporary rule; closure.

SUMMARY: This action closes the Georges Bank (GB) cod Trimester Total Allowable Catch (TAC) Area for the remainder of Trimester 1, through August 31, 2013. Based on our projection, the common pool fishery has caught 90 percent of its GB cod Trimester 1 TAC triggering the regulatory requirement to close the TAC area for the remainder of the trimester. This action is intended to prevent an overage of the common pool's GB cod quota.

DATES: This action is effective July 30, 2013, through August 31, 2013.

FOR FURTHER INFORMATION CONTACT: Sarah Heil, Fishery Policy Analyst, 978–281–9257.

SUPPLEMENTARY INFORMATION: The regulations at § 648.82(n)(2)(ii) require the Regional Administrator to close the Trimester TAC Area for a stock when 90 percent of the Trimester TAC is projected to be caught. The fishing year (FY) 2013 common pool quota for GB cod is 32 mt (70,547.9 lb), which is divided into Trimester TACs. The Trimester 1 TAC is 8.0 mt (17,600 lb). Based on the most recent data, which include vessel trip reports (VTRs), dealer reported landings, and vessel monitoring system (VMS) information, we projected that 90 percent of the

Trimester 1 TAC for GB cod was caught by July 27, 2013. Therefore, effective July 30, 2013, the GB cod Trimester TAC Area is closed for the remainder of Trimester 1, through August 31, 2013, to all common pool vessels fishing with trawl gear, sink gillnet gear, and longline/hook gear. The GB cod Trimester TAC Area includes statistical areas 521, 522, 525, and 561. The GB cod Trimester TAC Area will reopen to common pool vessels fishing with trawl, sink gillnet, and longline/hook gear at the beginning of Trimester 2, on September 1, 2013.

We are required to deduct any overages of the GB cod Trimester 1 and 2 TACs from the Trimester 3 TAC. If the Trimester 1 or 2 TACs are not fully caught, the remaining portions will be carried over to Trimester 3. At the end of FY 2013, we will evaluate total common pool catch, and if the common pool fishery exceeds its annual quota for any stock, we are required to deduct the overage from the respective common pool quota for FY 2014. Uncaught portions of the common pool's annual quota may not be carried over to the next fishing year. Weekly quota monitoring reports for the common pool fishery can be found on our Web site at: *http://www.nero.noaa.gov/ro/fso/MultiMonReports.htm*. We will continue to monitor common pool catch through VTRs, dealer-reported landings, VMS catch reports, and other available information, and if necessary, we will make additional adjustments to common pool management measures.

Classification

This action is required by 50 CFR part 648, and is exempt from review under Executive Order 12866.

The Assistant Administrator for Fisheries, NOAA (AA), finds good cause pursuant to 5 U.S.C. 553(b)(B) and 5 U.S.C. 553(d)(3) to waive prior notice and the opportunity for public comment and the 30-day delayed effectiveness period because it would be impracticable and contrary to the public interest.

The regulations require the Regional Administrator to close a trimester TAC area to the common pool fishery when 90 percent of the Trimester TAC for a stock has been caught. Updated catch information only recently became available indicating that the common pool fishery would catch 90 percent of its Trimester 1 TAC for GB cod by July 27, 2013. The time necessary to provide for prior notice and comment, and a 30-day delay in effectiveness, would prevent the immediate closure of the GB cod Trimester 1 TAC area, and would increase the likelihood that the common pool fishery exceeds its quota of GB cod to the detriment of this stock.

Any overage of the Trimester 1 TAC is required to be deducted from the Trimester 3 TAC, which could cause the premature closure of Trimester 3, and have negative economic impacts on the common pool fishery. Any overage of the Trimester 1 TAC would also increase the likelihood that the common pool fishery exceeds its total annual quota for GB cod, which would trigger accountability measures in the 2014 fishing year. Overages would not only have negative economic impacts on the common pool fishery, but would also undermine the conservation objectives of the Northeast Multispecies Fishery Management Plan. As a result, immediate implementation of this action is necessary to help ensure that the common pool fishery does not exceed its GB cod quota.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: July 26, 2013.

James P. Burgess,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2013–18408 Filed 7–29–13; 8:45 am]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 78, No. 146
Tuesday, July 30, 2013

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 AGRICULTURE

Agricultural Marketing Service

7 CFR Part 955

[Docket No. AMS–FV–13–0037; FV13–955–2 CR]

Vidalia Onions Grown in Georgia; Continuance Referendum

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Referendum order.

SUMMARY: This document directs that a referendum be conducted among eligible producers of Vidalia onions grown in Georgia to determine whether they favor continuance of the marketing order that regulates the handling of Vidalia onions produced in the production area.

DATES: The referendum will be conducted from September 9 through September 27, 2013. To vote in this referendum, producers must have produced Vidalia onions within the designated production area in Georgia during the period of January 1 through December 31, 2012.

ADDRESSES: Copies of the marketing order may be obtained from the referendum agents at 799 Overlook Drive, Winter Haven, FL 33884, or the Office of the Docket Clerk, Marketing Order and Agreement Division, Fruit and Vegetable Program, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250–0237; Fax: (202) 720–8938; or Internet: *www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Corey E. Elliott, Marketing Specialist, or Christian D. Nissen, Regional Director, Southeast Marketing Field Office, Marketing Order and Agreement Division, Fruit and Vegetable Program, AMS, USDA, 799 Overlook Drive, Winter Haven, FL 33884; Telephone: (863) 324–3375, Fax: (863) 325–8793, or Email: *Corey.Elliott@ams.usda.gov* or *Christian.Nissen@ams.usda.gov*.

SUPPLEMENTARY INFORMATION: Pursuant to Marketing Agreement and Order No. 955, as amended (7 CFR Part 955), hereinafter referred to as the ''order,'' and the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act,'' it is hereby directed that a referendum be conducted to ascertain whether continuance of the order is favored by the producers. The referendum shall be conducted from September 9 through September 27, 2013, among Vidalia onion producers in the production area. Only Vidalia onion producers that were engaged in the production of Vidalia onions in Georgia during the period of January 1 through December 31, 2012, may participate in the continuance referendum.

USDA has determined that continuance referenda are an effective means for determining whether producers favor the continuation of marketing order programs. USDA would consider termination of the order if fewer than two-thirds of the producers voting in the referendum and producers of less than two-thirds of the volume of Vidalia onions represented in the referendum favor continuance. In evaluating the merits of continuance versus termination, USDA will not exclusively consider the results of the continuance referendum. USDA will also consider all other relevant information concerning the operation of the order and the relative benefits and disadvantages to producers, handlers, and consumers in determining whether continued operation of the order would tend to effectuate the declared policy of the Act.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), the ballot materials to be used in the referendum have been submitted to and approved by the Office of Management and Budget (OMB) and have been assigned OMB No. 0581–0178, Vegetable and Specialty Crop Marketing Orders. It has been estimated that it will take an average of 20 minutes for each of the approximately 80 producers of Vidalia onions in Georgia to cast a ballot. Participation is voluntary. Ballots postmarked after September 27, 2013, will not be included in the vote tabulation.

Corey E. Elliott and Christian D. Nissen of the Southeast Marketing Field Office, Fruit and Vegetable Program, AMS, USDA, are hereby designated as the referendum agents of the Secretary of Agriculture to conduct this referendum. The procedure applicable to the referendum shall be the ''Procedure for the Conduct of Referenda in Connection With Marketing Orders for Fruits, Vegetables, and Nuts Pursuant to the Agricultural Marketing Agreement Act of 1937, as Amended'' (7 CFR 900.400–900.407).

Ballots will be mailed to all producers of record and may also be obtained from the referendum agents, or from their appointees.

List of Subjects in 7 CFR Part 955

Marketing agreements, Onions, Reporting and recordkeeping requirements.

Authority: 7 U.S.C. 601–674.

Dated: July 24, 2013.

Rex A. Barnes,

Associate Administrator, Agricultural Marketing Service.

[FR Doc. 2013–18225 Filed 7–29–13; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2008–0618; Directorate Identifier 2007–NM–355–AD]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Supplemental notice of proposed rulemaking (NPRM); reopening of comment period.

SUMMARY: We are revising an earlier proposed airworthiness directive (AD) for all The Boeing Company Model 777–200, –200LR, –300, and –300ER series airplanes. That supplemental notice of proposed rulemaking (SNPRM) proposed to require revising the maintenance program to incorporate a revision to the Airworthiness Limitations Section of the maintenance planning data (MPD) document. That SNPRM was prompted by reports of two in-service occurrences on Model 737–

400 airplanes of total loss of boost pump pressure of the fuel feed system, followed by loss of fuel system suction feed capability on one engine, and in-flight shutdown of the engine. This action revises that SNPRM by adding Model 777F series airplanes to the applicability. We are proposing this AD to detect and correct failure of the engine fuel suction feed of the fuel system, which, in the event of total loss of the fuel boost pumps, could result in dual engine flameout, inability to restart the engines, and consequent forced landing of the airplane. Since this action imposes an additional burden over that proposed in the previous SNPRM, we are reopening the comment period to allow the public the chance to comment on this proposed change.

DATES: We must receive comments on this supplemental NPRM by September 13, 2013.

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

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

For service information identified in this proposed AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P.O. Box 3707, MC 2H–65, Seattle, WA 98124–2207; telephone 206–544–5000, extension 1; fax 206–766–5680; Internet *https://www.myboeingfleet.com*. You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221.

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Sue Lucier, Aerospace Engineer, Propulsion Branch, ANM–140S, 1601 Lind Avenue SW., Renton, Washington 98057–3356; phone: 425–917–6438; fax: 425–917–6590; email: *suzanne.lucier@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–2008–0618; Directorate Identifier 2007–NM–355–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://www.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

We issued a supplemental NPRM (SNPRM) to amend 14 CFR part 39 to include an AD that would apply to all The Boeing Company Model 777–200, –200LR, –300, and –300ER series airplanes. The earlier SNPRM published in the **Federal Register** on March 7, 2013 (78 FR 14722). The earlier SNPRM proposed to require revising the maintenance program to incorporate a revision to the Airworthiness Limitations Section of the MPD document.

Actions Since Earlier SNPRM (78 FR 14722, March 7, 2013) Was Issued

Since we issued the earlier SNPRM (78 FR 14722, March 7, 2013), we have determined that Model 777F series airplanes are also affected by the identified unsafe condition and must be included in the applicablity.

Comment

We gave the public the opportunity to comment on the earlier SNPRM (78 FR 14722, March 7, 2013). The following presents the comment received on the earlier SNPRM and the FAA's response to that comment.

Request To Add Airplanes

FedEx asked that Model 777F series airplanes be added to the applicability identified in paragraph (c) of the earlier SNPRM (78 FR 14722, March 7, 2013), if the intent is to include all Model 777 series airplanes.

We agree with the commenter to include all Model 777 series airplanes for the reason provided previously. We have changed paragraph (c) of this second SNPRM to add Model 777F series airplanes.

FAA's Determination

We are proposing this second SNPRM because we evaluated all the relevant information and determined the unsafe condition described previously is likely to exist or develop in other products of the same type design. The change described above expands the scope of the earlier SNPRM (78 FR 14722, March 7, 2013). As a result, we have determined that it is necessary to reopen the comment period to provide additional opportunity for the public to comment on this second SNPRM.

Proposed Requirements of the Second SNPRM

This second SNPRM revises the earlier SNPRM (78 FR 14722, March 7, 2013), by proposing to add airplanes to the applicability.

Costs of Compliance

We estimate that this proposed AD would affect 676 airplanes of U.S. registry. We estimate the following costs to comply with this proposed AD:

ESTIMATED COSTS

Action	Labor cost	Cost per product	Cost on U.S. operators
Maintenance Program Revision	1 work-hour × $85 per hour = $85	$85 per test	$57,460, per test.

We have received no definitive data that would enable us to provide a cost estimate for the on-condition actions or the optional terminating action specified in this AD.

Authority for This Rulemaking

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

We are issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701: ''General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This proposed 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 airworthiness directive (AD):

The Boeing Company: Docket No. FAA–2008–0618; Directorate Identifier 2007–NM–355–AD.

(a) Comments Due Date

We must receive comments by September 13, 2013.

(b) Affected ADs

None.

(c) Applicability

This AD applies to all The Boeing Company Model 777–200, –200LR, –300, –300ER, and 777F series airplanes, certificated in any category.

(d) Subject

Joint Aircraft System Component (JASC)/Air Transport Association (ATA) of America Code 2800, Aircraft Fuel System.

(e) Unsafe Condition

This AD was prompted by reports of two in-service occurrences on Model 737–400 airplanes of total loss of boost pump pressure of the fuel feed system, followed by loss of fuel system suction feed capability on one engine, and in-flight shutdown of the engine. We are issuing this AD to detect and correct failure of the engine fuel suction feed of the fuel system, which, in the event of total loss of the fuel boost pumps, could result in dual engine flameout, inability to restart the engines, and consequent forced landing of the airplane.

(f) Compliance

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

(g) Maintenance Program Revision

Within 90 days after the effective date of this AD: Revise the maintenance program to incorporate the Airworthiness Limitation (AWL) identified in Appendix 1 of this AD. The initial compliance time for accomplishing AWL No. AWL–28–101, Engine Fuel Suction Feed Operational Test, is within 7,500 flight hours or 3 years after the effective date of this AD, whichever is first.

(h) No Alternative Actions, Intervals, and/or Critical Design Configuration Control Limitations (CDCCLs)

After accomplishing the revision required by paragraph (g) of this AD, no alternative actions (e.g., tests), intervals, or CDCCLs may be used unless the actions, intervals, or CDCCLs are approved as an alternative method of compliance (AMOC) in accordance with the procedures specified in paragraph (j) of this AD.

(i) Credit for Incorporating Previous Maintenance Program Revision

This paragraph provides credit for the actions required by paragraph (g) of this AD, if those actions were performed before the effective date of this AD using AWL No. 28–AWL–101, Engine Fuel Suction Feed Operational Test, of Section D.2., AWLS—Fuel Systems, of Section 9, Airworthiness Limitations (AWLs) and Certification Maintenance Requirements (CMRs), D622W001–9, Revision February 2012, of the Boeing 777 Maintenance Planning Data (MPD) Document, provided the revised ''interval'' specified in Appendix 1 of this AD is incorporated into the existing maintenance program within 90 days after the effective date of this AD.

(j) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Seattle Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the ACO, send it to the attention of the person identified in the Related Information section of this AD. Information may be emailed to: *9-ANM-Seattle-ACO-AMOC-Requests@faa.gov*.

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

(k) Related Information

(1) For more information about this AD, contact Sue Lucier, Aerospace Engineer, Propulsion Branch, ANM–140S, 1601 Lind Avenue SW., Renton, Washington 98057–3356; phone: 425–917–6438; fax: 425–917–6590; email: *suzanne.lucier@faa.gov*.

(2) For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P.O. Box 3707, MC 2H–65, Seattle, WA 98124–2207; telephone 206–544–5000, extension 1; fax 206–766–5680; Internet *https://www.myboeingfleet.com*. You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221.

Appendix 1

AWL No.	Task	Interval	Applicability	Description
28–AWL–101 ..	ALI	7,500 FH or 3 years, whichever is first.	ALL	Engine Fuel Suction Feed Operational Test An Engine Fuel Suction Feed Operational Test must be accomplished successfully on each engine individually. This test is required in order to protect against engine flameout during suction feed operations, and must meet the following requirements (refer to Boeing AMM 28–22–00): Fuel Tank Quantity Limitations: Engine No. 1 a. The Center Tank Fuel Quantity must not exceed 5,000 lbs (2,270 kg). b. The Main Tank No. 1 Fuel Quantity must be between 1,400 lbs—1,600 lbs (600 kg—800 kg). **Note:** Excess fuel can be transferred to Main Tank No. 2. Engine No. 2 a. The Center Tank Fuel Quantity must not exceed 5,000 lbs (2,270 kg). b. The Main Tank No. 2 Fuel Quantity must be between 1,400 lbs—1,600 lbs (600 kg—800 kg). **Note:** Excess fuel can be transferred to Main Tank No. 1. Test Procedural Limitations: 1. The Fuel Cross-Feed Valve must be CLOSED. 2. The APU Selector Switch must be OFF. 3. Idle Engine Warm-up time of minimum two minutes with Boost Pump ON. 4. Idle Engine Suction Feed (Boost Pump OFF) operation for a minimum of five minutes. **Note:** APU may be used to start the engines provided the Fuel Tank Quantity and Test Procedural Limitations are met. The test is considered a success if engine operation is maintained during the five-minute period and engine parameters (N1, N2, and Fuel Flow) do not decay relative to those observed with Boost Pump ON. A suction feed system that fails the operational test must be repaired or maintained, and successfully pass the Engine Suction Feed Operational Test prior to further flight.

Issued in Renton, Washington, on July 23, 2013.

Stephen P. Boyd,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2013–18237 Filed 7–29–13; 8:45 am]

BILLING CODE 4910–13–P

FEDERAL TRADE COMMISSION

16 CFR Part 423

Public Roundtable Analyzing Proposed Changes to the Trade Regulation Rule on Care Labeling of Textile Wearing Apparel and Certain Piece Goods as Amended

AGENCY: Federal Trade Commission.

ACTION: Announcement of public roundtable and request for public comment.

SUMMARY: The Federal Trade Commission (''FTC'' or ''Commission'') is holding a public roundtable relating to its September 20, 2012 Notice of Proposed Rulemaking (''NPRM'') announcing proposed changes to the Care Labeling Rule. The roundtable will explore issues relating to professional wetcleaning, care symbols, the Rule's reasonable basis requirements, and other issues raised in comments received in response to the NPRM.

DATES: The public roundtable will be held on October 1, 2013, from 9:15 a.m. until 3:45 p.m. at the FTC's Satellite Building Conference Center, located at 601 New Jersey Avenue NW., Washington, DC. Requests to participate as a panelist must be received by September 3, 2013. Any written comments related to the agenda topics, the issues discussed by the panelists at the roundtable, or the issues raised in comments received in response to the NPRM must be received by October 15, 2013.

ADDRESSES: Interested parties may file a comment or a request to participate as a panelist electronically or on paper by following the instructions in the Filing Comments and Requests to Participate as a Panelist part of the **SUPPLEMENTARY INFORMATION** section below. Write ''Care Labeling Rule, 16 CFR Part 423, Comment, Project No. R511915'' on your comment and ''Care Labeling Rule, 16 CFR Part 423, Request to Participate, Project No. R511915'' on your request to participate as a panelist. File your comment online at *https://ftcpublic.commentworks.com/ftc/carelabelingroundtable* by following the instructions on the web-based form. File your request to participate as a panelist by email to: *carelabelingroundtable@ftc.gov.* If you prefer to file your comment or request on paper, mail or deliver it to the following address: Federal Trade Commission, Office of the Secretary, Room H–113 (Annex X), 600 Pennsylvania Avenue NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Robert M. Frisby, Attorney, 202–326–2098, or Amanda B. Kostner, Attorney, 202–326–2880, Federal Trade Commission, Division of Enforcement, Bureau of Consumer Protection, 600 Pennsylvania Avenue NW., Washington, DC 20580.

SUPPLEMENTARY INFORMATION:

I. Introduction

The Rule prohibits manufacturers and importers from selling textile wearing apparel and certain piece goods without attaching labels stating the care needed for their ordinary use.[1] Manufacturers and importers must possess, prior to sale, a reasonable basis for these care instructions [2] and can use approved care symbols to disclose those instructions.[3]

As part of its ongoing regulatory review program, the Commission published an Advance Notice of Proposed Rulemaking (''ANPR'') in July 2011 seeking comment on: The economic impact of, and the continuing need for, the Rule; the benefits of the Rule to consumers; and the burdens the Rule places on businesses.[4] The ANPR also sought comment on whether and how the Rule should address professional wetcleaning and updated industry standards regarding the use of care symbols. The Commission received 120 comments in response.[5]

After reviewing these comments, the Commission published a Notice of Proposed Rulemaking (''NPRM'') proposing four amendments.[6] The Commission proposed to: (1) Permit manufacturers and importers to provide a care instruction for professional wetcleaning on labels if the garment can be professionally wetcleaned; (2) permit manufacturers and importers to use the symbol system set forth in either ASTM Standard D5489–07, ''Standard Guide for Care Symbols for Care Instructions on Textile Products,'' or ISO 3758:2005(E), ''Textiles—Care labelling code using symbols''; (3) clarify what constitutes a reasonable basis for care instructions; and (4) update the definition of ''dryclean'' to reflect current practices and technology. The Commission received 87 comments in response,[7] including one requesting an opportunity to present views orally at a workshop or hearing [8] and several urging the Commission to hold a hearing or workshop [9] or requesting more time to file comments on the proposed amendments.[10] Most of the comments favoring a workshop or hearing or more time to comment also urged the Commission to amend the Rule to require a wetcleaning instruction rather than merely permit one if the garment can be wetcleaned. Accordingly, the Commission will conduct a roundtable [11] to provide interested parties with an opportunity to present their views orally pursuant to the procedures set forth in the NPRM.[12]

II. Issues for Discussion at the Roundtable

The roundtable will focus on the proposed amendment permitting a wetcleaning instruction and comments urging the Commission to require a wetcleaning instruction. The wetcleaning discussion also will address: (1) The cost of substantiating wetcleaning instructions; (2) the availability of wetcleaning services; (3) consumer awareness of wetcleaning; and (4) the content of labels providing a wetcleaning instruction (*e.g.,* instructing ''professionally wetclean'' versus ''wetclean'').

The roundtable also will explore issues relating to the use of care symbols and the Commission's proposal to clarify the Rule's reasonable basis requirements. These discussions will address: (1) The differences between ASTM and ISO symbols and between the 2005 and 2012 ISO symbols; (2) whether to require that labels identify ISO symbols if used to comply with the Rule; (3) the change in the meaning of the circle P symbol in the ASTM system; (4) the absence of ASTM and ISO symbols for solvents other than perchloroethylene (''perc'') and petroleum; (5) consumer understanding of symbols; and (6) how to clarify the Rule's reasonable basis requirements.[13] In addition, the roundtable will provide participants with an opportunity to discuss other issues raised by comments. A more detailed agenda will be published at a later date, in advance of the scheduled roundtable. In the interim, the Commission is particularly interested in receiving relevant consumer perception evidence.

III. Public Participation Information

A. Registration Information

The roundtable is open to the public, and there is no fee for attendance. For admittance to the Conference Center, all attendees must show valid government-issued photo identification, such as a driver's license. Pre-registration is not necessary to attend, but is encouraged so that staff may better plan this event. To pre-register, please email your name and affiliation to *carelabelingroundtable@ftc.gov.* When you pre-register, the FTC collects your name, affiliation, and email address. We will use this information to estimate how many people will attend and better understand the likely audience for the roundtable, and will dispose of it following the roundtable. We may use your email address to contact you with information about the roundtable. The FTC Act and other laws the Commission administers permit the collection of this contact information to consider and use for the above purposes. Under the Freedom of Information Act or other laws, we may be required to disclose the information you provide to outside organizations. For additional information, including routine uses permitted by the Privacy Act, see the Commission's privacy policy at *http://www.ftc.gov/privacy.shtm.*

B. Requests To Participate as a Panelist

The roundtable will consist of roundtable discussions by panelists selected by the FTC staff. Other attendees will have an opportunity to comment and ask questions. The Commission will place a transcript of the proceeding on the public record. Requests to participate as a panelist must be received on or before September 3, 2013, as explained in Section IV below. Persons selected as panelists will be notified on or before September 17, 2013.

C. Electronic and Paper Comments

The submission of comments is not required for participation in the roundtable. If a person wishes to submit paper or electronic comments about the topics to be discussed at the roundtable or issues raised in the comments filed in response to the NPRM, such comments should be filed as prescribed in Section IV, and must be received on or before October 15, 2013.

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[1] 16 CFR 423.5 and 423.6(a) and (b).

[2] 16 CFR 423.6(c).

[3] The Rule provides that the symbol system developed by ASTM International, formerly the American Society for Testing and Materials, and designated as ASTM Standard D5489–96c ''Guide to Care Symbols for Care Instructions on Consumer Textile Products'' may be used on care labels or care instructions in lieu of terms so long as the symbols fulfill the requirements of Part 423. 16 CFR 423.8(g).

[4] 76 FR 41148 (July 13, 2011).

[5] The comments are posted at *http://www.ftc.gov/os/comments/carelabelinganpr/index.shtm.*

[6] 77 FR 58338 (September 20, 2012).

[7] The comments are posted at *http://www.ftc.gov/os/comments/carelabelingnprm/index.shtm.* The Commission has assigned each comment a number appearing after the name of the commenter and the date of submission. This notice cites comments using the last name of the individual submitter or the name of the organization, followed by the number assigned by the Commission.

[8] Sinsheimer, UCLA Sustainable Technology & Policy Program (87).

[9] Huie (80); Miele (72 and 76); Professional Wet Cleaners Association (59); Sung (74); and Toxic Use Reduction Institute (54).

[10] European Union (67); Huie (80); and Professional Wet Cleaners Association (59).

[11] The NPRM noted the possibility of holding a workshop; however, the Commission has decided to describe this event as a roundtable to encourage discussion and interaction between the panelists.

[12] 77 FR at 58338–339.

[13] *See, e.g.,* GreenEarth Cleaning (41).

IV. Filing Comments and Requests To Participate as a Panelist

You can file a comment or request to participate in the roundtable as a panelist online or on paper. For the Commission to consider your comment, we must receive it on or before October 15, 2013. Write ''Care Labeling Rule, 16 CFR Part 423, Comment, Project No. R511915'' on your comment and ''Care Labeling Rule, 16 CFR Part 423, Request to Participate, Project No. R511915'' on your request to participate. Your comment—including your name and your state B 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, such as 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, such as 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).[14] 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/carelabelingroundtable*, by following the instruction 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.

Requests to participate as a panelist at the roundtable should be submitted electronically to *carelabelingroundtable@ftc.gov*, or, if mailed, should be submitted in the manner detailed below. Parties are asked to include in their requests a brief statement setting forth their expertise in or knowledge of the issues on which the roundtable will focus as well as their contact information, including a phone number, facsimile number, and email address (if available), to enable the FTC to notify them if they are selected.

If you file your comment or request on paper, write ''Care Labeling Rule, 16 CFR Part 423, Comment, Project No. R511915'' on your comment and on the envelope and ''Care Labeling Rule, 16 CFR Part 423, Request to Participate, Project No. R511915,'' on your request and on the envelope, and mail or deliver it to the following address: Federal Trade Commission, Office of the Secretary, Room H–113 (Annex X), 600 Pennsylvania Avenue NW., Washington, DC 20580. If possible, submit your paper comment or request 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 October 15, 2013. The Commission will consider all timely requests to participate as a panelist in the roundtable that it receives by September 3, 2013. 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*. The Commission invites members of the public to comment on any issues or concerns they believe are relevant or appropriate to the Commission's consideration of proposed amendments to the Care Labeling Rule or the roundtable agenda. The Commission requests that comments provide factual data, such as consumer perception evidence, upon which the commenters' proposals or views are based.

V. Communications to Commissioners and Commissioner Advisors by Outside Parties

Pursuant to Commission Rule 1.18(c)(1), the Commission has determined that communications with respect to the merits of this proceeding from any outside party to any Commissioner or Commissioner advisor shall be subject to the following treatment. Written communications and summaries or transcripts of oral communications shall be placed on the rulemaking record if the communication is received before the end of the staff report comment period. They shall be placed on the public record if the communication is received later. Unless the outside party making an oral communication is a member of Congress, such communications are permitted only if advance notice is published in the Weekly Calendar and Notice of ''Sunshine'' Meetings.[15]

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 2013–18181 Filed 7–29–13; 8:45 am]

BILLING CODE 6750–01–P

[14] 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).

[15] *See* 15 U.S.C. 57a(i)(2)(A); 16 CFR 1.18(c).

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Chapter IX

[Docket No. FR–5650–N–04]

Native American Housing Assistance and Self-Determination Act of 1996: Negotiated Rulemaking Committee Membership and First Meeting

AGENCY: Office of Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice of membership and meeting of negotiated rulemaking committee.

SUMMARY: This notice announces the final list of committee members of the Indian Housing Block Grant Allocation Formula Negotiated Rulemaking Committee. The committee will negotiate a proposed rule to revise the allocation formula used under the Indian Housing Block Grant (IHBG) Program. In addition, this notice announces a two-day first meeting of the negotiated rulemaking committee.

DATES: The meeting will be held on Tuesday, August 27, 2013, and Wednesday, August 28, 2013. On each day, the session will begin at approximately 8:30 a.m., and adjourn at approximately 5 p.m.

ADDRESSES: The meeting will take place at the Grand Hyatt Hotel, 1750 Welton Street, Denver, Colorado 80202.

FOR FURTHER INFORMATION CONTACT: Rodger J. Boyd, Deputy Assistant Secretary for Native American Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street SW., Room 4126, Washington, DC 20410, telephone number 202–401–7914 (this is not a toll-free number). Hearing- or speech-impaired individuals may access this number via TTY by calling the toll-free Federal Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

I. Background

The Native American Housing and Assistance and Self-Determination Act of 1996 (25 U.S.C. 4141 *et seq.*) (NAHASDA) changed the way that housing assistance is provided to Native Americans. NAHASDA eliminated several separate assistance programs and replaced them with a single block grant program, known as the Indian Housing Block Grant (IHBG) program. The regulations governing the IHBG formula allocation are codified in subpart D of part 1000 of HUD's regulations in title 24 of the Code of Federal Regulations. In accordance with section 106 of NAHASDA, HUD developed the regulations with active tribal participation using the procedures of the Negotiated Rulemaking Act of 1990 (5 U.S.C. 561–570).

Under the IHBG program, HUD makes assistance available to eligible Indian tribes for affordable housing activities. The amount of assistance made available to each Indian tribe is determined using a formula that was developed as part of the NAHASDA negotiated process. Based on the amount of funding appropriated for the IHBG program, HUD calculates the annual grant for each Indian tribe and provides this information to the Indian tribes. An Indian Housing Plan for the Indian tribe is then submitted to HUD. If the Indian Housing Plan is found to be in compliance with statutory and regulatory requirements, the grant is made.

II. The Indian Housing Block Grant Allocation Formula Negotiated Rulemaking Committee

Through this notice, HUD announces the establishment of its Indian Housing Block Grant Allocation Formula Negotiated Rulemaking Committee. The committee will negotiate a proposed rule to revise the allocation formula used for the IHBG Program. This notice announces the final list of negotiated rulemaking committee members.

On June12, 2013 at 78 FR 35178, HUD announced in the **Federal Register** the list of proposed members for the negotiated rulemaking committee, and requested additional public comment on the proposed membership.

III. Discussion of Public Comments Received on the June 12, 2013, Notice

The public comment period on the June 12, 2013, notice closed on July 12, 2013. HUD received three (3) public comments on the notice. This section presents a summary of the issues raised by the commenters on the June 12, 2013, notice, and HUD's responses to these issues.

Comment: Deirdre Food is nominated to be added to the Negotiated Rulemaking Committee.

HUD Response: Having met the requirements for nomination and membership on the Committee, Ms. Flood was added.

Comment: The proposed membership of committee does not include a representative from small tribes in California or Nevada. Two commenters made this same comment.

HUD Response: The addition of Ms. Flood from the Washoe Housing Authority now provides such representation.

IV. Final Membership of the Negotiated Rulemaking Committee

This section announces the final list of negotiated rulemaking committee members. In making the selections for membership on the negotiated rulemaking committee, HUD's goal was to establish a committee whose membership reflects a balanced representation of Indian tribes. In addition to the tribal members on the committee, there will be two HUD representatives on the negotiated rulemaking committee.

The final list of members of the Indian Housing Block Grant Allocation Formula Negotiated Rulemaking Committee is as follows:

Tribal Members

Jason Adams, Executive Director, Salish-Kootenai Housing Authority, Pablo, Montana.

Annette Bryan, Executive Director, Puyallup Nation Housing Authority, Tacoma, Washington.

Heather Cloud, Representative, Ho-Chunk Nation, Black River Falls, Wisconsin.

Gary Cooper, Executive Director, Cherokee Nation, Tahlequah, Oklahoma.

Pete Delgado, Executive Director, Tohono O'odham Housing Authority, Sells, Arizona.

Sami Jo Difuntorum, Executive Director, Siletz Tribal Housing Department, Siletz, Oklahoma.

Jason Dollarhide, 2nd Chief, Peoria Tribe of Indians of Oklahoma, Miami, Oklahoma.

Earl Evans, Tribal Councilor, Haliwa-Saponi Tribe, Hollister, North Carolina.

Deirdre Flood, Chairwoman, Washoe Housing Authority, Gardnerville, Nevada.

Karin Lee Foster, Legal Counsel, Yakama Nation Housing Authority, Toppenish, Washington.

Carol Gore, President/Chief Executive Officer, Cook Inlet Housing Authority, Anchorage, Alaska.

Lafe Allen Haugen, Executive Director, Northern Cheyenne Tribal Housing Authority, Lame Deer, Montana.

Richard Hill, General Manager, Mille Lacs Housing Authority, Onamia, Minnesota.

Leon Jacobs, Representative, Lumbee Tribe of North Carolina, Mystic, Connecticut.

Teri Nutter, Executive Director, Cooper River Basin Regional Housing Authority, Glennallen, Alaska.

Sam Okakok, Housing Director, Native Village of Barrow, Barrow, Alaska.

Diana Phair, Executive Director, Lummi Nation, Bellingham, Washington.

Michael Reed, Chief Executive Officer, Cocopah Indian Housing and Development, Somerton, Arizona.

S. Jack Sawyers, Special Projects Coordinator, Paiute Tribe of Utah, Cedar City, Utah.

Marty Shuravloff, Executive Director, Kodiak Island Housing Authority, Kodiak, Alaska.

Russell Sossamon, Executive Director, Choctaw Housing Authority, Hugo, Oklahoma.

Michael Thom, Vice Chairman, Karuk Tribe, Happy Camp, California.

Sharon Vogel, Executive Director, Cheyenne River Housing Authority, Eagle Butte, South Dakota.

Aneva Yazzie, Chief Executive Officer, Navajo Housing Authority, Window Rock, Arizona.

HUD Representatives

Sandra Henriquez, Assistant Secretary for Public and Indian Housing.

Rodger Boyd, Deputy Assistant Secretary for Native American Programs.

V. First Committee Meeting

The first meeting of the Indian Housing Block Grant Allocation Formula Negotiated Rulemaking Committee will be held on Tuesday, August 27, 2013, and Wednesday, August 28, 2013. On each day, the session will begin at approximately 8:30 a.m., and adjourn at approximately 5 p.m. The meetings will take place at the Grand Hyatt Hotel, 1750 Welton Street, Denver, Colorado 80202.

The meeting will be open to the public without advance registration. Public attendance may be limited to the space available. Members of the public may make statements during the meeting, to the extent time permits, and file written statements with the committee for its consideration. Written statements should be submitted to the address listed in the **FOR FURTHER INFORMATION** section of this notice.

VI. Future Committee Meetings

Decisions with respect to future meetings will be made at the first meeting and from time to time thereafter. Notices of all future meetings will be published in the **Federal Register**. HUD will make every effort to publish such notices at least 15 calendar days prior to each meeting.

Dated: July 19, 2013.

Sandra B. Henriquez,

Assistant Secretary for Public and Indian Housing.

[FR Doc. 2013–18176 Filed 7–29–13; 8:45 am]

BILLING CODE 4210–67–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[EPA–HQ–SFUND–1983–0002; FRL–9840–4]

National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List: Deletion of the Craig Farm Drum Superfund Site

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; notice of intent.

SUMMARY: The Environmental Protection Agency (EPA) Region III is issuing a Notice of Intent to Delete the Craig Farm Drum Superfund Site (Site) located in Perry Township, Armstrong County, Pennsylvania, from the National Priorities List (NPL) and requests public comments on this proposed action. The NPL, promulgated pursuant to Section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended, is an appendix of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP). The EPA and the Commonwealth of Pennsylvania, through the Pennsylvania Department of Environmental Protection (PADEP), have determined that all appropriate response actions under CERCLA, other than operation, maintenance, and Five Year Reviews, have been completed. However, this deletion does not preclude future actions under Superfund.

DATES: Comments must be received by August 29, 2013.

ADDRESSES: Submit your comments, identified by Docket ID no. EPA–HQ–SFUND–1983–0002, by one of the following methods:

- *http://www.regulations.gov*. Follow on-line instructions for submitting comments.
- *Email: Epps.John@epa.gov*.
- *Fax:* (215) 814–3002.
- *Mail:* John Epps, 1650 Arch Street, Mail Code 3HS22, Philadelphia, PA 19103.
- *Hand delivery:* John Epps, 1650 Arch Street, Mail Code 3HS22, Philadelphia, PA 19103.

Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID no. EPA–HQ–SFUND–1983–0002. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or email. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through *http://www.regulations.gov*, your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in the hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at:

EPA Administrative Records Room, 1650 Arch Street, Philadelphia, PA 19103, (215) 814–3157, Hours: Monday through Friday, 8:00 a.m. to 4:30 p.m.; by appointment only.

Karns City Area High School Office, 1446 Kittanning, Karns City, PA 16041, (726) 756–2030, Please call to schedule an appointment.

FOR FURTHER INFORMATION CONTACT: John Epps, Remedial Project Manager, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Mail Code 3HS22, Philadelphia, PA 19103, (215) 814–3144, Email: *Epps.John@epa.gov.*

SUPPLEMENTARY INFORMATION: In the ''Rules and Regulations'' Section of today's **Federal Register**, we are publishing a direct final Notice of Deletion of the Craig Farm Drum Superfund Site without prior Notice of Intent to Delete because we view this as a noncontroversial revision and anticipate no adverse comment. We have explained our reasons for this deletion in the preamble to the direct final Notice of Deletion, and those reasons are incorporated herein. If we receive no adverse comment(s) on this deletion action, we will not take further action on this Notice of Intent to Delete. If we receive adverse comment(s), we will withdraw the direct final Notice of Deletion, and it will not take effect. We will, as appropriate, address all public comments in a subsequent final Notice of Deletion based on this Notice of Intent to Delete. We will not institute a second comment period on this Notice

of Intent to Delete. Any parties interested in commenting must do so at this time.

For additional information, see the direct final Notice of Deletion which is located in the *Rules* section of this **Federal Register**.

List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous waste, Hazardous substances, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Authority: 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601–9657; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; E.O. 12580, 52 FR 2923; 3 CFR, 1987 Comp., p. 193.

Dated: July 10, 2013.

W.C. Early,

Acting Regional Administrator, Region III.

[FR Doc. 2013–18190 Filed 7–29–13; 8:45 am]

BILLING CODE 6560–50–P

Notices

Federal Register
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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

July 24, 2013.

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.

Comments regarding this information collection received by August 29, 2013 will be considered. Written comments should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), New Executive Office Building, 725–17th Street NW., Washington, DC 20502. Commenters are encouraged to submit their comments to OMB via email to: *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Copies of the submission(s) may be obtained by calling (202) 720–8958.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Animal & Plant Health Inspection Service

Title: National Animal Health Monitoring System; Dairy 2014 Study.

OMB Control Number: 0579–0205.

Summary Of Collection: Collection and dissemination of animal health data and information is mandated by 7 U.S.C. 391, the Animal Industry Act of 1884, which established the precursor of the Animal and Plant Health Inspection Service (APHIS), Veterinary Services, the Bureau of Animal Industry. The collection, analysis and dissemination of livestock and poultry health information on a national basis are consistent with the APHIS mission of protecting and improving American agriculture's productivity and competitiveness. In connection with this mission, the National Animal Health Monitoring System's (NAHMS) program includes periodic national commodity studies to investigate current issues and examine general health and management practices used on farms. NAHMS will initiate the fifth national data collection for dairy through Dairy 2014. The Dairy 2014 study is a part of an ongoing series of NAHMS studies on the U.S. dairy population.

Need and Use of the Information: The purpose of this fifth dairy study is to collect information, through two on-farm questionnaires and biological sampling to: (1) Describe trends in dairy cattle health and management practices; (2) describe management practices and production measures related to animal welfare; (3) estimate the herd level prevalence of lameness and identify housing and management factors associated with lameness; (4) evaluate dairy calf health from birth to weaning; (5) describe antibiotic use and residue prevention methods used to ensure milk and meal quality; and (6) estimate the prevalence and antimicrobial resistance pattern of foodborne pathogens.

Without this type of national data, the U.S.'s ability to detect trends in management, production, and health status, either directly or indirectly, would be reduced or nonexistent.

Description of Respondents: Business or other for-profit.

Number of Respondents: 3,500.

Frequency of Responses: Reporting; Annually.

Total Burden Hours: 7,439.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2013–18215 Filed 7–29–13; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Document Number AMS–FV–09–0028, FV–13–328]

United States Standards for Grades of Frozen Vegetables

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice.

SUMMARY: The Agricultural Marketing Service (AMS) of the Department of Agriculture (USDA) has revised eight United States Standards for Grades of Frozen Vegetables. This revision replaces dual grade nomenclature with single letter grade designations. ''U.S. Grade A'' (or ''U.S. Fancy''), ''U.S. Grade B'' (or ''U.S. Extra Standard''), and ''U.S. Grade C'' (or ''U.S. Standard'') become ''U.S. Grade A,'' ''U.S. Grade B,'' and ''U.S. Grade C,'' respectively. This change conforms to recent changes in other grade standards. AMS has also updated contact information for obtaining copies of the grade standards and color standards. These changes bring these grade standards in line with the present quality levels being marketed today and provide guidance in the effective use of these products. The grade standards covered by these revisions are: frozen asparagus, frozen lima beans, frozen speckled butter beans, frozen cooked squash, frozen summer squash, frozen sweetpotatoes, frozen turnip greens with turnips, and frozen mixed vegetables.

DATES: *Effective Date:* August 29, 2013.

FOR FURTHER INFORMATION CONTACT: Brian E. Griffin, Standardization Branch, Specialty Crops Inspection Division, Fruit and Vegetable Program, Agricultural Marketing Service, U.S. Department of Agriculture, 1400 Independence Avenue SW., Room 0709,

South Building; STOP 0247, Washington, DC 20250; fax: (202) 690–1527; or email at *Brian.Griffin@ams.usda.gov*. Copies of the revised U.S. Standards for Grades of Frozen Vegetables are available on the AMS Web site at *http://www.ams.usda.gov/scihome*, and on *http://www.Regulations.gov.*

SUPPLEMENTARY INFORMATION: Section 203(c) of the Agricultural Marketing Act of 1946, as amended (7 U.S.C. 1622(c)), directs and authorizes the Secretary of Agriculture ''to develop and improve standards of quality, condition, quantity, grade, and packaging, and recommend and demonstrate such standards in order to encourage uniformity and consistency in commercial practices.''

AMS is committed to carrying out this authority in a manner that facilitates the marketing of agricultural commodities and makes copies of official standards available upon request. Those United States Standards for Grades of Fruits and Vegetables no longer appear in the Code of Federal Regulations but are maintained by USDA, AMS, Fruit and Vegetable Program at the following Web site: *http://www.ams.usda.gov/scihome.* AMS has revised these U.S. Standards for Grades using the procedures that appear in part 36 of Title 7 of the Code of Federal Regulations (7 CFR part 36).

Background: AMS periodically reviews the processed fruit and vegetable grade standards for usefulness in serving the industry. AMS has identified 18 grade standards covering various frozen vegetables for possible revision. More recently developed grade standards use a single term, such as ''U.S. Grade A'' or ''U.S. Grade B'' to describe each level of quality within a grade standard. Older standards use a dual system, such as ''U.S. Grade A'' and ''U.S. Fancy'' to describe the same level of quality within a grade standard. Prior to undertaking detailed work developing the proposed revisions to these grade standards, AMS published a notice in the **Federal Register** on July 23, 2010 (75 FR 43141) soliciting comments on the possible changes and any other comments regarding these grade standards to better serve the industry. A 60-day period was provided for interested persons to submit comments on the proposed grade standards. In response to the Notice, AMS received one comment from by the American Frozen Food Institute (AFFI). AFFI's comments are available on the web at *http://www.Regulations.gov.* AFFI is a national trade association representing the interests of U.S. frozen food processors and their suppliers. AFFI's more than 500 member companies represent approximately 90 percent of the frozen food processed annually in the United States. AFFI's comment was in support of the proposed revisions to the U.S. grade standards because its membership believes ''moving to a one-term system of grading (e.g., referring to ''Grade A'' solely, instead of allowing the use of ''Grade A'' and/or ''Extra Fancy'' to describe the same degree of quality) will help to improve consistency between new and old standards and minimize any confusion that might arise in the marketplace in interpreting or understanding the grading terminology used on packaging.''

AMS published a second Notice with a 60-day comment period in the **Federal Register** on January 15, 2013 (78 FR 2946). All comments are posted on *http://www.Regulations.gov.* In response to the second Notice, AMS received two comments. The first commenter, representing a state agency, agreed with the overall proposed change to the standards. This commenter went on to ask why the notice proposes to change the grading for only particular vegetables, e.g., asparagus, lima beans, speckled butter beans, cooked squash, summer squash, etc., and not other vegetables. AMS periodically reviews the processed fruit and vegetable grade standards for usefulness in serving the industry. Other grade standards have been identified and AMS has determined that these grade standards may require additional revisions before moving forward. The commenter also raised a question concerning frozen vegetables genetic modification, which is outside of the scope of this action. Further, the commenter was of the view that a good step overall in helping clarify the grading system would be to add an explanation of what a particular grade on a product means. For example, Grade A means that the product is carefully selected for color and tenderness. With regard to this suggestion, it should be noted that in each of the revised standards, there is a section titled ''Grades of (name of commodity).'' Within this section there is a definition of what each particular grade of a product means. The second commenter, representing a university, was in support of AMS revising the eight frozen vegetable standards identified in this Notice.

This Notice revises eight of the 18 grade standards identified in notices published July 23, 2010 (75 FR 43141) and January 15, 2013 (78 FR 2946). The changes to each of the grade standards are as follows:

United States Standards for Grades of Frozen Asparagus

Update address for AMS. Change ''U.S. Grade A or U.S. Fancy'' to ''U.S. Grade A.'' Change ''U.S. Grade B or U.S. Extra Standard'' to ''U.S. Grade B.''

United States Standards for Grades of Frozen Cooked Squash

Update address for AMS. Change ''U.S. Grade A or U.S. Fancy'' to ''U.S. Grade A.'' Change ''U.S. Grade B or U.S. Extra Standard'' to ''U.S. Grade B.'' Correct a typographical error to read: ''U.S. Grade B is the quality of frozen cooked squash that possesses reasonably good flavor and odor.'' This would ensure that these requirements are consistent throughout the document.

United States Standards for Grades of Frozen Lima Beans

Update address for AMS. Change ''U.S. Grade A or U.S. Fancy'' to ''U.S. Grade A.'' Change ''U.S. Grade B or U.S. Extra Standard'' to ''U.S. Grade B.'' Change ''U.S. Grade C or U.S. Standard'' to ''U.S. Grade C.'' Update contact information for obtaining color standards for frozen lima beans.

United States Standards for Grades of Frozen Mixed Vegetables

Update address for AMS. Change ''U.S. Grade A or U.S. Fancy'' to ''U.S. Grade A.'' Change ''U.S. Grade B or U.S. Extra Standard'' to ''U.S. Grade B.'' Change ''U.S. Grade C or U.S. Standard'' to ''U.S. Grade C.'' Update references to color standard and definitions to eliminate conflict with current U.S. Standards for Grades of Frozen Lima Beans (remove reference to Maerz and Paul's Dictionary of Color and replace with current USDA Color Standards for Frozen Lima Beans). Update definition for color to ''Green means that not less than 50 percent of the surface area of the individual lima bean possesses as much or more green color than U.S.D.A. lima bean green color standard for frozen lima beans.'' Update definition to ''White means that more than 50 percent of the surface area of the individual lima bean is lighter in color than U.S.D.A. lima bean white color standard for frozen lima beans.'' Add ''Information regarding these color standards may be obtained by contacting the Specialty Crops Inspection Division.'' These changes would eliminate the inconsistency in evaluating the color of frozen lima beans when they are a component in frozen mixed vegetables.

United States Standards for Grades of Frozen Speckled Butter (Lima) Beans

Update address for AMS. Change ''U.S. Grade A or U.S. Fancy'' to ''U.S.

Grade A.'' Change ''U.S. Grade B or U.S. Extra Standard'' to ''U.S. Grade B.''

United States Standards for Grades of Frozen Squash (Summer Type)

Update address for AMS. Change ''U.S. Grade A or U.S. Fancy'' to ''U.S. Grade A.'' Change ''U.S. Grade B or U.S. Extra Standard'' to ''U.S. Grade B.''

United States Standards for Grades of Frozen Sweet Potatoes

Update address for AMS. Change ''U.S. Grade A or U.S. Fancy'' to ''U.S. Grade A.'' Change ''U.S. Grade B or U.S. Extra Standard'' to ''U.S. Grade B.''

United States Standards for Grades of Frozen Turnip Greens With Turnips

Update address for AMS. Change ''U.S. Grade A or U.S. Fancy'' to ''U.S. Grade A.'' Change ''U.S. Grade B or U.S. Extra Standard'' to ''U.S. Grade B.'' Change references for ''flavor'' to ''flavor and odor'' to ensure that these requirements are consistent throughout the document.

The other grade standards identified in the original notice (75 FR 43141), namely frozen carrots, frozen whole kernel corn, frozen corn on the cob, frozen breaded onion rings, frozen peas, frozen peas and carrots, frozen French fried potatoes, frozen sweet peppers, frozen succotash, and frozen tomato juice and tomato juice from concentrate will be revised at a later date. AMS determined that these grade standards require additional revisions to take into account U.S. Food and Drug Administration's Standards of Identity, new styles and pack types, and new commercially cultivated varieties (such as supersweet corn) which possess unique characteristics. AMS will seek additional guidance from the industry to update these grade standards so that they reflect current marketing practices and serve the needs of the industry.

The revisions to these frozen vegetable grade standards made in this notice provide a common language for trade and better reflect the current marketing of frozen vegetables. The changes are made effective 30 days after the date of publication in the **Federal Register**.

Authority: 7 U.S.C. 1621–1627.

Dated: July 24, 2013.

Rex A. Barnes,

Associate Administrator, Agricultural Marketing Service.

[FR Doc. 2013–18221 Filed 7–29–13; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

Designation for the Amarillo, TX; Cairo, IL; Baton Rouge, LA; Raleigh, NC; and Belmond, IA Areas

AGENCY: Grain Inspection, Packers and Stockyards Administration, USDA.

ACTION: Notice.

SUMMARY: GIPSA is announcing the designation of Amarillo Grain Exchange, Inc. (Amarillo), Cairo Grain Inspection Agency, Inc. (Cairo), Louisiana Department of Agriculture and Forestry (Louisiana), North Carolina Department of Agriculture (North Carolina), and D.R. Schaal Agency, Inc. (Schaal) to provide official services under the United States Grain Standards Act (USGSA), as amended.

DATES: *Effective Date:* October 1, 2013.

ADDRESSES: Eric J. Jabs, Chief, USDA, GIPSA, FGIS, QACD, QADB, 10383 North Ambassador Drive, Kansas City, MO 64153.

FOR FURTHER INFORMATION CONTACT: Eric J. Jabs, 816–659–8408 or *Eric.J.Jabs@usda.gov.*

Read Applications: All applications and comments will be available for public inspection at the office above during regular business hours (7 CFR 1.27(c)).

SUPPLEMENTARY INFORMATION: In the December 28, 2012 **Federal Register** (77 FR 76453), GIPSA requested applications for designation to provide official services in the geographic areas presently serviced by Amarillo, Cairo, Louisiana, North Carolina, and Schaal. Applications were due by January 28, 2013. Amarillo, Cairo, Louisiana, North Carolina and Schaal were the sole applicants for designation to provide official services in these areas. As a result, GIPSA did not ask for additional comments.

GIPSA evaluated all available information regarding the designation criteria in section 79(f) of the USGSA (7 U.S.C. 79(f)) and determined that Amarillo, Cairo, Louisiana, North Carolina, and Schaal are qualified to provide official services in the geographic area specified in the **Federal Register** on December 28, 2012 and as corrected in the **Federal Register** on July 22, 2013, for the Cairo and Belmond geographic areas. This designation action to provide official services in these specified areas is effective October 1, 2013 and terminates on September 30, 2016.

Interested persons may obtain official services by contacting these agencies at the following telephone numbers:

Official agency	Headquarters location and telephone	Designation start	Designation end
Amarillo	Amarillo, TX (806) 372–8511	10/1/2013	9/30/2016
Cairo	Cairo, IL (618) 734–0689	10/1/2013	9/30/2016
Louisiana	Baton Rouge, LA (225) 922–1341	10/1/2013	9/30/2016
North Carolina	Raleigh, NC (919) 733–4491	10/1/2013	9/30/2016
D.R. Schaal	Belmond, IA (641) 444–3122	10/1/2013	9/30/2016

Section 79(f) of the USGSA authorizes the Secretary to designate a qualified applicant to provide official services in a specified area after determining that the applicant is better able than any other applicant to provide such official services (7 U.S.C. 79(f)).

Under section 79(g) of the USGSA, designations of official agencies are effective for no longer than three years unless terminated by the Secretary; however, designations may be renewed according to the criteria and procedures prescribed in section 79(f) of the USGSA.

Authority: 7 U.S.C. 71–87k.

Larry Mitchell,

Administrator, Grain Inspection, Packers and Stockyards Administration.

[FR Doc. 2013–18257 Filed 7–29–13; 8:45 am]

BILLING CODE 3410–KD–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Colorado Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission), and the Federal Advisory Committee Act (FACA), that a planning meeting of the Colorado Advisory Committee to the

Commission will convene at 11:00 a.m. (MDT) and end at 1:00 p.m. on Thursday, August 22, 2013, at City Hall, Pikes Peak Conference Room, Suite 200, Colorado Springs, CO. The meeting is for project planning.

Members of the public are entitled to submit written comments. The comments must be received in the regional office by Monday, September 23, 2013. Comments may be mailed to the Rocky Mountain Regional Office, U.S. Commission on Civil Rights, 999–18th Street, Suite 1380 South, Denver, CO 80202, faxed to 303–866–1050, or emailed to *ebohor@usccr.gov.* Persons who desire additional information may contact the Rocky Mountain Regional Office at 303–866–1040.

Persons needing accessibility services should contact the Rocky Mountain Regional Office at least 10 working days before the scheduled date of the meeting.

Records generated from this meeting may be inspected and reproduced at the Rocky Mountain Regional Office, as they become available, both before and after the meeting. Persons interested in the work of this advisory committee are advised to go to the Commission's Web site, www.usccr.gov, or to contact the Rocky Mountain Regional Office at the above phone number, email or street address.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission and FACA.

Dated in Chicago, IL, on July 25, 2013.

David Mussatt,

Acting Chief, Regional Programs Coordination Unit.

[FR Doc. 2013–18210 Filed 7–29–13; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

Census Bureau

Proposed Information Collection; Comment Request; Current Population Survey (CPS) Email Address Collection Test Supplement

AGENCY: U.S. Census Bureau, Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: To ensure consideration, written comments must be submitted on or before September 30, 2013.

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

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Kyra Linse, U.S. Census Bureau, DSD/CPS HQ–7H108F, Washington, DC 20233–8400, (301) 763–9280.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Census Bureau plans to request clearance for the collection of data concerning the November 2013 Email Address Collection Test Supplement. The Census Bureau and the Bureau of Labor Statistics (BLS) sponsor the CPS which has been conducted for over 70 years.

The Current Population Survey (CPS) has been collecting data on household employment for decades. Through the years, it has made survey improvements to keep the data quality and survey response rates high. Over the last few years, CPS, like many surveys, has seen response rates declining slowly. A review of paradata has found one of the main reasons for this decline is not just refusals but also respondent avoidance (i.e. the interviewers are unable to make contact with the respondent). This has led to an effort to think of new ways to contact respondents and reduce respondent burden so that they may be more likely to answer CPS over the many months needed.

One of the solutions recommended has been to research the possibility of using the Internet as a data collection mode as well as a tool to help increase response rates. We foresee that in the future, we could collect email addresses from our respondents. For those that are eligible, we could then send an email to the respondent with a secure link in order for that respondent to complete the CPS the next month over the internet and in turn, keep up response rates while lowering costs of interviewing. Internet is not limited to just a survey data collection mode. These emails could be used for other contacts as well. We could allow the respondent to set up a time to meet with the interviewer at their convenience and save on travel costs associated with the multiple personal visits. The email could also be as simple as a ''Thank You'' with information that lets respondents know their participation is improving the quality of our data.

This supplement is the first step in the review of the feasibility of this plan. It will test the ability of collecting email addresses and collecting interest in being contacted by email or answering the survey through the internet for possible future enhancements to CPS.

II. Method of Collection

The email address collection will be collected by both personal visit and telephone interviews in conjunction with the regular November CPS interviewing. All interviews are conducted using computer-assisted interviewing.

III. Data

OMB Control Number: None.

Form Number: There are no forms. We conduct all interviews on computers.

Type of Review: Regular submission.

Affected Public: Households.

Estimated Number of Respondents: 29,500.

Estimated Time per Response: 3 minutes.

Estimated Total Annual Burden Hours: 1,475.

Estimated Total Annual Cost: The only cost to the respondents is that of their time.

Respondents Obligation: Voluntary.

Legal Authority: Title 13 U.S.C. 182, and Title 29, U.S.C., 1–9.

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: July 24, 2013.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2013–18204 Filed 7–29–13; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[S–114–2013]

Foreign-Trade Zone 247—Erie, Pennsylvania, Application for Subzone, Hardinger Transfer Co., Erie and Grove City, Pennsylvania

An application has been submitted to the Foreign-Trade Zones (FTZ) Board by the Erie-Western Pennsylvania Port Authority, grantee of FTZ 247, requesting subzone status for the facilities of Hardinger Transfer Co., dba Team Hardinger Transportation and Warehousing (Team Hardinger), located in Erie and Grove City, Pennsylvania. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the FTZ Board (15 CFR part 400). It was formally docketed on July 24, 2013.

The proposed subzone would consist of the following sites: *Site 1* (36 acres) 3106 McCain Avenue, Erie, Erie County; *Site 2* (19 acres) 1314 West 18th Street, Erie, Erie County; and, *Site 3* (40 acres) 156 Hardinger Boulevard, Grove City, Venango County. No authorization for production activity has been requested at this time. The proposed subzone would be subject to the existing activation limit of FTZ 247.

In accordance with the FTZ Board's regulations, Elizabeth Whiteman of the FTZ Staff is designated examiner to review the application and make recommendations to the Executive Secretary.

Public comment is invited from interested parties. Submissions shall be addressed to the FTZ Board's Executive Secretary at the address below. The closing period for their receipt is September 9, 2013. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to September 23, 2013.

A copy of the application will be available for public inspection at the Office of the Executive Secretary, Foreign-Trade Zones Board, Room 21013, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230–0002, and in the ''Reading Room'' section of the FTZ Board's Web site, which is accessible via *www.trade.gov/ftz.*

For Further Information Contact: Elizabeth Whiteman at *Elizabeth.Whiteman@trade.gov* or (202) 482–0473.

Dated: July 24, 2013.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2013–18319 Filed 7–29–13; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–75–2013]

Foreign-Trade Zone (FTZ) 38—Spartanburg County, South Carolina, Notification of Proposed Production Activity, Black & Decker (U.S.) Inc., (Power Tools), Fort Mill, South Carolina

Black & Decker (U.S.) Inc. (Black & Decker) submitted a notification of proposed production activity to the FTZ Board for its facility in Fort Mill, South Carolina within Subzone 38E. The notification conforming to the requirements of the regulations of the FTZ Board (15 CFR 400.22) was received on July 19, 2013.

The Black & Decker facility is located within Subzone 38E. The facility is used for the manufacturing of power tool parts and components, the manufacture and assembly of power tools, the packaging and kitting of power tools and the repair and rework of power tools, parts and accessories. Pursuant to 15 CFR 400.14(b), FTZ activity would be limited to the specific foreign-status materials and components and specific finished products described in the submitted notification (as described below) and subsequently authorized by the FTZ Board.

Production under FTZ procedures could exempt Black & Decker from customs duty payments on the foreign status components used in export production. On its domestic sales, Black & Decker would be able to choose the duty rates during customs entry procedures that apply to miter saws, drills (with a self-contained motor), saws (with a self-contained motor), grinders, polishers, sanders, screwdrivers, nut-runners, impact wrenches, impact drivers, routers, planers, grass and weed trimmers/edgers, electro-pneumatic rotary and percussion hammers, electric scissors, circle cutters, spindles, gears, sleeve bearings, motors (cordless), SA armatures and work lights (duty rate ranges from duty-free to 12.5%) for the foreign status inputs noted below. Customs duties also could possibly be deferred or reduced on foreign status production equipment.

The components and materials sourced from abroad include: Resins (colored pigments); paints; inks; grease; adhesives; loctite; polyethylene, polypropylene, polystyrene, ABS, acetyl, epoxy powder, polycarbonate, polyethylene terephthalate, polyester, saturated polyester, glass filled nylon and polyamide resins; nylon tape; plastic hoses; flexible hoses; nameplates; transparent tapes; ID labels; plastic labels; tape; film stretch; plastic cases; poly-bags; battery caps; blister packs; shrink-heat tubing; plastic handles and knobs; O-rings; seals; washers; retaining clips; chuck key holders; cord protectors; nuts; spacers/fasteners; drive belts; Styrofoam; rubber tubing and hoses; backing pads; caps plugs; polisher pads; tool bags; kit boxes; wood pallets; wood biscuits; corrugated sheets; corrugated cartons; non-corrugated cartons; sleeves; hang tags; labels; fillers; gaskets; paper gaskets; seals; corner posts; instruction/owner manuals; heat transfer labels; blister cards; advertising flyers; leaflets; bulletins; warranty cards; survey cards; slot liners; mower, sander and planer filter bags; sander pads; felt washers and seals; grinding wheels; sanding discs; iron/metal powder; non-alloyed steel; steel; chains; bolts; screws; hardware bag assemblies; lock nuts; nuts; rivets; cotters; cotter pins; retaining rings; snap rings; blade locks; fastener pins; leaf, helical/coil and other springs; wire forms; flanges; backing flanges; rip fences; clips; brass strips; articles of aluminum die-casting; magnesium ingots; bandsaw, circular saw, jigsaw, cutsaw and other blades; wrenches; chuck keys; socket wrenches; clamps; punch/punch & die; drill bits; dies; die kits; loose keys; solders; solder wire; prepared solder bars; parts of inflator fans; mobile bases; wheels for lawnmowers; drill chucks; circle cutters; clamps for stationary tools; parts of work holders; tables and wings for saws; base/cutting arms; brackets, handles, knobs and parts of stationary tools; guards; parts of tools; parts for pneumatic nailers; actuators; bearing plates; bearing retainers; bearing supports; blade clamps; button switches; clamps; cord retainers; counterweights; cover plates; end caps; handles/switch covers; housings; field cases; lock buttons; parts of power tools; circular saw quadrants; shields; jigsaw shoe/plates; triggers; cord clamps; gear cases; dust shields; thrust bearings; ball bearings; needle roller bearings;

cylindrical bearings; bearing parts; spindles; transmission shafts; bearing blocks, plates and housings; bearing retainer housings; bearing bushings; bearing sleeves; sintered metal; gear boxes; SA transmission assemblies; transmissions; sprockets; pulleys; clutches; gearcase covers; pinions; reciprocating shafts; yokes; balls for clutches and transmissions; transmission parts; gears; gear blanks; metal seals; cordless, corded and single phase motors; commutators; armature shafts; armatures; brush assemblies; brush boxes; plates; rings; holders; capacitor assemblies; fields; laminations for motors; motor cans; transformers; charges; inverters; laminations for transformers; parts of chargers; magnets; magnetic chucks; lead-acid, power pack, NiMH and lithium ion batteries; SA battery packs; car/hand vacuum filter bags; vacuum parts; flashlight lenses; reflector SA for flashlights; sensormatic security tags; SA terminal boards; fuses; PC terminal boards; switches; terminals/terminations; contacts for switches; terminal boards; electronic modules and controls; PC boards; printed circuit assemblies/SA modules; paddles; switch parts; flashlight bulbs; fluorescent lights/tubes; laser and light-emitting diodes; diodes; magnet wires; cordsets; lead wire assemblies; lead wire; brushes; ceramic insulators; end fibers; end punching; end rings; insulators; insulating tube; mylar paper; wire nuts; coil-wound chokes; ceramic insulating fittings; terminal blocks; miter and planer (all mechanical) gauges; air pressure gauges; tachometers; levels; miter and scroll saw stands; and, brushes for vacuums (duty rate ranges from duty-free to 20%). The request indicates that inputs classified under HTSUS Subheadings 4202.92, 5911.90 and 6307.90 will be admitted to the zone in privileged foreign status (19 CFR 146.41), thereby precluding inverted tariff benefits on such items.

Public comment is invited from interested parties. Submissions shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is September 9, 2013.

A copy of the notification will be available for public inspection at the Office of the Executive Secretary, Foreign-Trade Zones Board, Room 21013, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230–0002, and in the ''Reading Room'' section of the Board's Web site, which is accessible via *www.trade.gov/ftz.*

For Further Information Contact: Elizabeth Whiteman at *Elizabeth.Whiteman@trade.gov* or (202) 482–0473.

Dated: July 24, 2013.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2013–18289 Filed 7–29–13; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–601]

Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China: Initiation of Antidumping Duty New Shipper Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Department) has determined that Shanghai Tainai Bearing Co., Ltd.'s (Tainai's) request for a new shipper review (NSR) of the antidumping duty order on tapered roller bearings and parts thereof, finished and unfinished (TRBs), from the People's Republic of China (PRC) meets the statutory and regulatory requirements for initiation. The period of review (POR) for this NSR is June 1, 2012, through May 31, 2013.

DATES: As of July 30, 2013.

FOR FURTHER INFORMATION CONTACT: Elizabeth Eastwood or Stephen Banea, AD/CVD Operations, Office 2, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–3874 or (202) 482–0656, respectively.

SUPPLEMENTARY INFORMATION:

Background

On June 15, 1987, the Department published in the **Federal Register** the antidumping duty order on TRBs from the PRC.[1] On June 21, 2013, pursuant to section 751(a)(2)(B)(i) of the Tariff Act of 1930, as amended (the Act), the Department received a properly filed NSR request from Tainai during the anniversary month [2] of the antidumping duty order.

In its request, Tainai certified that it is both a producer and exporter of TRBs from the PRC. Pursuant to section 751(a)(2)(B)(i)(I) of the Act and 19 CFR 351.214(b)(2)(i), Tainai certified that it did not export TRBs to the United States during the period of investigation (POI).[3] In addition, pursuant to section 751(a)(2)(B)(i)(II) of the Act and 19 CFR 351.214(b)(2)(iii)(A), Tainai certified that, since the initiation of the investigation, it has never been affiliated with any PRC exporter or producer who exported TRBs to the United States during the POI, including those respondents not individually examined during the investigation.[4] As required by 19 CFR 351.214(b)(2)(iii)(B), Tainai also certified that its export activities were not controlled by the government of the PRC.[5]

In addition to the certifications described above, pursuant to 19 CFR 351.214(b)(2)(iv)(A), (B) and (C), Tainai submitted documentation establishing the following: (1) The date on which Tainai first shipped TRBs for export to the United States and the date on which the TRBs were first entered; (2) the volume of its first shipment; and (3) the date of its first sale to an unaffiliated customer in the United States.[6]

The Department conducted U.S. Customs and Border Protection (CBP) database queries in an attempt to confirm that Tainai's shipment of subject merchandise had entered the United States for consumption and that liquidation of this entry had been properly suspended for antidumping duties. The Department also examined whether the CBP data confirmed that this entry was made during the POR. The information the Department examined was consistent with that provided by Tainai. After the initiation of the NSR, the Department intends to place additional CBP data on the record and, if necessary, request additional information from Tainai.

Period of Review

In accordance with 19 CFR 351.214(g)(1)(i)(A), the POR for an NSR initiated in the month immediately following the anniversary month will be the twelve-month period immediately preceding the anniversary month. Therefore, the POR for this NSR is June 1, 2012, through May 31, 2013. Based on the information provided by Tainai, the sale and entry into the United States of subject merchandise produced and exported by Tainai occurred during this twelve-month POR.

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[1] *See Antidumping Duty Order; Tapered Roller Bearings and Parts Thereof, Finished or Unfinished, From the People's Republic of China,* 52 FR 22667 (June 15, 1987).

[2] *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review,* 78 FR 33061 (June 3, 2013).

[3] *See* Tainai's June 21, 2013, submission, at Exhibit 1.

[4] *Id.*

[5] *Id.*

[6] *See* Tainai's June 21, 2013, submission, at Exhibit 2.

Initiation of New Shipper Review

Pursuant to section 751(a)(2)(B) of the Act, 19 CFR 351.214(b), 19 CFR 351.214(d)(1), and the information on the record, the Department finds that Tainai meets the threshold requirements for initiation of an NSR for shipments of TRBs from the PRC produced and exported by Tainai.[7] If the information supplied by Tainai cannot be verified using CBP import data, or is otherwise found to be incorrect or insufficient during the course of this proceeding, the Department may rescind the review or apply facts available pursuant to section 776 of the Act, depending on the facts on record.

The Department intends to issue the preliminary results of this NSR no later than 180 days from the date of initiation, and the final results no later than 270 days from the date of initiation, pursuant to section 751(a)(2)(B)(iv) of the Act.

It is the Department's usual practice, in cases involving non-market economy countries, to require that a company seeking to establish eligibility for an antidumping duty rate separate from the country-wide rate provide evidence of *de jure* and *de facto* absence of government control over the company's export activities. Accordingly, we will issue a questionnaire to Tainai, which will include a section requesting information concerning Tainai's eligibility for a separate rate. The review will proceed if the response provides sufficient indication that Tainai is not subject to either *de jure* or *de facto* government control with respect to its export of subject merchandise.

We will instruct CBP to allow, at the option of the importer, the posting, until the completion of the review, of a bond or security in lieu of a cash deposit for each entry of the subject merchandise from Tainai in accordance with section 751(a)(2)(B)(iii) of the Act and 19 CFR 351.214(e). The bonding privilege will only apply to entries of subject merchandise both produced and exported by Tainai.

To assist in its analysis of the *bona fides* of Tainai's sales, upon initiation of this NSR, the Department will require Tainai to submit on an ongoing basis complete transaction information concerning any sales of subject merchandise to the United States that were made subsequent to the POR.

Interested parties requiring access to proprietary information in this NSR should submit applications for disclosure under administrative protective order in accordance with 19 CFR 351.305 and 351.306. This initiation and notice are published in accordance with section 751(a)(2)(B) of the Act and 19 CFR 351.214 and 351.221(c)(1)(i).

Dated: July 24, 2013.

Christian Marsh,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2013–18304 Filed 7–29–13; 8:45 am]

BILLING CODE 3510–DS–P

[7] *See* Memorandum to the File from Stephen Banea, International Trade Compliance Analyst, Office 2, AD/CVD Operations, entitled ''Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China: Initiation of New Shipper Review,'' dated concurrently with this notice.

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID DOD–2012–OS–0058]

Privacy Act of 1974; Systems of Records

AGENCY: National Security Agency/Central Security Service, DoD.

ACTION: Notice to alter a System of Records.

SUMMARY: The National Security Agency/Central Security Service proposes to alter a system of records in its existing inventory of records systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: This proposed action will be effective on August 30, 2013 unless comments are received which result in a contrary determination. Comments will be accepted on or before August 29, 2013.

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, 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. Kris Grein, National Security Agency/Central Security Service, Freedom of Information Act and Privacy Act Office, 9800 Savage Road, Suite 6248, Ft. George G. Meade, MD 20755–6248 or by phone at (301) 688–6527.

SUPPLEMENTARY INFORMATION: The National Security Agency/Central Security Service systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address in **FOR FURTHER INFORMATION CONTACT** or from the Defense Privacy and Civil Liberties Office Web site at *http://dpclo.defense.gov/privacy/SORNs/component/nsa/index.html.* The proposed system report, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, was submitted on May 24, 2012 to the House Committee on Oversight and Government Reform, the Senate Committee on Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, ''Federal Agency Responsibilities for Maintaining Records About Individuals,'' dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: July 25, 2013.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

GNSA 14

SYSTEM NAME:

NSA/CSS Library Patron File Control System (August 19, 2009, 74 FR 41869)

CHANGES:

* * * * *

SYSTEM LOCATION:

Delete entry and replace with ''National Security Agency/Central Security Service, 9800 Savage Road, Ft. George G. Meade, MD 20755–6000.''

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Delete entry and replace with ''NSA civilian employees, active duty military assignees to NSA, or contractors assigned to NSA, who have approval of their contracting representative, are given permission to borrow items from the NSA/CSS library.''

* * * * *

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with ''Section 6 of the National Security Agency Act of 1959, Public Law 86–36, (codified at 50 U.S.C. Section 402 note); and Department of Defense Instruction

1015.10, Military Morale, Welfare, and Recreation (MWR) Programs.''

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with ''Chief, Advanced Intelligence Research Services, National Security Agency/Central Security Service, 9800 Savage Road, Ft. George G. Meade, MD 20755–6000.''

NOTIFICATION PROCEDURE:

Delete entry and replace with ''Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the National Security Agency/Central Security Service, Freedom of Information Act/Privacy Act Office, 9800 Savage Road, Suite 6248, Ft. George G. Meade, MD 20755–6248.

Written inquiries should contain the individual's full name, mailing address, and signature.''

RECORD ACCESS PROCEDURES:

Delete entry and replace with ''Individuals seeking access to information about themselves contained in this system should address written inquiries to the National Security Agency/Central Security Service, Freedom of Information Act/Privacy Act Office, 9800 Savage Road, Suite 6248, Ft. George G. Meade, MD 20755–6248.

Written inquiries should contain the individual's full name, mailing address, and signature.''

CONTESTING RECORD PROCEDURES:

Delete entry and replace with ''The NSA/CSS rules for contesting contents and appealing initial determinations are published at 32 CFR Part 322 or may be obtained by written request addressed to the National Security Agency/Central Security Service, Freedom of Information Act/Privacy Act Office, 9800 Savage Road, Suite 6248, Ft. George G. Meade, MD 20755–6248.''

* * * * *

[FR Doc. 2013–18238 Filed 7–29–13; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Army

[Docket ID USA–2013–0022]

Privacy Act of 1974; System of Records

AGENCY: Department of the Army, DoD.

ACTION: Notice to alter a System of Records.

SUMMARY: The Department of the Army proposes to alter a system of records notice, A0600–8–104 AHRC, ''Army Personnel System (APS)'' in its existing inventory of records systems subject to the Privacy Act of 1974, (5 U.S.C. 552a (r)), as amended. This system will manage the member's Army Service effectively, document historically the member's military service, and safeguard the rights of the member and the Army.

DATES: This proposed action will be effective on August 30, 2013 unless comments are received which result in a contrary determination. Comments will be accepted on or before August 29, 2013.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

* *Federal Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

* *Mail:* Federal Docket Management System Office, 4800 Mark Center Drive East Tower, 2nd Floor, Suite 02G09, Alexandria, VA 22350–3100.

Instructions: All submissions received must include the agency name and docket number for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Mr. Leroy Jones, Department of the Army, Privacy Office, U.S. Army Records Management and Declassification Agency, 7701 Telegraph Road, Casey Building, Suite 144, Alexandria, VA 22325–3905 or by calling (703) 428–6185.

SUPPLEMENTARY INFORMATION: The Department of the Army's notices for systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address in **FOR FURTHER INFORMATION CONTACT** or from the Defense Privacy and Civil Liberties Office Web site at *http://dpclo.defense.gov/privacy/SORNs/component/army/index.html.*

The proposed systems reports, as required by 5 U.S.C. 552a(r) of the Privacy Act, as amended were submitted on July 2, 2013, to the House Committee on Oversight and Government Reform, the Senate Committee on Homeland Security and Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, ''Federal Agency Responsibilities for Maintaining Records About Individuals,'' dated February 8, 1996, (February 20, 1996, 61 FR 6427).

Dated: July 24, 2013.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

A0600–8–104 AHRC

SYSTEM NAME:

Military Personnel Records Jacket Files (MPRJ) (January 6, 2004, 69 FR 790).

* * * * *

CHANGES:

SYSTEM NAME:

Delete entry and replace with ''Army Personnel System (APS).''

SYSTEM LOCATION:

Delete entry and replace with ''U.S. Army Human Resources Command, 1600 Spearhead Division Avenue, Fort Knox, KY 40122–5500.''

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Delete entry and replace with ''Current and former members of the U.S. Army (including Active and Reserve Components), DoD civilians, military dependents, and members of the general public.''

CATEGORIES OF RECORDS IN THE SYSTEM:

Delete entry and replace with ''IDENTIFICATION DATA: Name, other names used, name change, Social Security Number (SSN), DoD ID Number, driver's license number, other ID number, citizenship, legal status, gender/sex, race/ethnicity, ethnic group code, birth date, place of birth, state of birth, country of birth, religious preference, birth certificate, citizenship statement and status, demographics, U.S. field medical card.

CONTACT INFORMATION: Personal cell telephone number, home telephone number, personal email address, mailing/home address, emergency contact, emergency data, Army Knowledge Online (AKO) email address, network login, personal network ID, daytime telephone number, home of record address, geographic location abbreviation, work fax number, work telephone number.

MILITARY PERSONNEL INFORMATION: Military records, acknowledgements of service requirements, active duty report, appellate actions for 10 U.S.C. 815,

application for appointment, application for correction of military records, appointments, AKO login, assignment information agreements, elections, history, travel, waivers, awards, Absent Without Leave and desertion records, base pay, basic active service date, benefit data, board results, branch, career field designation date, career guidance, casualty line of duty report, certificate of release or discharge from active duty, commissioned service start date, commissioning source, conscientious objector summary sheets review, current organization, current position and tour information, dates (entry on active duty, mandatory removal retention expiration, previous rank, rank), declaration of parent/guardian, deferment, designations, determinations of moral eligibility, discharge or separation reviews, duty address (mailing address, city, state, nine digit zip code), duty command of assignment, duty station, effective date of duty assignment, efficiency appeals, election of options, employment assistance information, enlistment (contract, extensions, statements), evaluations, expiration of term of service, field/application for active duty, flight status board reviews, grade, grade reserve, inactive status date, incentive data, investigation status, language/foreign language qualifications, legal information, length of service, limitations, line of duty and misconduct determinations, location history, major command, mandatory removal date, Military Occupational Specialty (duty, primary and/or secondary, skill level), military service obligation statutory expiration date, military training data, miscellaneous correspondence, documents and orders relating to military service, mobilization information, mobilization status, oath of enlistment, office location, office symbol, Official Military Personnel File documents, order date, order number, pay data, pay entry base date, pay grade, pay grade at retirement, photograph/DA photo, physical evaluation board proceedings, pre-induction processing and commissioning data, projected separation date, promotion data (eligibility date, notifications, pass-over notifications, recommendations, approvals, declinations, reconsiderations, reduction), qualification record, rank, recommendations for awards, regular Army appointment date, Reserve programs, retirement data (date, eligibility date, order numbers, points), security clearance (clearance, date, personal security investigation completion date, questionnaire, status, requirements), separation date, service code, Social Security Administration correspondence, statement of service, status award code, status change date, Survivor Benefit Plan information, term of service, tour end date, tour start date, transcripts of military records, transfer or discharge report, transfers, U.S. Army unit number, unit name, veterans' services, voluntary reduction, volunteer status, waiver of disqualifications.

DEPENDENT/FAMILY DATA: Mother's maiden name, mother's middle name, marital status, date of marriage, spouse information (citizenship, country of birth, date of birth, date of death, SSN, state of birth), child information, child SSN, family members' names, family members' dates of birth, miscellaneous correspondence pertaining to dependents.

FINANCIAL INFORMATION: Bank account number, financial institution.

MEDICAL INFORMATION: Medical records, applications for review by physical evaluation and disability boards, date of last physical examination, disability information, HIV test date, medical examination, and temporary disability record.

LAW ENFORCEMENT INFORMATION: Consent for police record checks, FBI reports.

EMPLOYMENT INFORMATION: Application for employment, civilian employer (company, job title, position, start date, supervisor information, work address, work telephone).

EDUCATION INFORMATION: Civilian education (certifications, degree code, education code, degree, major, transcripts, university, military education (records, code, courses).''

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with ''5 U.S.C. 301, Departmental Regulations, 10 U.S.C. Sections 12731, Age and Service Requirements; 1413a, Combat-related special compensation, 1477, Death gratuity: Eligible survivors; 3013, Secretary of the Army; 612–646, Promotion, Separation, and Involuntary Retirement of Officers on the Active Duty List, Chapter 55, Medical and Dental Care, Chapter 61, Retirement or Separation for Physical Disability, and Subtitle E, Parts I–IV, Reserve Components; 37 U.S.C. 1006, Pay and Allowances; 42 U.S.C. 10606, The Public Health and Welfare; 44 U.S.C. Chapters 29, Records Management by the Archivist of the United States and by the Administrator of General Services, chapter 31, Records Management by Federal Agencies and chapter 33, Disposal of Records, 44 U.S.C. 3101–3102 and 3501, Public Printing and Documents; Public Law 93–3097; Section 636, National Defense Authorization Act; DODD 1030.1, Victim and Witness Assistance; DODD 1200.7, Screening the Ready Reserve; DODD 1235.10, Activation, Mobilization, and Demobilization of the Ready Reserve; DODD 1310.1, Rank and Seniority of Commissioned Officers; DODD 1332.18, Separation or Retirement for Physical Disability; DODI 1300.19, Joint Officer Management Program; DODI 1300.20, DOD Joint Officer Management Program Procedures; DODI 1320.4, Military Officer Actions Requiring Approval of the Secretary of Defense or the President, or Confirmation by the Senate; DODI 1320.12, Commissioned Officer Promotion Program; DODI 1320.14, Commissioned Officer Promotion Program Procedures; Under Secretary of Defense Memo, General and Flag Officer Boards—Adverse Information of a Credible Nature; DODI 1336.08, DODI 1336.08, Military Human Resource Records Life Cycle Management, AR 25–1, Army Knowledge Management and Information Technology; AR 25–400–2, ARIMS; AR 40–3, Medical, Dental, and Veterinary Care; AR 40–407, Nursing Records and Reports; AR 135–133, Ready Reserve Screening, Qualification Records System and Change of Address Reports; AR 135–155, Promotion of Commissioned Officers and Warrant Officers Other Than General Officers; AR 140–1, Army Reserve Mission, Organization, and Training; AR–140–9, Entry On Active Duty or Active Duty for Training (ROTC Officers); AR 140–10, Assignments, Attachments, Details, and Transfers; AR 140–30, Active Duty in Support of the USAR and AGR Management Program; AR 149–50, Officer Candidate School, Army Reserve; AR 140–111, U.S. Army Reserve Reenlistment Program; AR 140–145, IMA Program; AR 140–185, Training and Retirement Point Credits and Unit Level Strength; AR 140–315, Employment and Utilization of U.S. Army Reserve Military Technicians; AR 380–381, Special Access Programs; AR 600–8–6, Personnel Accounting and Strength Reporting; AR 600–8–19, Enlisted Promotions and Reductions; AR 600–8–29, Officer Promotions; AR 600–8–104, Army Military Human Resource Records Management; AR 600–8–111, Wartime Replacement Operations; AR 600–18, The Family Advocacy Program; AR 623–3, Evaluation Reporting System; AR 635–40, Physical Evaluation for Retention, Retirement or Separation; AR 640–30, Photographs for Military Personnel Files; AR 690–200, General Personnel

Provisions; DA Pamphlet 600–81, Information Handbook for Operating CONUS Replacement Centers and Individual Deployment Sites; DA Memo 600–2, Policies and Procedures for Active Duty List Officer Selection Boards; and DA G–1 Memo, Personnel Suitability Screening Policy (Enlisted and Officer), Army Directive 2013–06, Providing Specific Law Enforcement Information to Commanders of Newly Assigned Soldiers, and E.O. 9397 (SSN), as amended.''

PURPOSE:

Delete entry and replace with ''Personnel records are created and maintained to manage the member's Army Service effectively, document historically the member's military service, and safeguard the rights of the member and the Army.

The APS will transfer Soldiers' names, ranks, SSNs, and assignment data (both historic and pending) electronically from the Integrated Total Army Personnel Data Base (ITAPDB) to the Centralized Operations Police Suite (COPS) system of the Office of the Provost Marshal General (OPMG) monthly for the purpose of assisting OPMG in providing commanders criminal history of Soldiers incoming to their commands.''

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Delete entry and replace with ''In addition to those disclosures generally permitted under 5 U.S.C. Section 552a(b) of the Privacy Act of 1974, as amended, these records contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. Section 552a(b)(3) as follows:

The DoD Blanket Routine Uses set forth at the beginning of the Army's compilation of systems of records notices may apply to this system.

Note: This system of records contains individually indentifiable health informaton. The DoD Health Information Privacy Regulation (DoD 6025.18–R) issued pursuant to the Health Insurance Portability and Accountability Act of 1996, applies to most such health information. DoD 6025.18–R may place additional procedural requirements on the uses and disclosures of such information beyond those found in the Privacy Act of 1974 or mentioned in this system of records notice.

* * * * *

STORAGE:

Delete entry and replace with ''Paper records and electronic storage media.''

* * * * *

SAFEGUARDS:

Delete entry and replace with ''Buildings and/or rooms employ alarms, security guards, and are security-controlled areas accessible only to authorized persons. Hard copy records are maintained in General Service Administration approved security containers, and records in the U.S. Army Investigative Records Repository are stored in security-controlled areas accessible only to authorized persons. Electronically and optically stored records are maintained in ''fail-safe'' system software with password-protected access. Records are accessible only to authorized persons with a need-to-know who are properly screened, cleared, and trained.''

RETENTION AND DISPOSAL:

Delete entry and replace with ''Soldiers records are offered to the National Archives 75 years after individual's final separation. The National Archives, after consultation with the Department of the Army, genealogists, historians, social scientists, and other interested parties, will then determine the disposition of the records based on any continuing administrative needs and their archival value. Records, if any, not selected for permanent retention by the Archives will be disposed of.''

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with ''Commander, U.S. Army Human Resources Command, 1600 Spearhead Division Avenue, Fort Knox, KY 40122–5500.''

NOTIFICATION PROCEDURE:

Delete entry and replace with ''Individuals seeking to determine if information about themselves is contained in this system should address written inquiries to the commander of the organization to which the service member is assigned. For retired and non-unit reserve personnel, information may be obtained from the U.S. Army Human Resources Command, 1600 Spearhead Division Avenue, Fort Knox, KY 40122–5500; for discharged and deceased personnel information contact the National Personnel Records Center, 1 Archives Drive, St. Louis, MO 63138–1002.

Individual should provide the full name, SSN, current address and telephone number, and signature.

In addition, the requester must provide a notarized statement or an unsworn declaration made in accordance with 28 U.S.C. 1746, in the following format:

IF EXECUTED OUTSIDE THE UNITED STATES:

'I declare (or certify, verify, or state) under penalty of perjury under the laws of the United State of America that the foregoing is true and correct. Executed on (date). (Signature)'.

If executed within the United States, its territories, possessions, or commonwealths: 'I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature)' ''

RECORD ACCESS PROCEDURES:

Delete entry and replace with ''Individuals seeking access to records about themselves contained in this system should address written inquiries to the commander of the organization to which the service member is assigned. For retired and non-unit reserve personnel, information may be obtained from the U.S. Army Human Resources Command, 1600 Spearhead Division Avenue, Fort Knox, KY 40122–5500; for discharged and deceased personnel information contact the National Personnel Records Center, 1 Archives Drive, St. Louis, MO 63138–1002.

Individual should provide the full name, SSN, current address and telephone number, and signature.

In addition, the requester must provide a notarized statement or an unsworn declaration made in accordance with 28 U.S.C. 1746, in the following format:

IF EXECUTED OUTSIDE THE UNITED STATES:

'I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date). (Signature)'.

IF EXECUTED WITHIN THE UNITED STATES, ITS TERRITORIES, POSSESSIONS, OR COMMONWEALTHS:

'I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature)' ''

* * * * *

[FR Doc. 2013–18186 Filed 7–29–13; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF EDUCATION

[Docket No. ED–2013–ICCD–0072]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Native American Career and Technical Education Program (NACTEP) Performance Reports

AGENCY: Department of Education (ED), Office of Vocational and Adult Education (OVAE)

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 3501 *et seq.*), ED is proposing an extension of an existing information collection.

DATES: Interested persons are invited to submit comments on or before August 29, 2013.

ADDRESSES: Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting Docket ID number ED–2013–ICCD–0072 or via postal mail, commercial delivery, or hand delivery. *Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted.* Written requests for information or comments submitted by postal mail or delivery should be addressed to the Director of the Information Collection Clearance Division, U.S. Department of Education, 400 Maryland Avenue SW., LBJ, Room 2E115, Washington, DC 20202–4537.

FOR FURTHER INFORMATION CONTACT: Electronically mail *ICDocketMgr@ed.gov*. Please do not send comments here.

SUPPLEMENTARY INFORMATION: The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: Native American Career and Technical Education Program (NACTEP) Performance Reports.

OMB Control Number: 1830–0573.

Type of Review: Extension without change of an existing collection of information.

Respondents/Affected Public: State, Local, or Tribal Governments.

Total Estimated Number of Annual Responses: 30.

Total Estimated Number of Annual Burden Hours: 1,200.

Abstract: The Native American Career and Technical Education Program (NACTEP) is requesting approval to collect semi-annual, annual/continuation reports, and final performance reports from currently funded NACTEP grantees. This information is necessary to (1) manage and monitor the current NACTEP grantees, and (2) award continuation grants for years four and five of the grantees' performance periods. The continuation performance reports will include budgets, performance/statistical reports, GPRA reports, and evaluation reports. The data, collected from the performance reports, will be used to determine if the grantees successfully met their project goals and objectives, so that NACTEP staff can award continuation grants. Final performance reports are required to determine whether or not the grant is in compliance with the NACTEP grant program requirements.

Dated: July 24, 2013.

Tomakie Washington,

Acting Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management.

[FR Doc. 2013–18193 Filed 7–29–13; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

National Committee on Foreign Medical Education and Accreditation Meeting

AGENCY: Office of Postsecondary Education, National Committee on Foreign Medical Education and Accreditation, U.S. Department of Education.

ACTION: The purpose of this notice is to announce the upcoming meeting of the National Committee on Foreign Medical Education and Accreditation (NCFMEA). Parts of this meeting will be open to the public, and the public is invited to attend those portions.

Meeting Date and Place: The public meeting will be held on Wednesday, October 30, 2013, from 8:00 a.m. until approximately 5:30 p.m., at the U.S. Department of Education, Eighth Floor Conference Center, Office of Postsecondary Education, 1990 K Street NW., Washington, DC 20006. On Thursday, October 31, 2013, the Committee will meet in Executive Session from 8:00 a.m. until approximately 2:00 p.m. This session will not be open to the public.

Function: The NCFMEA was established by the Secretary of Education under Section 102 of the Higher Education Act of 1965, as amended. The NCFMEA's responsibilities are to:

- Upon request of a foreign country, evaluate the standards of accreditation applied to medical schools in that country; and,
- Determine the comparability of those standards to standards for accreditation applied to United States medical schools.

Comparability of the applicable accreditation standards is an eligibility requirement for foreign medical schools to participate in the William D. Ford Federal Direct Student Loan Program, 20 U.S.C. 1087a et seq.

Meeting Agenda: The NCFMEA will review the standards of accreditation applied to medical schools by several foreign countries to determine whether those standards are comparable to the standards of accreditation applied to medical schools in the United States and/or reports previously requested of countries by the NCFMEA. Discussion of the standards of accreditation will be held in sessions open to the public. Discussions resulting in specific determinations of comparability are closed to the public in order that each country may be properly notified by the Department of the Committee's decision.

The countries which are scheduled to be discussed are Antigua and Barbuda, Cayman Islands, Dominica, Granada, Hungary, Philippines, and Sint Maarten. The meeting agenda, as well as the staff analyses pertaining to the meeting will be posted on the Department of Education's Web site prior to the meeting at *http://www2.ed.gov/about/bdscomm/list/ncfmea.html.*

Reasonable Accommodations: The meeting site is accessible to individuals with disabilities. If you will need an auxiliary aid or service to participate in the meeting (e.g., interpreting service, assistive listening device, or materials in an alternate format), notify the contact person listed in this notice by October 18, 2013, although we will attempt to meet a request received after that date.

FOR FURTHER INFORMATION CONTACT: Carol Griffiths, Executive Director for the NCFMEA, U.S. Department of Education, 1990 K Street NW., Room 8073, Washington, DC 20006–8129, telephone: 202 219–7035; fax: 202 502–7874, or email: *Carol.Griffiths@ed.gov.*

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.

Delegation of Authority: The Secretary of Education has delegated authority to Lynn B. Mahaffie, Acting Deputy Assistant Secretary for Policy, Planning, and Innovation, to perform the functions and duties of the Assistant Secretary for Postsecondary Education.

Lynn B. Mahaffie,

Acting Deputy Assistant Secretary for Policy, Planning, and Innovation, delegated the authority to perform the functions and duties of the Assistant Secretary for Postsecondary Education.

[FR Doc. 2013–18233 Filed 7–29–13; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

[OE Docket No. PP–387]

Application for Presidential Permit; Soule River Hydroelectric Project

AGENCY: Office of Electricity Delivery and Energy Reliability, DOE.

ACTION: Notice of application.

SUMMARY: Soule Hydro, LLC (Soule Hydro) has applied for a Presidential permit to construct, operate, maintain, and connect an electric transmission line across the United States border with Canada.

DATES: Comments, protests, or motions to intervene must be submitted on or before August 29, 2013.

ADDRESSES: Comments, protests, or motions to intervene should be addressed as follows: Brian Mills, Office of Electricity Delivery and Energy Reliability (OE–20), U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT: Brian Mills (Program Office) at 202–586–8267 or via electronic mail at *Brian.Mills@hq.doe.gov,* or Katherine L. Konieczny (Attorney-Adviser) at 202–586–0503 or via electronic mail at *Katherine.Konieczny@hq.doe.gov.*

SUPPLEMENTARY INFORMATION: The construction, operation, maintenance, and connection of facilities at the international border of the United States for the transmission of electric energy between the United States and a foreign country is prohibited in the absence of a Presidential permit issued pursuant to Executive Order (EO) 10485, as amended by EO 12038.

On March 18, 2013, Soule Hydro filed an application with the Office of Electricity Delivery and Energy Reliability of the Department of Energy (DOE) for a Presidential Permit. Soule Hydro is a limited liability corporation, organized and existing in the State of Delaware. Alaska Power & Telephone Company (AP&T) is the parent company and sole shareholder for Soule Hydro.

Soule Hydro proposes to construct and operate a high-voltage alternating current (HVAC) hydroelectric transmission line that is to originate on the Soule River, on Portland Canal in Southeast Alaska, and continue to the BC Hydro Stewart Substation on the north side of Stewart, British Columbia. It would occupy federal land administered by the Ketchikan-Misty Fjords Ranger District of the U.S. Forest Service (Forest Service). The proposed Soule River Hydroelectric Project (the ''Project'') would be capable of transmitting up to 77.4 megawatts (MW) of power.

The Alaska portion of the Project would be an 8-mile long, 138 kilovolt (kV) HVAC 3-phase submarine cable that would be laid on the floor of Portland Canal off the community of Hyder, Alaska, waterfront before it would cross the international boundary and extend approximately 2 miles to land at Stewart, B.C. Arrow Dock.

The transmission line would eventually transition to overhead and terminate at the BC Hydro Stewart Substation approximately 2.5 miles from the cable landing.

Soule Hydro represents that the Project's precise final route would be subject to a number of factors, including resource issues, permitting, land acquisition, and stakeholder agreement. The approximately 8-mile-long portion of the Project located within the United States as well as the approximately 4.5 miles of transmission infrastructure in Canada would be owned and operated by Soule Hydro.

Since the restructuring of the electric industry began, resulting in the introduction of different types of competitive entities into the marketplace, DOE has consistently expressed its policy that cross-border trade in electric energy should be subject to the same principles of comparable open access and non-discrimination that apply to transmission in interstate commerce. DOE has stated that policy in export authorizations granted to entities requesting authority to export over international transmission facilities. Specifically, DOE expects transmitting utilities owning border facilities to provide access across the border in accordance with the principles of comparable open access and non-discrimination contained in the Federal Power Act and articulated in Federal Energy Regulatory Commission (FERC) Order No. 888 (Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Services by Public Utilities; FERC Stats. & Regs. ¶31,036 (1996)), as amended. In furtherance of this policy, DOE invites comments on whether it would be appropriate to condition any Presidential permit issued in this proceeding on compliance with these open access principles.

Procedural Matters: Any person may comment on or protest this application by filing such comment or protest at the address provided above in accordance with Rule 211 of FERC's Rules of Practice and Procedure (18 CFR 385.211). Any person seeking to become a party to this proceeding must file a

motion to intervene at the address provided above in accordance with Rule 214 of FERC's Rules of Practice and Procedure (18 CFR 385.214). Fifteen copies of each comment, protest, or motion to intervene should be filed with DOE on or before the date listed above.

Additional copies of such comment, protest, or motion to intervene should also be filed directly with: Mr. Robert S. Grimm, CEO/President, Soule Hydro, LLC, c/o Alaska Power & Telephone Company, 193 Otto Street, P.O. Box 3222, Port Townsend, WA 98368.

Before a Presidential permit may be issued or amended, DOE must determine that the proposed action is in the public interest. In making that determination, DOE considers the environmental impacts of the proposed project pursuant to the National Environmental Policy Act of 1969, determines the project's impact on electric reliability by ascertaining whether the proposed project would adversely affect the operation of the U.S. electric power supply system under normal and contingency conditions, and considers any other factors that may also be relevant to the public interest. DOE must obtain the concurrences of the Secretary of State and the Secretary of Defense before taking final action on a Presidential permit application.

Copies of this application will be made available, upon request, for public inspection and copying at the address provided above, by accessing the program Web site at *http://www.oe.energy.gov/permits_pending.htm*, or by emailing Angela Troy at *angela.troy@hq.doe.gov*.

Issued in Washington, DC, on July 24, 2013.

Brian Mills,

Director, Permitting and Siting, Office of Electricity Delivery and Energy Reliability.

[FR Doc. 2013–18241 Filed 7–29–13; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IC13–14–000]

Commission Information Collection Activities (FERC Form 80); Comment Request; Extension

AGENCY: Federal Energy Regulatory Commission.

ACTION: Comment request.

SUMMARY: In compliance with the requirements of the Paperwork Reduction Act of 1995, 44 U.S.C. 3507(a)(1)(D), the Federal Energy Regulatory Commission (Commission or FERC) is submitting the information collection, FERC Form 80, Licensed Hydropower Development Recreation Report, to the Office of Management and Budget (OMB) for review of the information collection requirements. Any interested person may file comments directly with OMB and should address a copy of those comments to the Commission as explained below. The Commission issued a Notice in the **Federal Register** (78 FR 28820, 5/16/2013) requesting public comments. FERC received no comments on the FERC Form 80 and is making this notation in its submittal to OMB.

DATES: Comments on the collection of information are due August 29, 2013.

ADDRESSES: Comments filed with OMB, identified by the OMB Control No. 1902–0106, should be sent via email to the Office of Information and Regulatory Affairs: *oira_submission@omb.gov.* Attention: Federal Energy Regulatory Commission Desk Officer. The Desk Officer may also be reached via telephone at 202–395–4718.

A copy of the comments should also be sent to the Federal Energy Regulatory Commission, identified by the Docket No. IC13–14–000, by either of the following methods:

- *eFiling at Commission's Web site: http://www.ferc.gov/docs-filing/efiling.asp*
- *Mail/Hand Delivery/Courier:* Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street NE., Washington, DC 20426.

Instructions: All submissions must be formatted and filed in accordance with submission guidelines at: *http://www.ferc.gov/help/submission-guide.asp.* For user assistance contact FERC Online Support by email at *ferconlinesupport@ferc.gov,* or by phone at: (866) 208–3676 (toll-free), or (202) 502–8659 for TTY.

Docket: Users interested in receiving automatic notification of activity in this docket or in viewing/downloading comments and issuances in this docket may do so at *http://www.ferc.gov/docs-filing/docs-filing.asp.*

FOR FURTHER INFORMATION CONTACT: Ellen Brown may be reached by email at *DataClearance@FERC.gov,* telephone at (202) 502–8663, and fax at (202) 273–0873.

SUPPLEMENTARY INFORMATION:

Title: FERC Form 80, Licensed Hydropower Development Recreation Report.

OMB Control No.: 1902–0106.

Type of Request: Minor revisions to the FERC Form 80 information collection requirements with no change to the current reporting burden.

Abstract: FERC uses the information on the FERC Form 80 to implement the statutory provisions of sections 4(a), 10(a), 301(a), 304 and 309 of the Federal Power Act (FPA), 16 U.S.C. 797, 803, 825c & 8254. FERC's authority to collect this information comes from section 10(a) of the FPA which requires the Commission to be responsible for ensuring that hydro projects subject to FERC jurisdiction are consistent with the comprehensive development of the nation's waterway for recreation and other beneficial public uses. In the interest of fulfilling these objectives, FERC expects licensees subject to its jurisdiction to recognize the resources that are affected by their activities and to play a role in protecting such resources.

FERC Form 80 is a report on the use and development of recreational facilities at hydropower projects licensed by the Commission. Applications for licenses, amendments to licenses, and/or changes in land rights frequently involve changes in resources available for recreation. FERC utilizes the FERC Form 80 data when analyzing the adequacy of existing public recreational facilities and when processing and reviewing proposed amendments to help determine the impact of such changes. In addition, the FERC regional office staff uses the FERC Form 80 data when conducting inspections of licensed projects. FERC inspectors use the data in evaluating compliance with various license conditions and in identifying recreational facilities at hydropower projects.

The FERC Form 80 requires data specified by Title 18 of the Code of Federal Regulations (CFR) under Parts 8.11 and 141.14 (and discussed at *http://www.ferc.gov/docs-filing/forms.asp#80*).

FERC collects the FERC Form 80 once every six years. The last collection was due on April 1, 2009, for data compiled during the 2008 calendar year. The next collection of the FERC Form 80 is due on April 1, 2015, with subsequent collections due every sixth year, for data compiled during the previous calendar year.

The Commission made minor revisions throughout the form. Specifically, FERC clarified and simplified instructions, removed redundancy in certain questions, clarified questions and terms, and generally improved the readability of the form.

FERC has attached the revised form to this notice.

Type of Respondents: Hydropower project licensees.

Estimate of Annual Burden:[1] For each reporting period, FERC estimates the total Public Reporting Burden for this information collection as: (a) 1,000 respondents, (b) 0.167 responses/respondent, and (c) 3 hours per response, giving a total of 501 burden hours. The Commission has increased its total number of respondents to reflect the actual numbers we received during the last two reporting periods. In addition, FERC spreads the burden hours and costs over the six-year collection cycle in the table below to reflect how the information is collected. The average burden hours per response remains unchanged. These are the figures FERC will submit to OMB.

FERC–80—LICENSED HYDROPOWER DEVELOPMENT RECREATION REPORT

Number of respondents (A)	Number of responses per respondent[2] (B)	Total number of responses (A) × (B) = (C)	Average burden hours per response (D)	Estimated total annual burden (C) × (D)
1,000	0.167	167	3	501

The total estimated annual cost burden to respondents is $35,070 [501 hours * $70/hour[3] = $35,070].

Comments: The Commission invites comments on: (1) Whether the collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden and cost of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Dated: July 23, 2013.

Kimberly D. Bose,

Secretary.

[FR Doc. 2013–18208 Filed 7–29–13; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–1483–001.

Applicants: Dominion Energy Kewaunee, Inc.

Description: Supplement to June 29, 2012 Market Power Analyses Report of Dominion Energy Kewaunee, Inc.

Filed Date: 6/17/13.

Accession Number: 20130617–5076.

Comments Due: 5 p.m. ET 8/13/13.

Docket Numbers: ER10–1483–003, ER10–2386–002; ER10–1823–002; ER10–1462–002; ER10–1996–002; ER10–1802–001; ER10–2413–002; ER10–2309–002; ER10–1917–002; ER13–1403–002; ER10–2458–002; ER10–2468–003.

Applicants: Dominion Energy Kewaunee, Inc., Fairless Energy, LLC, Dominion Energy Marketing, Inc., Dominion Energy Brayton Point, LLC, Dominion Energy Kewaunee, Inc., Dominion Retail, Inc., Dominion Energy Manchester Street, Inc., Kincaid Generation, L.L.C., Elwood Energy, LLC, Dominion Nuclear Connecticut, Inc., Dominion Bridgeport Fuel Cell, LLC, NedPower Mount Storm, LLC, Fowler Ridge Wind Farm LLC.

Description: Second Supplement to June 29, 2012 Market Power Analyses Report of Dominion Energy Kewaunee, Inc., et al.

Filed Date: 6/28/13.

Accession Number: 20130628–5319.

Comments Due: 5 p.m. ET 8/13/13.

Docket Numbers: ER13–101–003.

Applicants: Midcontinent Independent System Operator, Inc.

Description: 07–22–13 ATCLLC Order 1000 Compliance to be effective 12/31/9998.

Filed Date: 7/22/13.

Accession Number: 20130722–5157.

Comments Due: 5 p.m. ET 8/21/13.

Docket Numbers: ER13–198–002.

Applicants: PJM Interconnection, L.L.C.

Description: PJM Order 1000 Compliance filing per 3/22/2013 Order in Docket No. ER13–198–000 to be effective 1/1/2014.

Filed Date: 7/22/13.

Accession Number: 20130722–5164.

Comments Due: 5 p.m. ET 8/21/13.

Docket Numbers: ER13–690–003.

Applicants: Public Service Company of New Mexico.

Description: Attachment H Compliance Filing to be effective 8/2/2011.

Filed Date: 7/22/13.

Accession Number: 20130722–5128.

Comments Due: 5 p.m. ET 8/12/13.

Docket Numbers: ER13–690–004.

Applicants: Public Service Company of New Mexico.

Description: Public Service Company of New Mexico submits Attachment H Compliance to be effective 8/2/2013.

Filed Date: 7/23/13.

Accession Number: 20130723–5074.

Comments Due: 5 p.m. ET 8/13/13.

Docket Numbers: ER13–1366–000.

Applicants: Public Service Company of New Mexico.

Description: Public Service Company of New Mexico submits Gallup Refund Report to be effective N/A.

Filed Date: 7/23/13.

Accession Number: 20130723–5065.

Comments Due: 5 p.m. ET 8/13/13.

Docket Numbers: ER13–1631–000.

Applicants: Midcontinent Independent System Operator, Inc.

Description: Errata to June 4, 2013 Request for Waiver of certain tariff provisions of Midcontinent Independent System Operator, Inc.

Filed Date: 7/22/13.

Accession Number: 20130722–5191.

Comments Due: 5 p.m. ET 8/12/13.

Docket Numbers: ER13–1747–001.

Applicants: eBay Inc.

Description: eBay Inc. submits Amendment to MBR Application to be effective 8/26/2013.

Filed Date: 7/23/13.

Accession Number: 20130723–5096.

[1] FERC defines burden as the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. For further explanation of what is included in the information collection burden, reference 5 Code of Federal Regulations 1320.3.

[2] FERC divides the responses per respondent by six because this collection occurs once every six years.

[3] FY 2013 Estimated Average Hourly Cost per FTE, including salary + benefits.

Comments Due: 5 p.m. ET 8/13/13.

Docket Numbers: ER13–2000–000.

Applicants: Northern States Power Company, a Minnesota corporation.

Description: 2013–7–22_CAPX_LaX-MN_CMA-557-0.0.0-Filing to be effective 12/21/2012.

Filed Date: 7/22/13.

Accession Number: 20130722–5125.

Comments Due: 5 p.m. ET 8/12/13.

Docket Numbers: ER13–2001–000.

Applicants: PJM Interconnection, L.L.C.

Description: Queue Position Y1–057; Original Service Agreement No. 3602 to be effective 6/21/2013.

Filed Date: 7/22/13.

Accession Number: 20130722–5129.

Comments Due: 5 p.m. ET 8/12/13.

Docket Numbers: ER13–2002–000.

Applicants: Northern States Power Company, a Minnesota corporation.

Description: 2013–7–22_CAPX-LaX-MN-OMA-558-0.0.0-Filing to be effective 12/21/2012.

Filed Date: 7/22/13.

Accession Number: 20130722–5130.

Comments Due: 5 p.m. ET 8/12/13.

Docket Numbers: ER13–2003–000.

Applicants: Northern States Power Company, a Minnesota corporation.

Description: 2013–7–22_CAPX_LaX–MN_TCEA–559–0.0.0—Filing to be effective 12/21/2012.

Filed Date: 7/22/13.

Accession Number: 20130722–5132.

Comments Due: 5 p.m. ET 8/12/13.

Docket Numbers: ER13–2004–000.

Applicants: Northern States Power Company, a Wisconsin corporation.

Description: 2013–7–22_LaX–WI–TCEA–Concur–to–559–0.0.0—Filing to be effective 12/21/2012.

Filed Date: 7/22/13.

Accession Number: 20130722–5163.

Comments Due: 5 p.m. ET 8/12/13.

Docket Numbers: ER13–2005–000.

Applicants: Midcontinent Independent System Operator, Inc.

Description: 2013–07–22 OASIS Errata Compliance to be effective 4/15/2013.

Filed Date: 7/23/13.

Accession Number: 20130723–5001.

Comments Due: 5 p.m. ET 8/13/13.

Docket Numbers: ER13–2006–000.

Applicants: Duke Energy Florida, Inc.

Description: Cancellation of DEF Rate Schedule No. 167 to be effective 9/30/2012.

Filed Date: 7/23/13.

Accession Number: 20130723–5030.

Comments Due: 5 p.m. ET 8/13/13.

Docket Numbers: ER13–2007–000.

Applicants: PJM Interconnection, L.L.C.

Description: First Revised Service Agreement No. 3396; Queue No. V4–009 to be effective 3/4/2013.

Filed Date: 7/23/13.

Accession Number: 20130723–5032.

Comments Due: 5 p.m. ET 8/13/13.

Docket Numbers: ER13–2008–000.

Applicants: Midcontinent Independent System Operator, Inc.

Description: 07–23–13 SA 2525 SMEPA to be effective 12/19/2013.

Filed Date: 7/23/13.

Accession Number: 20130723–5038.

Comments Due: 5 p.m. ET 8/13/13.

Docket Numbers: ER13–2009–000.

Applicants: Duke Energy Progress, Inc.

Description: Duke Energy Progress, Inc. submits Notice of Cancellation of 2004 NITSA with French Broad EMC.

Filed Date: 7/23/13.

Accession Number: 20130723–5043.

Comments Due: 5 p.m. ET 8/13/13.

Docket Numbers: ER13–2010–000.

Applicants: American Transmission Systems, Incorporation, PJM Interconnection, L.L.C.

Description: American Transmission Systems, Incorporated et al submits Revised OATT Attachment H–21A to be effective 9/21/2013.

Filed Date: 7/23/13.

Accession Number: 20130723–5069.

Comments Due: 5 p.m. ET 8/13/13.

Docket Numbers: ER13–2011–000.

Applicants: Southwest Power Pool, Inc.

Description: 2220R2 Broken Bow Wind II, LLC GIA to be effective 6/24/2013.

Filed Date: 7/23/13.

Accession Number: 20130723–5100.

Comments Due: 5 p.m. ET 8/13/13.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: July 23, 2013.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2013–18261 Filed 7–29–13; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Numbers: RP13–1091–000.

Applicants: Stingray Pipeline Company, L.L.C.

Description: Revise Stingray System Map to be effective 9/1/2013.

Filed Date: 7/23/13.

Accession Number: 20130723–5037.

Comments Due: 5 p.m. ET 8/5/13.

Docket Numbers: RP13–1092–000.

Applicants: Kern River Gas Transmission Company.

Description: 2013 NAESB Copyright to be effective 8/23/2013.

Filed Date: 7/23/13.

Accession Number: 20130723–5062.

Comments Due: 5 p.m. ET 8/5/13.

Docket Numbers: RP13–1093–000.

Applicants: Natural Gas Pipeline Company of America.

Description: Removal of Expiring Agreements to be effective 8/24/2013.

Filed Date: 7/24/13.

Accession Number: 20130724–5025.

Comments Due: 5 p.m. ET 8/5/13.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: July 24, 2013.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2013–18264 Filed 7–29–13; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL13–79–000]

Owensboro Municipal Utilities v. Louisville Gas and Electric Company and Kentucky Utilities Company; Notice of Complaint

Take notice that on July 23, 2013, Owensboro Municipal Utilities (Complainant) filed a formal complaint against Louisville Gas and Electric Company and Kentucky Utilities Company (collectively, Respondents), pursuant to sections 206 of the Federal Power Act, 16 U.S.C. 824e and Rule 206 of the Commission's Rules of Practice and Procedure, 18 CFR 385.206, requesting that the Commission find that the Respondents violated section 22.1 of its open access transmission tariff by imposing additional charges when service under a Firm Point-To-Point reservation was redirected on a non-firm basis.

Owensboro Municipal Utilities certifies that copies of the complaint were served on the contacts for the Respondents as listed on the Commission's list of Corporate Officials.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. The Respondent's answer and all interventions, or protests must be filed on or before the comment date. The Respondent's answer, motions to intervene, and protests must be served on the Complainants.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 5 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: 5:00 p.m. Eastern Time on August 12, 2013.

Dated: July 23, 2013.

Kimberly D. Bose,

Secretary.

[FR Doc. 2013–18207 Filed 7–29–13; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER13–1992–000]

Desert Sunlight 300, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding, of Desert Sunlight 300, LLC's application for market-based rate authority, with an accompanying rate schedule, noting that such application includes a request for blanket authorization, under 18 CFR Part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR Part 34, of future issuances of securities and assumptions of liability is August 13, 2013.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 5 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

The filings in the above-referenced proceeding(s) are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive 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.

Dated: July 24, 2013.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2013–18262 Filed 7–29–13; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2013–0246; FRL 9535–1]

Information Collection Request Submitted to OMB for Review and Approval; Comment Request; New Marine Compression Ignition Engines at or Above 30 Liters per Cylinder (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency has submitted an information collection request (ICR), ''New Marine Compression Ignition Engines at or Above 30 Liters per Cylinder (Renewal),'' EPA ICR Number 2345.03, OMB Number 2060–0641, to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). This is a proposed revision of the ICR, which is currently approved through July 31, 2013. Public comments were previously requested via the **Federal Register** (78 FR 29751) on May 21, 2013 during a 60-day comment period. This notice allows for an additional 30 days for public comments. A fuller description of the ICR is given below, including its estimated burden and cost to the public. An Agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

DATES: Additional comments may be submitted on or before August 29, 2013.

ADDRESSES: Submit your comments, referencing Docket ID Number EPA–HQ–OAR–2013–0246, to (1) EPA online using *www.regulations.gov* (our preferred method), by email to *a-and-r-Docket@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW., Washington, DC 20460, and (2) OMB via email to *oira_submission@omb.eop.gov*. Address comments to OMB Desk Officer for EPA.

EPA's policy is that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

FOR FURTHER INFORMATION CONTACT: Nydia Yanira Reyes-Morales, Environmental Protection Agency, 1200 Pennsylvania Avenue NW., Mail Code 6403J, Washington, DC 20460; telephone number: 202–343–9264; fax number: 202–343–2804; email address: *reyes-morales.nydia@epa.gov*.

SUPPLEMENTARY INFORMATION: Supporting documents which explain in detail the information that the EPA will be collecting are available in the public docket for this ICR. The docket can be viewed online at *www.regulations.gov* or in person at the EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The telephone number for the Docket Center is 202–566–1744. For additional information about EPA's public docket, visit *http://www.epa.gov/dockets*.

Abstract: Title II of the Clean Air Act (42 U.S.C. 7521 et seq.), charges EPA with issuing certificates of conformity for those engines that comply with applicable emission standards. Such a certificate must be issued before engines may be legally introduced into commerce. Under this ICR, EPA collects information necessary to (1) issue certificates of compliance with emission statements, and (2) verify compliance with various programs and regulatory provisions pertaining to marine compression-ignition engines with a specific engine displacement at or above 30 liters per cylinder (Category 3 engines). To apply for a certificate of conformity, manufacturers are required to submit descriptions of their planned production engines, including detailed descriptions of emission control systems and test data. This information is organized by ''engine family'' groups expected to have similar emission characteristics. The CAA also mandates that EPA verifies that manufacturers have successfully translated their certified prototypes into mass produced engines and that these engines comply with emission standards throughout their useful lives.

Under the Production Line Testing (PLT) Program, manufacturers of Category 3 engines are required to test each engine at the sea trial of the vessel in which the engine is installed or within the first 300 hours of operation, whichever comes first. This self-audit program allows manufacturers to monitor compliance and minimize the cost of correcting errors through early detection. In addition, owners and operators of marine vessels with Category 3 engines must record certain information and send minimal annual notifications to EPA to show that engine maintenance and adjustments have not caused engines to be noncompliant. From time to time, EPA may test in-use engines to verify compliance with emission standards throughout the marine engine's useful life and may ask for information about the engine family to be tested. The information requested is collected by the Diesel Engine Compliance Center (DECC), Compliance Division (CD), Office of Transportation and Air Quality, Office of Air and Radiation, EPA. Besides DECC and CD, this information could be used by the Office of Enforcement and Compliance Assurance and the Department of Justice for enforcement purposes.

Proprietary information is kept confidential in accordance with the Freedom of Information Act (FOIA), 40 CFR Parts 2 and 1042, and class determinations issued by EPA's Office of General Counsel. Non-confidential business information may be disclosed as requested under FOIA.

Forms: Annual Production Report; PLT CumSum Report; PLT Non-CumSum Report.

Respondents/affected entities: Respondents are manufacturers and owners or operators of marine compression-ignition engines above 30 liters per cylinder and the vessels in which those engines are installed.

Respondent's obligation to respond: Manufacturers must respond to this collection if they wish to sell and/or operate their Category 3 engines in the U.S. (required to obtain or retain a benefit), as prescribed by Section 206(a) of the CAA (42 U.S.C. 7521) and 40 CFR Part 1042. Certification reporting is mandatory under Section 206(a) of CAA (42 U.S.C. 7521) and 40 CFR Part 1042, Subpart C. PLT reporting is mandatory (Section 206(b)(1) of CAA (42 U.S.C. 7521) and 40 CFR Part 1042, Subpart D).

Estimated number of respondents: 201.

Frequency of response: Quarterly, Annually, On Occasion, depending on the type of response.

Total estimated burden: 24,813 hours per year. Burden is defined at 5 CFR 1320.03(b).

Total estimated cost: $1,931,765 (per year), includes an estimated $734,588 annualized capital or maintenance and operational costs.

Changes in the Estimates: There is an increase of 21,741 hours in the total estimated burden for ICR 2345.03 from the burden currently identified in the OMB Inventory of Approved ICR Burdens. This increase is due to better accounting and an adjustment of estimates, not a change in the program. The primary reason for the change is that the hour burden in the previous ICR did not account for an annual records audit that vessel owners have to perform and the annual report they have to submit (first rows of table 5 in the Excel file). The previous ICR only accounted for owner and rebuilder's recordkeeping requirements (see table 6 on 2345.02). There are 187 respondents that are supposed to prepare that report; so even though the burden is only 99 hours per respondent, the total comes out high (at 18,813 hours). Second, regarding the burden to engine manufacturers, this ICR accounts for PLT testing and reporting (5,276 hours—see table 3) and SEAs (table 4), which was not done in the previous ICR. The previous ICR only accounts for certification (table 5 on 2345.02 vs. table 2 in 2345.03).

John Moses,

Director, Collection Strategies Division.

[FR Doc. 2013–18196 Filed 7–29–13; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OECA–2012–0690; FRL–9534–9]

Information Collection Request Submitted to OMB for Review and Approval; Comment Request; NESHAP for Automobile and Light-duty Truck Surface Coating (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency has submitted an information collection request (ICR), ''NESHAP for Automobile and Light-duty Truck Surface Coating (40 CFR part 63, subpart

IIII) (Renewal)'' (EPA ICR No. 2045.05, OMB Control No. 2060–0550), to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq*). This is a proposed extension of the ICR, which is currently approved through September 30, 2013. Public comments were previously requested via the **Federal Register** (77 FR 63813) on October 17, 2012 during a 60-day comment period. This notice allows for an additional 30 days for public comments. A fuller description of the ICR is given below, including its estimated burden and cost to the public. An Agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

DATES: Additional comments may be submitted on or before August 29, 2013.

ADDRESSES: Submit your comments, referencing Docket ID Number EPA–HQ–OECA–2012–0690, to: (1) EPA online, using *www.regulations.gov* (our preferred method), by email to: *docket.oeca@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW., Washington, DC 20460; and (2) OMB via email to *oira_submission@omb.eop.gov.* Address comments to OMB Desk Officer for EPA.

EPA's policy is that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

FOR FURTHER INFORMATION CONTACT: Learia Williams, Monitoring, Assistance, and Media Programs Division, Office of Compliance, Mail Code 2227A, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460; telephone number: (202) 564–4113; fax number: (202) 564–0050; email address: *williams.learia@epa.gov.*

SUPPLEMENTARY INFORMATION: Supporting documents which explain in detail the information that the EPA will be collecting are available in the public docket for this ICR. The docket can be viewed online at *www.regulations.gov* or in person at the EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The telephone number for the Docket Center is 202–566–1744. For additional information about EPA's public docket, visit *http://www.epa.gov/dockets.*

Abstract: The affected entities are subject to the General Provisions of the NESHAP at 40 CFR part 63, subpart A, and any changes, or additions to the General Provisions specified at 40 CFR part 63, subpart IIII. Owners or operators of the affected facilities must submit initial notification, performance tests, and periodic reports, and results. Owners or operators are also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. Reports are required semiannually at a minimum.

Form Numbers: None.

Respondents/affected entities: Owners or operators of automobile and light-duty truck surface coating facilities.

Respondent's obligation to respond: mandatory (40 CFR part 63, subpart IIII).

Estimated number of respondents: 65 (total).

Frequency of response: Initially and semiannually.

Total estimated burden: 26,685 hours (per year). ''Burden'' is defined at 5 CFR 1320.3(b).

Total estimated cost: $2,688,147 (per year), includes $78,000 annualized capital or operation & maintenance costs.

Changes in the Estimates: There is an increase in respondent labor hours from the previous ICR. This is not due to any program changes. The increase is due to a mathematical correction in the per-respondent technical labor hours. Additionally, there is also an increase in the respondent and Agency costs due to use of updated labor rates. This ICR references recent labor rates from the Bureau of Labor Statistics to calculate respondent burden costs, and references recent labor rates from OPM to calculate Agency burden costs.

John Moses,

Director, Collection Strategies Division.

[FR Doc. 2013–18199 Filed 7–29–13; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2005–0161; FRL 9534–4]

Information Collection Request Submitted to OMB for Review and Approval; Comment Request; Renewable Fuel Standard (RFS 2) Program (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency has submitted an information collection request (ICR), ''Renewable Fuel Standard (RFS 2) Program (Renewal)'' (EPA ICR No. 2333.03, OMB Control No. 2060–0640) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). This is a proposed extension of the ICR, which is currently approved through July 31, 2013. Public comments were previously requested via the **Federal Register** (78 FR 11870) on February 20, 2013 during a 60-day comment period. This notice allows for an additional 30 days for public comments. A fuller description of the ICR is given below, including its estimated burden and cost to the public. An Agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

DATES: Additional comments may be submitted on or before August 29, 2013.

ADDRESSES: Submit your comments, referencing Docket ID Number EPA–HQ–OAR–2005–0161 to (1) EPA online using *www.regulations.gov* (our preferred method), by email to *a-and-r-Docket@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW., Washington, DC 20460, and (2) OMB via email to *oira_submission@omb.eop.gov.* Address comments to OMB Desk Officer for EPA.

EPA's policy is that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

FOR FURTHER INFORMATION CONTACT: Geanetta Heard, Fuel Compliance Center, 6406J, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460; telephone

number: 202–343–9017; fax number: 202–343–2800; email address: *heard.geanetta@epa.gov.*

SUPPLEMENTARY INFORMATION: Supporting documents which explain in detail the information that EPA will be collecting are available in the public docket for this ICR. The docket can be viewed online at *www.regulations.gov* or in person at the EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The telephone number for the Docket Center is 202–566–1744. For additional information about EPA's public docket, visit *http://www.epa.gov/dockets.*

Abstract: EPA would like to continue to collect annual compliance reports from obligated parties, quarterly reports for all EPA Moderated Transaction System (EMTS) users, generation and assignment of Renewable Identification Numbers (RINs) quarterly reports from biofuels producers and importers, and third party disclosure reports from biofuel feedstock producers by way of the Agency's Central Data Exchange (CDX). The recordkeeping and reporting will allow EPA to monitor compliance with the RFS program. EPA informs respondents that they may assert claims of business confidentially for information they submit in accordance with 40 CFR 2.203.

Form Numbers: 5900–275 (RFSA101—RFS2 2011 Activity Report); 5900–276 (RFS0101—RFS2 2010 Activity Report); 5900–277 (RFG 1300—VOC Average Report); 5900–278 (RFS0901—RFS2 Production Outlook Report); 5900–279 (RFS0100 RFS Activity Report); 5900–280 (EMTS: RFS2 RIN Generation Report (Equivalent to RSF0400)); 5900–281 (RFS0201—RFS 1 Transaction Report); 5900–282 (RFS0301—RFS2 2010 Annual Compliance Report); 5900–283 (RFS0900—RFS2 Production Outlook Report); 5900–284 (RFS0200—RIN Transaction Report); 5900–285 (RFS0700—RFS2 Renewable Fuel Producer Co-Products); 5900–286 (RFS2 EMTS RIN Transaction Report); 5900–287 (RFS0103—RFS 2012 Q1 Activity Report); 5900–288 (RFS0104—RFS2 Activity Report); 5900–289 (RFS0701—RFS2 Renewable Fuel Producer Co-Producer); 5900–290 (RFS0601—RFS2 Renewable Fuel Producer Supplemental); 5900–291 (RFS0300—RFS2 Obligated Party Annual Compliance Report); 5900–292 (RFS0800—RFS2 Renewable Biomass Report); 5900–293 (RFS0801—RFS2 Renewable Biomass Report); 5900–294 (RFS0102—RFS2 2011 Activity Report); 5900–295 (RFS2 EPA Cellulosic Biofuel Waiver Credit Form); 5900–296 (RFS0303—RFS2 Annual Compliance Report).

Respondents/affected entities: Producers of renewable fuels, Importers, Obligated party, Parties who own RINs and Foreign Refiners.

Respondent's obligation to respond: Mandatory (42 U.S.C. 7414 and 7542).

Estimated number of respondents: 2,092,731 (total).

Frequency of response: Annually, Quarterly & Daily.

Total estimated burden: 608,220 hours (per year). Burden is defined at 5 CFR 1320.3(b).

Total estimated cost: $69,337,137 (per year), which includes no annualized capital or operation & maintenance costs.

Changes in the Estimates: There is a decrease of 812,913 hours in the total estimated respondent burden compared with the ICR currently approved by OMB. This decrease is due to adjustments to the estimates. At the onset of the RFS2 program, EMTS for RINs were not a feature of RFS1. For the new EMTS system, all parties who owned RINs were required to re-submit their application, disclose feedstock sources, prepare quarterly reports on RIN activity and submit annual compliance reports (obligated party only). Re-submittal provisions are no longer required, which will cause a decrease in total responses for this ICR. EMTS users will not be burdened to submit more reports in this information collection, unlike the previous. The total responses for industry decreased now that the final rule is no longer requiring re-submissions or quarterly reports for certain party members. To date, biofuels producers and importers are required to submit quarterly reports along with their third party disclosure on feedstock producers to EPA. All users of the EMTS system are required to submit quarterly RIN reports.

The number of respondents or users of the EMTS system has more than doubled due to the additional response burden for mapping foreign and domestic plantation/forest land owners and foreign biofuels feedstock producers, which was not reflected in the previous ICR reporting period. With an increase of respondents, total burden hours have decreased from 1,421,133 to 608,220 hours. The reduction is due to the fact that the EMTS system's automation structure helps users to prepare reports instantly, lessening the amount of time and cost needed to respond, even with more than a million added users.

John Moses,

Director, Collection Strategies Division.

[FR Doc. 2013–18198 Filed 7–29–13; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9840–5]

Clean Water Act: Availability of List Decisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability.

SUMMARY: This notice announces the availability of EPA's Responsiveness Summary Concerning EPA's May 9, 2013 Public Notice of Proposed Decisions To Add Waters and Pollutants to Louisiana's 2012 Section 303(d) List.

On May 9, 2013 EPA published a notice in the **Federal Register** at Volume 78, Number 90, pages 27233–27234 providing the public the opportunity to review its decision to partially approve and proposal to partially disapprove Louisiana's 2012 Section 303(d) List. Specifically, EPA approved Louisiana's listing of 323 waterbody pollutant combinations, and associated priority rankings. EPA proposed to disapprove Louisiana's decisions not to list three waterbodies. These three waterbodies were added by EPA because the applicable numeric water quality standards marine criterion for dissolved oxygen was not attained in these segments.

Based on the Responsiveness Summary, EPA finds no new information or persuasive arguments as to why the three waters should not be added to the 2012 Louisiana Section 303(d) List as proposed. Therefore, EPA is taking Final Action on the addition of three waterbody pollutant combinations to the final Louisiana 2012 Section 303(d) List. The basis for these decisions is described in EPA's Record of Decision.

ADDRESSES: Copies of EPA's Responsiveness Summary Concerning EPA's July 18, 2013 Public Notice of Final Decisions To Add Waters and Pollutants to Louisiana's 2012 Section 303(d) List can be obtained at EPA Region 6's Web site at *http://www.epa.gov/region6/water/npdes/tmdl/index.htm#303dlists,* or by writing or calling Ms. Diane Smith at Water Quality Protection Division, U.S. Environmental Protection Agency Region 6, 1445 Ross Ave., Dallas, TX

75202–2733, telephone (214) 665–2145, facsimile (214) 665–6490, or email: *smith.diane@epa.gov.* Underlying documents from the administrative record for these decisions are available for public inspection at the above address. Please contact Ms. Smith to schedule an inspection.

FOR FURTHER INFORMATION CONTACT: Diane Smith at (214) 665–2145.

SUPPLEMENTARY INFORMATION: Section 303(d) of the Clean Water Act (CWA) requires that each state identify those waters for which existing technology-based pollution controls are not stringent enough to attain or maintain state water quality standards. For those waters, states are required to establish Total Maximum Daily Loads (TMDLs) according to a priority ranking.

EPA's Water Quality Planning and Management regulations include requirements related to the implementation of Section 303(d) of the CWA (40 CFR 130.7). The regulations require states to identify water quality limited waters still requiring TMDLs every two years. The list of waters still needing TMDLs must also include priority rankings and must identify the waters targeted for TMDL development during the next two years (40 CFR 130.7).

Consistent with EPA's regulations, Louisiana submitted to EPA its 2012 listing decisions under Section 303(d) on February 14, 2013. On May 1, 2013, EPA approved Louisiana's 2012 listing of 323 water body-pollutant combinations and associated priority rankings, and proposed to disapprove Louisiana's decisions not to list three waterbodies. On July 18, 2013, EPA finalized the action to disapprove Louisiana's 2012 listing decisions not to list three water quality limited segments. EPA identified these additional waters and pollutants along with priority rankings for inclusion on the 2012 Section 303(d) List.

Dated: July 18, 2013.

David F. Garcia,

Deputy Director, Water Quality Protection Division, Region 6.

[FR Doc. 2013–18312 Filed 7–29–13; 8:45 am]

BILLING CODE 6560–50–P

FARM CREDIT ADMINISTRATION

Farm Credit Administration Board; Sunshine Act; Regular Meeting

AGENCY: Farm Credit Administration.

SUMMARY: Notice is hereby given, pursuant to the Government in the Sunshine Act, of the regular meeting of the Farm Credit Administration Board (Board).

DATE AND TIME: The regular meeting of the Board will be held at the offices of the Farm Credit Administration in McLean, Virginia, on August 8, 2013, from 9:00 a.m. until such time as the Board concludes its business.

FOR FURTHER INFORMATION CONTACT: Dale L. Aultman, Secretary to the Farm Credit Administration Board, (703) 883–4009, TTY (703) 883–4056.

ADDRESSES: Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090.

SUPPLEMENTARY INFORMATION: Parts of this meeting of the Board will be open to the public (limited space available) and parts will be closed to the public. In order to increase the accessibility to Board meetings, persons requiring assistance should make arrangements in advance. The matters to be considered at the meeting are:

Open Session

Approval of Minutes

- July 11, 2013

New Business

- Repeal of the Regulations Governing Registration of Mortgage Loan Originators—Interim Final Rule

Closed Session*

- Office of Secondary Market Oversight Quarterly Report

Dated: July 26, 2013.

Dale L. Aultman,

Secretary, Farm Credit Administration Board.

[FR Doc. 2013–18435 Filed 7–26–13; 4:15 pm]

BILLING CODE 6705–01–P

*Session Closed-Exempt pursuant to 5 U.S.C. 552b(c)(8) and (9).

FEDERAL COMMUNICATIONS COMMISSION

Information Collection Being Submitted to the Office of Management and Budget for Review and Approval

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burden and as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520), the Federal Communications Commission invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s). Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information burden for small business concerns with fewer than 25 employees. The FCC may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid OMB control number.

DATES: Written Paperwork Reduction Act (PRA) comments should be submitted on or before August 29, 2013. If you anticipate that you will be submitting PRA comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the FCC contact listed below as soon as possible.

ADDRESSES: Submit your PRA comments to Nicholas A. Fraser, Office of Management and Budget, via fax at 202–395–5167 or via Internet at *Nicholas_A._Fraser@omb.eop.gov* and to Benish Shah, Federal Communications Commission, via the Internet at *Benish.Shah@fcc.gov.* To submit your PRA comments by email send them to: *PRA@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: Benish Shah, Office of Managing Director, (202) 418–7866.

SUPPLEMENTARY INFORMATION:

OMB Approval Number: 3060–0398.

Title: Sections 2.948 and 15.117(g)(2)—Equipment Authorization Measurement Standards.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents: 1,225 respondents; 525 responses.

Estimated Time per Response: 2 to 30 hours.

Frequency of Response: On occasion, one time and every three year reporting requirements, recordkeeping requirement and third party disclosure requirement.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this information collection is contained in 47 U.S.C. 4(i), 302, 303(c), 303(f), 303(g) and 303(r), and 309(a).

Total Annual Burden: 5,360 hours.

Total Annual Cost: None.

Privacy Impact Assessment: N.A.

Nature and Extent of Confidentiality: There is a minimal exemption from the Freedom of Information Act (FOIA), 5 U.S.C. 552(b)(4) and 47 CFR 0.459(d) of the Commission's rules that is granted for trade secrets, which may be submitted to the Commission as part of the documentation of the test results. No other assurances of confidentiality are provided to respondents.

Needs and Uses: The Commission will submit this information collection after this 60 day comment period to obtain the full three year clearance from the Office of Management and Budget (OMB).

Description of Measurement Facilities

The Commission established uniform technical standards for various non-licensed equipment operating under the guidelines established in 47 CFR parts 2, 15 and 18 of the FCC rules, which include personal computers, garage door openers, baby monitors, etc. In order to ensure that technical standards are applied uniformly to non-licensed equipment, the Commission requires manufacturers to follow the standardized measurement procedures and practices:

(a) 47 CFR part 2 of the Commission's rules requires each Electro-Magnetic Compatibility (EMC) testing facility that performs equipment testing in support of any request for equipment authorization to file a test site description with the Commission. The Commission also permits a testing facility to be accredited by Commission-approved accrediting bodies. A testing laboratory that is accredited by a Commission-approved accrediting body is not required to file a test site description with the Commission since the accreditation body will review this information as part of the accreditation assessment.

(b) The test site description and the supporting information documents that the EMC testing facility complies with the testing standards used to make the measurements that support any request for equipment authorization.

The Commission or a Telecommunications certification body uses the information from these test sites and the supporting documentation, which accompany all requests for equipment authorization:

(a) To ensure that the data are valid and that proper testing procedures are used;

(b) To ensure that potential interference to radio communications is controlled; and

(c) To investigate complaints of harmful interference or to verify the manufacturer's compliance with Section 47 CFR 2.948 of the Commission's rules.

Accreditation Bodies

On September 14, 2009, the Office of Engineering and Technology (OET) identified and requested comment on certain types of information that an applicant should provide to be considered as an accreditation body of test laboratories under the Commission's rules, *see* DA 09–2049. 47 CFR 2.948(d) of the Commission's rules sets forth the requirements for accreditation bodies seeking recognition from the FCC as a laboratory accreditation body. Accreditation bodies seeking such recognition from the Commission must file a report of their qualifications with the Office of Engineering and Technology (OET). They are only required to file this information once. The Commission currently has three recognized accreditations bodies.

Other Information

In addition, the referenced 47 CFR part 15 rules (47 CFR 15.117(g)(2)) require that certain equipment manufacturers file information concerning the testing of TV receivers, which tune to UHF channels, to show that the UHF channels provide approximately the same degree of tuning accuracy with approximately the same expenditure of time and effort.

Federal Communications Commission.

Marlene H. Dortch,

Secretary, Office of the Secretary, Office of Managing Director.

[FR Doc. 2013–18268 Filed 7–29–13; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Information Collection Being Reviewed by the Federal Communications Commission Under Delegated Authority

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: The Federal Communications Commission (FCC), as part of its continuing effort to reduce paperwork burdens, invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act (PRA) of 1995. Comments are requested concerning whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

The FCC 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.

DATES: Written PRA comments should be submitted on or before September 30, 2013. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to the Federal Communications Commission via email to *PRA@fcc.gov* and *Cathy.Williams@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Cathy Williams at (202) 418–2918.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0084.

Title: Ownership Report for Noncommercial Educational Broadcast Station, FCC Form 323–E.

Form Number: FCC Form 323–E.

Type of Review: Extension of a currently approved collection.

Respondents: Not-for-profit institutions.

Number of Respondents and Responses: 2,636 respondents; 2,636 responses.

Estimated Time per Response: One hour.

Frequency of Response: On occasion, biennially, and on renewal reporting requirements.

Total Annual Burden: 2,636 hours.

Total Annual Cost: $1,581,600.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority is contained in Sections 154(i), 308 and 310 of the Communications Act of 1934, as amended.

Nature and Extent of Confidentiality: There is no need for confidentiality with this collection of information.

Privacy Impact Assessment(s): No impact(s).

Needs and Uses: Each licensee/permittee of a noncommercial FM and TV broadcast station is required to file an Ownership Report for Noncommercial Educational Broadcast Station, FCC Form 323–E, within 30 days of the date of grant by the FCC of an application for an original construction permit. In addition, licensee must file FCC Form 323–E biennially on the anniversary of the application filing date for the station license renewal. Each licensee with a current, unmodified FCC Form 323–E on file with the Commission may electronically review its current Report, validate its accuracy, and be relieved of the obligation to file a new Biennial Ownership Report. The FCC 323–E must also be filed within 30 days of consummating authorized assignments or transfers of permits and licenses.

Federal Communications Commission.

Marlene H. Dortch,

Secretary, Office of the Secretary, Office of Managing Director.

[FR Doc. 2013–18269 Filed 7–29–13; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0173; Docket 2012–0076; Sequence 52]

Submission for OMB Review; Limitations on Pass-Through Charges

AGENCY: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for public comments regarding an extension to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act, the Regulatory Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve a previously approved information collection requirement regarding Limitations on Pass-Through Charges. A notice was published in the **Federal Register** at 77 FR 69440, on November 19, 2012. One comment was received.

DATES: Submit comments on or before August 29, 2013.

ADDRESSES: Submit comments identified by Information Collection 9000–0173, Limitations on Pass-Through Charges by any of the following methods:

- *Regulations.gov: http://www.regulations.gov.*

Submit comments via the Federal eRulemaking portal by searching the OMB control number. Select the link ''Submit a Comment'' that corresponds with ''Information Collection 9000–0173, Limitations on Pass-Through Charges''. Follow the instructions provided at the ''Submit a Comment'' screen. Please include your name, company name (if any), and ''Information Collection 9000–0173, Limitations on Pass-Through Charges'' on your attached document.

- *Fax:* 202–501–4067.
- *Mail:* General Services Administration, Regulatory Secretariat (MVCB), 1800 F Street NW.,, 2nd floor, Washington, DC 20405. ATTN: Hada Flowers/IC 9000–0173, Limitations on Pass-Through Charges.

Instructions: Please submit comments only and cite Information Collection 9000–0173, Limitations on Pass-Through Charges, in all correspondence related to this collection. Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503. All comments received will be posted without change to *http://www.regulations.gov,* including any personal and/or business confidential information provided.

FOR FURTHER INFORMATION CONTACT: Mr. Edward N. Chambers, Procurement Analyst, Office of Acquisition Policy, at telephone (202) 501–3221 or via email to *Edward.chambers@gsa.gov.*

SUPPLEMENTARY INFORMATION:

A. Purpose

To enable contracting officers to verify that pass-through charges are not excessive, the clause at FAR 52.215–22, Limitations on Pass-Through Charges—Identification of Subcontract Effort, requires offerors submitting a proposal for a contract, task order, or delivery order to provide the following information with its proposal:

(1) The percent of effort the offeror intends to perform and the percent expected to be performed by each subcontractor.

(2) If the offeror intends to subcontract more than 70 percent of the total cost of work to be performed—

(i) The amount of the offeror's indirect costs and profit/fee applicable to the work to be performed by the subcontractor(s); and,

(ii) A description of the value added by the offeror as related to the work to be performed by the subcontractor(s).

(3) If any subcontractor intends to subcontract to a lower-tier subcontractor more than 70 percent of the total cost of work to be performed under its subcontract—

(i) The amount of the subcontractor's indirect costs and profit/fee applicable to the work to be performed by the lower-tier subcontractor(s); and,

(ii) A description of the value added by the subcontractor as related to the work to be performed by the lower-tier subcontractor(s).

In addition, if the amount of the effort to be subcontracted by the contractor or a subcontractor changes from the amount identified in the proposal such that it exceeds 70 percent of the total cost of work to be performed, the clause at FAR 52.215–23, Limitations on Pass-Through Charges, requires contractors to provide a description of the value added by the contractor or subcontractor, as applicable, as related to the subcontract effort.

B. Discussion and Analysis

One respondent submitted public comments on the extension of the previously approved information collection. The analysis of their public comments is summarized as follows:

Comment: The respondent commented that the extension of the information collection would violate the fundamental purposes of the Paperwork Reduction Act because of the burden it puts on the entity submitting the information and the agency collecting the information.

Response: In accordance with the Paperwork Reduction Act (PRA), agencies can request OMB approval of an existing information collection. The PRA requires that agencies use the **Federal Register** notice and comment process, to extend OMB's approval, at least every three years. This extension, to a previously approved information collection, pertains to FAR clause 52.215–22. This clause requires offerors submitting a proposal for a contract, task order, or delivery order to provide

certain information on its projected subcontracting activities with its proposal. Absent the reporting under this clause, the Government would be vulnerable to charges from prime contractors related to subcontract activity which did not provide commensurate or even any value to the contract.

Comment: The respondent commented that the agency did not accurately estimate the public burden challenging that the agency's methodology for calculating it is insufficient and inadequate and does not reflect the total burden. The respondent stated the estimate of a half hour per response per respondent is understated, and that a more realistic estimate would be in the range of 40 to 80 hours per response. For this reason, the respondent provided that the agency should reassess the estimated total burden hours and revise the estimate upwards to be more accurate, as was done in FAR Case 2007–006. The respondent also provided that the burden of compliance with the information collection requirement outweighs any potential utility of the extension.

Response: Serious consideration is given, during the open comment period, to all comments received and adjustments are made to the paperwork burden estimate based on reasonable considerations provided by the public. This is evidenced, as the respondent notes, in FAR Case 2007–006 where an adjustment was made from the total preparation hours from three to 60. This change was made considering particularly the hours that would be required for review within the company, prior to release to the Government.

The burden is prepared taking into consideration the necessary criteria in OMB guidance for estimating the paperwork burden put on the entity submitting the information. For example, consideration is given to an entity reviewing instructions; using technology to collect, process, and disclose information; adjusting existing practices to comply with requirements; searching data sources; completing and reviewing the response; and transmitting or disclosing information. The estimated burden hours for a collection are based on an average between the hours that a simple disclosure by a very small business might require and the much higher numbers that might be required for a very complex disclosure by a major corporation. Also, the estimated burden hours should only include projected hours for those actions which a company would not undertake in the normal course of business. Careful consideration went into assessing the estimated burden hours for this collection, and although, the respondent provided estimates of responses and burden hours, the estimates cannot be confirmed with any degree of certainty to totally rely on the information. However, it is determined that an upward adjustment from the previously approved information collection is warranted at this time based upon consideration of the information provided in the public comment.

C. Annual Reporting Burden

There is no centralized database in the Federal Government that maintains information regarding the use of the clauses at FAR 52.215–22 and FAR 52.215–23. Therefore, subject matter experts were consulted to obtain additional information that helped in estimating the revised public burden.

For this information collection requirement data from Fiscal Year (FY) 2012 was retrieved from the Federal Procurement Data System—Next Generation (FPDS–NG). The parameters for this information collection were defined based on the prescription from the applicable clauses. Based on a comprehensive review of the prescriptions for the applicable clauses, it was determined that the types of contracts associated with this information collection are:

(1) For civilian agencies, cost-reimbursement type contracts and the total estimated contract or order value exceeds the simplified acquisition threshold (SAT).

(2) For DoD, the total estimated contract or order value exceeds the threshold for obtaining cost or pricing data in 15.403–4 ($700,000); and the contract type is expected to be any contract type except—

(i) A firm-fixed-price contract awarded on the basis of adequate price competition;

(ii) A fixed-price contract with economic price adjustment awarded on the basis of adequate price competition;

(iii) A firm-fixed-price contract for the acquisition of a commercial item;

(iv) A fixed-price contract with economic price adjustment, for the acquisition of a commercial item;

(v) A fixed-price incentive contract awarded on the basis of adequate price competition; or

(vi) A fixed-price incentive contract for the acquisition of a commercial item.

For civilian agencies, FPDS–NG shows 3,017 contracts awarded to 2,258 unique vendors were applicable to the clauses associated with this information collection. For DOD, FPDS–NG shows 1,376 contracts awarded to 1,119 unique vendors were applicable to the clauses associated with this information collection. This equates to a total of 4,393 contracts awarded to 3,377 unique vendors. Based on discussions with subject matter experts, it was determined that 4,393 contract awards was a sufficient baseline for estimating the number of solicitations that would include the applicable clause. It is estimated that 3 responses would be submitted in response to a solicitation that included the applicable clauses, for a total of 13,179 estimated respondents per year. The number of responses per respondent is estimated at one. It is also determined that the estimated time required to read and prepare a response is increased from 60 minutes to 120 minutes. This determination is based on the consideration of public comments.

These revisions represent an increase from the previously approved information collection.

Respondents: 13,179.

Responses per Respondent: 1.

Total Responses 13,179.

Hours per Response: 2.

Total Burden Hours: 26,358.

Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat (MVCB), 1800 F Street NW., 2nd floor, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0173, Limitations on Pass-Through Charges, in all correspondence.

Dated: July 24, 2013.

Karlos Morgan,

Acting Director, Federal Acquisition Policy Division, Office of Governmentwide Acquisition Policy, Office of Acquisition Policy, Office of Governmentwide Policy.

[FR Doc. 2013–18218 Filed 7–29–13; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2012–N–0980]

Agency Information Collection Activities; Announcement of Office of Management and Budget Approval; Guidance on Reagents for Detection of Specific Novel Influenza A Viruses

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing

that a collection of information entitled ''Guidance on Reagents for Detection of Specific Novel Influenza A Viruses'' has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: Daniel Gittleson, Office of Information Management, Food and Drug Administration, 1350 Piccard Dr., PI50–400B, Rockville, MD 20850, 301–796–5156, *Daniel.Gittleson@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION: On March 20, 2013, the Agency submitted a proposed collection of information entitled ''Guidance on Reagents for Detection of Specific Novel Influenza A Viruses'' to OMB for review and clearance under 44 U.S.C. 3507. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has now approved the information collection and has assigned OMB control number 0910–0584. The approval expires on April 30, 2016. A copy of the supporting statement for this information collection is available on the Internet at *http://www.reginfo.gov/public/do/PRAMain.*

Dated: July 24, 2013.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2013–18227 Filed 7–29–13; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2011–D–0164]

Guidance for Industry: Safety Labeling Changes—Implementation of Section 505(o)(4) of the Federal Food, Drug, and Cosmetic Act; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a guidance for industry entitled ''Safety Labeling Changes—Implementation of Section 505(o)(4) of the FD&C Act.'' The Food and Drug Administration Amendments Act of 2007 (FDAAA) added new provisions to the Federal Food, Drug, and Cosmetic Act (the FD&C Act) authorizing FDA to require certain drug and biological product application holders to make safety-related labeling changes based upon new safety information that becomes available after the drug or biological product is approved under the FD&C Act or the Public Health Service Act (the PHS Act). This final guidance provides information on the implementation of section 505(o)(4) of the FD&C Act, including a description of the types of safety labeling changes that ordinarily might be required under this section; how FDA plans to determine what constitutes new safety information; the procedures involved in requiring safety labeling changes; and enforcement of the requirements for safety labeling changes.

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; or the Office of Communication, Outreach and Development (HFM–40), Center for Biologics Evaluation and Research (CBER), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448. The guidance may also be obtained by mail by calling CBER at 1–800–835–4709 or 301–827–1800. 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: Kristen Everett, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 22, Rm. 6484, Silver Spring, MD 20993–0002, 301–796–0453; or Stephen Ripley, Center for Biologics Evaluation and Research (HFM–17), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448, 301–827–6210.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a guidance for industry entitled ''Safety Labeling Changes—Implementation of Section 505(o)(4) of the FD&C Act.'' In the past, FDA has requested that holders of applications for approved products make labeling changes related to safety after approval to address serious risks. In most cases, application holders responded to these requests by negotiating appropriate language with FDA staff to address the concerns and then submitting a supplement or amended supplement to obtain approval of the change. However, negotiations were often protracted, and FDA had few tools available at its disposal to end negotiations and require the changes. Congress recognized the limitations of FDA's authority in this area and, in FDAAA, gave FDA new authorities to require safety labeling changes in certain circumstances.

Title IX, section 901 of FDAAA (Pub. L. 110–85) amended the FD&C Act by adding new section 505(o)(4) (21 U.S.C. 355(o)(4)). Section 505(o)(4) authorizes FDA to require, and if necessary, order labeling changes if FDA becomes aware of new safety information that FDA believes should be included in the labeling of certain prescription drug and biological products approved under section 505 of the FD&C Act or section 351 of the PHS Act (42 U.S.C. 262). Specifically, section 505(o)(4) of the FD&C Act applies to prescription drug products with an approved new drug application (NDA) under section 505(b) of the FD&C Act, biological products with an approved biologics license application (BLA) under section 351 of the PHS Act, or prescription drug products with an approved abbreviated new drug application (ANDA) under section 505(j) of the FD&C Act if the NDA reference listed drug is not currently marketed. The safety labeling changes provisions in section 505(o)(4) apply to the previously listed products, including products that are not marketed, unless approval of the NDA, BLA, or ANDA has been withdrawn in the **Federal Register.** FDAAA imposes timeframes for application holders to submit and FDA staff to review safety labeling changes, and gives FDA new enforcement tools to bring about timely and appropriate labeling changes.

In the **Federal Register** of April 13, 2011 (76 FR 20686), FDA announced the availability of a draft guidance for industry entitled ''Safety Labeling Changes—Implementation of Section 505(o)(4) of the Federal Food, Drug, and Cosmetic Act.'' The notice gave interested parties the opportunity to comment by July 12, 2011. FDA carefully considered all of the comments received, and revised the guidance as appropriate. This guidance is intended to clarify how FDA will implement section 505(o)(4) of the FD&C Act, including providing a description of the types of safety labeling changes that ordinarily might be required under this section; how FDA plans to determine what

constitutes new safety information; what procedures are involved in requiring safety labeling changes; and how FDA will enforce the requirements for safety labeling changes.

This guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidance represents the Agency's current thinking on implementation of section 505(o)(4) of the FD&C Act. 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 either electronic comments regarding this document to *http://www.regulations.gov* or written comments to the Division of Dockets Management (see **ADDRESSES**). It is only necessary to send one set of comments. Identify comments with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday, and will be posted to the docket at *http://www.regulations.gov.*

III. Paperwork Reduction Act of 1995

This guidance contains collections of information that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (the PRA) (44 U.S.C. 3501–3520). The collections of information have been approved under OMB control number 0910–0734. This guidance also refers to previously approved collections of information. Specifically, the guidance describes: Labeling supplements for NDAs, ANDAs, and BLAs submitted under 21 CFR 314.70, 314.71, 314.97, and 601.12; and the content and format of prescription drug labeling submitted under 21 CFR 201.56 and 201.57. These collections of information are subject to review by OMB under the PRA and are approved under OMB control numbers 0910–0001, 0910–0338, and 0910–0572. Section V of the guidance refers to the guidance entitled ''Formal Dispute Resolution: Appeals Above the Division Level,'' which describes collections of information approved under OMB control number 0910–0430.

IV. Electronic Access

Persons with access to the Internet may obtain the document at either *http://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/default.htm, http://www.fda.gov/BiologicsBloodVaccines/GuidanceComplianceRegulatoryInformation/default.htm,* or *http://www.regulations.gov.*

Dated: July 24, 2013.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2013–18236 Filed 7–29–13; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities; Proposed Collection; Public Comment Request

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Notice.

SUMMARY: In compliance with the requirement for opportunity for public comment on proposed data collection projects (Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995), the Health Resources and Services Administration (HRSA) announces plans to submit an Information Collection Request (ICR), described below, to the Office of Management and Budget (OMB). Prior to submitting the ICR to OMB, HRSA seeks comments from the public regarding the burden estimate below, or any other aspect of the ICR.

DATES: Comments on this Information Collection Request must be received within 60 days of this notice.

ADDRESSES: Submit your comments to *paperwork@hrsa.gov* or mail the HRSA Information Collection Clearance Officer, Room 10–29, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the data collection plans and draft instruments, email *paperwork@hrsa.gov* or call the HRSA Information Collection Clearance Officer at (301) 443–1984.

SUPPLEMENTARY INFORMATION: When submitting comments or requesting information, please include the information request collection title for reference.

Information Collection Request Title: Nurse Anesthetist Traineeship (NAT) Program Application.

OMB No. 0915–XXXX—New.

Abstract: The Health Resources and Services Administration (HRSA) provides advanced education nursing training grants to educational institutions to increase the numbers of Nurse Anesthetists through the NAT Program. The NAT Program is governed by Title VIII, Section 811(a)(2) of the Public Health Service Act, (42 U.S.C. 296j(a)(2)), as amended by Section 5308 of the Patient Protection and Affordable Care Act, Public Law 111–148. The NAT application will use the SF–424 R&R Short Form which includes the Project Abstract, Program Narrative, NAT Attachments and the NAT Tables. The application and proposed NAT Tables will request information on program participants such as the number of enrollees, number of enrollees/trainees supported, number of graduates, number of graduates supported, projected data on enrollees/trainees and graduates for the previous fiscal year, the types of programs they are enrolling into and/or from which enrollees/trainees are graduating, and the distribution of Nurse Anesthetists to practice in underserved, rural, or public health practice settings.

Need and Proposed Use of the Information: Funds appropriated for the NAT Program are distributed among eligible institutions based on a formula. NAT award amounts are based on enrollment and graduate data and two funding factors (Statutory Funding Preference and Special Consideration) reported on the NAT Tables. HRSA will use the data from the application, specifically the NAT Tables to determine the award, ensure programmatic compliance, and provide information to the public and Congress.

Likely Respondents: Eligible applicants are schools of nursing, nursing centers, academic health centers, state or local governments, and other public or private nonprofit entities determined appropriate by the Secretary that submit an application and are accredited for the provision of nurse anesthesia educational program by designated accrediting organizations. Eligible applicants must be accredited by the Council on Accreditation (COA) of Nurse Anesthesia Educational Programs of the American Association of Nurse Anesthetists. The school must be located in the 50 states, the District of Columbia, Guam, the Commonwealth of Puerto Rico, the Northern Mariana Islands, the Virgin Islands, American Samoa, Guam, the U.S. Virgin Islands, the Federated States of Micronesia, the Republic of the Marshall Islands, or the Republic of Palau.

Burden Statement: Burden in this context means the time expended by persons to generate, maintain, retain, disclose or provide the information

requested. This includes the time needed to review instructions; to develop, acquire, install and utilize technology and systems for the purpose of collecting, validating and verifying information, processing and maintaining information, and disclosing and providing information; to train personnel and to be able to respond to a collection of information; to search data sources; to complete and review the collection of information; and to transmit or otherwise disclose the information. The total annual burden hours estimated for this Information Collection Request are summarized in the table below.

Total Estimated Annualized burden hours:

Form name	Number of respondents	Number of responses per respondent	Total responses	Average burden per response (in hours)	Total burden hours
NAT Application including the NAT Attachments and NAT Tables	100	1	100	6	600
Total	100	1	100	6	600

HRSA specifically requests comments on (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.

Dated: July 24, 2013.

Bahar Niakan,

Director, Division of Policy and Information Coordination.

[FR Doc. 2013–18310 Filed 7–29–13; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

National Advisory Committee on Rural Health and Human Services; Notice of Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following National Advisory body scheduled to meet during the month of September 2013.

The National Advisory Committee on Rural Health will convene its seventy-fourth meeting in the time and place specified below:

Name: National Advisory Committee on Rural Health and Human Services.

Dates and Time: September 4, 2013, 9:00 a.m.–5 p.m. September 5, 2013, 9:00 a.m.–5 p.m. September 6, 2013, 8:45 a.m.–11:00 a.m.

Place: Holiday Inn Bozeman, 5 East Baxter Lane, Bozeman, MT 59715, (406) 587–4561.

Status: The meeting will be open to the public.

Purpose: The National Advisory Committee on Rural Health and Human Services provides counsel and recommendations to the Secretary with respect to the delivery, research, development, and administration of health and human services in rural areas.

Agenda: Wednesday morning, September 4, at 9:00 a.m., the meeting will be called to order by the Chairperson of the Committee: the Honorable Ronnie Musgrove. The Committee will be examining outreach, enrollment and education efforts for the rural population in regards to the Health Insurance Marketplaces which will open this fall. The Committee will also examine the intersection of human service delivery and poverty in rural communities. The day will conclude with a period of public comment at approximately 5:00 p.m.

Thursday morning, September 5, at approximately 9:00 a.m., the Committee will break into Subcommittees and depart for site visits to health care and human services providers in Montana. One panel from the Health Subcommittee will visit Community Health Partners in Livingston, Montana. Another panel from the Health Subcommittee will visit Wheatland Memorial Healthcare in Harlowton, Montana. The Human Services Subcommittee will visit the Human Resource Development Council, in Bozeman, Montana. The day will conclude at the Holiday Inn Bozeman with a period of public comment at approximately 4:30 p.m.

Friday morning, September 6, at 8:45 a.m., the Committee will summarize key findings from the meeting and develop a work plan for the next quarter and the following meeting.

FOR FURTHER INFORMATION CONTACT: Steve Hirsch, MSLS, Executive Secretary, National Advisory Committee on Rural Health and Human Services, Health Resources and Services Administration, Parklawn Building, Room 5A–05, 5600 Fishers Lane, Rockville, MD 20857, telephone (301) 443–0835, or fax (301) 443–2803.

Persons interested in attending any portion of the meeting should contact Kristen Lee at the Office of Rural Health Policy (ORHP) via telephone at (301) 443–0835 or by email at *klee1@hrsa.gov.* The Committee meeting agenda will be posted on ORHP's Web site *http://www.hrsa.gov/advisorycommittees/rural/.*

Dated: July 24, 2013.

Bahar Niakan,

Director, Division of Policy and Information Coordination.

[FR Doc. 2013–18308 Filed 7–29–13; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the National Advisory Neurological Disorders and Stroke Council.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in 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 Advisory Neurological Disorders and Stroke Council.

Date: September 12–13, 2013.

Open: September 12, 2013, 8:00 a.m. to 3:15 p.m.

Agenda: Report by the Director, NINDS; Report by the Associate Director for Extramural Research; Administrative and Program Developments; and an Overview of the NINDS Intramural Program.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Conference Room E1/E2, Bethesda, MD 20892.

Closed: September 12, 2013, 3:15 p.m. to 4:45 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Conference Room E1/E2, Bethesda, MD 20892.

Closed: September 12, 2013, 4:45 p.m. to 5:15 p.m.

Agenda: To review and evaluate the Division of Intramural Research Board of Scientific Counselors' Reports.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Conference Room E1/E2, Bethesda, MD 20892.

Closed: September 13, 2013, 8:00 a.m. to 11:00 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Conference Room E1/E2, Bethesda, MD 20892.

Contact Person: Robert Finkelstein, Ph.D., Associate Director for Extramural Research, National Institute of Neurological Disorders and Stroke, NIH, 6001 Executive Blvd., Suite 3309, MSC 9531, Bethesda, MD 20892, (301) 496–9248.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

Information is also available on the Institute's/Center's home page: *http://www.ninds.nih.gov,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS).

Dated: July 24, 2013.

Carolyn Baum,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–18202 Filed 7–29–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel Cardiovascular Research Resource.

Date: August 22, 2013.

Time: 2:30 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Room 7182, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Susan Wohler Sunnarborg, Ph.D., Scientific Review Officer, Office of Scientific Review/DERA, National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Room 7182, Bethesda, MD 20892, *sunnarborgsw@nhlbi.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: July 24, 2013.

Michelle Trout,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–18201 Filed 7–29–13; 8:45 am]

BILLING CODE 4140–01–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 Huntington's Disease Ancillary Studies SEP.

Date: August 7, 2013.

Time: 10:15 a.m. to 11:45 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Blvd., Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Shanta Rajaram, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Research, NINDS, NIH, NSC, 6001 Executive Blvd., Suite 3208, MSC 9529, Bethesda, MD 20892–9529, 301–435–6033, *rajarams@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. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS)

Dated: July 24, 2013.

Carolyn Baum,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–18200 Filed 7–29–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; 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 Mental Health Special Emphasis Panel, ITVC Conflicts.

Date: August 16, 2013.

Time: 1:00 p.m. to 2:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Aileen Schulte, Ph.D., Scientific Review Officer, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6140, MSC 9608, Bethesda, MD 20892–9608, 301–443–1225, *aschulte@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: July 24, 2013.

Carolyn A. Baum,

Program Analyst, Office of Federal Advisory Cmmittee Policy.

[FR Doc. 2013–18203 Filed 7–29–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

The National Institute of Dental and Craniofacial Research (NIDCR) Strategic Plan Request for Comments

SUMMARY: NIDCR is developing a new strategic plan to guide the Institute's research efforts and priorities over the next six years (2014–2019). The purpose of this time-sensitive Request for Information (RFI) is to seek input from a broad range of stakeholders about prospective activities, areas of research emphasis, future research approaches, needs, and opportunities.

DATES: To ensure consideration, your responses must be received by Friday, September 6, 2013.

ADDRESSES: Responses to this Notice must be submitted electronically using either the web-based format at *http://www.nidcr.nih.gov/NewsAndFeatures/Announcements/GiveUsYourIdeasforNIDCRsNextStrategicPlan* or email to *NIDCRStrategicPlanCo@nidcr.nih.gov.*

FOR FURTHER INFORMATION CONTACT: Dr. Margo Adesanya, Acting Director, Office of Science Policy and Analysis, National Institute of Dental and Craniofacial Research, 9000 Rockville Pike, Bldg. 31, Rm. 5B/55, MSC 2190, Bethesda, MD 20892, Telephone: 301–594–8774, Fax: 301–496–9988, Email: *Margo.Adesanya@nih.gov.*

SUPPLEMENTARY INFORMATION:

Background

NIDCR, the lead Federal agency for research and research training on oral, dental and craniofacial diseases and disorders, has a distinguished record of supporting research to advance the oral health of the nation for 65 years. The mission of the NIDCR is to improve oral, dental and craniofacial health through research, research training, and the dissemination of health information. We accomplish our mission by performing and supporting basic and clinical research; conducting and funding research training and career development programs to ensure an adequate number of talented, well-prepared and diverse investigators; coordinating and assisting relevant research and research-related activities among all sectors of the research community; and promoting the timely transfer of knowledge gained from research and its implications for health to the public, health professionals, researchers, and policy-makers.

Information Requested

This notice invites public comment and input on the development of the next strategic plan. We ask that you consider cross-cutting research opportunities, and/or needs that could have the greatest benefit for advancing oral health.

To inform development of the strategic plan, input is being sought on each of the areas identified below.

(1) ''Transformative'' areas of research where new discoveries could have the greatest benefit for advancing dental, oral, and craniofacial research.

(2) New technical capabilities or tools that can have a significant impact on dental, oral, and craniofacial research and clinical practice in the next fifteen years.

(3) Scientific advances that could result in a quantum leap in the care of dental, oral, and craniofacial disorders.

(4) Major challenges and opportunities for revolutionizing how we understand, prevent, diagnose and manage dental, oral, and craniofacial diseases and disorders.

(5) NIDCR's role and potential for expanding and enhancing the pipeline for new dental, oral, and craniofacial researchers.

(6) Potential areas for Public-Private Partnerships—partnerships that will allow NIDCR to work collaboratively with both public and private entities to advance research and improve the public health.

(7) Any additional comments or information you think would be useful to NIDCR in developing its 2014–2019 Strategic Plan.

General Information

All of the following fields in the response are optional and voluntary. Any personal identifiers will be removed when responses are compiled. Proprietary, classified, confidential, or sensitive information should not be included in your response. This notice is for planning purposes only and is not a solicitation for applications or an obligation on the part of the United States (U.S.) government to provide support for any ideas identified in response to it. Please note that the U.S. government will not pay for the preparation of any comment submitted or for its use of that comment.

Please indicate if you are one of the following: grantee, administrator, student, patient advocate, Dean/or Institutional administrator, NIH employee, or other. If you are an investigator, please indicate your career level and main area of research interest, including whether the focus is clinical or basic. If you are a member of a particular advocacy or professional organization, please indicate the name and primary focus of the organization (i.e., research support, patient care, etc.) and whether you are responding on behalf of your organization (if not, please indicate your position within the organization).

Please provide your name and email address.

Privacy Act Notification Statement: We are requesting your comments for the 2014–2019 National Institute of Dental and Craniofacial Research (NIDCR) Strategic Plan. The information you provide may be disclosed to NIDCR senior staff serving on the strategic plan steering committee and to contractors working on our behalf. Submission of this information is voluntary. However, the information you provide will help to categorize responses by scientific area of

expertise, organizational entity or professional affiliation.

Collection of this information is authorized under 42 U.S.C. 203, 24 1, 2891–1 and 44 U.S.C. 310 I and Section 301 and 493 of the Public Health Service Act regarding the establishment of the National Institutes of Health, its general authority to conduct and fund research and to provide training assistance, and its general authority to maintain records in connection with these and its other functions.

Dated: July 18, 2013.

Martha J. Somerman,

Director, National Institute of Dental and Craniofacial Research, National Institutes of Health.

[FR Doc. 2013–18214 Filed 7–29–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Domestic Nuclear Detection Office; Announcement of Requirements and Registration for the National Radiological and Nuclear Detection Challenge; Correction

AGENCY: Domestic Nuclear Detection Office, DHS.

ACTION: Notice; correction.

SUMMARY: DNDO published a notice in the **Federal Register** of May 8, 2013, to announce the National Radiological and Nuclear Detection Challenge (Rad/Nuc Challenge), a participation challenge being conducted under the America Competes Reauthorization Act, for state, local, and tribal law enforcement, other first responders, public safety officials, and Civil Support Team members. This event has been postponed requiring a change to the date and location information.

FOR FURTHER INFORMATION CONTACT: Timothy Smith, (202) 254–7297, *Radnucchallenge@hq.dhs.gov.* To register for and find additional information about the Rad/Nuc Challenge, visit *http://www.radnucchallenge.org.*

Correction

Correct FR Doc. 2013–10928 as follows:

1. In the **Federal Register** of May 8, 2013, in FR Doc. 2013–10928, on page 26795, in the second column, correct the **DATES** caption to read:

DATES: The Rad/Nuc Challenge will be held late in Fiscal Year 2014.

2. On page 26795, in the second column, correct the **ADDRESSES** caption to read:

ADDRESSES: The location of the Rad/Nuc Challenge is to be announced.

3. On page 26795, in the third column, correct the first sentence of the second full paragraph to read:

The event will be hosted at a location to be announced.

Authority: 15 U.S.C. 3719.

Dated: June 17, 2013.

Rafael Borras,

Under Secretary for Management.

[FR Doc. 2013–18216 Filed 7–29–13; 8:45 am]

BILLING CODE 4410–9D–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2013–0030; OMB No. 1660–0046]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: The Federal Emergency Management Agency, 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 a revision of a currently approved information collection. In accordance with the Paperwork Reduction Act of 1995, this notice seeks comments concerning enrollment for students and score assessments for FEMA's Independent Study Program.

DATES: Comments must be submitted on or before September 30, 2013.

ADDRESSES: To avoid duplicate submissions to the docket, please use only one of the following means to submit comments:

(1) *Online.* Submit comments at *www.regulations.gov* under Docket ID FEMA–2013–0030. Follow the instructions for submitting comments.

(2) *Mail.* Submit written comments to Docket Manager, Office of Chief Counsel, DHS/FEMA, 500 C Street SW., Room 840, Washington, DC 20472–3100.

All submissions received must include the agency name and Docket ID. Regardless of the method used for submitting comments or material, all submissions will be posted, without change, to the Federal eRulemaking Portal at *http://www.regulations.gov,* and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to read the Privacy Act notice that is available via the link in the footer of *www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Dana Moat, Training Specialist, Emergency Management Institute, 301–447–1922. You may contact the Records Management Division for copies of the proposed collection of information at facsimile number (202) 646–3347 or email address: *FEMA-Information-Collections-Management@dhs.gov.*

SUPPLEMENTARY INFORMATION: FEMA's Emergency Management Institute (EMI) provides a wide variety of training to emergency management personnel throughout the country. The EMI Independent Study (IS) Program is part of the FEMA training program authorized under section 611(f) of the Robert T. Stafford Disaster Relief and Emergency Act, Public Law 93–288 as amended. These courses are offered online by the Emergency Management Institute (EMI). The IS Program provides valuable training to Federal, State, local and Tribal emergency management personnel and the general citizenry of the United States without having to attend a resident course at EMI, or at a State-sponsored course. The IS program also includes a course on the National Incident Management System (NIMS). The National Incident Management System is our nation's incident management system. Homeland Security Presidential Directive 5, ''Management of Domestic Incidents'' requires the adoption of NIMS by all Federal departments and agencies. This directive also requires that Federal preparedness assistance funding for States, Territories, local jurisdictions and Tribal entities be dependent on being NIMS compliance.

Collection of Information

Title: Emergency Management Institute (EMI) Independent Study Course Enrollment Application.

Type of Information Collection: Revision of a currently approved information collection.

FEMA Forms: FEMA Form 064–0–9, Emergency Management Institute (EMI) Independent Study Course Enrollment Application.

Abstract: The IS program office collects data from FEMA Form 064–0–9 to create and update student records and provide students with credit for training completion. The system also allows FEMA to track completions and failures of course exams. The data on the electronic form will be encrypted

and sent to the server to be parsed into the Independent Study database.

Affected Public: Individuals and households, business or other for-profit, not for profit institutions, farms, Federal government, State, local or tribal government.

Number of Respondents: 2,148,746.

Number of Responses: 8,594,984.

Estimated Total Annual Burden Hours: 4,297,492.

Estimated Cost: There are no annual capital, start-up, and operation or maintenance costs associated with this collection.

Comments

Comments may be submitted as indicated in the **ADDRESSES** caption above. Comments are solicited to (a) Evaluate whether the proposed data collection is necessary for the proper performance of the agency, including whether the information shall have practical utility; (b) 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; (c) enhance the quality, utility, and clarity of the information to be collected; and (d) 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.

Dated: July 23, 2013.

Charlene D. Myrthil,

Director, Records Management Division, Mission Support Bureau, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. 2013–18270 Filed 7–29–13; 8:45 am]

BILLING CODE 9110–72–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2013–0029; OMB No. 1660–0005]

Agency Information Collection Activities: Proposed Collection; Comment Request; National Flood Insurance Program Claim Forms

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: The Federal Emergency Management Agency, 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 a revision of a currently approved information collection. In accordance with the Paperwork Reduction Act of 1995, this notice seeks comments concerning the collection of information related to the flood insurance claims process.

DATES: Comments must be submitted on or before September 30, 2013.

ADDRESSES: To avoid duplicate submissions to the docket, please use only one of the following means to submit comments.

(1) *Online.* Submit comments at *www.regulations.gov* under docket ID FEMA–2013–0029. Follow the instructions for submitting comments.

(2) *Mail.* Submit written comments to Docket Manager, Office of Chief Counsel, DHS/FEMA, 500 C Street SW., Room 840, Washington, DC 20472–3100.

(3) *Facsimile.* Submit comments to (703) 483–2999.

All submissions received must include the agency name and docket ID. Regardless of the method used for submitting comments or material, all submissions will be posted, without change, to the Federal eRulemaking Portal at *http://www.regulations.gov,* and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to read the Privacy Act notice that is available via the link in the footer *www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Donald Waters, Insurance Examiner, FEMA at (202) 212–4725 for additional information. You may contact the Records Management Division for copies of the proposed collection of information at facsimile number (202) 646–3347 or email address: *FEMA-Information-Collections-Manage@dhs.gov.*

SUPPLEMENTARY INFORMATION: The National Flood Insurance Program (NFIP) is codified as 42 U.S.C. 4001, *et sec.* and is authorized by Public Law 90–448 (1968) and expanded by Public Law 93–234 (1973). The National Flood Insurance Act of 1968 requires that the Federal Emergency Management Agency (FEMA) provides flood insurance at full actuarial rates with limited exceptions for certain structures reflecting the complete flood risk to structures built or substantially improved on or after the effective date for the initial Flood Insurance Rate Map (FIRM) for the community, or after December 31, 1974, whichever is later, so that the risk associated with buildings in flood-prone areas are borne by those located in such areas and not by the taxpayers at large. In accordance with Public Law 93–234, the purchase of flood insurance is mandatory when Federal or federally related financial assistance is being provided for acquisition or construction of buildings located, or to be located, within FEMA-identified special flood hazard areas of communities that are participating in the NFIP. When flood damage occurs to insured property, information is collected to report, investigate, and negotiate in order to settle the claim.

The NFIP Appeals Process

Section 205 of The Bunning-Bereuter-Blumenauer Flood Insurance Reform Act (FIRA) of 2004, Public Law 108–264, requires the Federal Emergency Management Agency (FEMA) to establish by regulation an additional process for the appeal of decisions of flood insurance claims issued through the National Flood Insurance Program (NFIP). Consequently, FEMA published an interim final rule in May 2006 and a final rule in October 2006 codifying into regulation what was previously an existing informal process to handle appeals regarding decisions related to coverage, or claims under the NFIP.

Collection of Information

Title: National Flood Insurance Program Claim Forms.

Type of Information Collection: Revision of a currently approved information collection.

FEMA Forms: FEMA Form 086–0–6; Worksheet—Content—Personal Property; 086–0–7; Worksheet—Building; 086–0–8; Worksheet—Building (Continued); 086–0–9; Proof of Loss; 086–0–10; Increased Cost of Compliance Proof of Loss; 086–0–11; Notice of Loss; 086–0–12; Statement as to Full Cost of Repair or Replacement under the Replacement Cost Coverage, Subject to Terms and Conditions of this Policy; 086–0–13; National Flood Insurance Program Preliminary Report; 086–0–14; National Flood Insurance Program Final Report; 086–0–15; National Flood Insurance Program Narrative Report; 086–0–16; Cause of Loss and Subrogation Report; 086–0–17; Manufactured (Mobile) Home/Travel Trailer Worksheet; 086–0–18; Manufactured (Mobile) Home/Travel Trailer Worksheet (Continued); 086–0–19; Increased Cost of Compliance (ICC) Adjusters Report; 086–0–20; Adjuster Preliminary Damage Assessment; 086–0–21; Adjuster Certification

Application. NFIP Claims Appeals Process.

Abstract: The National Flood Insurance Program (NFIP) appeal process establishes a formal mechanism to allow NFIP policyholders to appeal the decisions of any insurance agent, adjuster, insurance company, or any Federal Emergency Management Agency (FEMA) employee or contractor, in cases or unsatisfactory decisions on claims, proof of loss, and loss estimates.

Affected Public: Individuals, households, farms, businesses, and other for profit.

Number of Respondents: 97,242.

Number of Responses: 97,242.

Estimated Total Annual Burden Hours: 73,815.

Estimated Cost: There are no recordkeeping, capital, start-up or maintenance costs associated with this information collection.

Comments

Comments may be submitted as indicated in the **ADDRESSES** caption above. Comments are solicited to (a) Evaluate whether the proposed data collection is necessary for the proper performance of the agency, including whether the information shall have practical utility; (b) 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; (c) enhance the quality, utility, and clarity of the information to be collected; and (d) 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.

Dated: July 23, 2013.

Charlene D. Myrthil,

Director, Records Management Division, Mission Support Bureau, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. 2013–18256 Filed 7–29–13; 8:45 am]

BILLING CODE 9110–11–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2013–0002]

Final Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Final notice.

SUMMARY: Flood hazard determinations, which may include additions or modifications of Base Flood Elevations (BFEs), base flood depths, Special Flood Hazard Area (SFHA) boundaries or zone designations, or regulatory floodways on the Flood Insurance Rate Maps (FIRMs) and where applicable, in the supporting Flood Insurance Study (FIS) reports have been made final for the communities listed in the table below.

The FIRM and FIS report are the basis of the floodplain management measures that a community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the Federal Emergency Management Agency's (FEMA's) National Flood Insurance Program (NFIP). In addition, the FIRM and FIS report are used by insurance agents and others to calculate appropriate flood insurance premium rates for buildings and the contents of those buildings.

DATES: The effective date of December 3, 2013 which has been established for the FIRM and, where applicable, the supporting FIS report showing the new or modified flood hazard information for each community.

ADDRESSES: The FIRM, and if applicable, the FIS report containing the final flood hazard information for each community is available for inspection at the respective Community Map Repository address listed in the tables below and will be available online through the FEMA Map Service Center at *www.msc.fema.gov* by the effective date indicated above.

FOR FURTHER INFORMATION CONTACT: Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, FEMA, 500 C Street SW., Washington, DC 20472, (202) 646–4064, or (email) *Luis.Rodriguez3@fema.dhs.gov;* or visit the FEMA Map Information eXchange (FMIX) online at *www.floodmaps.fema.gov/fhm/fmx_main.html.*

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) makes the final determinations listed below for the new or modified flood hazard information for each community listed. Notification of these changes has been published in newspapers of local circulation and ninety (90) days have elapsed since that publication. The Deputy Associate Adminstrator for Mitigation has resolved any appeals resulting from this notification.

This final notice is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR part 67. FEMA has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR part 60.

Interested lessees and owners of real property are encouraged to review the new or revised FIRM and FIS report available at the address cited below for each community or online through the FEMA Map Service Center at *www.msc.fema.gov.*

The flood hazard determinations are made final in the watersheds and/or communities listed in the table below.

I. Non-watershed-based studies:

Community	Community map repository address
Mason County, West Virginia, and Incorporated Areas	
Docket No.: FEMA–B–1270	
City of Point Pleasant	City Hall, 400 Viand Street, Point Pleasant, WV 25550.
Town of Hartford	Town Hall, 133 2nd Street, Hartford, WV 25247.
Town of Henderson	Town Hall, 1 Railroad Street, Henderson, WV 25106.
Town of Leon	Town Hall, 136 Main Street, Leon, WV 25123.
Town of Mason	Office of the Mayor, 656 2nd Street, Mason, WV 25260.
Town of New Haven	Town of New Haven City Hall, 218 5th Street, New Haven, WV 25265.
Unincorporated Areas of Mason County	Mason County Courthouse, 200 6th Street, Point Pleasant, WV 25550.

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Dated: July 12, 2013.

Roy E. Wright,

Deputy Associate Administrator for Mitigation, Department of Homeland Security, Federal Emergency Management Agency.

[FR Doc. 2013–18254 Filed 7–29–13; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2013–0002]

Final Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Final notice.

SUMMARY: Flood hazard determinations, which may include additions or modifications of Base Flood Elevations (BFEs), base flood depths, Special Flood Hazard Area (SFHA) boundaries or zone designations, or regulatory floodways on the Flood Insurance Rate Maps (FIRMs) and where applicable, in the supporting Flood Insurance Study (FIS) reports have been made final for the communities listed in the table below.

The FIRM and FIS report are the basis of the floodplain management measures that a community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the Federal Emergency Management Agency's (FEMA's) National Flood Insurance Program (NFIP). In addition, the FIRM and FIS report are used by insurance agents and others to calculate appropriate flood insurance premium rates for buildings and the contents of those buildings.

DATES: The effective date of December 17, 2013 which has been established for the FIRM and, where applicable, the supporting FIS report showing the new or modified flood hazard information for each community.

ADDRESSES: The FIRM, and if applicable, the FIS report containing the final flood hazard information for each community is available for inspection at the respective Community Map Repository address listed in the tables below and will be available online through the FEMA Map Service Center at *www.msc.fema.gov* by the effective date indicated above.

FOR FURTHER INFORMATION CONTACT: Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, FEMA, 500 C Street SW., Washington, DC 20472, (202) 646–4064, or (email) *Luis.Rodriguez3@fema.dhs.gov;* or visit the FEMA Map Information eXchange (FMIX) online at *www.floodmaps.fema.gov/fhm/fmx_main.html.*

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) makes the final determinations listed below for the new or modified flood hazard information for each community listed. Notification of these changes has been published in newspapers of local circulation and ninety (90) days have elapsed since that publication. The Deputy Associate Adminstrator for Mitigation has resolved any appeals resulting from this notification.

This final notice is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR part 67. FEMA has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR part 60.

Interested lessees and owners of real property are encouraged to review the new or revised FIRM and FIS report available at the address cited below for each community or online through the FEMA Map Service Center at *www.msc.fema.gov.*

The flood hazard determinations are made final in the watersheds and/or communities listed in the table below.

I. Non-watershed-based studies:

Community	Community map repository address
Kay County, Oklahoma and Incorporated Areas Docket No.: FEMA–B–1272	
City of Ponca City	City Hall, 516 East Grand Avenue, Ponca City, OK 74607.
Unincorporated Areas of Kay County	Kay County Courthouse, 201 South Main Street, Newkirk, OK 74647.
Osage County, Oklahoma and Incorporated Areas Docket No.: FEMA–B–1272	
Unincorporated Areas of Osage County	Osage County Planning and Zoning, 628 Kihekah Avenue, Pawhuska, OK 74056.

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Dated: July 12, 2013.

Roy E. Wright,

Deputy Associate Administrator for Mitigation, Department of Homeland Security, Federal Emergency Management Agency.

[FR Doc. 2013–18259 Filed 7–29–13; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2013–0002]

Final Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Final notice.

SUMMARY: Flood hazard determinations, which may include additions or modifications of Base Flood Elevations (BFEs), base flood depths, Special Flood Hazard Area (SFHA) boundaries or zone designations, or regulatory floodways on the Flood Insurance Rate Maps (FIRMs) and where applicable, in the supporting Flood Insurance Study (FIS) reports have been made final for the communities listed in the table below.

The FIRM and FIS report are the basis of the floodplain management measures that a community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the Federal Emergency Management Agency's (FEMA's) National Flood Insurance Program (NFIP). In addition, the FIRM

and FIS report are used by insurance agents and others to calculate appropriate flood insurance premium rates for buildings and the contents of those buildings.

DATES: The effective date of December 3, 2013 which has been established for the FIRM and, where applicable, the supporting FIS report showing the new or modified flood hazard information for each community.

ADDRESSES: The FIRM, and if applicable, the FIS report containing the final flood hazard information for each community is available for inspection at the respective Community Map Repository address listed in the tables below and will be available online through the FEMA Map Service Center at *www.msc.fema.gov* by the effective date indicated above.

FOR FURTHER INFORMATION CONTACT: Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, FEMA, 500 C Street SW., Washington, DC 20472, (202) 646–4064, or (email) *Luis.Rodriguez3@fema.dhs.gov;* or visit the FEMA Map Information eXchange (FMIX) online at *www.floodmaps.fema.gov/fhm/fmx_main.html.*

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) makes the final determinations listed below for the new or modified flood hazard information for each community listed. Notification of these changes has been published in newspapers of local circulation and ninety (90) days have elapsed since that publication. The Deputy Associate Adminstrator for Mitigation has resolved any appeals resulting from this notification.

This final notice is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR part 67. FEMA has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR part 60.

Interested lessees and owners of real property are encouraged to review the new or revised FIRM and FIS report available at the address cited below for each community or online through the FEMA Map Service Center at *www.msc.fema.gov.* The flood hazard determinations are made final in the watersheds and/or communities listed in the table below.

Community	Community map repository address
Wayne County, Michigan (All Jurisdictions) Docket No.: FEMA–B–1270	
City of Dearborn Heights	6045 Fenton Street, Dearborn Heights, MI 48127.
City of Romulus	11111 Wayne Road, Romulus, MI 48174.
City of Taylor	25605 Northline Road, Taylor, MI 48180.
City of Westland	36601 Ford Road, Westland, MI 48185.
Township of Huron	22950 Huron River Drive, New Boston, MI 48164.

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Dated: July 12, 2013.

Roy E. Wright,

Deputy Associate Administrator for Mitigation, Department of Homeland Security, Federal Emergency Management Agency.

[FR Doc. 2013–18253 Filed 7–29–13; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2013–0002; Internal Agency Docket No. FEMA–B–1338]

Changes in Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice lists communities where the addition or modification of Base Flood Elevations (BFEs), base flood depths, Special Flood Hazard Area (SFHA) boundaries or zone designations, or the regulatory floodway (hereinafter referred to as flood hazard determinations), as shown on the Flood Insurance Rate Maps (FIRMs), and where applicable, in the supporting Flood Insurance Study (FIS) reports, prepared by the Federal Emergency Management Agency (FEMA) for each community, is appropriate because of new scientific or technical data. The FIRM, and where applicable, portions of the FIS report, have been revised to reflect these flood hazard determinations through issuance of a Letter of Map Revision (LOMR), in accordance with Title 44, Part 65 of the Code of Federal Regulations (44 CFR Part 65). The LOMR will be used by insurance agents and others to calculate appropriate flood insurance premium rates for new buildings and the contents of those buildings. For rating purposes, the currently effective community number is shown in the table below and must be used for all new policies and renewals.

DATES: These flood hazard determinations will become effective on the dates listed in the table below and revise the FIRM panels and FIS report in effect prior to this determination for the listed communities.

From the date of the second publication of notification of these changes in a newspaper of local circulation, any person has ninety (90) days in which to request through the community that the Deputy Associate Administrator for Mitigation reconsider the changes. The flood hazard determination information may be changed during the 90-day period.

ADDRESSES: The affected communities are listed in the table below. Revised flood hazard information for each community is available for inspection at both the online location and the respective community map repository address listed in the table below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *www.msc.fema.gov* for comparison.

Submit comments and/or appeals to the Chief Executive Officer of the community as listed in the table below.

FOR FURTHER INFORMATION CONTACT: Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, FEMA, 500 C Street SW., Washington, DC 20472, (202) 646–4064, or (email) *Luis.Rodriguez3@fema.dhs.gov;* or visit the FEMA Map Information eXchange (FMIX) online at *www.floodmaps.fema.gov/fhm/fmx_main.html.*

SUPPLEMENTARY INFORMATION: The specific flood hazard determinations are not described for each community in

this notice. However, the online location and local community map repository address where the flood hazard determination information is available for inspection is provided.

Any request for reconsideration of flood hazard determinations must be submitted to the Chief Executive Officer of the community as listed in the table below.

The modifications are made pursuant to section 201 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.,* and with 44 CFR Part 65.

The FIRM and FIS report are the basis of the floodplain management measures that the community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

These flood hazard determinations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities. The flood hazard determinations are in accordance with 44 CFR 65.4.

The affected communities are listed in the following table. Flood hazard determination information for each community is available for inspection at both the online location and the respective community map repository address listed in the table below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *www.msc.fema.gov* for comparison.

State and county	Location and case No.	Chief executive officer of community	Community map repository	Online location of letter of map revision	Effective date of modification	Community No.
New Mexico:						
Otero	City of Alamogordo (13–06–0956P).	The Honorable Susie Galea, Mayor, City of Alamogordo, 1376 East 9th Street, Alamogordo, NM 88310.	1376 East 9th Street, Alamogordo, NM 88310.	*http://www.rampp-team.com/lomrs.htm.*	September 23, 2013	350045
Otero	Unincorporated areas of Otero County (13–06–0956P).	Ms. Pamela Heltner, County Manager, Otero County, 1101 New York Avenue, Room 106, Alamogordo, NM 88310.	Otero County, 1101 New York Avenue, Room 106, Alamogordo, NM 88310.	*http://www.rampp-team.com/lomrs.htm.*	September 23, 2013	350044
Pennsylvania:						
Chester	Township of East Whiteland (12–03–2075P).	The Honorable Virginia McMichael, Chairman, East Whiteland Township Board of Supervisors, 209 Conestoga Road, Frazer, PA 19355.	East Whiteland Township Building, 209 Conestoga Road, Frazer, PA 19355.	*http://www.rampp-team.com/lomrs.htm.*	September 19, 2013	420279
Chester	Township of Tredyffrin (12–03–2075P).	The Honorable Michelle H. Kichline, Chairman, Tredyffrin Township Board of Supervisors, 1100 Duportail Road, Berwyn, PA 19312.	Tredyffrin Municipal Building, 1100 Duportail Road, Berwyn, PA 19312.	*http://www.rampp-team.com/lomrs.htm.*	September 19, 2013	420291
Texas:						
Bexar	City of San Antonio (13–06–0089P).	The Honorable Julian Castro, Mayor, City of San Antonio, P.O. Box 839966, San Antonio, TX 78283.	Municipal Plaza, 114 West Commerce Street, 7th Floor, San Antonio, TX 78205.	*http://www.rampp-team.com/lomrs.htm.*	September 3, 2013	480045
Bexar	City of San Antonio (13–06–1508P).	The Honorable Julian Castro, Mayor, City of San Antonio, P.O. Box 839966, San Antonio, TX 78283.	Municipal Plaza, 114 West Commerce Street, 7th Floor, San Antonio, TX 78205.	*http://www.rampp-team.com/lomrs.htm.*	September 25, 2013	480045
Bexar	Unincorporated areas of Bexar County (13–06–0089P).	The Honorable Nelson W. Wolff, Bexar County Judge, Paul Elizondo Tower, 101 West Nueva Street, 10th Floor, San Antonio, TX 78205.	Bexar County Public Works Department, 233 North Pecos-La Trinidad Street, Suite 420, San Antonio, TX 78207.	*http://www.rampp-team.com/lomrs.htm.*	September 3, 2013	480035
Brazoria	City of West Columbia (12–06–1432P).	The Honorable Laurie B. Kincannon, Mayor, City of West Columbia, P.O. Box 487, West Columbia, TX 77486.	512 East Brazos Avenue, West Columbia, TX 77486.	*http://www.rampp-team.com/lomrs.htm.*	August 29, 2013	480081
Brazoria	Unincorporated areas of Brazoria County (12–06–1432P).	The Honorable Joe King, Brazoria County Judge, 111 East Locust Street, Suite 102, Angleton, TX 77515.	Brazoria County, 451 North Velasco Street, Suite 210, Angleton, TX 77515.	*http://www.rampp-team.com/lomrs.htm.*	August 29, 2013	485458

State and county	Location and case No.	Chief executive officer of community	Community map repository	Online location of letter of map revision	Effective date of modification	Community No.
Collin	City of Plano (12–06–4168P).	The Honorable Phil Dyer, Mayor, City of Plano, P.O. Box 860358, Plano, TX 75086.	City Hall, 1520 Avenue K, Plano, TX 75074.	*http://www.rampp-team.com/lomrs.htm.*	September 20, 2013	480140
Dallas	City of Coppell (13–06–0810P).	The Honorable Karen Hunt, Mayor, City of Coppell, P.O. Box 9478, Coppell, TX 75019.	City Engineering Department, 255 Parkway Boulevard, Coppell, TX 75019.	*http://www.rampp-team.com/lomrs.htm.*	September 9, 2013	480170
Dallas	City of Grand Prairie (13–06–1633P).	The Honorable Charles England, Mayor, City of Grand Prairie, P.O. Box 534045, Grand Prairie, TX 75053.	City Development Center, 206 West Church Street, Grand Prairie, TX 75050.	*http://www.rampp-team.com/lomrs.htm.*	September 9, 2013	485472
Montgomery	Unincorporated areas of Montgomery County (13–06–1567P).	The Honorable Alan B. Sadler, Montgomery County Judge, 501 North Thompson Street, Suite 401, Conroe, TX 77301.	Montgomery County Permit Office, 301 North Thompson Street, Suite 208, Conroe, TX 77301.	*http://www.rampp-team.com/lomrs.htm.*	September 26, 2013	480483
Tarrant	City of Fort Worth (13–06–1283P).	The Honorable Betsy Price, Mayor, City of Fort Worth, 1000 Throckmorton Street, Fort Worth, TX 76102.	Department of Transportation and Public Works, 1000 Throckmorton Street, Fort Worth, TX 76102.	*http://www.rampp-team.com/lomrs.htm.*	September 5, 2013	480596
Virginia: Loudoun	Unincorporated areas of Loudoun County (12–03–1164P).	The Honorable Scott K. York, Chairman-at-Large, Loudoun County Board of Supervisors, 1 Harrison Street Southeast, 5th Floor, Mailstop 1, Leesburg, VA 20175.	Loudoun County Building and Development Department, 1 Harrison Street Southeast, Leesburg, VA 20175.	*http://www.rampp-team.com/lomrs.htm.*	September 19, 2013	510090

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Dated: July 12, 2013.

Roy E. Wright,

Deputy Associate Administrator for Mitigation, Department of Homeland Security, Federal Emergency Management Agency.

[FR Doc. 2013–18258 Filed 7–29–13; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2013–0002]

Changes in Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Final notice.

SUMMARY: New or modified Base (1% annual-chance) Flood Elevations (BFEs), base flood depths, Special Flood Hazard Area (SFHA) boundaries or zone designations, and/or the regulatory floodway (hereinafter referred to as flood hazard determinations) as shown on the indicated Letter of Map Revision (LOMR) for each of the communities listed in the table below are finalized. Each LOMR revises the Flood Insurance Rate Maps (FIRMs), and in some cases the Flood Insurance Study (FIS) reports, currently in effect for the listed communities. The flood hazard determinations modified by each LOMR will be used to calculate flood insurance premium rates for new buildings and their contents.

DATES: The effective date for each LOMR is indicated in the table below.

ADDRESSES: Each LOMR is available for inspection at both the respective Community Map Repository address listed in the table below and online through the FEMA Map Service Center at *www.msc.fema.gov.*

FOR FURTHER INFORMATION CONTACT: Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, FEMA, 500 C Street SW., Washington, DC 20472, (202) 646–4064, or (email) *Luis.Rodriguez3@fema.dhs.gov;* or visit the FEMA Map Information eXchange (FMIX) online at *www.floodmaps.fema.gov/fhm/fmx_main.html.*

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) makes the final flood hazard determinations as shown in the LOMRs for each community listed in the table below. Notice of these modified flood hazard determinations has been published in newspapers of local circulation and ninety (90) days have elapsed since that publication. The Deputy Associate Administrator for Mitigation has resolved any appeals resulting from this notification.

The modified flood hazard determinations are made pursuant to section 206 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.,* and with 44 CFR part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The new or modified flood hazard determinations are the basis for the floodplain management measures that the community is required either to adopt or to show evidence of being already in effect in order to remain qualified for participation in the National Flood Insurance Program (NFIP).

These new or modified flood hazard determinations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities.

These new or modified flood hazard determinations are used to meet the floodplain management requirements of the NFIP and also are used to calculate the appropriate flood insurance premium rates for new buildings, and for the contents in those buildings. The changes in flood hazard determinations are in accordance with 44 CFR 65.4.

Interested lessees and owners of real property are encouraged to review the final flood hazard information available at the address cited below for each community or online through the FEMA Map Service Center at *www.msc.fema.gov.*

State and county	Location and case No.	Chief executive officer of community	Community map repository	Effective date of modification	Community No.
Louisiana: Ascension (FEMA Docket No.: B–1305).	Unincorporated areas of Ascension Parish (12–06–1883P).	The Honorable Tommy Martinez, President, Ascension Parish, 208 East Railroad Avenue, Gonzales, LA 70737.	Ascension Parish President's Office, 208 East Railroad Avenue, Gonzales, LA 70737.	May 3, 2013	220013
New Mexico: Santa Fe (FEMA Docket No.: B–1302).	City of Santa Fe (12–06–1488P).	The Honorable David Coss, Mayor, City of Santa Fe, 200 Lincoln Avenue, Santa Fe, NM 87501.	200 Lincoln Avenue, Santa Fe, NM 87501.	May 23, 2013	350070
Oklahoma:					
Comanche (FEMA Docket No.: B–1313).	City of Lawton (11–06–3317P).	The Honorable Fred L. Fitch, Mayor, City of Lawton, 212 Southwest 9th Street, Lawton, OK 73501.	City Hall, 212 Southwest 9th Street, Lawton, OK 73501.	May 30, 2013	400049
Tulsa (FEMA Docket No.: B–1302).	City of Tulsa (12–06–1019P).	The Honorable Dewey F. Bartlett, Jr., Mayor, City of Tulsa, 175 East 2nd Street, Suite 690, Tulsa, OK 74103.	Stormwater Design Office, 2317 South Jackson, Suite 302, Tulsa, OK 74107.	May 28, 2013	405381
Pennsylvania: Montgomery (FEMA Docket No.: B–1305).	Township of Lower Moreland (13–03–0174X).	The Honorable Robert P. DeMartinis, President, Township of Lower Moreland Board of Commissioners, 640 Red Lion Road, Huntingdon Valley, PA 19006.	Lower Moreland Municipal Building, 640 Red Lion Road, Huntingdon Valley, PA 19006.	May 13, 2013	420702
Texas:					
Bexar (FEMA Docket No.: B–1305).	City of San Antonio (11–06–2654P).	The Honorable Julian Castro, Mayor, City of San Antonio, 100 Military Plaza, San Antonio, TX 78205.	Municipal Plaza, 114 West Commerce Street, 7th Floor, San Antonio, TX 78205.	May 13, 2013	480045
Bexar (FEMA Docket No.: B–1305).	City of San Antonio (12–06–3820P).	The Honorable Julian Castro, Mayor, City of San Antonio, 100 Military Plaza, San Antonio, TX 78205.	Municipal Plaza, 114 West Commerce Street, 7th Floor, San Antonio, TX 78205.	May 13, 2013	480045
Bexar (FEMA Docket No.: B–1302).	City of San Antonio (12–06–2711P).	The Honorable Julian Castro, Mayor, City of San Antonio, 100 Military Plaza, San Antonio, TX 78205.	Municipal Plaza, 114 West Commerce Street, 7th Floor, San Antonio, TX 78205.	May 16, 2013	480045
Bexar (FEMA Docket No.: B–1305).	Unincorporated areas of Bexar County (13–06–0093P).	The Honorable Nelson W. Wolff, Bexar County Judge, Paul Elizondo Tower, 101 West Nueva Street, 10th Floor, San Antonio, TX 78205.	Bexar County Department of Public Works, 233 North Pecos-La Trinidad, Suite 420, San Antonio, TX 78207.	May 13, 2013	480035
Bexar (FEMA Docket No.: B–1302).	Unincorporated areas of Bexar County (12–06–1791P).	The Honorable Nelson W. Wolff, Bexar County Judge, Paul Elizondo Tower, 101 West Nueva Street, 10th Floor, San Antonio, TX 78205.	Bexar County Department of Public Works, 233 North Pecos-La Trinidad, Suite 420, San Antonio, TX 78207.	May 28, 2013	480035
Bexar, Comal and Kendall (FEMA Docket No.: B–1313).	City of Fair Oaks Ranch (11–06–4481P).	The Honorable Cheryl Landman, Mayor, City of Fair Oaks Ranch, 7286 Dietz Elkhorn Road, Fair Oaks Ranch, TX 78015.	City Hall, 7286 Dietz Elkhorn Road, Fair Oaks Ranch, TX 78015.	May 28, 2013	481644
Collin (FEMA Docket No.: B–1313).	City of Allen (12–06–2183P).	The Honorable Stephen Terrell, Mayor, City of Allen, 305 Century Parkway, 1st Floor, Allen, TX 75013.	City Hall, 305 Century Parkway, Allen, TX 75013.	May 31, 2013	480131
Collin (FEMA Docket No.: B–1313).	City of Parker (12–06–2183P).	The Honorable Z. Marshall, Mayor, City of Parker, 5700 East Parker Road, Parker, TX 75002.	City Hall, 5700 East Parker Road, Parker, TX 75002.	May 31, 2013	480139
Collin (FEMA Docket No.: B–1313).	City of Plano (12–06–2183P).	The Honorable Phil Dyer, Mayor, City of Plano, 1520 Avenue K, Plano, TX 75074.	City Hall, 1520 Avenue K, Plano, TX 75074.	May 31, 2013	480140
Denton (FEMA Docket No.: B–1302).	Town of Trophy Club (12–06–3169P).	The Honorable Connie White, Mayor, Town of Trophy Club, 100 Municipal Drive, Trophy Club, TX 76262.	100 Municipal Drive, Trophy Club, TX 76262.	May 6, 2013	481606
Fort Bend (FEMA Docket No.: B–1313).	City of Sugar Land (12–06–3366P).	The Honorable James A. Thompson, Mayor, City of Sugar Land, P.O. Box 110, Sugar Land, TX 77487.	Engineering Department, 2700 Town Center Boulevard, Sugar Land, TX 77479.	June 6, 2013	480234
Fort Bend (FEMA Docket No.: B–1313).	Unincorporated areas of Fort Bend County (12–06–3366P).	The Honorable Robert Hebert, Fort Bend County Judge, 301 Jackson Street, Suite 719, Richmond, TX 77469.	Fort Bend County Engineering Department, 1124 Blume Road, Rosenburg, TX 77471.	June 6, 2013	480228

State and county	Location and case No.	Chief executive officer of community	Community map repository	Effective date of modification	Community No.
Harris (FEMA Docket No.: B–1305).	City of Pasadena (12–06–3062P).	The Honorable Johnny Isbell, Mayor, City of Pasadena, 1211 Southmore Avenue, Pasadena, TX 77502.	Public Library, 1201 Jeff Ginn Memorial Drive, Pasadena, TX 77502.	March 1, 2013	480307
Harris (FEMA Docket No.: B–1302).	Unincorporated areas of Harris County (13–06–0262P).	The Honorable Ed M. Emmett, Harris County Judge, 1001 Preston Street, Suite 911, Houston, TX 77002.	Harris County, 10555 Northwest Freeway, Houston, TX 77092.	May 20, 2013	480287
Hays (FEMA Docket No.: B–1313).	City of San Marcos (12–06–2514P).	The Honorable Daniel Guerrero, Mayor, City of San Marcos, 630 East Hopkins Street, San Marcos, TX 78666.	Engineering Department, 630 East Hopkins Street, San Marcos, TX 78666.	May 28, 2013	485505
Hays (FEMA Docket No.: B–1313).	Unincorporated areas of Hays County (12–06–2514P).	The Honorable Bert Cobb, M.D., Hays County Judge, 111 East San Antonio Street, Suite 300, San Marcos, TX 78666.	Hays County, Development Services Department, 2171 Yarrington Road, San Marcos, TX 78667.	May 28, 2013	480321
Montgomery (FEMA Docket No.: B–1313).	Unincorporated areas of Montgomery County (12–06–1995P).	The Honorable Alan B. Sadler, Montgomery County Judge, 501 North Thompson Street, Suite 401, Conroe, TX 77301.	Montgomery County Permit Office, 301 North Thompson Street, Suite 208, Conroe, TX 77301.	June 6, 2013	480483
Tarrant (FEMA Docket No.: B–1305).	City of Fort Worth (12–06–1018P).	The Honorable Betsy Price, Mayor, City of Fort Worth, 1000 Throckmorton Street, Fort Worth, TX 76102.	Department of Transportation and Public Works, 1000 Throckmorton Street, Fort Worth, TX 76102.	May 3, 2013	480596
Tarrant (FEMA Docket No.: B–1302).	City of Fort Worth (12–06–3303P).	The Honorable Betsy Price, Mayor, City of Fort Worth, 1000 Throckmorton Street, Fort Worth, TX 76102.	Department of Transportation and Public Works, 1000 Throckmorton Street, Fort Worth, TX 76102.	May 20, 2013	480596
Williamson (FEMA Docket No.: B–1305).	City of Cedar Park (11–06–0027P).	The Honorable Bob Lemon, Mayor, City of Cedar Park, 600 North Bell Boulevard, Cedar Park, TX 78613.	Planning and Zoning Office, 600 North Bell Boulevard, Cedar Park, TX 78613.	May 3, 2013	481282
Williamson (FEMA Docket No.: B–1305).	City of Leander (11–06–0027P).	The Honorable Chris Fielder, Mayor, City of Leander, 200 West Willis Street, Leander, TX 78641.	City Hall, 200 West Willis Street, Leander, TX 78641.	May 3, 2013	481536
Williamson (FEMA Docket No.: B–1305).	Unincorporated areas of Williamson County (11–06–0027P).	The Honorable Dan. A Gattis, Williamson County Judge, 710 Main Street, Suite 101, Georgetown, TX 78626.	Williamson County Courthouse, 710 Main Street, Georgetown, TX 78626.	May 3, 2013	481079
Virginia: Fauquier (FEMA Docket No.: B–1316).	Town of Warrenton (13–03–0051P).	The Honorable George B. Fitch, Mayor, Town of Warrenton, P.O. Drawer 341, Warrenton, VA 20188.	Town Hall, 18 Court Street, Warrenton, VA 20186.	May 2, 2013	510057
Wisconsin: Waukesha (FEMA Docket No.: B–1302).	City of New Berlin (12–05–4601P).	The Honorable Jack Chiovatero, Mayor, City of New Berlin, 3805 South Casper Drive, New Berlin, WI 53151.	City Hall, 3805 South Casper Drive, New Berlin, WI 53151.	May 10, 2013	550487

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Dated: July 12, 2013.

Roy E. Wright,

Deputy Associate Administrator for Mitigation, Department of Homeland Security, Federal Emergency Management Agency.

[FR Doc. 2013–18255 Filed 7–29–13; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket No. FEMA–2013–0002; Internal Agency Docket No. FEMA–B–1250]

Proposed Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency; DHS.

ACTION: Notice; correction.

SUMMARY: On April 30, 2012, FEMA published in the **Federal Register** a proposed flood hazard determination notice that contained an erroneous table. This notice provides corrections to that table, to be used in lieu of the information published at 77 FR 25498. The table provided here represents the proposed flood hazard determinations and communities affected for Harrison County, Texas, and Incorporated Areas.

DATES: Comments are to be submitted on or before October 28, 2013.

ADDRESSES: The Preliminary Flood Insurance Rate Map (FIRM), and where applicable, the Flood Insurance Study (FIS) report for each community are available for inspection at both the online location and the respective Community Map Repository address listed in the table below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *www.msc.fema.gov* for comparison.

You may submit comments, identified by Docket No. FEMA–B–1250, to Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, FEMA, 500 C Street SW., Washington, DC 20472, (202) 646–4064, or (email) *Luis.Rodriguez3@fema.dhs.gov.*

FOR FURTHER INFORMATION CONTACT: Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, FEMA, 500 C Street SW., Washington, DC 20472, (202) 646–4064 or (email) *Luis.Rodriguez3@fema.dhs.gov;* or visit the FEMA Map Information eXchange (FMIX) online at *www.floodmaps.fema.gov/fhm/fmx_main.html.*

SUPPLEMENTARY INFORMATION: FEMA proposes to make flood hazard determinations for each community listed in the table below, in accordance

with Section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed flood hazard determinations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State, or regional entities. These flood hazard determinations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after the FIRM and FIS report become effective.

The communities affected by the flood hazard determinations are provided in the table below. Any request for reconsideration of the revised flood hazard determinations shown on the Preliminary FIRM and FIS report that satisfies the data requirements outlined in 44 CFR 67.6(b) is considered an appeal. Comments unrelated to the flood hazard determinations will also be considered before the FIRM and FIS report are made final.

Use of a Scientific Resolution Panel (SRP) is available to communities in support of the appeal resolution process. SRPs are independent panels of experts in hydrology, hydraulics, and other pertinent sciences established to review conflicting scientific and technical data and provide recommendations for resolution. Use of the SRP may only be exercised after FEMA and local communities have been engaged in a collaborative consultation process for at least 60 days without a mutually acceptable resolution of an appeal. Additional information regarding the SRP process can be found online at *http://www.fema.gov/pdf/media/factsheets/2010/srp_fs.pdf.*

In the proposed flood hazard determination notice published at 77 FR 25498 in the April 30, 2012, issue of the **Federal Register**, FEMA published a table titled ''Harrison County, Texas, and Incorporated Areas.'' This table contained inaccurate information as to the watershed or communities affected by the proposed flood hazard determinations, or the associated community map repository or web addresses also featured in the table. In this document, FEMA is publishing a table containing the accurate information, to address these prior errors. The information provided below should be used in lieu of that previously published.

Correction

In Proposed rule FR Doc. 2012–10280, beginning on page 25495 in the issue of April 30, 2012, make the following correction. On page 25498, correct the Harrison County, Texas table as follows:

Community	Community map repository address
Harrison County, Texas, and Incorporated Areas	
Maps Available for Inspection Online at: *http://riskmap6.com/Community.aspx?cid=351&sid=5.*	
City of Hallsville	City Hall, 115 West Main Street, Hallsville, TX 75650.
City of Longview	Development Services and Engineering Department, 410 South High Street, Longview, TX 75601.
City of Marshall	City Hall, 401 South Alamo Street, Marshall, TX 75670.
City of Uncertain	City Hall, 199 Cypress Drive, Uncertain, TX 75661.
City of Waskom	City Hall, 450 West Texas Avenue, Waskom, TX 75692.
Town of Scottsville	Harrison County Environmental Health Department, Road and Bridge Building, 3800 Five Notch Road, Marshall, TX 75670.
Unincorporated Areas of Harrison County	Harrison County Environmental Health Department, Road and Bridge Building, 3800 Five Notch Road, Marshall, TX 75670.

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Dated: June 28, 2013.

Roy E. Wright,

Deputy Associate Administrator for Mitigation, Department of Homeland Security, Federal Emergency Management Agency.

[FR Doc. 2013–18267 Filed 7–29–13; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket No. FEMA–2013–0002; Internal Agency Docket No. FEMA–B–1247]

Proposed Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency; DHS.

ACTION: Notice; correction.

SUMMARY: On April 11, 2012, FEMA published in the **Federal Register** a proposed flood hazard determination notice that contained an erroneous table. This notice provides corrections to that table, to be used in lieu of the information published at 77 FR 21792. The table provided here represents the proposed flood hazard determinations and communities affected for Gregg County, Texas, and Incorporated Areas.

DATES: Comments are to be submitted on or before October 28, 2013.

ADDRESSES: The Preliminary Flood Insurance Rate Map (FIRM), and where applicable, the Flood Insurance Study (FIS) report for each community are available for inspection at both the online location and the respective Community Map Repository address listed in the table below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *www.msc.fema.gov* for comparison.

You may submit comments, identified by Docket No. FEMA–B–1247, to Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, FEMA, 500 C Street SW., Washington, DC

20472, (202) 646–4064, or (email) *Luis.Rodriguez3@fema.dhs.gov.*

FOR FURTHER INFORMATION CONTACT: Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, FEMA, 500 C Street SW., Washington, DC 20472, (202) 646–4064 or (email) *Luis.Rodriguez3@fema.dhs.gov;* or visit the FEMA Map Information eXchange (FMIX) online at *www.floodmaps.fema.gov/fhm/fmx_main.html.*

SUPPLEMENTARY INFORMATION: FEMA proposes to make flood hazard determinations for each community listed in the table below, in accordance with Section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed flood hazard determinations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State, or regional entities. These flood hazard determinations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after the FIRM and FIS report become effective.

The communities affected by the flood hazard determinations are provided in the table below. Any request for reconsideration of the revised flood hazard determinations shown on the Preliminary FIRM and FIS report that satisfies the data requirements outlined in 44 CFR 67.6(b) is considered an appeal. Comments unrelated to the flood hazard determinations will also be considered before the FIRM and FIS report are made final.

Use of a Scientific Resolution Panel (SRP) is available to communities in support of the appeal resolution process. SRPs are independent panels of experts in hydrology, hydraulics, and other pertinent sciences established to review conflicting scientific and technical data and provide recommendations for resolution. Use of the SRP may only be exercised after FEMA and local communities have been engaged in a collaborative consultation process for at least 60 days without a mutually acceptable resolution of an appeal. Additional information regarding the SRP process can be found online at *http://www.fema.gov/pdf/media/factsheets/2010/srp_fs.pdf.*

In the proposed flood hazard determination notice published at 77 FR 21792 in the April 11, 2012, issue of the **Federal Register**, FEMA published a table titled ''Gregg County, Texas, and Incorporated Areas.'' This table contained inaccurate information as to the watershed or communities affected by the proposed flood hazard determinations, or the associated community map repository or web addresses also featured in the table. In this document, FEMA is publishing a table containing the accurate information, to address these prior errors. The information provided below should be used in lieu of that previously published.

Correction

In Proposed rule FR Doc. 2012–8600, beginning on page 21791 in the issue of April 11, 2012, make the following correction. On page 21792, correct the Gregg County, Texas table as follows:

Community	Community map repository address
Gregg County, Texas, and Incorporated Areas	
Maps Available for Inspection Online at: *http://riskmap6.com/Community.aspx?cid=341&sid=5.*	
City of Clarksville City	City Hall, 631 U.S. Highway 80 and White Street, Clarksville City, TX 75693.
City of Easton	City Hall, 185 Kennedy Boulevard, Easton, TX 75663.
City of Gladewater	City Hall, 519 East Broadway, Gladewater, TX 75647.
City of Kilgore	City Hall, 815 North Kilgore Street, Kilgore, TX 75662.
City of Lakeport	Lakeport City Hall, 207 Milam Road, Longview, TX 75603.
City of Longview	Development Services and Engineering Department, 410 South High Street, Longview, TX 75601.
City of Warren City	Warren City City Hall, 3004 George Richey Road, Gladewater, TX 75647.
City of White Oak	City Hall, 906 South White Oak Road, White Oak, TX 75693.
Unincorporated Areas of Gregg County	Gregg County Courthouse, 101 East Methvin, Longview, TX 75601.

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Dated: June 28, 2013.

Roy E. Wright,

Deputy Associate Administrator for Mitigation, Department of Homeland Security, Federal Emergency Management Agency.

[FR Doc. 2013–18266 Filed 7–29–13; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5687–N–34]

60-Day Notice of Proposed Information Collection: Contractor's Requisition—Project Mortgages

AGENCY: Office of the Assistant Secretary for Housing, HUD.

ACTION: Notice.

SUMMARY: HUD is seeking approval from the Office of Management and Budget (OMB) for the information collection described below. In accordance with the Paperwork Reduction Act, HUD is requesting comment from all interested parties on the proposed collection of information. The purpose of this notice is to allow for 60 days of public comment.

DATES: *Comments Due Date:* September 30, 2013.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Colette Pollard, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street SW., Room 4176, Washington, DC

20410–5000; telephone 202–402–5564 (this is not a toll-free number) or email at *Colette.Pollard@hud.gov* for a copy of the proposed forms or other available information. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339.

FOR FURTHER INFORMATION CONTACT: Thomas L. Goade, Director of Technical Support, Office of Multifamily Housing, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410; email Thomas L. Goade at *Thomas.L.Goade@hud.gov* or telephone 202–402–2727. This is not a toll-free number. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339.

Copies of available documents submitted to OMB may be obtained from Mr. Goade.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD is seeking approval from OMB for the information collection described in Section A.

A. Overview of Information Collection

Title of Information Collection: Contractor's Requisition-Project Mortgages.

OMB Approval Number: 2502–0028.

Type of Request: Extension of a currently approved collection.

Form Number: HUD–92448.

Description of the need for the information and proposed use: The information collection is used to obtain program benefits, consisting of distribution of insured mortgage proceeds when construction costs are involved. The information regarding completed work items is used by the Multifamily Hub Centers to ensure that payments from mortgage proceeds are made for work actually completed in a satisfactory manner. The certification regarding prevailing wages is used by the Multifamily Hub Centers to ensure compliance with prevailing wage rates.

Respondents (i.e. affected public): Business or other for-profit.

Estimated Number of Respondents: 1,858.

Estimated Number of Responses: 22,296.

Frequency of Response: Monthly.

Average Hours per Response: 2 hours per response.

Total Estimated Burdens: 133,776.

B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

(1) 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) The accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Ways to minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

HUD encourages interested parties to submit comment in response to these questions.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35.

Dated: July 24, 2013.

Laura M. Marin,

Associate General Deputy Assistant Secretary for Housing-Associate Deputy Federal Housing Commissioner.

[FR Doc. 2013–18284 Filed 7–29–13; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5687–N–32]

60-Day Notice of Proposed Information Collection: Owner Certification With HUD's Tenant Eligibility and Rent Procedures

AGENCY: Office of the Assistant Secretary for Housing, HUD.

ACTION: Notice.

SUMMARY: HUD is seeking approval from the Office of Management and Budget (OMB) for the information collection described below. In accordance with the Paperwork Reduction Act, HUD is requesting comment from all interested parties on the proposed collection of information. The purpose of this notice is to allow for 60 days of public comment.

DATES: *Comments Due Date:* September 30, 2013.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Colette Pollard, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street SW., Room 4176, Washington, DC 20410–5000; telephone 202–402–3400 (this is not a toll-free number) or email at *Colette.Pollard@hud.gov* for a copy of the proposed forms or other available information. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339.

FOR FURTHER INFORMATION CONTACT: Lanier M. Hylton, Housing Program Manager, Office of Program Systems Management, Office of Multifamily Housing Programs, QDAM, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410; email Lanier Hylton at *Lanier.M.Hylton@hud.gov* or telephone 202–402–2510. This is not a toll-free number. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339. Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD is seeking approval from OMB for the information collection described in Section A.

A. Overview of Information Collection

Title of Information Collection: Owner Certification with HUD's Tenant Eligibility and Rent Procedures.

OMB Approval Number: 2502–0204.

Type of Request: Revision.

Form Number: HUD–50059, HUD–50059–A, HUD–9887/9887–A, HUD–27061–H, HUD–90100, HUD–90101, HUD–90102, HUD–90103, HUD–90104, HUD–90105–a, HUD–90105–b, HUD–90105–c, HUD–90105–d, HUD–90106, HUD–91066, HUD–91067 and new forms, HUD–90011 (Enterprise Income Verification (EIV) System Multifamily Housing Coordinator Access Authorization Form) and HUD–90012 (Enterprise Income Verification (EIV) System User Access Authorization Form).

Description of the need for the information and proposed use: The Department needs to collect this information in order to establish an applicant's eligibility for admittance to subsidized housing, specify which eligible applicants may be given priority over others, and prohibit racial discrimination in conjunction with selection of tenants and unit assignments. The Department must specify tenant eligibility requirements as well as how tenants' incomes, rents and assistance must be verified and computed so as to prevent the

Department from making improper payments to owners on behalf of assisted tenants. The Department also must provide annual reports to Congress and the public on the race/ethnicity and gender composition of subsidy program beneficiaries. This information is essential to maintain a standard of fair practices in assigning tenants to HUD Multifamily properties.

Respondents: Individuals or households.

Estimated Number of Respondents: 2,700,895.

Estimated Number of Responses: 4,127,179.

Frequency of Response: Annually.

Average Hours per Response: 2.88 per hour.

Total Estimated Burdens: 41,461,775.

B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

(1) 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) The accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Ways to minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

HUD encourages interested parties to submit comment in response to these questions.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35.

Dated: July 24, 2013.

Laura M. Marin,

Associate General Deputy Assistant Secretary for Housing-Associate General Deputy Federal Housing Commissioner.

[FR Doc. 2013–18288 Filed 7–29–13; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5687–N–33]

60-Day Notice of Proposed Information Collection: Section 8 Renewal Policy Guide

AGENCY: Office of the Assistant Secretary for Housing, HUD.

ACTION: Notice.

SUMMARY: HUD is seeking approval from the Office of Management and Budget (OMB) for the information collection described below. In accordance with the Paperwork Reduction Act, HUD is requesting comment from all interested parties on the proposed collection of information. The purpose of this notice is to allow for 60 days of public comment.

DATES: *Comments Due Date:* September 30, 2013.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Colette Pollard, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street SW., Room 4176, Washington, DC 20410–5000; telephone 202–402–5564 (this is not a toll-free number) or email at *Colette.Pollard@hud.gov* for a copy of the proposed forms or other available information. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339.

FOR FURTHER INFORMATION CONTACT: Catherine Brennan, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410; email Catherine Brennan at *Catherine.M.Brennan@hud.gov* or telephone 202–402–6732. This is not a toll-free number. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339.

Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD is seeking approval from OMB for the information collection described in Section A.

A. Overview of Information Collection

Title of Information Collection: Section 8 Renewal Policy Guide.

OMB Approval Number: 2502–0587.

Type of Request: Revision.

Form Number:

Contract Renewal Request Form (HUD–9624)(decreased usage).
OCAF Rent Adjustment Worksheet (HUD–9625)(decreased usage)
Comparability Study Comparison Worksheet, (HUD–9626) (Auto OCAF Letters)
Section 515 and Section 221 (d)(3) BMIR Worksheet (HUD–9627) (Auto OCAF Letters)
Other New Construction and Sub-Rehab Worksheet (HUD–9628)
Appraiser Certification (HUD–9629)
Rent Comparability Grid (HUD–9630)
One Year Notification Owner Does Not Intend To Renew (HUD–9631)
One Year Notification Letter Owner Intends To Renew (HUD–9632)
Use Agreement (HUD–9633)
Addendum to Agreement To Enter Into Housing Assistance Payments Contract (HUD–9634)
Appendix 15–3 Project Capital Needs Assessments and Replacement Reserve Escrow (HUD–9635)
Projects Preparing a Budget-Based Rent Increase (HUD–9636)
Basic Renewal Contract—One Year Term (HUD–9637)
Basic Renewal Contract—Multi-Year Term (HUD–9638)
Renewal Contract for Mark-Up-To-Market Project (HUD–9639)
Housing Assistance Payments Preservation Renewal Contract (HUD–9640)
Interim (Full) Mark-To-Market Renewal Contract (HUD–9641)
Interim (Lite) Mark-To-Market Renewal Contract (HUD–9642)
Full Mark-To-Market Renewal Contract (HUD–9643)
Watch List Renewal Contract (HUD–9644)
Project Based Assistance Payments Amendment Contract Moderate Rehabilitation (HUD–9645)
Project Based Section Housing Assistance Payments Extension of Renewal Contract (HUD–9646)
Consent to Assignment of HAP Contract as Security for Financing (HUD–9649)
Consent to Assignment of HAP Contract as Security for FNMA Financing (HUD–9651)
Request to Renew Using Non-Section 8 Units in the Section 8 Project as a Market Rent Ceiling (HUD–9652)
Request To Renew Using FMR's as Market Ceiling (HUD–9653)
Addendum to Renewal Contract (HUD–9654)
Rent Comparability Study (HUD–9655)
Rent Comparability Grid (HUD–9656)
Completing the Rent Comparability Grid (HUD–9657)
Required Contents for Rent Comparability Study (HUD–9658)
Project-Based Section 8 Housing Assistance Payments-During Rehabilitation (HUD–9913)
Project-Based Section 8 Housing Assistance Payments-Post Rehabilitation (HUD–9914)
Rider to Original Section 8 Housing Assistance Payments Contract (HUD–9915)

Description of the need for the information and proposed use: The modifications of the Section 8 renewal policy and recent legislation are implemented to address the essential requirement to preserving low income rental housing affordability and availability. The Section 8 Renewal Policy Guide will include recent legislation modifications for renewing of expiring Section 8 policy(ies) Guidebook, as authorized by the Code of Federal Regulations 24 CFR Part 401 and 24 CFR Part 402.

The Multifamily Housing Reform and Affordability Act of 1997 (MAHRA) for fiscal year 1998 (public law 105–65, enacted on October 27, 1997), required that expiring Section 8 project-based assistance contracts be renewed under MAHRA. Established in the MAHRA policies renewal of Section 8 project-based contracts rent are based on market rents instead of the Fair Market Rent (FMR) standard.

MAHRA renewals submission should include a Rent Comparability Study (RCS). If the RCS indicated rents were at or below comparable market rents, the contract was renewed at current rents adjusted by Operating Cost Adjustment Factor (OCAF), unless the Owner submitted documentation justifying a budget-based rent increase or participation in Mark-Up-To-Market. The case is that no renewal rents could exceed comparable market rents. If the RCS indicated rents were above comparable market rents, the contract was referred to the Office of Affordable Housing Preservation (OAHP) for debt restructuring and/or rent reduction.

The Preserving Affordable Housing for Senior Citizens and Families Into the 21st Century Act of 1999 (Pub. L. 106–74, enacted on October 20, 1999), modified MAHRA.

The Section 8 Renewal Policy Guide sets forth six renewal options from which a project owner may choose when renewing their expiring Section 8 contract: Option One—Mark-Up-To-Market, Option Two—Other Contract Renewal with Current Rents at or Below Comparable Market Rents, Option Three—Referral to the Office of Affordable Preservation (OAHP), Option Four- Renewal of Projects Exempted From OMHAR, Option Five—Renewal of Portfolio Reengineering Demonstration or Preservation Projects, and Option Six—Opt Outs.

Owners should select one of six options which are applicable to their project and should submit contract renewal on an annual basis to renew contract.

The Section 8 Renewal Guide sets forth six renewal options from which a project owner may choose when renewing their expiring Section 8 contracts.

Option One (Mark-Up-To-Market)

Option Two (Other Contract Renewals with Current Rents at or Below Comparable Market Rents

Option Three (Referral to the Office of Multifamily Housing Assistant Restructuring—OHAP)

Option Four (Renewal of Projects Exempted from OHAP)

Option Five (Renewal of Portfolio Reengineering Demonstration or Preservation Projects)

Option Six (Opt-Outs)

Respondents (i.e. affected public): Business or other for profit.

Estimated Number of Respondents: 25,439.

Estimated Number of Responses: 25,439.

Frequency of Response: On occasion.

Average Hours per Response: 1 hour.

Total Estimated Burdens: 24,680.

B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

(1) 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) The accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Ways to minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

HUD encourages interested parties to submit comment in response to these questions.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35.

Dated: *July 24, 2013.*

Laura M. Marin,

Acting General Deputy Assistant Secretary for Housing-Acting General Deputy Federal Housing Commissioner.

[FR Doc. 2013–18287 Filed 7–29–13; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Wildland Fire Executive Council Meeting Schedule

AGENCY: Office of the Secretary, Interior.

ACTION: Notice of meeting.

SUMMARY: In accordance with the requirements of the Federal Advisory Committee Act, 5 U.S.C. App., 2, the U.S. Department of the Interior, Office of the Secretary, Wildland Fire Executive Council (WFEC) will meet as indicated below.

DATES: The next meeting will be held September 10, 2013.

ADDRESSES: The meetings will be held from 10:00 a.m. to 2:00 p.m. on September 10, 2013 at the Main Interior Building, 1849 C Street, Room 2654 NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Shari Eckhoff, Designated Federal Officer, 300 E Mallard Drive, Suite 170, Boise, Idaho 83706; telephone (208) 334–1552; fax (208) 334–1549; or email *Shari_Eckhoff@ios.doi.gov*.

SUPPLEMENTARY INFORMATION: The WFEC is established as a discretionary advisory committee under the authorities of the Secretary of the Interior and Secretary of Agriculture, in furtherance of 43 U.S.C. 1457 and provisions of the Fish and Wildlife Act of 1956 (16 U.S.C. 742a–742j), the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 *et. seq*), the National Wildlife Refuge System Improvement Act of 1997 (16 U.S.C. 668dd-668ee), and the National Forest Management Act of 1976 (16 U.S.C. 1600 *et. seq*) and in accordance with the provisions of the Federal Advisory Committee Act, as amended, 5 U.S.C. App. 2. The Secretary of the Interior and Secretary of Agriculture certify that the formation of the WFEC is necessary and is in the public interest.

The purpose of the WFEC is to provide advice on coordinated national-level wildland fire policy and to provide leadership, direction, and program oversight in support of the Wildland Fire Leadership Council. Questions related to the WFEC should be directed to Shari Eckhoff (Designated Federal Officer) at *Shari_Eckhoff@ios.doi.gov* or (208) 334–1552 or 300 E Mallard Drive, Suite 170, Boise, Idaho, 83706–6648.

Meeting Agenda: The meeting agenda will include: (1) Welcome and introduction of council members; (2) Review and deliberation on the comments received on the Cohesive Strategy National Report; (3) public

comments; and (4) closing remarks. Participation is open to the public.

Public Input: All WFEC meetings are open to the public. Members of the public who wish to participate must notify Shari Eckhoff at *Shari_Eckhoff@ios.doi.gov* no later than the Friday preceding the meeting. Those who are not committee members and wish to present oral statements or obtain information should contact Shari Eckhoff via email no later than the Friday preceding the meeting. Depending on the number of persons wishing to comment and time available, the time for individual oral comments may be limited.

Questions about the agenda or written comments may be emailed or submitted by U.S. Mail to: Department of the Interior, Office of the Secretary, Office of Wildland Fire, Attention: Shari Eckhoff, 300 E. Mallard Drive, Suite 170, Boise, Idaho 83706–6648. WFEC requests that written comments be received by the Friday preceding the scheduled meeting. Attendance is open to the public, but limited space is available. Persons with a disability requiring special services, such as an interpreter for the hearing impaired, should contact Ms. Eckhoff at (202) 527–0133 at least seven calendar days prior to the meeting.

Dated: July 24, 2013.

Shari Eckhoff,

Designated Federal Officer.

[FR Doc. 2013–18234 Filed 7–29–13; 8:45 am]

BILLING CODE 4310–J4–P

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Wildland Fire Executive Council Meeting Schedule

AGENCY: Office of the Secretary, Interior.

ACTION: Notice of meeting.

SUMMARY: In accordance with the requirements of the Federal Advisory Committee Act, 5 U.S.C. App. 2, the U.S. Department of the Interior, Office of the Secretary, Wildland Fire Executive Council (WFEC) will meet as indicated below.

DATES: The next meeting will be held August 19, 2013.

ADDRESSES: The meetings will be held from 10:00 a.m. to 12:00 p.m. on August 19, 2013 at the Main Interior Building, 1849 C Street, Room 2654, NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Shari Eckhoff, Designated Federal Officer, 300 E Mallard Drive, Suite 170, Boise, Idaho 83706; telephone (208) 334–1552; fax (208) 334–1549; or email *Shari_Eckhoff@ios.doi.gov.*

SUPPLEMENTARY INFORMATION: The WFEC is established as a discretionary advisory committee under the authorities of the Secretary of the Interior and Secretary of Agriculture, in furtherance of 43 U.S.C. 1457 and provisions of the Fish and Wildlife Act of 1956 (16 U.S.C. 742a-742j), the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 *et. seq*), the National Wildlife Refuge System improvement Act of 1997 (16 U.S.C. 668dd-668ee), and the National Forest Management Act of 1976 (16 U.S.C. 1600 *et seq.*) and in accordance with the provisions of the Federal Advisory Committee Act, as amended, 5 U.S.C. App. 2. The Secretary of the Interior and Secretary of Agriculture certify that the formation of the WFEC is necessary and is in the public interest.

The purpose of the WFEC is to provide advice on coordinated national-level wildland fire policy and to provide leadership, direction, and program oversight in support of the Wildland Fire Leadership Council. Questions related to the WFEC should be directed to Shari Eckhoff (Designated Federal Officer) at *Shari_Eckhoff@ios.doi.gov* or (208) 334–1552 or 300 E. Mallard Drive, Suite 170, Boise, Idaho, 83706–6648.

Meeting Agenda: The meeting agenda will include: (1) Welcome and introduction of Council members; (2) Public Comments on the Cohesive Strategy National Report; and (3) closing remarks. Participation is open to the public. The Cohesive Strategy National Report will be available at *www.forestsandrangelands.gov.*

Public Input: All WFEC meetings are open to the public. Members of the public who wish to participate must notify Shari Eckhoff at *Shari_Eckhoff@ios.doi.gov* no later than the Friday preceding the meeting. Those who are not committee members and wish to present oral statements or obtain information should contact Shari Eckhoff via email no later than the Friday preceding the meeting. Depending on the number of persons wishing to comment and time available, the time for individual oral comments may be limited.

Questions about the agenda or written comments may be emailed or submitted by U.S. Mail to: Department of the Interior, Office of the Secretary, Office of Wildland Fire, Attention: Shari Eckhoff, 300 E. Mallard Drive, Suite 170, Boise, Idaho 83706–6648. WFEC requests that written comments be received by the Friday preceding the scheduled meeting. Attendance is open to the public, but limited space is available. Persons with a disability requiring special services, such as an interpreter for the hearing impaired, should contact Ms. Eckhoff at (202) 527–0133 at least seven calendar days prior to the meeting.

Dated: July 24, 2013.

Shari Eckhoff,

Designated Federal Officer.

[FR Doc. 2013–18235 Filed 7–29–13; 8:45 am]

BILLING CODE 4310–J4–P

DEPARTMENT OF THE INTERIOR

Office of the Secretary

[XXXD4523WT DWT000000.000000 DS65101000]

Privacy Act of 1974, as Amended; Notice of a New System of Records

AGENCY: Department of the Interior.

ACTION: Notice of creation of a new system of records.

SUMMARY: Pursuant to the provisions of the Privacy Act of 1974, as amended (5 U.S.C. 552a), the Department of the Interior is issuing a public notice of its intent to create the Office of the Secretary Incident Management, Analysis and Reporting System system of records. The Incident Management, Analysis and Reporting System will provide a unified system for Department of the Interior law enforcement agencies to manage law enforcement investigations, measure performance and meet reporting requirements. The Incident Management, Analysis and Reporting System will incorporate current Department of the Interior law enforcement systems utilized by the Bureaus. This newly established system will be included in the Department of the Interior's inventory of record systems.

DATES: Comments must be received by September 9, 2013. This new system will be effective September 9, 2013.

ADDRESSES: Any person interested in commenting on this amendment may do so by: submitting comments in writing to the OS/IBC Privacy Act Officer, 1849 C Street NW., Mail Stop 2650 MIB, Washington, DC 20240; hand-delivering comments to the OS/IBC Privacy Act Officer, 1849 C Street NW., Mail Stop 2650 MIB, Washington, DC 20240 or emailing comments to *privacy@nbc.gov.*

FOR FURTHER INFORMATION CONTACT: System Manager—IMARS, 13461 Sunrise Valley Drive, Herndon, VA 20171, or by phone at 703–793–5091.

SUPPLEMENTARY INFORMATION:

I. Background

The Department of the Interior (DOI), Office of the Secretary, has created an enterprise-wide system, known as the Incident Management, Analysis and Reporting System (IMARS) system of records, to consolidate law enforcement incident management and reporting among the various Bureaus and Offices with law enforcement duties within DOI. IMARS will improve the following capabilities of the Department: prevent, detect and investigate known and suspected criminal activity; protect natural and cultural resources; capture, integrate and share law enforcement and related information and observations from other sources; identify needs (training, resources); measure the performance of law enforcement programs and operations; meet reporting requirements; provide the capability to interface with Department of Homeland Security and National Incident Based Reporting System; analyze and prioritize protection efforts; provide information to justify law enforcement funding requests and expenditures; assist in managing visitor use and protection programs, including training; investigate, detain and apprehend those committing crimes on DOI properties or tribal reservations (for the purpose of this system of records notice, tribal reservations include contiguous areas policed by tribal or Bureau of Indian Affairs law enforcement offices) managed by a Native American tribe under DOI's Bureau of Indian Affairs; and investigate and prevent visitor accident injuries on DOI properties or tribal reservations.

Incident and non-incident data related to criminal and civil activity will be collected in support of law enforcement, homeland security, and security (physical, personnel and stability, information, and industrial) activities. This may include data documenting investigations and law enforcement activities, traffic safety, traffic accidents and domestic issues, and emergency management, sharing and analysis activities.

In accordance with the Privacy Act of 1974, as amended, DOI proposes to consolidate the following DOI Privacy Act systems of records: Bureau of Reclamation Law Enforcement Management Information System (RLEMIS)—Interior, WBR–50 (73 FR 62314, October 20, 2008); Fish and Wildlife Service Investigative Case File System—Interior, FWS–20 (48 FR 54719, December 6, 1983); Bureau of Land Management Criminal Case Investigation—Interior, BLM–18 (73 FR 17376, April 1, 2008); Bureau of Indian Affairs Law Enforcement Services—Interior, BIA–18 (70 FR 1264, January 6, 2005); and National Park Service Case Incident Reporting System, NPS–19 (70 FR 1274, January 6, 2005) into one Department of the Interior system of records, titled the Incident Management, Analysis and Reporting System (IMARS). The consolidated system will be maintained by DOI's Office of Law Enforcement Services. The system will be managed by the IMARS Security Manager (the ''System Manager'').

In a notice of proposed rulemaking, which is published separately in the **Federal Register**, the Office of the Secretary is proposing to exempt records maintained in this system from certain provisions of the Privacy Act pursuant to 5 U.S.C. 552a(j)(2) and (k)(2). The exemptions for the consolidated system of records will continue to be applicable until the final rule has been completed.

The system will be effective as proposed at the end of the comment period (the comment period will end 40 days after the publication of this notice in the **Federal Register**), unless comments are received which would require a contrary determination. DOI will publish a revised notice if changes are made based upon a review of the comments received.

II. Privacy Act

The Privacy Act of 1974, as amended, embodies fair information practice principles in a statutory framework governing the means by which Federal Agencies collect, maintain, use, and disseminate individuals' personal information. The Privacy Act applies to information that is maintained in a ''system of records.'' A ''system of records'' is a group of any records under the control of an agency for which information is retrieved by the name of an individual or by some identifying number, symbol, or other identifying particulars assigned to the individual. The Privacy Act defines an individual as a United States citizen or lawful permanent resident. As a matter of policy, DOI extends administrative Privacy Act protections to all individuals. Individuals may request access to their own records that are maintained in a system of records in the possession or under the control of DOI by complying with DOI Privacy Act regulations, 43 CFR part 2.

The Privacy Act requires each agency to publish in the **Federal Register** a description denoting the type and character of each system of records that the agency maintains and the routine uses of each system to make agency recordkeeping practices transparent, notify individuals regarding the uses of their records, and assist individuals to more easily find such records within the agency. Below is the description of the Office of the Secretary Incident Management, Analysis and Reporting System (IMARS) system of records.

In accordance with 5 U.S.C. 552a(r), DOI has provided a report of this system of records to the Office of Management and Budget and to Congress.

III. Public Disclosure

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Dated: July 18, 2013.

David Alspach,

OS/IBC Privacy Act Officer.

SYSTEM NAME:

Incident Management, Analysis and Reporting System, DOI–10.

SYSTEM LOCATION

Interior Business Center, U.S. Department of Interior, 7301 W Mansfield Ave, Denver, CO 80235.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

The categories of individuals covered in the system include current and former Federal employees and contractors, Federal, tribal, state and local law enforcement officers. Additionally, this system contains information on members of the general public, including individuals and/or groups of individuals involved with law enforcement incidents involving Federal assets or occurring on public lands and tribal reservations, such as witnesses, individuals making complaints, individuals being investigated or arrested for criminal or traffic offenses, or certain types of non-criminal incidents; and members of the general public involved in an accident on DOI properties or tribal reservations.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system includes law enforcement incident reports, law enforcement personnel records, and law enforcement training records, which contain the following information: Social Security numbers, drivers license numbers, vehicle identification numbers, license plate numbers, names, home addresses,

work addresses, phone numbers, email addresses and other contact information, emergency contact information, ethnicity and race, tribal identification numbers or other tribal enrollment data, work history, educational history, affiliations, and other related data, dates of birth, places of birth, passport numbers, gender, fingerprints, hair and eye color, and any other physical or distinguishing attributes of an individual. Incident reports and records may include attachments such as photos, video, sketches, medical reports, and email and text messages. Incident reports may also include information concerning criminal activity, response, and outcome of the incident. Records in this system also include information concerning Federal civilian employees and contractors, Federal, tribal, state and local law enforcement officers and may contain information regarding an officer's name, contact information, station and career history, firearms qualifications, medical history, background investigation and status, date of birth and Social Security Number. Information regarding Officers' equipment, such as firearms, tasers, body armor, vehicles, computers and special equipment related skills is also included in this system.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Uniform Federal Crime Reporting Act, 28 U.S.C. 534; Intelligence Reform and Terrorism Prevention Act of 2004 (Pub. L. 108–458); Homeland Security Act of 2002 (Pub. L. 107–296); USA PATRIOT ACT of 2001 (Pub. L. 107–56); USA PATRIOT Improvement Act of 2005 (Pub. L. 109–177); Tribal Law and Order Act of 2010 (Pub. L. 111–211); Homeland Security Presidential Directive 7—Critical Infrastructure Identification, Prioritization, and Protection; Homeland Security Presidential Directive 12—Policy for a Common Identification Standard for Federal Employees and Contractors; Criminal Intelligence Systems Operating Policies, 28 CFR part 23.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The primary use of the records is for an incident management and reporting application that will enhance the following abilities: prevent, detect and investigate known and suspected criminal activity; protect natural and cultural resources; capture, integrate and share law enforcement and related information and observations from other sources; measure performance of law enforcement programs and management of emergency incidents; meet reporting requirements, provide Department of Homeland Security (DHS) and National Incident Based Reporting System (NIBRS) interface frameworks; analyze and prioritize protection efforts; assist in managing visitor use and protection programs; employee training; enable the ability to investigate, detain and apprehend those committing crimes on DOI properties or tribal reservations; and to investigate and prevent visitor accident injuries on DOI properties or tribal reservations. In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, all or a portion of the records or information contained in this system may be disclosed outside DOI as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

(1) (a) To any of the following entities or individuals, when the circumstances set forth in paragraph (b) are met:

(i) The U.S. Department of Justice (DOJ);

(ii) A court or an adjudicative or other administrative body;

(iii) A party in litigation before a court or an adjudicative or other administrative body; or

(iv) Any DOI employee acting in his or her individual capacity if DOI or DOJ has agreed to represent that employee or pay for private representation of the employee;

(b) When:

(i) One of the following is a party to the proceeding or has an interest in the proceeding:

(A) DOI or any component of DOI;

(B) Any other Federal agency appearing before the Office of Hearings and Appeals;

(C) Any DOI employee acting in his or her official capacity;

(D) Any DOI employee acting in his or her individual capacity if DOI or DOJ has agreed to represent that employee or pay for private representation of the employee;

(E) The United States, when DOJ determines that DOI is likely to be affected by the proceeding; and

(ii) DOI deems the disclosure to be:

(A) Relevant and necessary to the proceeding; and

(B) Compatible with the purpose for which the records were compiled.

(2) To a congressional office in response to a written inquiry that an individual covered by the system, or the heir of such individual if the covered individual is deceased, has made to the office, to the extent the records have not been exempted from disclosure pursuant to 5 U.S.C. 552a(j)(2) and (k)(2).

(3) To the Executive Office of the President in response to an inquiry from that office made at the request of the subject of a record or a third party on that person's behalf, or for a purpose compatible for which the records are collected or maintained, to the extent the records have not been exempted from disclosure pursuant to 5 U.S.C. 552a(j)(2) and (k)(2).

(4) To any criminal, civil, or regulatory law enforcement authority (whether Federal, State, territorial, local, tribal or foreign) when a record, either alone or in conjunction with other information, indicates a violation or potential violation of law—criminal, civil, or regulatory in nature, and the disclosure is compatible with the purpose for which the records were compiled.

(5) To an official of another Federal agency to provide information needed in the performance of official duties related to reconciling or reconstructing data files or to enable that agency to respond to an inquiry by the individual to whom the record pertains.

(6) To Federal, State, territorial, local, tribal, or foreign agencies that have requested information relevant or necessary to the hiring, firing or retention of an employee or contractor, or the issuance of a security clearance, license, contract, grant or other benefit, when the disclosure is compatible with the purpose for which the records were compiled.

(7) To representatives of the National Archives and Records Administration to conduct records management inspections under the authority of 44 U.S.C. 2904 and 2906.

(8) To State and local governments and tribal organizations to provide information needed in response to court order and/or discovery purposes related to litigation, when the disclosure is compatible with the purpose for which the records were compiled.

(9) To an expert, consultant, or contractor (including employees of the contractor) of DOI that performs services requiring access to these records on DOI's behalf to carry out the purposes of the system.

(10) To appropriate agencies, entities, and persons when:

(a) It is suspected or confirmed that the security or confidentiality of information in the system of records has been compromised; and

(b) The Department has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interest, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by the Department or

another agency or entity) that rely upon the compromised information; and

(c) The disclosure is made to such agencies, entities and persons who are reasonably necessary to assist in connection with the Department's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

(11) To the Office of Management and Budget during the coordination and clearance process in connection with legislative affairs as mandated by OMB Circular A–19.

(12) To the Department of the Treasury to recover debts owed to the United States.

(13) To a consumer reporting agency if the disclosure requirements of the Debt Collection Act, as outlined at 31 U.S.C. 3711(e)(1), have been met.

(14) To the Department of Justice, the Department of Homeland Security, and other federal, state and local law enforcement agencies for the purpose of information exchange on law enforcement activity.

(15) To agency contractors, grantees, or volunteers for DOI or other Federal Departments who have been engaged to assist the Government in the performance of a contract, grant, cooperative agreement, or other activity related to this system of records and who need to have access to the records in order to perform the activity.

(16) To any of the following entities or individuals, for the purpose of providing information on traffic accidents, personal injuries, or the loss or damage of property:

(a) Individuals involved in such incidents;

(b) Persons injured in such incidents;

(c) Owners of property damaged, lost or stolen in such incidents; and/or

(d) These individuals' duly verified insurance companies, personal representatives, and/or attorneys.

(17) To any criminal, civil, or regulatory authority (whether Federal, State, territorial, local, tribal or foreign) for the purpose of providing background search information on individuals for legally authorized purposes, including but not limited to background checks on individuals residing in a home with a minor or individuals seeking employment opportunities requiring background checks.

(18) To the news media and the public, with the approval of the System Manager in consultation with the Office of the Solicitor and the Senior Agency Official for Privacy, in support of the law enforcement activities, including obtaining public assistance with identifying and locating criminal suspects and lost or missing individuals, and providing the public with alerts about dangerous individuals.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Electronic records are maintained in password protected removable drives and other user-authenticated, password-protected systems that are compliant with the Federal Information Security Management Act. All records are accessed only by authorized personnel who have a need to access the records in the performance of their official duties. Paper records are contained in file folders stored in file cabinets.

RETRIEVABILITY:

Multiple fields allow retrieval of individual record information including Social Security number, first or last name, badge number, address, phone number, vehicle information and physical attributes.

SAFEGUARDS:

The records contained in this system are safeguarded in accordance with 43 CFR 2.226 and other applicable security rules and policies. During normal hours of operation, paper records are maintained in locked filed cabinets under the control of authorized personnel. Computerized records systems follow the National Institute of Standards and Technology standards as developed to comply with the Privacy Act of 1974 (Pub. L. 93–579), Paperwork Reduction Act of 1995 (Pub. L. 104–13), Federal Information Security Management Act of 2002 (Pub. L. 107–347), and the Federal Information Processing Standards 199, Standards for Security Categorization of Federal Information and Information Systems. Computer servers in which electronic records are stored are located in secured Department of the Interior facilities.

Access to records in the system is limited to authorized personnel who have a need to access the records in the performance of their official duties. Electronic data is protected through user identification, passwords, database permissions and software controls. Such security measures establish different access levels for different types of users associated with pre-defined groups and/or bureaus. Each user's access is restricted to only the functions and data necessary to perform that person's job responsibilities. Access can be restricted to specific functions (create, update, delete, view, assign permissions) and is restricted utilizing role-based access.

Authorized users are trained and required to follow established internal security protocols and must complete all security, privacy, and records management training and sign the Rules of Behavior. Contract employees with access to the system are monitored by their Contracting Officer's Technical Representative and the agency Security Manager.

RETENTION AND DISPOSAL:

Records in this system are retained and disposed of in accordance with Office of the Secretary Records Schedule 8151, Incident, Management, Analysis and Reporting System, which was approved by the National Archives and Records Administration (NARA) (N1–048–09–5), and other NARA approved bureau or office records schedules. The specific record schedule for each type of record or form is dependent on the subject matter and records series. After the retention period has passed, temporary records are disposed of in accordance with the applicable records schedule and DOI policy. Disposition methods include burning, pulping, shredding, erasing and degaussing in accordance with DOI 384 Departmental Manual 1. Permanent records that are no longer active or needed for agency use are transferred to the National Archives for permanent retention in accordance with NARA guidelines.

SYSTEM MANAGER AND ADDRESS:

IMARS Security Manager, 13461 Sunrise Valley Drive, Herndon, VA 20171.

NOTIFICATION PROCEDURES:

The Department of the Interior is proposing to exempt portions of this system from the notification procedures of the Privacy Act pursuant to sections (j)(2) and (k)(2). An individual requesting notification of the existence of records on himself or herself should send a signed, written inquiry to the System Manager identified above. The request envelope and letter should both be clearly marked ''PRIVACY ACT INQUIRY.'' A request for notification must meet the requirements of 43 CFR 2.235.

RECORDS ACCESS PROCEDURES:

The Department of the Interior is proposing to exempt portions of this system from the access procedures of the Privacy Act pursuant to sections (j)(2) and (k)(2). An individual requesting records on himself or herself should send a signed, written inquiry to the System Manager identified above. The request should describe the records sought as specifically as possible. The request envelope and letter should both

be clearly marked ''PRIVACY ACT REQUEST FOR ACCESS.'' A request for access must meet the requirements of 43 CFR 2.238.

CONTESTING RECORDS PROCEDURES:

The Department of the Interior is proposing to exempt portions of this system from the amendment procedures of the Privacy Act pursuant to sections (j)(2) and (k)(2). An individual requesting corrections or the removal of material from his or her records should send a signed, written request to the System Manager identified above. A request for corrections or removal must meet the requirements of 43 CFR 2.246.

RECORD SOURCE CATEGORIES:

Sources of information in the system include Department, bureau, office, tribal, State and local law officials and management, complainants, informants, suspects, victims, witnesses, visitors to Federal properties, and other Federal agencies including the Federal Bureau of Investigation or the Department of Justice.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

The Privacy Act (5 U.S.C. 552a(j)(2) and (k)(2)) provides general exemption authority for some Privacy Act systems. In accordance with that authority, the Department of the Interior adopted regulations 43 CFR 2.254(a–b). Pursuant to 5 U.S.C. 552a(j)(2) and (k)(2) of the Privacy Act, portions of this systems are exempt from the following subsections of the Privacy Act (as found in 5 U.S.C. 552a); (c)(3), (c)(4), (d), (e)(1) through (e)(3), (e)(4)(G) through (e)(4)(I), (e)(5), (e)(8), (f), and (g).

[FR Doc. 2013–18224 Filed 7–29–13; 8:45 am]

BILLING CODE 4310–RK–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R4–R–2013–N104; FXRS12650400000S3–123–FF04R02000]

Theodore Roosevelt National Wildlife Refuge, Sharkey County, MS; and Holt Collier National Wildlife Refuge in Washington County, MS

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of intent to prepare a comprehensive conservation plan and environmental assessment; request for comments.

SUMMARY: We, the Fish and Wildlife Service (Service), intend to prepare a comprehensive conservation plan (CCP) and associated National Environmental Policy Act (NEPA) documents for Theodore Roosevelt and Holt Collier National Wildlife Refuges (NWRs). We provide this notice in compliance with our CCP policy to advise other Federal and State agencies, Native-American tribes, and the public of our intentions, and to obtain suggestions and information on the scope of issues to consider in the planning process.

DATES: To ensure consideration, we must receive your written comments by August 29, 2013.

ADDRESSES: You may send comments, questions, and requests for information to: Justin Sexton, Refuge Manager, Yazoo National Wildlife Refuge, 595 Yazoo Refuge Road, Hollandale, MS 38748.

FOR FURTHER INFORMATION CONTACT: Mr. Justin Sexton, at 662/839–2638 (telephone); or you may email Mr. Sexton at, *Justin_Sexton@fws.gov.*

SUPPLEMENTARY INFORMATION:

Introduction

With this notice, we initiate our process for developing a CCP for Theodore Roosevelt and Holt Collier NWRs in Sharkey and Washington Counties, MS. This notice complies with our CCP policy to: (1) Advise other Federal and State agencies, Native-American tribes, and the public of our intention to conduct detailed planning on this refuge; and (2) obtain suggestions and information on the scope of issues to consider in the environmental document and during development of the CCP.

Background

The CCP Process

The National Wildlife Refuge System Administration Act of 1966 (16 U.S.C. 668dd–668ee) (Administration Act), as amended by the National Wildlife Refuge System Improvement Act of 1997, requires us to develop a CCP for each national wildlife refuge. The purpose for developing a CCP is to provide refuge managers with a 15-year plan for achieving refuge purposes and contributing toward the mission of the National Wildlife Refuge System, consistent with sound principles of fish and wildlife management, conservation, legal mandates, and our policies. In addition to outlining broad management direction on conserving wildlife and their habitats, CCPs identify wildlife-dependent recreational opportunities available to the public, including opportunities for hunting, fishing, wildlife observation, wildlife photography, and environmental education and interpretation. We will review and update the CCP at least every 15 years in accordance with the Administration Act.

Each unit of the National Wildlife Refuge System was established for specific purposes. We use these purposes as the foundation for developing and prioritizing the management goals and objectives for each refuge within the National Wildlife Refuge System mission, and to determine how the public can use each refuge. The planning process is a way for us and the public to evaluate management goals and objectives for the best possible conservation approach to this important wildlife habitat, while providing for wildlife-dependent recreation opportunities that are compatible with the refuge's establishing purposes and the mission of the National Wildlife Refuge System.

Our CCP process provides participation opportunities for Tribal, State, and local governments; agencies; organizations; and the public. We encourage input in the form of issues, concerns, ideas, and suggestions for the future management of Theodore Roosevelt and Holt Collier NWRs.

We will conduct the environmental review of this project in accordance with the requirements of the National Environmental Policy Act of 1969, as amended (NEPA) (42 U.S.C. 4321 *et seq.*); NEPA regulations (40 CFR 1500–1508); other appropriate Federal laws and regulations; and our policies and procedures for compliance with those laws and regulations.

Both refuges were created ''for conservation purposes'' (7 U.S.C. 2002). The legislative authority for Holt Collier National Wildlife Refuge also comes from the Fish and Wildlife Coordination Act (16 U.S.C. 661–667e). This refuge consists of approximately 1,439 acres of former Farmers Home Administration (now known as the Farm Service Agency) lands in Washington County. Holt Collier NWR is located near Darlove, MS. The refuge is open year-round for wildlife-related activities such as hunting, wildlife observation, and nature photography. The refuge habitat, formerly consisting of agricultural lands, has been nearly reforested to bottomland hardwoods.

Theodore Roosevelt National Wildlife Refuge is in Sharkey County. To date, 870 acres have been purchased in fee-title. The habitat consists of: Former, native bottomland hardwoods planted to trees; farmlands; and open water. The refuge is not open to the public. There are no public facilities on either of these refuges.

Public Availability and Comments

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Authority

This notice is published under the authority of the National Wildlife Refuge System Improvement Act of 1997 (16 U.S.C. 668dd *et seq.*).

Dated: June 14, 2013.

Mike Oetker,

Deputy Regional Director.

[FR Doc. 2013–18231 Filed 7–29–13; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–HQ–IA–2013–N173; FXIA16710900000P5–123–FF09A30000]

Endangered Species; Receipt of Applications for Permit

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of applications for permit.

SUMMARY: We, the U.S. Fish and Wildlife Service, invite the public to comment on the following applications to conduct certain activities with endangered species. With some exceptions, the Endangered Species Act (ESA) prohibits activities with listed species unless Federal authorization is acquired that allows such activities.

DATES: We must receive comments or requests for documents on or before August 29, 2013.

ADDRESSES: Brenda Tapia, Division of Management Authority, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Room 212, Arlington, VA 22203; fax (703) 358–2280; or email *DMAFR@fws.gov.*

FOR FURTHER INFORMATION CONTACT: Brenda Tapia, (703) 358–2104 (telephone); (703) 358–2280 (fax); *DMAFR@fws.gov* (email).

SUPPLEMENTARY INFORMATION:

I. Public Comment Procedures

A. How do I request copies of applications or comment on submitted applications?

Send your request for copies of applications or comments and materials concerning any of the applications to the contact listed under **ADDRESSES**. Please include the **Federal Register** notice publication date, the PRT-number, and the name of the applicant in your request or submission. We will not consider requests or comments sent to an email or address not listed under **ADDRESSES**. If you provide an email address in your request for copies of applications, we will attempt to respond to your request electronically.

Please make your requests or comments as specific as possible. Please confine your comments to issues for which we seek comments in this notice, and explain the basis for your comments. Include sufficient information with your comments to allow us to authenticate any scientific or commercial data you include.

The comments and recommendations that will be most useful and likely to influence agency decisions are: (1) Those supported by quantitative information or studies; and (2) Those that include citations to, and analyses of, the applicable laws and regulations. We will not consider or include in our administrative record comments we receive after the close of the comment period (see **DATES**) or comments delivered to an address other than those listed above (see **ADDRESSES**).

B. May I review comments submitted by others?

Comments, including names and street addresses of respondents, will be available for public review at the street address listed under **ADDRESSES**. The public may review documents and other information applicants have sent in support of the application unless our allowing viewing would violate the Privacy Act or Freedom of Information Act. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

II. Background

To help us carry out our conservation responsibilities for affected species, and in consideration of section 10(a)(1)(A) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), along with Executive Order 13576, ''Delivering an Efficient, Effective, and Accountable Government,'' and the President's Memorandum for the Heads of Executive Departments and Agencies of January 21, 2009—Transparency and Open Government (74 FR 4685; January 26, 2009), which call on all Federal agencies to promote openness and transparency in Government by disclosing information to the public, we invite public comment on these permit applications before final action is taken.

III. Permit Applications

A. Endangered Species

Applicant: Association for the Conservation of Threatened Parrots, Inc., Palm City, FL; PRT–01604B

The applicant requests a permit to export five male and four female captive-born St. Vincent Parrots (*Amazona guildingii*) for the purpose of enhancement of the survival of the species thorough propagation, to Verein zur Erhaltung bedrohter Papageien e.V. (ACTP), in Schoneiche, Germany.

Applicant: Feld Entertainment, Inc., Vienna, VA; PRT–08059B

The applicant requests a permit to export biological samples of Asian elephants (*Elephas maximus*) to the African Lion Safari, Ontario, Canada, for the purpose of enhancement of the survival of the species thorough propagation. This notification covers activities to be conducted by the applicant over a 5-year period.

Applicant: Saint Louis Zoo, St. Louis, MO; PRT–06587B

The applicant requests a permit to export hair samples from captive bred Somali wild ass (*Equus africanus somalicus*) and Grevy's zebra (*Equus grevyi*) for the purpose of enhancement of the survival of the species.

Applicant: Joel Owens, Rosenberg, TX; PRT–11914B

The applicant requests a permit authorizing interstate and foreign commerce, export, and cull of excess scimitar-horned oryx (*Oryx dammah*), from the captive herd maintained at their facility, for the purpose of enhancement of the survival of the species. This notification covers activities over a 5-year period.

Multiple Applicants

The following applicants each request a permit to import the sport-hunted trophy of one male bontebok

(*Damaliscus pygargus pygargus*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Applicant: Larry Bell, Midland, TX; PRT–10814B

Applicant: David Flough, Cushing, OK; PRT–09940B

Applicant: Neil Davies, Grand Island, NE; PRT–11450B

Applicant: Mishael Ashbrook, Monroe, LA; PRT–07316B

Applicant: Howard Leavins, Eastpoint, FL; PRT–10713B

Applicant: Paul Fiedler, Villard, MN; PRT–06267B

Applicant: Tony Ross, Conroe, TX; PRT–10999B

Brenda Tapia,

Program Analyst/Data Administrator, Branch of Permits, Division of Management Authority.

[FR Doc. 2013–18276 Filed 7–29–13; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLMTB07900 09 L10100000 PH0000 LXAMANMS0000]

Notice of Public Meeting; Western Montana Resource Advisory Council

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act and the Federal Advisory Committee Act of 1972, the U.S. Department of the Interior, Bureau of Land Management (BLM) Western Montana Resource Advisory Council (RAC) will meet as indicated below.

DATES: The meeting will be held August 21, 2013. The meeting will begin at 9 a.m. with a 30-minute public comment period starting at 11:30 a.m. and will adjourn at 3 p.m.

ADDRESSES: The meeting will be in the BLM's Butte Field Office, 106 N. Parkmont in Butte, MT.

SUPPLEMENTARY INFORMATION: This 15-member council advises the Secretary of the Interior on a variety of management issues associated with public land management in Montana. During this meeting the council will participate in/discuss/act upon several topics, including a discussion of the Northern Continental Divide grizzly bear conservation strategy, proposed recreation fees by the BLM and the U.S. Forest Service, and updates from the BLM's Butte, Missoula and Dillon field offices.

All RAC meetings are open to the public. The public may present written comments to the RAC. Each formal RAC meeting will also have time allocated for hearing public comments. Depending on the number of persons wishing to comment and time available, the time for individual oral comments may be limited.

FOR FURTHER INFORMATION CONTACT: David Abrams, Western Montana Resource Advisory Council Coordinator, Butte Field Office, 106 North Parkmont, Butte, MT 59701, 406–533–7617, *dabrams@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.

Cornelia H. Hudson,

District Manager (Acting), Western Montana District.

[FR Doc. 2013–18240 Filed 7–29–13; 8:45 am]

BILLING CODE 4310–DN–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLID9570000.LL14200000.BJ0000]

IDAHO: Filing of Plats of Survey

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of filing of plats of surveys.

SUMMARY: The Bureau of Land Management (BLM) has officially filed the plats of survey of the lands described below in the BLM Idaho State Office, Boise, Idaho, effective 9:00 a.m., on the dates specified.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, 1387 South Vinnell Way, Boise, Idaho 83709–1657.

SUPPLEMENTARY INFORMATION: These surveys were executed at the request of the Bureau of Land Management to meet their administrative needs. The lands surveyed are:

The plat representing the dependent resurvey of portions of the south boundary and subdivisional lines, and the subdivision of section 35, T., 11 N., R., 5 W., of the Boise Meridian, Idaho, Group Number 1362, was accepted June 5, 2013.

The plat representing the entire survey record of the dependent resurvey of a portion of the subdivisional lines, and the subdivision of section 34, T., 2 N., R., 17 E., of the Boise Meridian, Idaho, Group Number 1384, was accepted June 14, 2013.

The plat representing the entire survey record of the dependent resurvey of a portion of the west boundary and subdivisional lines, and the subdivision of section 7, and a metes-and-bounds survey in section 7, T., 7 S., R. 35 E., of the Boise Meridian, Idaho, Group Number 1312, was accepted June 24, 2013.

The plat representing the dependent resurvey of portions of the east boundary, subdivisional lines, and boundaries of certain mineral surveys, and the subdivision of sections 26 and 27, T., 48 N., R. 5 E., of the Boise Meridian, Idaho, Group Number 1275, was accepted June 28, 2013.

This survey was executed at the request of the Bureau of Indian Affairs to meet their administrative needs. The lands surveyed are:

The plat representing the dependent resurvey of portions of the east and north boundaries, subdivisional lines, and subdivision of section 3, and the additional subdivision of section 3, and the subdivision of sections 9 and 12, T. 34 N., R. 2 W., Boise Meridian, Idaho, Group Number 1353, was accepted May 9, 2013.

This survey was executed at the request of the Bureau of Reclamation to meet their administrative needs. The lands surveyed are:

The plat representing the dependent resurvey of portions of the subdivisional lines and the subdivision of sections 3, 4, 10, and 11, and the further subdivision of section 4, and metes-and-bounds surveys in sections 3, 4, 10, and 11, T. 2 N., R. 3 E., of the Boise Meridian, Idaho, Group Number 1366, was accepted May 29, 2013.

This survey was executed at the request of the USDA Forest Service to meet their administrative needs. The lands surveyed are:

The field notes representing the remonumentation of certain mile posts and angle points along the boundary between the states of Idaho and Montana, T. 27 N., Rs. 21 and 22 E., Boise Meridian, Idaho, Group Number 1500, was approved June 19, 2013.

Dated: July 10, 2013.

Stanley G. French,

Chief Cadastral Surveyor for Idaho.

[FR Doc. 2013–18239 Filed 7–29–13; 8:45 am]

BILLING CODE 4310–GG–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–13277; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: Hamilton County Department of Parks and Recreation, Hamilton County, IN

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The Hamilton County Department of Parks and Recreation (here after referred to as ''Park'') has completed an inventory of human remains and associated funerary objects, in consultation with the appropriate Indian tribes or Native Hawaiian organizations, and has determined that there is no cultural affiliation between the human remains and associated funerary objects and any present-day Indian tribes or Native Hawaiian organizations. Representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request to the Park. If no additional requestors come forward, transfer of control of the human remains and associated funerary objects to the Indian tribes or Native Hawaiian organizations stated in this notice may proceed.

DATES: Representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request with information in support of the request to the Park at the address in this notice by August 29, 2013.

ADDRESSES: Hamilton County Department of Parks and Recreation, Attn: Mr. Allen Patterson, Director, 15513 South Union Street, Westfield, IN 46033, telephone (317) 770–4400, email *allen.patterson@hamiltoncounty.in.gov.*

SUPPLEMENTARY INFORMATION: Notice is hereby given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains and associated funerary objects under the control of the Park. The human remains and associated funerary objects were removed from the Strawtown Koteewi Park, Hamilton County, IN.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3) and 43 CFR 10.11(d). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations in this notice.

Consultation

A detailed assessment of the human remains and associated funerary objects was made by the Park professional staff in consultation with representatives of the Absentee-Shawnee Tribe of Indians of Oklahoma; Eastern Shawnee Tribe of Oklahoma; Miami Tribe of Oklahoma; Pokagon Band of Potawatomi Indians, Michigan and Indiana; and the Shawnee Tribe. The Delaware Nation, Oklahoma, did not participate in the consultation but monitored the process through an agreement with the Miami Tribe of Oklahoma.

History and Description of the Remains

Between 2001 and 2011, human remains representing, at minimum, 34 individuals were removed from Strawtown Koteewi Park in Hamilton County, IN, during field schools and by professional archaeological teams investigating archaeological sites within the property boundaries. The human remains were recovered primarily from two archaeological locations within the park boundaries, site 12 H 883 (The Strawtown Enclosure) and site 12 H 3 (The Castor Farm site). Additionally, one phalange was recovered from site 12 H 1052 in 2011. During the course of these investigations, multiple isolated human remains and several burials were inadvertently encountered. No intact burials were removed and standard archaeological procedure when encountering a burial involved either: (a) Exposing and documenting the burial or (b) once a burial was encountered, all excavations were halted in the immediate area. All burials were covered again with soils from the excavated area.

In some instances, bone samples were removed from the burials to undergo further archaeological investigation. The bone samples that were recovered are included in the human remains intended for repatriation and are reflected in the minimum number of individuals (MNI). In addition, multiple, presumably secondarily deposited, isolated human remains were encountered during archaeological fieldwork. Often, the isolated human remains were identified in the laboratory post active archaeological fieldwork. These individual elements and fragments were recovered from feature and unit contexts. These items are presumed to have been secondarily deposited after they were prehistorically encountered during construction of houses, storage pits, postholes, etc. Additionally, during the 2002 excavation year, a number of human remains were collected from the back dirt of an active groundhog hole within the enclosure.

A detailed osteological analysis of the human remains as a whole has not been completed. The human remains underwent archaeological processing and analysis under the direction of Indiana University Purdue University at Ft. Wayne and were then turned over to Hamilton County Parks and Recreation. They currently reside at the Taylor Center of Natural History located in Strawtown Koteewi Park, where they are awaiting repatriation in a secure curation facility. No known individuals were identified. The 151 associated funerary objects were removed from the two main excavation sites, as detailed below.

From site 12 H 883, the 115 associated funerary objects are 4 lots of animal bone (burned and unburned); 1 animal incisor tool; 1 antler indeterminate tool; 1 lot of antler non-formal tool; 2 lots of antler projectile point, partial and unrefined; 1 lot of antler tine flakers; 1 antler tine tool; 1 antler toggle; 1 lot of antler tool making debris; 1 bear maxilla; 1 bear tooth; 2 lots of bone awl fragments; 2 lots of bone beamers, partial; 1 bone fish hook fragment; 1 bone indeterminate tool fragment; 1 bone tool fragment; 1 lot of bone tool making debris; 3 lots of burned soil; 1 burned soil or coil tip; 1 chert biface tip; 5 chert bifaces, unrefined; 4 lots of chert core; 4 lots of chert debitage; 1 chert graver fragment; 4 lots of chert non-formal uniface; 2 lots of chert T-base drill; 1 chert triangular projectile point fragment; 2 lots of chert triangular projectile points; 2 lots of detritus; 1 dog skeleton from a dog burial, relatively complete; 1 lot of drill fragments; 4 lots of FCR; 2 lots of fish scale; 4 lots of flora; 1 lot of flotation; 1 lot of formal uniface; 1 lot of hammer stone; 1 lot of hammer stone with ochre residue; 1 lot of humpback knife; 1 lot of intermediate bone tool; 4 lots of light and heavy fraction; 1 modified animal tooth; 1 lot of mussel shell fragments; 1 lot of non-formal uniface; 2 lots of ochre; 1 pestle fragment; 1 pitted stone with ochre residue; 4 lots of pottery sherds; 1 lot of

quartzite biface fragments; 4 lots of quartzite debitage; 1 quartzite non-formal uniface; 1 lot of quartzite projectile points; 1 lot of refined biface fagments; 1 rock manuport; 1 sandstone abrader; 1 sandstone palette with ochre; 1 scribed bone tool fragment; 1 scribed elk scapula fragments; 1 lot of shells; 1 shell tempered loop handle; 1 slate debitage; 4 lots of soil and soil samples; 1 stone anvil with ochre residue; 3 lots of triangular projectile points; 1 turtle shell bowl; 1 lot of unrefined biface; 1 lot of unrefined biface fragment; and 2 lots of waste clay.

From site 12 H 3, the 36 associated funerary objects are 2 lots of animal bone (burned and unburned); 1 lot of antler tool making debris; 1 bead (one half); 1 lot of bone beamer; 1 bone tool fragment; 1 chert biface fragment; 3 lots of chert debitage; 1 lot of chert non-formal uniface; 1 conch shell column; 1 cordmarked rim/vessel section; 1 lot of detritus ; 1 elk beamer; 3 lots of FCR; 2 lots of flora; 1 lot of flotation; 2 lots of light and heavy fraction; 1 lot of mussel shell; 1 pendant (incomplete); 3 lots of pottery sherd; 2 lots of quartzite debitage; 1 sandstone abrader; 1 sandstone abrader fragment; 1 lot of shell; 1 shell pendant (claw shaped); 1 lot of soil (burned and unburned); and 1 triangular point fragment.

Determinations Made by the Hamilton County Department of Parks and Recreation

Officials of the Hamilton County Department of Parks and Recreation have determined that:

- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice are Native American based on archeological evidence.
- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of 34 individuals of Native American ancestry.
- Pursuant to 25 U.S.C. 3001(3)(A), the 151 objects described in this notice are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony.
- Pursuant to 25 U.S.C. 3001(2), a relationship of shared group identity cannot be reasonably traced between the Native American human remains and associated funerary objects and any present-day Indian tribe.
- According to final judgments of the Indian Claims Commission or the Court of Federal Claims, the land from which the Native American human remains and associated funerary objects were removed is the aboriginal land of the Delaware Nation, Oklahoma, and the Miami Tribe of Oklahoma.
- Treaties, Acts of Congress, or Executive Orders, indicate that the land from which the Native American human remains and associated funerary objects were removed is the aboriginal land of the Delaware Nation, Oklahoma, and the Miami Tribe of Oklahoma.
- Pursuant to 43 CFR 10.11(c)(1), the disposition of the human remains and associated funerary objects may be to the Delaware Nation, Oklahoma, and the Miami Tribe of Oklahoma.

Additional Requestors and Disposition

Representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request with information in support of the request to Hamilton County Department of Parks and Recreation, Attn: Mr. Allen Patterson, Director, 15513 South Union Street, Westfield, IN 46033, telephone (317) 770–4400; email *allen.patterson@hamiltoncounty.in.gov,* by August 29, 2013. After that date, if no additional requestors have come forward, transfer of control of the human remains and associated funerary objects to the Delaware Nation, Oklahoma, and the Miami Tribe of Oklahoma may proceed.

The Park is responsible for notifying the Absentee-Shawnee Tribe of Indians of Oklahoma; Delaware Nation, Oklahoma; Eastern Shawnee Tribe of Oklahoma; Miami Tribe of Oklahoma; Pokagon Band of Potawatomi Indians, Michigan and Indiana; and the Shawnee Tribe that this notice has been published.

Dated: June 11, 2013.

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. 2013–18275 Filed 7–29–13; 8:45 am]

BILLING CODE 4312–50–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–13393; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: Columbia University, Department of Anthropology, New York, NY

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The Columbia University, Department of Anthropology, has completed an inventory of human remains, in consultation with the appropriate Indian tribes or Native Hawaiian organizations, and has determined that there is a cultural affiliation between the human remains and present-day Indian tribes or Native Hawaiian organizations. Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request to Columbia University. If no additional requestors come forward, transfer of control of the human remains to the lineal descendants, Indian tribes, or Native Hawaiian organizations stated in this notice may proceed.

DATES: Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request with information in support of the request to Columbia University at the address in this notice by August 29, 2013.

ADDRESSES: Dr. Nan Rothschild, Department of Anthropology, Columbia University, New York, NY 10027, telephone (212) 854–4977, email *roth@columbia.edu.*

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains under the control of Columbia University. The human remains were removed from On-A-Slant Village (site 32MO26), Morton County, ND.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains. The National Park Service is not responsible for the determinations in this notice.

Consultation

A detailed assessment of the human remains was made by the Columbia University, Department of Anthropology, professional staff in consultation with representatives of the Three Affiliated Tribes of Fort Berthold Reservation, North Dakota.

History and Description of the Remains

In 1938, human remains representing, at minimum, 10 individuals were removed from On-A-Slant Village (site 32MO26) in Morton County, ND. The

excavation was led by William Duncan Strong and jointly sponsored by Columbia University and the State Historical Society of North Dakota. Strong brought the human remains to the American Museum of Natural History (AMNH), where they were placed on ''permanent loan.'' In January 2002, a detailed assessment of the human remains was made by researchers at Columbia University, and in March 2006, AMNH transferred the human remains to the Department of Anthropology at Columbia University. Seven partial or nearly intact skeletons, representing five adults and two children, and fragmentary remains of three other individuals were identified. These individual have been identified as Native American based on Strong's documentation and non-invasive assessment of cranial features. No known individuals were identified. No associated funerary objects are present.

The human remains were found on the site of a contact-period Mandan settlement called On-A-Slant Village (site 32MO26) on the right bank of the Heart River near its confluence with the Missouri River. Lewis and Clark recorded this site in 1804, as ''the remains of a village formerly occupied by the Mandans,'' which local people reported as having been abandoned around 1780, due to smallpox and warfare with the Sioux. Records indicate that the descendants of this settlement sometimes lived with members of the Hidatsa and Arikara. Today, the Arikara, Hidatsa, and Mandan people are represented by the Three Affiliated Tribes of Fort Berthold Reservation, North Dakota.

Determinations Made by Columbia University, Department of Anthropology

Officials of Columbia University, Department of Anthropology, have determined that:

- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of, at minimum, 10 individuals of Native American ancestry.
- Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and the Three Affiliated Tribes of Fort Berthold Reservation, North Dakota.

Additional Requestors and Disposition

Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request with information in support of the request to Dr. Nan Rothschild, Department of Anthropology, Columbia University, 1200 Amsterdam Avenue, New York, NY 10027, telephone (212) 854–4977, email *roth@columbia.edu,* by August 29, 2013. After that date, if no additional requestors have come forward, transfer of control of the human remains to the Three Affiliated Tribes of Fort Berthold Reservation, North Dakota, may proceed.

The Columbia University, Department of Anthropology, is responsible for notifying the Three Affiliated Tribes of Fort Berthold Reservation, North Dakota, that this notice has been published.

Dated: June 25, 2013.

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. 2013–18274 Filed 7–29–13; 8:45 am]

BILLING CODE 4312–50–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–13406; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: Thomas Burke Memorial Washington State Museum, University of Washington, Seattle, WA

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The Thomas Burke Memorial Washington State Museum, University of Washington (Burke Museum), has completed an inventory of human remains and associated funerary objects, in consultation with the appropriate Indian tribes or Native Hawaiian organizations, and has determined that there is a cultural affiliation between the human remains and associated funerary objects and present-day Indian tribes or Native Hawaiian organizations. Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request to the Burke Museum. If no additional requestors come forward, transfer of control of the human remains and associated funerary objects to the lineal descendants, Indian tribes, or Native Hawaiian organizations stated in this notice may proceed.

DATES: Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request with information in support of the request to the Burke Museum at the address in this notice by August 29, 2013.

ADDRESSES: Peter Lape, Burke Museum, University of Washington, Box 35101, Seattle, WA 98195, telephone (206) 685–3849, email *plape@uw.edu.*

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains and associated funerary objects under the control of the Burke Museum. The human remains and associated funerary objects were removed from Island County, WA.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations in this notice.

Consultation

A detailed assessment of the human remains and associated funerary objects was made by the Burke Museum professional staff in consultation with representatives of the Lummi Tribe of the Lummi Reservation; Samish Indian Nation (previously listed as the Samish Indian Tribe, Washington); Sauk-Suiattle Indian Tribe; Stillaguamish Tribe of Indians of Washington (previously listed as Stillaguamish Tribe of Washington); Swinomish Indians of the Swinomish Reservation of Washington; Tulalip Tribes of Washington (previously listed as the Tulalip Tribes of the Tulalip Reservation, Washington); and the Upper Skagit Indian Tribe (hereafter referred to as ''The Consulted Tribes'').

History and Description of the Remains

Between 1953 and 1955, human remains representing, at minimum, one individual were removed from site 45–IS–77 in Island County, WA. The human remains were removed during a University of Washington Department of Anthropology Field Project led by Allan Bryan, and the human remains were accessioned by the Burke Museum in 1966 (Burke Accn. #1966–94). While six burials were excavated, the Burke Museum only holds the remains for

''Burial 6''; the whereabouts of the other human remains is unknown. No known individuals were identified. The 32 associated funerary objects are 2 lots of unmodified wood; 1 wood grave stake; 2 metal objects; 1 pair of scissors; 1 black plastic comb; 2 shells; 1 modified bone fragment; 1 unmodified bone fragment; 1 stone abrader; 1 .22 caliber gun; 3 bags of buttons (glass, porcelain, bone, copper); 8 U.S. coins; 1 porcelain doll head; 1 bag containing metal buckle fragments; and 6 composite artifact bags containing wood, nails, charcoal, pebbles, metal, leather, watch faces, a watch chain, and organic and inorganic materials.

Burial methods at the site were varied and included the use of long and short wooden box coffins. The remains were found extended, or in flexed and semi-flexed positions, on the back and side. There was also evidence of cremation at the site. The burials appear to be from a contact time period, as evidenced by the transition into European burial customs and the presence of post-contact artifacts. One of the burials was dated to 1876 or later based on the presence of an 1876 coin.

In 1962, human remains representing, at minimum, one individual were removed from south of site 45–IS–14 in Island County, WA. The remains were removed by Richard Arild Johnson and donated to the Burke Museum in 1962 (Burke Accn. #1963–24). No known individuals were identified. The one associated funerary object is 1 lot/bag of pebbles, dirt and shell fragments.

In 1953, human remains representing, at minimum, two individuals were removed from site 45–IS–13 on Snatelum Point in Island County, WA. The human remains were removed during a University of Washington Department of Anthropology Field Project led by Allan Bryan, and the human remains were accessioned by the Burke Museum in 1966 (Burke Accn. #1966–94). The human remains were loaned to the University of Washington Anthropology Department at an unknown date. The human remains were discovered in the Anthropology Department, stored with the physical anthropology remains in June 2010, and were then returned to the Burke Museum. No known individuals were identified. No associated funerary objects are present.

In 1926, human remains representing, at minimum, one individual were removed from San de Fuca in Island County, WA. The human remains were removed by John Armstrong from a shell mound near the site of old potlatch house and donated to the Burke Museum in 1926 (Burke Accn. #2122). No known individuals were identified. No associated funerary objects are present.

In 1963, human remains representing, at minimum, one individual were removed from Careless Bay in Island County, WA. The human remains were removed by Bob Atwell and Emil Gabeline and subsequently donated to the Burke Museum (Burke Accn. #1963–50). No known individuals were identified. No associated funerary objects are present.

In 1941, human remains representing, at minimum, one individual were removed from Utsalady on Camano Island in Island County, WA. The human remains were removed by Dr. Alfred E. Hudson and University of Washington archeology students. The human remains were accessioned by the Burke Museum in 1941 (Burke Accn. #3361). No known individuals were identified. No associated funerary objects are present.

All of the human remains described above were removed from sites in the Penn Cove area on Whidbey Island or on the northwestern shore of Camano Island. Several sites are documented archeological or shell midden sites. The human remains in this notice have been determined to be Native American based on a combination of archaeological, geographic, or physical anthropology evidence.

Linguistically, Native American speakers of the Northern dialect of the Lushootseed language claim cultural heritage to the Northern Puget Sound area. Culturally, Native Americans from the Northern Puget Sound area are members of Southern Coast Salish tribes. Historical and anthropological sources (Deur 2009, Mooney 1896, Roberts 1975, Ruby and Brown 1986, Spier 1936, Swanton 1952) indicate that the Kikiallus, Swinomish, Lower Skagit, and Stillaguamish peoples occupied and had village sites in the Penn Cove area and on the northwestern shore of Camano Island. Although the Indian Claims Commission determined that the sites near Penn Cove on Whidbey Island fell within the aboriginal territory of the Lower Skagit, shortly after 1855, anthropologists and historians described this area as a mixed community. Penn Cove was one of the communities Stillaguamish and other tribes were told to move to after being forced to leave their villages on the mainland (Deur 2009, Grady 2012).

Today, descendants of Kikiallus are members of the Stillaguamish Tribe of Indians of Washington (previously listed as Stillaguamish Tribe of Washington); Swinomish Indians of the Swinomish Reservation of Washington; and the Tulalip Tribes of Washington (previously listed as the Tulalip Tribes of the Tulalip Reservation, Washington). Today, the Lower Skagit are primarily members of the Swinomish Indians of the Swinomish Reservation of Washington and the Tulalip Tribes of Washington (previously listed as the Tulalip Tribes of the Tulalip Reservation, Washington).

Determinations Made by the Burke Museum

Officials of the Burke Museum have determined that:

- Based on archaeological evidence, the human remains have been determined to be Native American.
- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of seven individuals of Native American ancestry.
- Pursuant to 25 U.S.C. 3001(3)(A), the 33 objects described in this notice are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony.
- Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and the Stillaguamish Tribe of Indians of Washington (previously listed as Stillaguamish Tribe of Washington); Swinomish Indians of the Swinomish Reservation of Washington; and the Tulalip Tribes of Washington (previously listed as the Tulalip Tribes of the Tulalip Reservation, Washington).

Additional Requestors and Disposition

Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request with information in support of the request to Peter Lape, Burke Museum, University of Washington, Box 35101, Seattle, WA 98195, telephone (206) 685–3849, email *plape@uw.edu,* by August 29, 2013. After that date, if no additional requestors have come forward, transfer of control of the human remains and associated funerary objects to the Stillaguamish Tribe of Indians of Washington (previously listed as Stillaguamish Tribe of Washington); Swinomish Indians of the Swinomish Reservation of Washington; and the Tulalip Tribes of Washington (previously listed as the Tulalip Tribes of the Tulalip Reservation, Washington) may proceed.

The Burke Museum is responsible for notifying The Consulted Tribes that this notice has been published.

Dated: July 8, 2013.

Melanie O'Brien,

Acting Manager, National NAGPRA Program.

[FR Doc. 2013–18323 Filed 7–29–13; 8:45 am]

BILLING CODE 4312–50–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–13324; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: Missouri Department of Natural Resources, Jefferson City, MO

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The Missouri Department of Natural Resources has completed an inventory of human remains and associated funerary objects, in consultation with the appropriate Indian tribes or Native Hawaiian organizations, and has determined that there is a cultural affiliation between the human remains and associated funerary objects and present-day Indian tribes or Native Hawaiian organizations. Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request to the Missouri Department of Natural Resources. If no additional requestors come forward, transfer of control of the human remains and associated funerary objects to the lineal descendants, Indian tribes, or Native Hawaiian organizations stated in this notice may proceed.

DATES: Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request with information in support of the request to the Missouri Department of Natural Resources at the address in this notice by August 29, 2013.

ADDRESSES: Judith Deel, Missouri Department of Natural Resources, P.O. Box 179, Jefferson City, MO 65101, telephone (573) 751–7862.

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains and associated funerary objects under the control of the Missouri Department of Natural Resources, Jefferson City, MO. The human remains were removed from Clarksville, in Pike County, MO.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains. The National Park Service is not responsible for the determinations in this notice.

Consultation

A detailed assessment of the human remains was made by the Missouri Department of Natural Resources professional staff in consultation with representatives of the Sac & Fox Nation, Oklahoma; Sac & Fox of Missouri in Kansas and Nebraska; and the Sac & Fox Tribe of the Mississippi in Iowa.

History and Description of the Remains

Between 1962 and 1996, human remains representing, at minimum, 29 individuals were removed from the Clarksville Mound Group (site 23PI6) in Pike County, MO. The Clarksville Mound Group was originally recorded in 1952 and described as a group of six mounds. In 1962, the site was bulldozed in order to develop a sky-ride and tourist attraction, and five of the six mounds were destroyed. One accretion mound survived, under the sky-ride platform, and was incorporated into the commercial operation. Verbal and newspaper accounts report large numbers of human remains were removed or destroyed at the time, and some human remains were displayed as a part of the tourist attraction.

In 1995 and 1996, the City of Clarksville, the owner of the site, contacted the Missouri Department of Natural Resources, State Historic Preservation Office (SHPO) for assistance after terminating the lease to the tourist attraction. Human remains were eroding out of the damaged mound, and due to the severity of the erosion problem, the SHPO and the City of Clarksville decided to undertake excavations to remove the threatened burials. The excavations were expanded as more burials were discovered. During the excavation, human remains representing, at minimum, 22 individuals were removed from the site. No known individuals were identified. The two associated funerary objects are one lot of ancalusa shell beads and one Scallorn point. In 2002, additional human remains representing, at minimum, four individuals were transferred to the SHPO by a local collector who had been on the site in 1962. In 2006, additional human remains representing, at minimum, three individuals were transferred to the SHPO by the University of Missouri-Columbia.

The area of Pike County, MO, was ceded by the Sauk and Fox in a series of treaties with the United States between 1804 and 1816. The Sauk and Fox are represented by the present day Sac & Fox Nation, Oklahoma; Sac & Fox of Missouri in Kansas and Nebraska; and the Sac & Fox Tribe of the Mississippi in Iowa. Cultural affiliation was determined based on tribal history and the historical association of these tribes to the counties bordering the Mississippi River, including Pike County, MO.

Determinations Made by the Missouri Department of Natural Resources

Officials of the Missouri Department of Natural Resources have determined that:

- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of 29 individuals of Native American ancestry.
- Pursuant to 25 U.S.C. 3001(3)(A), the two objects described in this notice are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony.
- Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and the Sac & Fox Nation, Oklahoma; Sac & Fox of Missouri in Kansas and Nebraska; and the Sac & Fox Tribe of the Mississippi in Iowa.

Additional Requestors and Disposition

Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request with information in support of the request to Judith Deel, Missouri Department of Natural Resources, P.O. Box 179, Jefferson City, MO 65101, telephone (573) 751–7862, by August 29, 2013. After that date, if no additional requestors have come forward, transfer of control of the human remains and associated funerary objects the Sac & Fox Nation, Oklahoma; Sac & Fox of Missouri in Kansas and Nebraska; and the Sac & Fox Tribe of the Mississippi in Iowa may proceed.

The Missouri Department of Natural Resources is responsible for notifying the Sac & Fox Nation, Oklahoma; Sac & Fox of Missouri in Kansas and Nebraska; and the Sac & Fox Tribe of the Mississippi in Iowa that this notice has been published.

Dated: June 17, 2013.

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. 2013–18317 Filed 7–29–13; 8:45 am]

BILLING CODE 4312–50–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–13370; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: University of Denver Museum of Anthropology, Denver, CO

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The University of Denver Museum of Anthropology has completed an inventory of human remains, in consultation with the appropriate Indian tribes or Native Hawaiian organizations, and has determined that there is no cultural affiliation between the human remains and any present-day Indian tribes or Native Hawaiian organizations. Representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request to the University of Denver Museum of Anthropology. If no additional requestors come forward, transfer of control of the human remains to the Indian tribes or Native Hawaiian organizations stated in this notice may proceed.

DATES: Representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request with information in support of the request to the University of Denver Museum of Anthropology at the address in this notice by August 29, 2013.

ADDRESSES: Anne Amati, University of Denver Museum of Anthropology, 2000 E. Asbury Avenue, Denver, CO 80208, telephone (303) 871–2687, email *anne.amati@du.edu.*

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains under the control of the University of Denver Museum of Anthropology, Denver, CO. The human remains were removed from unknown sites in Costilla, Alamosa, and Saguache Counties, CO.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3) and 43 CFR 10.11(d). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains. The National Park Service is not responsible for the determinations in this notice.

Consultation

A detailed assessment of the human remains was made by the University of Denver Museum of Anthropology professional staff in consultation with representatives of the Hualapai Indian Tribe of the Hualapai Indian Reservation, Arizona; Jicarilla Apache Nation, New Mexico; Mescalero Apache Tribe of the Mescalero Reservation, New Mexico; Navajo Nation, Arizona, New Mexico & Utah; Ohkay Owingeh, New Mexico (previously listed as the Pueblo of San Juan); Pueblo of Cochiti, New Mexico; Pueblo of Isleta, New Mexico; Pueblo of Jemez, New Mexico; Pueblo of San Felipe, New Mexico; Pueblo of San Ildefonso, New Mexico; Southern Ute Indian Tribe of the Southern Ute Reservation, Colorado; Ute Indian Tribe of the Uintah & Ouray Reservation, Utah; Ute Mountain Tribe of the Ute Mountain Reservation, Colorado, New Mexico & Utah; and the Zuni Tribe of the Zuni Reservation, New Mexico.

History and Description of the Remains

In 1933, human remains representing, at minimum, two individuals were removed from an unknown site in Costilla County, CO. The human remains were removed by E.B. Renaud of the University of Denver Department of Anthropology during a University of Denver sponsored archeological expedition. Both individuals are adult males. No known individuals were identified. No associated funerary objects are present.

In 1938, human remains representing, at minimum, one individual were removed from an unknown site near Great Sand Dunes in Alamosa or Saguache Counties, CO. They were removed by Theodore Sowers, a student of E.B. Renaud's at the University of Denver Department of Anthropology. Mr. Sowers' daughters donated the human remains to the University of Denver Museum of Anthropology in August 1995. The individual is an adult. No known individuals were identified. No associated funerary objects are present.

In 1981, human remains representing, at minimum, one individual were removed from the Bunker Ranch in Alamosa County, CO. The human remains were recovered from an exposed road cut by Dr. Jonathan Haas of the University of Denver Department of Anthropology. The individual is an adult male. No known individuals were identified. No associated funerary objects are present.

Determinations Made by the University of Denver Museum of Anthropology

Officials of the University of Denver Museum of Anthropology have determined that:

- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice are Native American based on inscriptions on the remains, museum records, and the findings of a physical anthropologist employed by the University of Denver prior to November 1995.
- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of four individuals of Native American ancestry.
- Pursuant to 25 U.S.C. 3001(2), a relationship of shared group identity cannot be reasonably traced between the Native American human remains and any present-day Indian tribe.
- According to final judgments of the Indian Claims Commission or the Court of Federal Claims, the land from which the Native American human remains were removed is the aboriginal land of the Jicarilla Apache Nation, New Mexico.
- Treaties, Acts of Congress, or Executive Orders, indicate that the land from which the Native American human remains were removed is the aboriginal land of the Comanche Nation, Oklahoma; Kiowa Indian Tribe of Oklahoma; Southern Ute Indian Tribe of the Southern Ute Reservation, Colorado; Ute Indian Tribe of the Uintah & Ouray Reservation, Utah; and Ute Mountain Tribe of the Ute Mountain Reservation, Colorado, New Mexico & Utah.
- Pursuant to 43 CFR 10.11(c)(1), the disposition of the human remains may be to the Comanche Nation, Oklahoma; Jicarilla Apache Nation, New Mexico; Kiowa Indian Tribe of Oklahoma; Southern Ute Indian Tribe of the Southern Ute Reservation, Colorado; Ute Indian Tribe of the Uintah & Ouray Reservation, Utah; and Ute Mountain Tribe of the Ute Mountain Reservation, Colorado, New Mexico & Utah.

Additional Requestors and Disposition

Representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request with information in support of the request to Anne Amati, University of Denver Museum of Anthropology, 2000 E Asbury Avenue, Denver, CO, telephone (303) 871–2687, email *anne.amati@du.edu,* by August 29, 2013. After that date, if no additional requestors have come forward, transfer of control of the human remains to the Comanche Nation, Oklahoma; Jicarilla Apache Nation, New Mexico; Kiowa Indian Tribe of Oklahoma; Southern Ute Indian Tribe of the Southern Ute Reservation, Colorado; Ute Indian Tribe of the Uintah & Ouray Reservation, Utah; and Ute Mountain Tribe of the Ute Mountain Reservation, Colorado, New Mexico & Utah may proceed.

The University of Denver Museum of Anthropology is responsible for notifying the Comanche Nation, Oklahoma; Jicarilla Apache Nation, New Mexico; Kiowa Indian Tribe of Oklahoma; Southern Ute Indian Tribe of the Southern Ute Reservation, Colorado; Ute Indian Tribe of the Uintah & Ouray Reservation, Utah; and the Ute Mountain Tribe of the Ute Mountain Reservation, Colorado, New Mexico & Utah that this notice has been published.

Dated: June 20, 2013.

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. 2013–18322 Filed 7–29–13; 8:45 am]

BILLING CODE 4312–50–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–13371; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: University of Denver Museum of Anthropology, Denver, CO

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The University of Denver Museum of Anthropology has completed an inventory of human remains and associated funerary objects, in consultation with the appropriate Indian tribes or Native Hawaiian organizations, and has determined that there is no cultural affiliation between the human remains and associated funerary objects and any present-day Indian tribes or Native Hawaiian organizations. Representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request to the University of Denver Museum of Anthropology. If no additional requestors come forward, transfer of control of the human remains and associated funerary objects to the Indian tribes or Native Hawaiian organizations stated in this notice may proceed.

DATES: Representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request with information in support of the request to the University of Denver Museum of Anthropology at the address in this notice by August 29, 2013.

ADDRESSES: Anne Amati, University of Denver Museum of Anthropology, 2000 E. Asbury Avenue, Denver, CO 80208, telephone (303) 871–2687, email *anne.amati@du.edu.*

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains and associated funerary objects under the control of the University of Denver Museum of Anthropology, Denver, CO. The human remains and associated funerary objects were removed from Colfax County, NM.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3) and 43 CFR 10.11(d). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations in this notice.

Consultation

A detailed assessment of the human remains was made by the University of Denver Museum of Anthropology professional staff in consultation with representatives of the Hualapai Indian Tribe of the Hualapai Indian Reservation, Arizona; Jicarilla Apache Nation, New Mexico; Mescalero Apache Tribe of the Mescalero Reservation, New Mexico; Navajo Nation, Arizona, New Mexico & Utah; Ohkay Owingeh, New Mexico (previously listed as the Pueblo of San Juan); Pueblo of Cochiti, New Mexico; Pueblo of Isleta, New Mexico; Pueblo of Jemez, New Mexico; Pueblo of San Felipe, New Mexico; Pueblo of San Ildefonso, New Mexico; Southern Ute Indian Tribe of the Southern Ute Reservation, Colorado; Ute Indian Tribe of the Uintah & Ouray Reservation, Utah; Ute Mountain Tribe of the Ute Mountain Reservation, Colorado, New Mexico & Utah; and the Zuni Tribe of the Zuni Reservation, New Mexico.

History and Description of the Remains

In 1929, human remains representing, at minimum, one individual were removed from Cave 6, on the T.O. Ranch in Colfax County, NM. They were removed by E.B. Renaud of the University of Denver Department of Anthropology during an expedition sponsored by the Colorado Museum of Natural History, now the Denver Museum of Nature and Science. In 2012, 1 tooth and 2 lithic flakes were found in the collection at the Denver Museum of Nature and Science, and identified as belonging with the University of Denver Museum of Anthropology individual and associated funerary objects from Cave 6, T.O. Ranch, whereupon they were relocated to the University of Denver Museum of Anthropology. No known individuals were identified. The 210 associated funerary objects are 9 bone awls, 1 antler flaker, 124 bone beads, 53 chipped stone tools, 1 stone pounder, 1 metate, 19 lithic flakes, and 2 choppers.

Determinations Made by the University of Denver Museum of Anthropology

Officials of the University of Denver Museum of Anthropology have determined that:

- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice are Native American based on inscriptions on the remains, associated funerary objects, and the findings of a physical anthropologist employed by the University of Denver prior to 1995.
- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of one individual of Native American ancestry.
- Pursuant to 25 U.S.C. 3001(3)(A), the 210 objects described in this notice are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony.
- Pursuant to 25 U.S.C. 3001(2), a relationship of shared group identity cannot be reasonably traced between the Native American human remains and associated funerary objects and any present-day Indian tribe.
- According to final judgments of the Indian Claims Commission or the Court of Federal Claims, the land from which

the Native American human remains and associated funerary objects were removed is the aboriginal land of the Jicarilla Apache Nation, New Mexico, and the Pueblo of Taos, New Mexico.

• Treaties, Acts of Congress, or Executive Orders, indicate that the land from which the Native American human remains and associated funerary objects were removed is the aboriginal land of the Apache Tribe of Oklahoma; Fort Sill Apache Tribe of Oklahoma; Jicarilla Apache Nation, New Mexico; Mescalero Apache Tribe of the Mescalero Reservation, New Mexico; San Carlos Apache Tribe of the San Carlos Reservation, Arizona; The Osage Nation (previously listed as the Osage Tribe); Tonto Apache Tribe of Arizona; and the White Mountain Apache Tribe of the Fort Apache Reservation, Arizona.

• Pursuant to 43 CFR 10.11(c)(1), the disposition of the human remains and associated funerary objects may be to the Apache Tribe of Oklahoma; Fort Sill Apache Tribe of Oklahoma; Jicarilla Apache Nation, New Mexico; Mescalero Apache Tribe of the Mescalero Reservation, New Mexico; Pueblo of Taos, New Mexico; San Carlos Apache Tribe of the San Carlos Reservation, Arizona; The Osage Nation (previously listed as the Osage Tribe); Tonto Apache Tribe of Arizona; and the White Mountain Apache Tribe of the Fort Apache Reservation, Arizona.

Additional Requestors and Disposition

Representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request with information in support of the request to Anne Amati, University of Denver Museum of Anthropology, 2000 E. Asbury Avenue, Denver, CO 80208, telephone (303) 871–2687, email *anne.amati@du.edu,* by August 29, 2013. After that date, if no additional requestors have come forward, transfer of control of the human remains and associated funerary objects to Apache Tribe of Oklahoma; Fort Sill Apache Tribe of Oklahoma; Jicarilla Apache Nation, New Mexico; Mescalero Apache Tribe of the Mescalero Reservation, New Mexico; Pueblo of Taos, New Mexico; San Carlos Apache Tribe of the San Carlos Reservation, Arizona; The Osage Nation (previously listed as the Osage Tribe); Tonto Apache Tribe of Arizona; and the White Mountain Apache Tribe of the Fort Apache Reservation, Arizona, may proceed.

The University of Denver Museum of Anthropology is responsible for notifying the Apache Tribe of Oklahoma; Fort Sill Apache Tribe of Oklahoma; Jicarilla Apache Nation, New Mexico; Mescalero Apache Tribe of the Mescalero Reservation, New Mexico; Pueblo of Taos, New Mexico; San Carlos Apache Tribe of the San Carlos Reservation, Arizona; The Osage Nation (previously listed as the Osage Tribe); Tonto Apache Tribe of Arizona; and the White Mountain Apache Tribe of the Fort Apache Reservation, Arizona that this notice has been published.

Dated: June 20, 2013.

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. 2013–18273 Filed 7–29–13; 8:45 am]

BILLING CODE 4312–50–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–13278; PPWOCRADN0–PCU00RP14.R50000]

Notice of Intent to Repatriate Cultural Item: Maxwell Museum of Anthropology, University of New Mexico, Albuquerque, NM

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The Maxwell Museum of Anthropology, in consultation with the appropriate Indian tribes or Native Hawaiian organizations, has determined that a cultural item listed in this notice meets the definition of sacred object. Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to claim this cultural item should submit a written request to the Maxwell Museum of Anthropology. If no additional claimants come forward, transfer of control of the cultural item to the lineal descendants, Indian tribes, or Native Hawaiian organizations stated in this notice may proceed.

DATES: Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to claim this cultural item should submit a written request with information in support of the claim to the Maxwell Museum of Anthropology at the address in this notice by August 29, 2013.

ADDRESSES: David Phillips, Curator of Archaeology, Maxwell Museum of Anthropology, MSC01 1050, University of New Mexico, Albuquerque, NM 87131, telephone (505) 277–9229.

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3005, of the intent to repatriate a cultural item under the control of the Maxwell Museum of Anthropology, University of New Mexico, Albuquerque, NM, that meet the definition of sacred objects under 25 U.S.C. 3001.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American cultural item. The National Park Service is not responsible for the determinations in this notice.

History and Description of the Cultural Item

In 1970, a private collector donated a small collection of items to the Maxwell Museum of Anthropology, University of New Mexico. One item, catalogue number 70.77.8, is a ceremonial bandolier reported to be from the Kewa Pueblo, New Mexico (previously listed as the Pueblo of Santo Domingo), and possibly used as late as 1970. In 2013, a delegation from the Kewa Pueblo, New Mexico (previously listed as the Pueblo of Santo Domingo) inspected the bandolier, confirmed that it was a sacred object from their tribe, and requested its return.

Determinations Made by the Maxwell Museum of Anthropology

The Collections and Research Committee of the Maxwell Museum of Anthropology has determined that:

• Pursuant to 25 U.S.C. 3001(3)(C), the cultural item described above is a specific ceremonial object needed by traditional Native American religious leaders for the practice of traditional Native American religions by their present-day adherents.

• Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the sacred object and the Kewa Pueblo, New Mexico (previously listed as the Pueblo of Santo Domingo).

Additional Requestors and Disposition

Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to claim this cultural item should submit a written request with information in support of the claim to David Phillips, Curator of Archaeology, Maxwell Museum of Anthropology, MSC01 1050, University of New Mexico, Albuquerque NM 87131, telephone (505) 277–9229 by August 29, 2013. After that date, if no additional claimants have come forward, transfer

of control of the sacred object to Kewa Pueblo, New Mexico (previously listed as the Pueblo of Santo Domingo) may proceed.

The Maxwell Museum is responsible for notifying Kewa Pueblo, New Mexico (previously listed as the Pueblo of Santo Domingo) that this notice has been published.

Dated: June 11, 2013.

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. 2013–18279 Filed 7–29–13; 8:45 am]

BILLING CODE 4312–50–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–13290; PPWOCRADN0–PCU00RP14.R50000]

Notice of Intent To Repatriate Cultural Items: Monterey Museum of Art, Monterey, CA

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The Monterey Museum of Art, in consultation with the appropriate Indian tribes or Native Hawaiian organizations, has determined that the cultural items listed in this notice meet the definition of objects of cultural patrimony. Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to claim these cultural items should submit a written request to the Monterey Museum of Art. If no additional claimants come forward, transfer of control of the cultural items to the lineal descendants, Indian tribes, or Native Hawaiian organizations stated in this notice may proceed.

DATES: Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to claim these cultural items should submit a written request with information in support of the claim to the Monterey Museum of Art at the address in this notice by August 29, 2013.

ADDRESSES: John Rexine, Registrar, Monterey Museum of Art, 559 Pacific St., Monterey, CA 93940, telephone (831) 372–5477, email *jrexine@montereyart.org.*

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3005, of the intent to repatriate cultural items under the control of the Monterey Museum of Art that meet the definition of objects of cultural patrimony under 25 U.S.C. 3001.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American cultural items. The National Park Service is not responsible for the determinations in this notice.

History and Description of the Cultural Items

In approximately the 1940s or 1950s, 193 cultural items of ivory, bone, wood, and stone were removed from the Iyatet site, in Nome County, AK, by anthropologist Mr. J.L. Giddings and local guide Mr. Louis Nakarak. The objects were subsequently purchased by Mr. William Holman of Pacific Grove, CA. Mr. Holman then donated the objects to the Monterey Museum of Art on November 20, 1978. The 193 objects of cultural patrimony are 42 harpoon or projectile points, 38 pendants or beads, 3 fire-starters, 4 hand tools, 6 fishing weights, 37 carvings, 1 scraper, 3 dogsled runners, 1 club, 4 needles or awls, and 54 other objects made of ivory, bone, wood and stone.

In the 1978 Deed of Gift to the Monterey Museum of Art, Mr. Holman notes that the objects were excavated from a site 125 miles east of Nome, AK, and were said to date to 6,000 years or more before present. The location and site of Iyatet matches this description, and the Native Village of Shaktoolik in Nome County, AK, is the nearest community that claims cultural affiliation with the site and with the objects of cultural patrimony removed from the site. The Native Village of Shaktoolik has made a claim to these objects and, through consultation, has provided information in support of that claim.

Determinations Made by the Monterey Museum of Art

Officials of the Monterey Museum of Art have determined that:

- Pursuant to 25 U.S.C. 3001(3)(D), the 193 cultural items described above have ongoing historical, traditional, or cultural importance central to the Native American group or culture itself, rather than property owned by an individual.
- Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the objects of cultural patrimony and the Native Village of Shaktoolik.

Additional Requestors and Disposition

Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to claim these cultural items should submit a written request with information in support of the claim to John Rexine, Registrar, Monterey Museum of Art, 559 Pacific St., Monterey, CA 93940, telephone (831) 372–5477, email *jrexine@montereyart.org* by August 29, 2013. After that date, if no additional claimants have come forward, transfer of control of the objects of cultural patrimony to the Native Village of Shaktoolik may proceed.

The Monterey Museum of Art is responsible for notifying the Native Village of Shaktoolik that this notice has been published.

Dated: June 11, 2013.

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. 2013–18277 Filed 7–29–13; 8:45 am]

BILLING CODE 4312–50–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–13367; PPWOCRADN0–PCU00RP14.R50000]

Notice of Intent To Repatriate a Cultural Item: U.S. Department of the Interior, National Park Service, Little Bighorn Battlefield National Monument, Crow Agency, MT

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The U.S. Department of the Interior, National Park Service, Little Bighorn Battlefield National Monument, in consultation with the appropriate Indian tribes or Native Hawaiian organizations, has determined that the cultural item listed in this notice meets the definition of sacred object. Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to claim the cultural item should submit a written request to Little Bighorn Battlefield National Monument. If no additional claimants come forward, transfer of control of the cultural item to the lineal descendants, Indian tribes, or Native Hawaiian organizations stated in this notice may proceed.

DATES: Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to claim the cultural item should submit a

written request with information in support of the claim to Little Bighorn Battlefield National Monument at the address in this notice by August 29, 2013.

ADDRESSES: Denice Swanke, Superintendent, Little Bighorn Battlefield National Monument, P.O. Box 39, Crow Agency, MT 59022–0039, telephone (406) 638–3201, email *denice_swanke@nps.gov.*

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3005, of the intent to repatriate a cultural item under the control of the U.S. Department of the Interior, National Park Service, Little Bighorn Battlefield National Monument, Crow Agency, MT, that meets the definition of sacred object under 25 U.S.C. 3001.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the Superintendent, Little Bighorn Battlefield National Monument.

History and Description of the Cultural Item

In 1951, one cultural item was donated to Custer Battlefield National Monument, now known as Little Bighorn Battlefield National Monument, by the Rapid City Indian Museum of the Bureau of Indian Affairs in Rapid City, SD, which had collected the item from John A. Anderson. It is believed that Anderson moved to the Rosebud Reservation in 1889 where he worked for the C.P. Jordan Trading Post and as a photographer. Later, after Mr. Jordan retired, Anderson became the owner/manager of the trading post. Over a span of 45 years, Anderson acquired historic objects through trade or purchase that represented the life ways of the area people. The one sacred object is a red catlinite pipe that originally belonged to, and was used by, the Lakota Chief Hollow Horn Bear. The bowl is slightly ornamented with carvings toward the stem and the stem is carved at each end.

Duane Hollow Horn Bear, great-grandson of Chief Hollow Horn Bear, is requesting repatriation of the cultural item described above. The pipe is needed by Mr. Hollow Horn Bear to continue traditional ceremonies. The Rosebud Sioux Tribal Historic Preservation Office corroborated Little Bighorn Battlefield National Monument's determination that Duane Hollow Horn Bear is the most appropriate recipient under the Rosebud traditional kinship system and common law system of descendance.

Determinations Made by Little Bighorn Battlefield National Monument

Officials of Little Bighorn Battlefield National Monument have determined that:

- Pursuant to 25 U.S.C. 3001(3)(C), the one cultural item described above is a specific ceremonial object needed by traditional Native American religious leaders for the practice of traditional Native American religions by their present-day adherents.
- Pursuant to 25 U.S.C. 3005(a)(5)(A), Mr. Duane Hollow Horn Bear is the direct lineal descendant of the individual who owned the sacred object.

Additional Requestors and Disposition

Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to claim this cultural item should submit a written request with information in support of the claim to Denice Swanke, Superintendent, Little Bighorn Battlefield National Monument, P.O. Box 39, Crow Agency, MT 59022–0039, telephone (406) 638–3201, email *denice_swanke@nps.gov,* by August 29, 2013. After that date, if no additional claimants have come forward, transfer of control of the sacred object to Mr. Hollow Horn Bear may proceed.

Little Bighorn Battlefield National Monument is responsible for notifying the Arapaho Tribe of the Wind River Reservation, Wyoming; Assiniboine and Sioux Tribes of the Fort Peck Indian Reservation, Montana; Cheyenne and Arapaho Tribes, Oklahoma (previously listed as the Cheyenne-Arapaho Tribes of Oklahoma); Cheyenne River Sioux Tribe of the Cheyenne River Reservation, South Dakota; Crow Creek Sioux Tribe of the Crow Creek Reservation, South Dakota; Crow Tribe of Montana; Flandreau Santee Sioux Tribe of South Dakota; Lower Brule Sioux Tribe of the Lower Brule Reservation, South Dakota; Northern Cheyenne Tribe of the Northern Cheyenne Indian Reservation, Montana; Oglala Sioux Tribe (previously listed as the Oglala Sioux Tribe of the Pine Ridge Reservation, South Dakota); Rosebud Sioux Tribe of the Rosebud Indian Reservation, South Dakota; Santee Sioux Nation, Nebraska; Sisseton-Wahpeton Oyate of the Lake Traverse Reservation, South Dakota; Spirit Lake Tribe, North Dakota; Standing Rock Sioux Tribe of North & South Dakota; Three Affiliated Tribes of the Fort Berthold Reservation, North Dakota; and Yankton Sioux Tribe of South Dakota that this notice has been published.

Dated: June 20, 2013.

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. 2013–18318 Filed 7–29–13; 8:45 am]

BILLING CODE 4312–50–P

DEPARTMENT OF THE INTERIOR

Bureau of Ocean Energy Management

[Docket No. BOEM–2013–0020; MMAA104000]

Research Lease on the Outer Continental Shelf (OCS) Offshore Virginia, Request for Competitive Interest

AGENCY: Bureau of Ocean Energy Management (BOEM), Interior.

ACTION: Public Notice of an Unsolicited Request for an OCS Research Lease; Request for Competitive Interest (RFCI); and Request for Public Comment.

SUMMARY: The purpose of this public notice is to: (1) Describe the proposal submitted to BOEM by the Commonwealth of Virginia, Department of Mines, Minerals and Energy (DMME) to acquire an OCS lease for wind energy research activities; (2) solicit indications of interest in a renewable energy lease in the area identified by DMME for substantially similar wind energy activities; and (3) solicit public input regarding the proposal, its potential environmental consequences, and the use of the area in which the proposed project would be located.

On February 13, 2013, BOEM received an unsolicited request for a research lease from DMME. The objective of DMME is to obtain a lease under 30 CFR 585.238 for renewable energy research activities, including wind turbine installation and operational testing and the installation of metocean monitoring equipment. The objective of the DMME proposal is to design, develop, and demonstrate a grid-connected 12 megawatt (MW) offshore wind test facility on the OCS off the coast of Virginia.

This RFCI is published pursuant to subsection 8(p)(3) of the OCS Lands Act, as amended by section 388 of the Energy Policy Act of 2005 (43 U.S.C. 1337(p)(3)), and the implementing regulations at 30 CFR Part 585.

DATES: If you are submitting an indication of interest in acquiring a renewable energy lease for the area proposed by DMME, your submission must be sent by mail, postmarked no later than August 29, 2013 for your

submission to be considered. If you are providing comments or other submissions of information, you may send them by mail, postmarked by this same date, or you may submit them through the Federal eRulemaking Portal at *http://www.regulations.gov,* also by this same date.

Submission Procedures: If you are interested in obtaining a renewable energy lease for the area requested by DMME, you should submit detailed and specific information as described in the section entitled ''Required Indication of Interest Information.'' Please submit this material by mail to the following address: Bureau of Ocean Energy Management, Office of Renewable Energy Programs, 381 Elden Street, HM–1328, Herndon, Virginia 20170. Submissions must be postmarked by August 29, 2013 to be considered by BOEM for the purposes of determining competitive interest. In addition to a paper copy of your submission, include an electronic copy on a compact disc. BOEM will list the parties that submit indications of interest on the BOEM Web site after the 30-day comment period has closed.

If you are submitting comments or other information concerning the proposed research lease area, you may use either of the following two methods:

1. *Federal eRulemaking Portal: http://www.regulations.gov.* In the entry entitled, ''Enter Keyword or ID,'' enter BOEM–2013–020, and then click ''search.'' Follow the instructions to submit public comments and view supporting and related materials available for this notice.

2. *Alternatively, comments may be submitted by mail to the following address:* Bureau of Ocean Energy Management, Office of Renewable Energy Programs, 381 Elden Street, HM–1328, Herndon, Virginia 20170.

If you wish to protect the confidentiality of your indication of interest or comment, clearly mark the relevant sections and request that BOEM treat them as confidential. Please label privileged or confidential information ''Contains Confidential Information'' and consider submitting such information as a separate attachment. Treatment of confidential information is addressed in the section of this notice entitled, ''Privileged or Confidential Information.'' BOEM will post all comments on the Federal eRulemaking Portal at *http://www.regulations.gov* unless labeled as confidential. Information that is not labeled as privileged or confidential will be regarded by BOEM as suitable for public release.

FOR FURTHER INFORMATION CONTACT: Mr. Casey Reeves, Renewable Energy Program Specialist, BOEM, Office of Renewable Energy Programs, 381 Elden Street, HM–1328, Herndon, Virginia 20170; phone (703) 787–1320.

SUPPLEMENTARY INFORMATION:

Purpose of the RFCI

Responses to this public notice will allow BOEM to determine, pursuant to subsection 8(p)(3) of the OCS Lands Act, whether or not there is competitive interest in acquiring an OCS renewable energy lease in the area requested by DMME. If BOEM receives no competing indications of interest for a lease in response to this notice, BOEM may decide to move forward with the research leasing process using the procedures described in 30 CFR 585.238(d).

This notice also provides an opportunity for interested stakeholders to comment on the proposed project and its potential impacts. BOEM will consider all comments received when deciding whether and how to move forward with the research leasing process.

DMME's Proposed Research Activities

DMME's proposed research activities are described in their unsolicited request for a research lease, which is available at the following URL: *http://www.boem.gov/Renewable-Energy-Program/State-Activities/Virginia.aspx.*

Description of the Proposed Research Lease Area

The proposed research lease area consists of six OCS sub-blocks (an OCS sub-block is 1,200 meters by 1,200 meters in area). The following table describes the OCS sub-blocks that comprise the proposed research lease area.

Protraction name	Protraction No.	Block No.	Sub bock
Currituck Sound.	NJ18–11	6061	H,L,P
Currituck Sound.	NJ18–11	6111	D,H,L

Map of the Area

A map of the area proposed by DMME and included in this RFCI can be found at the following URL: *http://www.boem.gov/Renewable-Energy-Program/State-Activities/Virginia.aspx.* A large scale map of the RFCI area showing boundaries of the area with the numbered blocks is available from BOEM at the following address: Bureau of Ocean Energy Management, Office of Renewable Energy Programs, 381 Elden Street, HM–1328, Herndon, Virginia 20170. Phone: (703) 787–1320, Fax: (703) 787–1708.

The six sub-blocks requested by DMME are located immediately adjacent to the western edge of the Virginia Wind Energy Area (WEA). The Virginia WEA, which consists of more than 19 full OCS blocks, will be offered for sale in lease sale Atlantic Wind One (ATLW1), as described in the following section.

Relationship of the DMME Proposal to the Virginia WEA

On July 23, 2013, BOEM published a Final Sale Notice (FSN) in the **Federal Register**, announcing the sale of a commercial wind lease on the OCS offshore Virginia (78 FR 44150–44156).

The area identified for potential commercial wind leasing in the PSN was delineated through consultation with the BOEM's Virginia Intergovernmental Task Force and is intended to balance the protection of environmentally sensitive areas and minimize space-use conflicts while maximizing the area available for commercial offshore wind development. The development of the WEA began in December 2009 and the WEA has been refined since that time, resulting in a area that avoids sensitive ecological areas offshore the barrier islands, takes advantage of Class 6 wind speeds, minimizes maritime traffic risk, avoids military operating and warning areas, and avoids a launch fallout area east of the NASA Goddard Space Flight Center's Wallops Flight Facility.

The delineation of the VA WEA was also informed by input received from stakeholders who commented on the July 12, 2011, Notice of Availability (NOA) of the draft Environmental Assessment (EA) (76 FR 40926). Among the comments received on the draft EA was a letter dated August 22, 2011, from the American Waterways Operators (AWO), a national trade association for the tugboat, towboat and barge industry. The comment requested that BOEM refrain from leasing OCS Blocks 6011, 6061, 6111, 6161, 6110, and 6160, suggesting that not leasing these blocks would ''preserve an area currently used by [AWO] members during inclement weather.'' Based on this concern and on an analysis of ship traffic data for larger vessels that transit the area, as well as an assessment conducted by the U.S. Coast Guard, BOEM removed these OCS blocks from consideration for commercial wind leasing prior to the publication of the Virginia Call for Information and Nominations (77 FR 5545).

In light of the concerns expressed by AWO, at this time BOEM is not

considering moving forward with leasing for any wind proposals larger in scale than DMME's proposed project or outside of the area proposed by DMME. It does not appear that the proposed lease activity described in this notice would impair navigational safety. However, authorizing a wind project within OCS Blocks 6011, 6061, 6111, 6161, 6110, and 6160 larger in scale than DMME's proposed project could cause an unacceptable level of obstruction to vessel traffic. Accordingly, BOEM will not consider indication of interest larger in scale than the project proposed by DMME.

Relationship of the DMME Proposal to the Atlantic Grid Holdings LLC's ROW Grant Request

On March 31, 2011, Atlantic Grid Holdings LLC submitted an unsolicited application for a ROW grant, for a buried offshore electrical transmission cable and infrastructure. A segment of the proposed cable project that is intended to support commercial development in the Virginia WEA also occupies the project area proposed by DMME. Following publication of a notice to determine competitive interest in the project, BOEM published its determination of no competitive interest on May 15, 2012, (77 FR 28620). The application and associated notices can be found at: *http://www.boem.gov/Renewable-Energy-Program/State-Activities/Regional-Proposals.aspx.*

Required Indication of Interest Information

If you intend to submit an indication of interest for a renewable energy lease for the area identified in this notice you must provide the following:

(1) A statement that you wish to acquire an offshore wind lease within the proposed lease area. For BOEM to consider your indication of interest, it must include a proposal for the installation of no more than two WTGs, and may include a proposal for the installation of one or more metocean facilities. Any interest in an area located outside of the proposed research lease area should be submitted separately pursuant to 30 CFR 585.238;

(2) A general description of your objectives and the facilities that you would use to achieve those objectives;

(3) A general schedule of proposed activities;

(4) Available and pertinent data and information concerning renewable energy resources and environmental conditions in the area that you wish to lease, including energy and resource data and information used to evaluate the area of interest. Where applicable, spatial information should be submitted in a format compatible with ArcGIS 9.3 in a geographic coordinate system (NAD 83);

(5) Documentation demonstrating that you are legally qualified to hold a renewable energy lease as set forth in 30 CFR 585.106 and 107. Examples of the documentation appropriate for demonstrating your legal qualifications and related guidance can be found in Chapter 2 and Appendix B of the Guidelines for the Minerals Management Service Renewable Energy Framework available at: *http://www.boem.gov/Renewable-Energy-Program/Regulatory-Information/Index.aspx.* Legal qualification documents will be placed in an official file that may be made available for public review. If you wish that any part of your legal qualification documentation be kept confidential, clearly identify what should be kept confidential, and submit it under separate cover (see ''Protection of Privileged or Confidential Information Section,'' below); and

(6) Documentation demonstrating that you are technically and financially capable of constructing, operating, maintaining and decommissioning the facilities described in your submission. Guidance regarding the required documentation to demonstrate your technical and financial qualifications can be found at: *http://www.boem.gov/Renewable-Energy-Program/Regulatory-Information/Index.aspx.*

It is critical that you provide a complete submission of competitive interest, including the items identified in (1) through (6), so that BOEM may consider your submission in a timely manner. If BOEM reviews your submission and determines that it is incomplete, BOEM will inform you of this determination in writing and describe the information that BOEM wishes you to provide in order for BOEM to deem your submission complete. You will be given 15 business days from the date of the letter to provide the information that BOEM found to be missing from your original submission. If you do not meet this deadline, or if BOEM determines your second submission is also insufficient, BOEM may deem your submission invalid. In such a case, BOEM would not consider your submission.

Requested Information From Interested or Affected Parties

BOEM is also requesting from the public and other interested or affected parties specific and detailed comments regarding the following:

(1) Geological and geophysical conditions (including bottom and shallow hazards) in the area described in this notice;

(2) Known archaeological, historic, and/or cultural resource sites on the seabed in the area described in this notice;

(3) Multiple uses of the area described in this notice, including navigation (in particular, commercial vessel usage, recreation, and commercial and recreational fisheries);

(4) Potential impacts to existing communication cables;

(5) Department of Defense operational, training and testing activities (surface and subsurface) that occur in the area described in this notice that may be impacted by the proposed project;

(6) Impacts to potential future uses of the area;

(7) Advisable setback distance for other offshore structures, including other cables, renewable energy structures, oil and gas structures, etc.;

(8) The potential risk posed by anchors or other factors, and burial depths that would be required to mitigate such risks; and

(9) Other relevant environmental and socioeconomic information.

Protection of Privileged or Confidential Information

Freedom of Information Act

BOEM will protect privileged or confidential information that you submit as required by the Freedom of Information Act (FOIA). Exemption 4 of FOIA applies to trade secrets and commercial or financial information that you submit that is privileged or confidential. If you wish to protect the confidentiality of such information, clearly mark it and request that BOEM treat it as confidential. BOEM will not disclose such information, subject to the requirements of FOIA. Please label privileged or confidential information, ''Contains Confidential Information,'' and consider submitting such information as a separate attachment.

However, BOEM will not treat as confidential any aggregate summaries of such information or comments not containing such information. Additionally, BOEM will not treat as confidential: (1) The legal title of the nominating entity; or (2) the geographic location of facilities and the types of those facilities. Information that is not labeled as privileged or confidential will be regarded by BOEM as suitable for public release.

Section 304 of the National Historic Preservation Act (16 U.S.C. 470w–3(a))

BOEM is required, after consultation with the Secretary of the Interior, to withhold the location, character, or ownership of historic resources, if it determines that disclosure may, among other things, cause a significant invasion of privacy, risk harm to the historic resources or impede the use of a traditional religious site by practitioners. Tribal entities and other interested parties should designate information that they wish to be held as 'confidential.'

Dated: July 24, 2013.

Tommy P. Beaudreau,

Director, Bureau of Ocean Energy Management.

[FR Doc. 2013–18283 Filed 7–29–13; 8:45 am]

BILLING CODE 4310–MR–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–1205 (Final)]

Silica Bricks and Shapes From China: Scheduling of the Final Phase of an Antidumping Investigation

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice of the scheduling of the final phase of antidumping investigation No. 731–TA–1205 (Final) under section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) (the Act) to determine whether an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of less-than-fair-value imports from China of silica bricks and shapes, provided for primarily in statistical reporting numbers 6902.20.1020 and 6902.20.5020 of the Harmonized Tariff Schedule of the United States.[1]

For further information concerning the conduct of this phase of the investigation, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207).

DATES: *Effective Date:* June 20, 2013.

FOR FURTHER INFORMATION CONTACT: Cynthia Trainor (202–205–3354), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background.—The final phase of this investigation is being scheduled as a result of an affirmative preliminary determination by the Department of Commerce that imports of silica bricks and shapes from China are being sold in the United States at less than fair value within the meaning of section 733 of the Act (19 U.S.C. 1673b). The investigation was requested in a petition filed on November 15, 2012, by Utah Refractories Corp., Lehi, Utah.

Participation in the investigation and public service list.—Persons, including industrial users of the subject merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the final phase of this investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11 of the Commission's rules, no later than 21 days prior to the hearing date specified in this notice. A party that filed a notice of appearance during the preliminary phase of the investigation need not file an additional notice of appearance during this final phase. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigation.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list.—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in the final phase of this investigation available to authorized applicants under the APO issued in the investigation, provided that the application is made no later than 21 days prior to the hearing date specified in this notice. Authorized applicants must represent interested parties, as defined by 19 U.S.C. 1677(9), who are parties to the investigation. A party granted access to BPI in the preliminary phase of the investigation need not reapply for such access. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Staff report.—The prehearing staff report in the final phase of this investigation will be placed in the nonpublic record on October 22, 2013, and a public version will be issued thereafter, pursuant to section 207.22 of the Commission's rules.

Hearing.—The Commission will hold a hearing in connection with the final phase of this investigation beginning at 9:30 a.m. on November 6, 2013, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before October 28, 2013. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 9:30 a.m. on October 30, 2013, at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the public hearing are governed by sections 201.6(b)(2), 201.13(f), and 207.24 of the Commission's rules. Parties must submit any request to present a portion of their hearing testimony *in camera* no later than 7 business days prior to the date of the hearing.

Written submissions.—Each party who is an interested party shall submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of section 207.23 of the

[1] For purposes of this investigation, the Department of Commerce has defined the subject merchandise as ''refractory bricks and shapes, regardless of size, that contain at least 90 percent silica (SiO_2) where at least 50 percent of the silica content, by weight, is crystalline silica, regardless of other materials contained in the bricks and shapes. Refractory refers to nonmetallic materials having those chemical and physical properties that make them applicable for structures, or as components of systems, that are exposed to environments above 1000 degrees Fahrenheit (538 degrees Celsius). The products covered by the scope of this investigation are currently classified under Harmonized Tariff Schedule of the United States (''HTSUS'') numbers 6902.20.1020 and 6902.20.5020. Because the definition of ''refractory'' in the HTSUS differs from that in the scope of this investigation, products covered by the scope of this investigation may also enter under HTSUS number 6909.19.5095. Although the HTSUS numbers are provided for convenience and customs purposes, the written description of the scope of this proceeding is dispositive.

The scope of this investigation does not cover refractory bricks and shapes, regardless of size, that are made, in part, from non-crystalline silica (commonly referred to as fused silica) where the silica content is less than 50 percent, by weight crystalline silica.''

Commission's rules; the deadline for filing is October 29, 2013. Parties may also file written testimony in connection with their presentation at the hearing, as provided in section 207.24 of the Commission's rules, and posthearing briefs, which must conform with the provisions of section 207.25 of the Commission's rules. The deadline for filing posthearing briefs is November 14, 2013. In addition, any person who has not entered an appearance as a party to the investigation may submit a written statement of information pertinent to the subject of the investigation, including statements of support or opposition to the petition, on or before November 14, 2013. On November 27, 2013, the Commission will make available to parties all information on which they have not had an opportunity to comment. Parties may submit final comments on this information on or before December 2, 2013, but such final comments must not contain new factual information and must otherwise comply with section 207.30 of the Commission's rules. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. Please be aware that the Commission's rules with respect to electronic filing have been amended. The amendments took effect on November 7, 2011. See 76 FR 61937 (Oct. 6, 2011) and the newly revised Commission's Handbook on E-Filing, available on the Commission's Web site at *http://edis.usitc.gov*.

Additional written submissions to the Commission, including requests pursuant to section 201.12 of the Commission's rules, shall not be accepted unless good cause is shown for accepting such submissions, or unless the submission is pursuant to a specific request by a Commissioner or Commission staff.

In accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: This investigation is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.21 of the Commission's rules.

By order of the Commission.

Issued: July 25, 2013.

Lisa R. Barton,

Acting Secretary to the Commission.

[FR Doc. 2013–18230 Filed 7–29–13; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 332–541]

Trade Barriers That U.S. Small and Medium-Sized Enterprises Perceive as Affecting Exports to the European Union; Institution of Investigation and Scheduling of Hearing

AGENCY: United States International Trade Commission.

ACTION: Institution of investigation and scheduling of public hearing.

SUMMARY: Following receipt of a letter from the United States Trade Representative (USTR) dated June 13, 2013 (received on June 18, 2013), under section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g)), the U.S. International Trade Commission (Commission) instituted investigation No. 332–541, Trade Barriers that U.S. Small and Medium-sized Enterprises Perceive as Affecting Exports to the European Union.

DATES:

September 13, 2013: Deadline for filing requests to appear at the public hearing.

September 20, 2013: Deadline for filing pre-hearing briefs and statements.

October 8, 2013: Public hearing.

October 15, 2013: Deadline for filing post-hearing briefs.

October 15, 2013: Deadline for filing all other written statements.

January 31, 2014: Transmittal of Commission report to the USTR.

ADDRESSES: All Commission offices, including the Commission's hearing rooms, are located in the United States International Trade Commission Building, 500 E Street SW., Washington, DC. All written submissions should be addressed to the Secretary, United States International Trade Commission, 500 E Street SW., Washington, DC 20436. The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov/edis3-internal/app.*

FOR FURTHER INFORMATION CONTACT: Project Leader William Deese (202–205–2626 or *william.deese@usitc.gov*) or Deputy Project Leader Tamar Khachaturian (202–205–3299 or *tamar.khachaturian@usitc.gov*) for information specific to this investigation. For information on the legal aspects of these investigations, contact William Gearhart of the Commission's Office of the General Counsel (202–205–3091 or *william.gearhart@usitc.gov*). The media should contact Margaret O'Laughlin, Office of External Relations (202–205–1819 or *margaret.olaughlin@usitc.gov*). Hearing-impaired individuals may obtain information on this matter by contacting the Commission's TDD terminal at 202–205–1810. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000.

Background: As requested by the USTR, the Commission will conduct an investigation and prepare a report that catalogues trade-related barriers that U.S. small and medium-sized enterprises (SMEs) perceive as disproportionately affecting their exports to the EU, compared to those of larger U.S. exporters to the EU. In identifying these barriers to exporting, the Commission will use, to the extent appropriate, information and definitions contained in the three Commission reports on SMEs released in 2010, including definitions of ''SME,'' ''disproportionate,'' and ''barrier,'' any relevant literature, and information gathered from SMEs and others. As requested by the USTR, the Commission's report will cover barriers faced by U.S. SMEs exporting both goods and services, and will focus primarily on barriers identified by U.S. SMEs that have experience in exporting to the EU. Also as requested, the report, to the degree practicable, will identify barriers by economic sector or by special issue and will focus on sectors with high concentrations of SMEs.

The letter indicated that the United States, in the Transatlantic Trade and Investment Partnership (TTIP) negotiations, will seek to strengthen U.S.-European Union (EU) cooperation to enhance the participation of SMEs in transatlantic trade, and to address trade barriers that may disproportionately impact small businesses.

As requested by the USTR, the Commission (1) will base its report on available information, including information furnished by SMEs and interested parties following the Commission's notice of investigation; (2) will address, where information is available, specific trade barriers in individual EU member states; (3) will provide, to the extent applicable,

qualitative distinctions among the identified trade-related barriers; and (4) will include suggestions gathered from SMEs or the relevant literature to strengthen U.S.-EU cooperation to enhance the participation of SMEs in transatlantic trade. As requested by the USTR, the Commission expects to transmit its report to the USTR by January 31, 2014.

Public Hearing: A public hearing in connection with this investigation will be held at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC, beginning at 9:30 a.m. on October 8, 2013. Requests to appear at the public hearing should be filed with the Secretary, no later than 5:15 p.m., September 13, 2013, in accordance with the requirements in the ''Submissions'' section below. All pre-hearing briefs and statements should be filed no later than 5:15 p.m., September 20, 2013; and all post-hearing briefs and statements should be filed not later than 5:15 p.m., October 15, 2013. In the event that, as of the close of business on September 13, 2013, no witnesses are scheduled to appear at the hearing, the hearing will be canceled. Any person interested in attending the hearing as an observer or nonparticipant should contact the Office of the Secretary at 202–205–2000 after September 13, 2013, for information concerning whether the hearing will be held.

Written Submissions: In lieu of or in addition to participating in the hearing, interested parties are invited to file written submissions concerning this investigation. All written submissions should be addressed to the Secretary, and should be received no later than 5:15 p.m., October 15, 2013. All written submissions must conform to the provisions of section 201.8 of the *Commission's Rules of Practice and Procedure* (19 CFR 201.8). Section 201.8 and the Commission's Handbook on Filing Procedures require that interested parties file documents electronically on or before the filing deadline and submit eight (8) true paper copies by 12:00 p.m. eastern time on the next business day. In the event that confidential treatment of a document is requested, interested parties must file, at the same time as the eight paper copies, at least four (4) additional true paper copies in which the confidential information must be deleted (see the following paragraph for further information regarding confidential business information). Persons with questions regarding electronic filing should contact the Secretary (202–205–2000).

Any submissions that contain confidential business information (CBI) must also conform to the requirements of section 201.6 of the *Commission's Rules of Practice and Procedure* (19 CFR 201.6). Section 201.6 of the rules requires that the cover of the document and the individual pages be clearly marked as to whether they are the ''confidential'' or ''non-confidential'' version, and that the confidential business information is clearly identified by means of brackets. All written submissions, except for confidential business information, will be made available for inspection by interested parties.

In the request letter, the USTR stated that the Office of the USTR intends to make the Commission's reports available to the public in their entirety, and asked that the Commission not include any confidential business information or national security classified information in the report that the Commission sends to the USTR. Any confidential business information received by the Commission in this investigation and used in preparing this report will not be published in a manner that would reveal the operations of the firm supplying the information.

Issued: July 25, 2013.

By order of the Commission.

Lisa R. Barton,

Acting Secretary to the Commission.

[FR Doc. 2013–18272 Filed 7–29–13; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Consent Decree Under the Comprehensive Environmental Response, Compensation, and Liability Act and the Clean Water Act

On July 19, 2013, the Department of Justice lodged a proposed consent decree with the United States District Court for the Southern District of Alabama in the lawsuit entitled *United States of America, Alabama Department of Conservation and Natural Resources, and the Geological Survey of Alabama* v. *BASF Corporation,* Civil Action No. 13–00372–KD–M.

The plaintiffs alleged that BASF Corporation, as successor in interest to BASF Performance Products LLC (f/k/a Ciba Corporation, f/k/a Ciba Specialty Chemicals Corporation), is liable under CERCLA and the Clean Water Act for damages for injury to, loss of, or destruction of natural resources under the trusteeship of the National Oceanic and Atmospheric Administration (NOAA), the U.S. Department of the Interior (DOI), Alabama Department of Conservation and Natural Resources, and the Geological Survey of Alabama. The claims arise from releases and threatened releases of hazardous substances, including the pesticide DDT and its degradation products, from a chemical production facility at the Ciba-Geigy Corporation (McIntosh Plant) Superfund Site near McIntosh, Washington County, Alabama. The consent decree requires BASF Corporation to pay $3.2 million into the Mobile Bay Watershed/Ciba-Geigy Site (AL) Restoration Account; $500,000 to the Alabama Department of Conservation and Natural Resources, Game and Fish Fund; and $1.3 million to DOI and NOAA as reimbursement for damage assessment costs. Under the consent decree, the plaintiffs covenant not to sue or take civil judicial or administrative action against BASF Corporation under CERCLA or the Clean Water Act to recover natural resource damages related to the Site.

The publication of this notice opens a period for public comment on the consent decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and should refer to *United States of America, Alabama Department of Conservation and Natural Resources, and the Geological Survey of Alabama* v. *BASF Corporation,* D.J. Ref. No. 90–11–2–781/1. All comments must be submitted no later than thirty (30) days after the publication date of this notice. Comments may be submitted either by email or by mail:

To submit comments:	*Send them to:*
By e-mail	*pubcomment-ees.enrd@usdoj.gov.*
By mail	Assistant Attorney General, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

During the public comment period, the consent decree may be examined and downloaded at this Justice Department Web site: *http://www.usdoj.gov/enrd/Consent_Decrees.html.* We will provide a paper copy of the consent decree upon written request and payment of reproduction costs. Please mail your request and payment to: Consent Decree Library, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

Please enclose a check or money order for $8.25 (25 cents per page

reproduction cost) payable to the United States Treasury.

Henry Friedman,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2013–18206 Filed 7–29–13; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

Amended Notice of Lodging of Proposed Consent Decree Under the Comprehensive Environmental Response, Compensation, and Liability Act

This Notice amends and replaces the original notice published on July 17, 2013, 78 FR 137. Notice is hereby given that on July 9, 2013, the Department of Justice lodged a proposed Consent Decree with the United States District Court for the Southern District of Mississippi, Southern Division in the lawsuit entitled *United States of America* v. *Stewart Gammill III.* Civil Action No. 1:12cv134 HSO–RHW.

The United States had filed a complaint against Stewart Gammill (Mr. Gammill) and his spouse Lynn Crosby Gammill (Mrs. Gammill) on April 30, 2012. The complaint alleged claims of the United States against Mr. and Mrs. Gammill under Section 107(a) of the Comprehensive Environmental Response, Compensation and Liability Act, as amended (CERCLA), 42 U.S.C. 9607(a), for recovery of unreimbursed costs incurred by the United States with respect to the Picayune Wood Treating Superfund Site located in Picayune, Pearl River County, Mississippi (the Site). Mr. Gammill is liable as a past owner and operator of Crosby Wood Preserving Company a woodtreating facility on a portion of the Site from 1964 through at least 1970.

The United States has agreed to resolve the claims against Stewart Gammill III on an ability to pay basis. Under the proposed Consent Decree, Mr. Gammill will pay two million dollars ($2,000,000) in no more than two installments with the first installment payment of no less than one million dollars ($1,000,000) due within 60 days of the Decree entry. The subsequent installment payment of the remaining balance is due 120 days after the effective date and shall include an additional sum for interest accrued on the unpaid portion of the principal amount.

Under the proposed Consent Decree, the United States covenants not to sue under CERCLA Sections 106 and 107 subject to statutory reopeners and other reserved rights. The covenants are conditioned upon the satisfactory performance of all obligations under the Consent Decree and upon the veracity and completeness of all financial information provided by Mr. Gammill. The United States is still pursuing its claim against Mrs. Gammill in this action.

The publication of this notice opens a period for public comment on the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and should refer to *United States of America* v. *Stewart Gammill III.* Civil Action No. 1:12cv134 HSO–RHW; D.J. Ref. No. 90–11–2–09451/1. All comments must be submitted no later than thirty (30) days after the publication date of this notice. Comments may be submitted either by email or by mail:

	Send them to:
By e-mail	*pubcomment-ees.enrd@usdoj.gov.*
By mail	Assistant Attorney General, U.S. DOJ—B ENRD, P.O. Box 7611, Washington, DC 20044–7611.

During the public comment period, the Consent Decree may be examined and downloaded at this Justice Department Web site: *http://www.usdoj.gov/enrd/Consent_Decrees.html.* We will provide a paper copy of the Consent Decree upon written request and payment of reproduction costs. Please mail your request and payment to: Consent Decree Library, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

Please enclose a check or money order for $4.75 (25 cents per page reproduction costs for 19 pages) payable to the United States Treasury.

Henry Friedman,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2013–18191 Filed 7–29–13; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

Office of Justice Programs

[OMB Number 1121–0330]

Agency Information Collection Activities; Proposed Collection; Comments Requested; Extension of Currently Approved Collection; Bureau of Justice Assistance Application Form: Law Enforcement Congressional Badge of Bravery

ACTION: 60-Day notice.

The Department of Justice, Office of Justice Programs, Bureau of Justice Assistance, will be submitting the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. This proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for ''thirty days'' until September 30, 2013. This process is conducted in accordance with 5 CFR 1320.10.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Chris Casto at Bureau of Justice Assistance, Office of Justice Programs, U.S. Department of Justice, 810 7th Street NW., Washington, DC 20531 or by email at *Chris.Casto@usdoj.gov.*

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:* Extension of currently approved collection.

(2) *The title of the form/collection: Law Enforcement Congressional Badge of Bravery (CBOB)*

(3) *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* None. Bureau of Justice Assistance, 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:*

Primary: BJA's CBOB Office will use the CBOB application information to confirm the eligibility of applicants to be considered for the CBOB, and forward the application as appropriate to the Federal or the State and Local CBOB Board for their further consideration. In General—A Federal/State and Local agency head many nominate for a Federal/State and Local Law Enforcement Badge and individual—(1) who is a Federal/State and Local law enforcement officer working within the agency of the Federal/State and Local agency head making the nomination; and (2) who—(A)(i) sustained a physical injury while—(I) engaged in the lawful duties of the individual; and (II) performing an act characterized as bravery by the Federal/State and Local agency head making the nomination; and (ii) put the individual at personal risk when the injury described in clause (i) occurred; or (B) while not injured, performed and act characterized as bravery by the Federal/State and Local agency head making the nomination that placed the individual at risk of serious physical injury or death. The U.S. Department of Justice's Office of Justice Programs' Bureau of Justice Assistance has been authorized to administer the Law Enforcement Congressional Badge of Bravery (CBOB) Program.

Others: None.

(5) *An estimate of the total number of respondents and the amount of time needed for an average respondent to respond is as follows:* Over the first three years of this program, and average of 184 applications were submitted annually. Each application takes approximately 20 minutes to complete.

(6) An estimate of the total public burden (in hours) associated with the collection is 61 hours. Total Annual Reporting Burden: 184 × 20 minutes per application = 3680 minutes/by 60 minutes per hour = 61 hours.

If additional information is required, please contact Jerri Murray, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE., Room 3W–1407B, Washington, DC 20530.

Dated: July 25, 2013.

Jerri Murray,

Department Clearance Officer for PRA, United States Department of Justice.

[FR Doc. 2013–18271 Filed 7–29–13; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; High-Voltage Continuous Mining Machines Standards for Underground Coal Mines

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) is submitting the Mine Safety and Health Administration (MSHA) sponsored information collection request (ICR) titled, ''High-Voltage Continuous Mining Machines Standards for Underground Coal Mines,'' to the Office of Management and Budget (OMB) for review and approval for continued use, without change, in accordance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501 et seq.).

DATES: Submit comments on or before August 29, 2013.

ADDRESSES: A copy of this ICR with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained free of charge from the RegInfo.gov Web site at *http://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201302-1219-004* (this link will only become active on the day following publication of this notice) or by contacting Michel Smyth by telephone at 202–693–4129 (this is not a toll-free number) or sending an email to *DOL_PRA_PUBLIC@dol.gov.*

Submit comments about this request to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for DOL–MSHA, Office of Management and Budget, Room 10235, 725 17th Street NW., Washington, DC 20503, Fax: 202–395–6881 (this is not a toll-free number), email: *OIRA_submission@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Contact Michel Smyth by telephone at 202–693–4129 (this is not a toll-free number) or by email at *DOL_PRA_PUBLIC@dol.gov.*

Authority: 44 U.S.C. 3507(a)(1)(D).

SUPPLEMENTARY INFORMATION: This information collection supports safe use of high-voltage continuous mining machines (HVCMM) in underground coal mines by requiring records of testing, examination and maintenance on machines to reduce fire, electrical shock, ignition, and operational hazards. Coal mine supervisors and employees, State mine inspectors, and Federal mine inspectors use the records to document whether mine operators have conducted examinations and tests and have given insight into hazardous conditions encountered or that may be encountered. The records of inspections greatly assist those who use them in making decisions that will ultimately affect the safety of miners working with HVCMM. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on April 8, 2013 (78 FR 20949).

This information collection is subject to the PRA, because the information collection is included in a rule of general applicability, 30 CFR part 75. *See* 5 CFR 1320.3(c)(4)(i). A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by the OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid Control Number. *See* 5 CFR 1320.5(a) and 1320.6. The DOL obtains OMB approval for this information collection under Control Number 1219–0140.

OMB authorization for an ICR cannot be for more than three (3) years without renewal, and the current approval for this collection is scheduled to expire on August 31, 2013. The DOL seeks to extend PRA authorization for this information collection for three (3) more years, without any change to existing requirements. It should also be noted that existing information collection requirements submitted to the OMB receive a month-to-month extension while they undergo review.

Interested parties are encouraged to send comments to the OMB, Office of Information and Regulatory Affairs at the address shown in the ADDRESSES section within 30 days of publication of this notice in the **Federal Register**. In order to help ensure appropriate consideration, comments should

mention OMB Control Number 1219–0140. The OMB is particularly interested in comments that:

- 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.

Agency: DOL–MSHA.

Title of Collection: High-Voltage Continuous Mining Machines Standards for Underground Coal Mines.

OMB Control Number: 1219–0140.

Affected Public: Private Sector—businesses or other for-profits.

Total Estimated Number of Respondents: 5.

Total Estimated Number of Responses: 8,510.

Total Estimated Annual Burden Hours: 384.

Total Estimated Annual Other Costs Burden: $0.

Dated: July 24, 2013.

Michel Smyth,

Departmental Clearance Officer.

[FR Doc. 2013–18242 Filed 7–29–13; 8:45 am]

BILLING CODE 4510–43–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Brookwood-Sago Mine Safety Grants

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Solicitation for Grant Applications (SGA).

Announcement Type: New.

Funding Opportunity Number: SGA 13–3BS.

Catalog of Federal Domestic Assistance (CFDA) Number: 17.603

SUMMARY: The U.S. Department of Labor, Mine Safety and Health Administration (MSHA), is making $550,000 available in grant funds for educational and training programs to help identify, avoid, and prevent unsafe working conditions in and around mines. The focus of these grants for the Fiscal Year (FY) 2013 will be on training and training materials for mine emergency preparedness and mine emergency prevention for all underground mines. Applicants for the grants may be States and nonprofit (private or public) entities.

The number of grants awarded will be determined by MSHA's evaluation of grant applications. The amount of each individual grant will be at least $50,000.00. The maximum amount for a 12-month period of performance is $150,000. MSHA will not be awarding renewal (two-year) grants in FY 2013 under this solicitation for grant applications (SGA). This notice contains all of the information needed to apply for grant funding, including for those eligible grantees which were awarded a 2012 renewal grant.

DATES: The closing date for applications will be August 31, 2013, (no later than 11:59 p.m. EDST). MSHA will award grants on or before September 30, 2013.

ADDRESSES: Applications for grants submitted under this competition must be submitted electronically using the Government-wide site at *http://www.grants.gov.* If applying online poses a hardship to any applicant, the MSHA Directorate of Educational Policy and Development will provide assistance to help applicants submit online.

FOR FURTHER INFORMATION CONTACT: Any questions regarding this solicitation for grant applications (SGA 13–3BS) should be directed to Robert Glatter at *glatter.robert@dol.gov* or at 202–693–9570 (this is not a toll-free number) or the Grant Officer, Nancy Sloanhoffer, at *sloanhoffer.nancy@dol.gov* or at 202–693–9839 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: This solicitation provides background information and the requirements for projects funded under the solicitation. This solicitation consists of nine parts:

- Part I provides background information on the Brookwood-Sago grants.
- Part II describes the size and nature of the anticipated awards.
- Part III describes the qualifications of an eligible applicant.
- Part IV provides information on the application and submission process for FY 2013 annual grants.
- Part V explains the review process and rating criteria that will be used to evaluate the FY 2013 applications.
- Part VI provides information for FY 2012 renewal grantees to apply for FY 2013 funding.
- Part VII provides award administration information.
- Part VIII contains MSHA contact information.
- Part IX addresses Office of Management and Budget information collection requirements.

I. Funding Opportunity Description

A. Overview of the Brookwood-Sago Mine Safety Grant Program

Responding to several coal mine disasters, Congress enacted the Mine Improvement and New Emergency Response Act of 2006 (MINER Act). When Congress passed the MINER Act, it expected that requirements for new and advanced technology, e.g., fire-resistant lifelines and increased breathable air availability in escapeways, would increase safety in mines. The MINER Act also required that every underground coal mine have persons trained in emergency response. Congress emphasized its commitment to training for mine emergencies when it strengthened the requirements for the training of mine rescue teams. Recent events demonstrate that training is the key for proper and safe emergency response and that all miners working underground should be trained in emergency response.

Under Section 14 of the MINER Act, the Secretary of Labor (Secretary) is required to establish a competitive grant program called the ''Brookwood-Sago Mine Safety Grants'' (Brookwood-Sago grants). This program provides funding of education and training programs to better identify, avoid, and prevent unsafe working conditions in and around mines. This program will use grant funds to establish and implement education and training programs or to create training materials and programs. The MINER Act requires the Secretary to give priority to mine safety demonstrations and pilot projects with broad applicability. It also mandates that the Secretary emphasize programs and materials that target miners in smaller mines, including training mine operators and miners on new MSHA standards, high-risk activities, and other identified safety priorities.

B. Grant Structures

MSHA has funded the Brookwood-Sago grants annually for 12 months of performance through two types of grants. For the first type, ''annual grants,'' MSHA requires an applicant to compete each year for the available funds. For the second type, ''renewal

grants,'' MSHA awards a grant eligible for two separate years of funding with two separate 12-month performance periods. Under this SGA, MSHA will only fund the second-year of eligible FY 2012 renewal grantees and will not accept applications for new renewal grants for FY 2013.

C. Educational and Training Program Priorities

MSHA priorities for the FY 2013 funding of the annual Brookwood-Sago grants will focus on training or training materials for mine emergency preparedness and mine emergency prevention for all underground mines. MSHA expects Brookwood-Sago annual grantees to develop training materials or to develop and provide mine safety training or educational programs, recruit mine operators and miners for the training, and conduct and evaluate the training.

MSHA expects Brookwood-Sago grantees to conduct follow-up evaluations with the people who received training in their programs to measure how the training promotes the Secretary's goal of ensuring a safe and healthy workplace. The evaluation will focus on determining how effective their training was in either reducing hazards, improving skills for the selected training topics, or in improving the conditions in mines. Grantees must also cooperate fully with MSHA evaluators of their programs.

II. Award Information

A. Award Amount for FY 2013

MSHA is providing $550,000 to award new FY 2013 annual grants and to fund the second year of eligible FY 2012 renewal grants. The number of grants awarded will be determined by MSHA's evaluation of grant applications. The amount of each individual grant will be no less than $50,000.00 for a 12-month performance period; and the maximum award for a 12-month performance period is $150,000. Applicants requesting less than $50,000 or more than $150,000 for a 12-month performance period will not be considered for funding.

B. Extension of Period of Performance

For annual awards, MSHA may approve a request for a one time no-cost extension to grantees for an additional period of up to 12 months from the expiration date of the annual award based on the success of the project and other relevant factors. See 29 CFR 95.25(e)(2). At the end of the second year of funding for a FY 2012 renewal grant, MSHA may approve a request for a no-cost extension for an additional period of performance of up to 12 months based on the success of the project and other relevant factors.

III. Eligibility Information

A. Eligible Applicants

Applicants for the grants may be States and nonprofit (private or public) entities. Eligible entities may apply for funding independently or in partnership with other eligible organizations. For partnerships, a lead organization must be identified.

Applicants other than States and State-supported or local government-supported institutions of higher education will be required to submit evidence of nonprofit status, preferably from the Internal Revenue Service (IRS). A nonprofit entity as described in 26 U.S.C. 501(c)(4), which engages in lobbying activities, is not eligible for a grant award. See 2 U.S.C. 1611.

B. Cost-Sharing or Matching

Cost-sharing or matching of funds is not required for eligibility.

C. Other Eligibility Requirements

1. Data Universal Number System (DUNS)

Under 2 CFR 25.200(b)(3), every applicant for a Federal grant funding opportunity is required to include a DUNS with its application. The DUNS number is a nine-digit identification number that uniquely identifies business entities. An applicant's DUNS number is to be entered into Block 8 of Standard Form (SF) 424. There is no charge for obtaining a DUNS number. To obtain a DUNS number, call 1–866–705–5711 or access the following Web site: *http://fedgov.dnb.com/webform/displayHomePage.do.*

After receiving a DUNS number, all grant applicants must also register as a vendor with the System for Award Management (SAM) through the Web site at *https://www.sam.gov/.* Grant applicants must create a user account and then complete and submit the online registration. Once you have completed the registration, it will take 48 to 72 hours to process. The applicant will receive an email notice that the registration is active. If you had an active record in the Central Contractor Registration (CCR), you have an active record in SAM. You do not need to do anything in SAM at this time, unless a change in your business circumstances requires a change in SAM in order for you to be paid or to receive an award. SAM will send notifications to the registered user via email 60, 30, and 15 days prior to expiration of the record. In addition, under 2 CFR 25.200(b)(2), each grant applicant must maintain ''an active registration with current information at all times.'' The Grants.gov Web site, through which applicants must apply for MSHA grants, advises that it will reject all applications that have an expired SAM registration.

2. Legal Rules Pertaining to Inherently Religious Activities by Organizations That Receive Federal Financial Assistance

The Government generally is prohibited from providing direct Federal financial assistance for inherently religious activities. See 29 CFR Part 2, Subpart D. Grants under this solicitation may not be used for religious instruction, worship, prayer, proselytizing, or other inherently religious activities. Neutral, non-religious criteria that neither favor nor disfavor religion will be employed in the selection of grant recipients and must be employed by grantees in the selection of contractors and subcontractors.

3. Non-compliant Applications

Applications for new FY 2013 annual grants that are lacking any of the required elements or do not follow the format prescribed in IV.B will not be reviewed.

4. Late Applications

Applications received after the deadline will not be reviewed unless it is determined to be in the best interest of the Government.

IV. Application and Submission Information for New FY 2013 Annual Grants

A. Application Forms

This announcement includes all information and links needed to apply for this funding opportunity. (The information regarding the second-year funding of the FY 2012 renewal grants is located in Part VI.) The full application is available through the Grants.gov Web site *http://www.grants.gov/* under ''Apply for Grants''. The Catalog of Federal Domestic Assistance (CFDA) number needed to locate the appropriate application for this opportunity is 17.603. If an applicant has problems downloading the application package from Grants.gov, contact Grants.gov Contact Center at 1–800–518–4726 or by email at *support@grants.gov.*

The full application package is also available on-line at *www.msha.gov:* Select ''Education & Training Resources,'' click on ''Courses,'' select ''Brookwood-Sago Mine Safety Grants,''

then select ''SGA 13–3BS.'' This Web site also includes all forms and all regulations that are referenced in this SGA. Applicants, however, must apply for this funding opportunity through the Grants.gov Web site.

B. Content and Form of the FY 2013 Application

Each grant application must address mine emergency preparedness or mine emergency prevention for underground mines. The application must consist of three separate and distinct sections. The three required sections are:

- Section 1—Project Forms and Financial Plan (No page limit).
- Section 2—Executive Summary (Not to exceed two pages).
- Section 3—Technical Proposal (Not to exceed 12 pages). Illustrative material can be submitted as an attachment.

The following are mandatory requirements for each section.

1. Project Forms and Financial Plan

This section contains the forms and budget section of the application. The Project Financial Plan will not count against the application page limits. A person with authority to bind the applicant must sign the grant application and forms. Applications submitted electronically through Grants.gov do not need to be signed manually; electronic signatures will be accepted.

(a) Completed SF–424, ''Application for Federal Assistance.'' This form is part of the application package on Grants.gov and is also available at *www.msha.gov.* The SF–424 must identify the applicant clearly and be signed by an individual with authority to enter into a grant agreement. Upon confirmation of an award, the individual signing the SF–424 on behalf of the applicant shall be considered the representative of the applicant.

(b) Completed SF–424A, ''Budget Information for Non-Construction Programs.'' The project budget should demonstrate clearly that the total amount and distribution of funds is sufficient to cover the cost of all major project activities identified by the applicant in its proposal, and must comply with the Federal cost principles and the administrative requirements set forth in this SGA. (Copies of all regulations that are referenced in this SGA are available on-line at *http://www.msha.gov.* Select ''Education & Training Resources,'' click on ''Courses,'' then select ''Brookwood-Sago Mine Safety Grants.'')

(c) Budget Narrative. The applicant must provide a concise narrative explaining the request for funds. The budget narrative should separately attribute the Federal funds to each of the activities specified in the technical proposal and it should discuss precisely how any administrative costs support the project goals. Administrative costs may not exceed 15% of the total grant budget. Indirect cost charges must be supported with a copy of an approved Indirect Cost Rate Agreement.

If applicable, the applicant must provide a statement about its program income.

The amount of Federal funding requested for the entire period of performance must be shown on the SF–424 and SF–424A forms.

(d) Completed SF–424B, ''Assurances for Non-Construction Programs.'' Each applicant for these grants must certify compliance with a list of assurances. This form is part of the application package on *http://www.grants.gov* and also is available at *http://www.msha.gov.*

(e) Supplemental Certification Regarding Lobbying Activities Form. If any funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the making of a grant or cooperative agreement, the applicant shall complete and submit SF–LLL, ''Disclosure Form to Report Lobbying,'' in accordance with its instructions. This form is part of the application package on *http://www.grants.gov* and is also available at *http://www.msha.gov.* Select ''Education & Training Resources,'' click on ''Courses,'' then select ''Brookwood-Sago Mine Safety Grants.''

(f) Non-profit status. Applicants must provide evidence of non-profit status, preferably from the IRS, if applicable.

(g) Accounting System Certification. An organization that receives less than $1 million annually in Federal grants must attach a certification stating that the organization (directly or through a designated qualified entity) has a functioning accounting system that meets the criteria below. The certification should attest that the organization's accounting system provides for the following:

(1) Accurate, current and complete disclosure of the financial results of each Federally sponsored project.

(2) Records that identify adequately the source and application of funds for Federally sponsored activities.

(3) Effective control over and accountability for all funds, property, and other assets.

(4) Comparison of outlays with budget amounts.

(5) Written procedures to minimize the time elapsing between transfers of funds.

(6) Written procedures for determining the reasonableness, allocability, and allowability of cost.

(7) Accounting records, including cost accounting records that are supported by source documentation.

(h) Attachments. The application may include attachments such as resumes of key personnel or position descriptions, exhibits, information on prior government grants, and signed letters of commitment to the project.

2. Executive Summary

The executive summary is a short one-to-two page abstract that succinctly summarizes the proposed project. MSHA will publish, as submitted, all grantees' executive summaries on the DOL Web site. The executive summary must include the following information:

(a) Applicant. Provide the organization's full legal name and address.

(b) Funding requested. List how much Federal funding is being requested.

(c) Grant Topic. List the grant topic and the location and number of mine operators and miners that the organization has selected to train or describe the training materials or equipment to be created with these funds.

(d) Program Structure. Identify the type of grant as annual.

(e) Summary of the Proposed Project. Write a brief summary of the proposed project. This summary must identify the key points of the proposal, including an introduction describing the project activities and the expected results.

3. Technical Proposal

The technical proposal must demonstrate the applicant's capabilities to plan and implement a project or create educational materials or equipment to meet the objectives of this solicitation. MSHA's focus for these grants is on training mine operators and miners and developing training materials for mine emergency preparedness or mine emergency prevention for underground mines. An Agency strategic goal is to ensure workplaces are safe and healthy for workers through strengthening and modernizing training and education and improving mine emergency response preparedness through training. MSHA has two program outcome goals, described below, that will be considered indicators of the success of the program as a whole. The following table explains

the types of data grantees must provide and their relationship with the Agency's program goals and performance measures for the Brookwood-Sago grants.

MSHA's Program goals	MSHA's Performance measures	DATA Grantees provide each reporting period
1. Agency creates more effective training to ensure workplaces are safe.	Increase overall number of trainers trained. Increase the number of mine operators and miners trained. Provide quality training with clearly stated goals and objectives for improving safety.	Number of training events. Number of trainers trained. Number of mine operators and miners trained. Number of course days of training provided to industry. Pre- and post-assessment results of trainees. Course evaluations of trainer and training materials. A description of the extent to which others replicate (i.e., adopt or adapt) or institutionalize and continue the training or educational programs after grant funding ends.
2. Agency creates training materials to provide more effective training to ensure workplaces are safe.	Increase the number of quality educational materials developed. Provide quality training materials with clearly stated goals and objectives for improving safety. Develop training materials that are reproducible or adaptable.	Pre- and post-assessment results of the training materials. Evaluation of training materials to include the target audience, statement of goals and objectives, learning level, instructions for using additional materials, secondary purposes, adult learning principles, and usability in the mine training environment. A description of the extent to which others will replicate (i.e., adopt or adapt) the funded training materials.

The technical proposal narrative is not to exceed 12 single-sided, double-spaced pages, using 12-point font, and must contain the following sections: Program Design, Overall Qualifications of the Applicant, and Output and Evaluation. Any pages over the 12-page limit will not be reviewed. Attachments to the technical proposal are not counted toward the 12-page limit. Major sections and sub-sections of the proposal should be divided and clearly identified. And as required in Section VII subpart I ''Transparency,'' a grantee's final technical proposal will be posted as is on MSHA's Web site unless MSHA receives a version redacting any proprietary, confidential business, or personally identifiable information by October 21, 2013.

MSHA will review and rate the technical proposal in accordance with the selection criteria specified in Part V.

(a) Program Design

(1) Statement of the Problem/Need for Funds. Applicants must identify a clear and specific need for proposed activities. They must identify whether they are providing a training program or creating training materials or both. Applicants also must identify the number of individuals expected to benefit from their training and education program; this should include identifying the type of underground mines, the geographic locations, and the number of mine operators and miners. Applicants must also identify other Federal funds they receive for similar activities.

(2) Quality of the Project Design. MSHA requires that each applicant include a 12-month workplan that correlates with the grant project period that will begin September 30, 2013, and end September 29, 2014.

(i) Plan Overview. Describe the plan for grant activities and the anticipated results. The plan should describe such things as the development of training materials, the training content, recruiting of trainees, where or how training will take place, and the anticipated benefits to mine operators and miners receiving the training.

(ii) Activities. Break the plan down into activities or tasks. For each activity, explain what will be done, who will do it, when it will be done, and the anticipated results of the activity. For training, discuss the subjects to be taught, the length of the training sessions, type of training (e.g., Mine Emergency Response Development exercise), and training locations (e.g., classroom, worksites). Describe how the applicant will recruit mine operators and miners for the training. (Note: Any commercially developed training materials the applicant proposes to use in its training must undergo an MSHA review before being used.)

(iii) Quarterly Projections. For training and other quantifiable activities, estimate the quantities involved using the table located in Part IV.B.3 for data required to meet the grant goals. For example, estimate how many classes will be conducted and how many mine operators and miners will be trained each quarter of the grant (grant quarters match calendar quarters, i.e., January to March, April to June; but the first quarter is the date of award to December 31, 2013). Also, provide the training number totals for the full year. Quarterly projections are used to measure the actual performance against the plan. Applicants planning to conduct a train-the-trainer program should estimate the number of individuals to be trained during the grant period by those who received the train-the-trainer training. These second-tier training numbers should be included only if the organization is planning to follow up with the trainers to obtain this data during the grant period.

(iv) Materials. Describe each educational material, including any piece of equipment (e.g., mine simulator) to be produced under the grant. Provide a timetable for developing and producing the material. The timetable must include provisions for an MSHA review of draft and camera-ready products or evaluation of equipment. MSHA must review and approve training materials or equipment for technical accuracy and suitability of content before use in the grant program. Whether or not an applicant's project is to develop training materials only, the applicant should provide an overall plan that includes time for MSHA to review any materials produced.

(b) Qualifications of the Applicant

(1) Applicant's Background. Describe the applicant, including its mission, and a description of its membership, if any. Provide an organizational chart (the chart may be included as a separate page which will not count toward the page limit). Identify the following:

(i) Project Director. The Project Director is the person who will be responsible for the day-to-day operation and administration of the program. Provide the name, title, street address and mailing address (if it is different from the organization's street address),

telephone and fax numbers, and email address of the Project Director.

(ii) Certifying Representative. The Certifying Representative is the official in the organization who is authorized to enter into grant agreements. Provide the name, title, street address and mailing address (if it is different from the organization's street address), telephone and fax numbers, and email address of the Certifying Representative.

(2) Administrative and Program Capability. Briefly describe the organization's functions and activities, i.e., the applicant's management and internal controls. Relate this description of functions to the organizational chart. If the applicant has received any other government (Federal, State or local) grant funding, the application must have, as an attachment (which will not count towards the page limit), information regarding these previous grants. This information must include each organization for which the work was done and the dollar value of each grant. If the applicant does not have previous grant experience, it may partner with an organization that has grant experience to manage the grant. If the organization uses this approach, the management organization must be identified and its grant program experience discussed. Lack of past experience with Federal grants is not a determining factor, but an applicant should show a successful experience relevant to the opportunity offered in the application. Such experience could include staff members' experiences with other organizations.

(3) Program Experience. Describe the organization's experience conducting the proposed mine training program or other relevant experience. Include program specifics such as program title, numbers trained, and duration of training. If creating training materials, include the title of other materials developed. Nonprofit organizations, including community-based and faith-based organizations that do not have prior experience in mine safety may partner with an established mine safety organization to acquire safety expertise.

(4) Staff Experience. Describe the qualifications of the professional staff you will assign to the program. Attach resumes of staff already employed (resumes will not count towards the page limit). If some positions are vacant, include position descriptions and minimum hiring qualifications instead of resumes. Staff should have, at a minimum, mine safety experience, training experience, or experience working with the mining community.

(c) Outputs and Evaluations. There are two types of evaluations that must be conducted. First, describe the methods, approaches, or plans to evaluate the training sessions or training materials to meet the data requirements listed in the table above. Second, describe plans to assess the long-term effectiveness of the training materials or training conducted. The type of training given will determine whether the evaluation should include a process-related outcome or a result-related outcome or both. This will involve following up with an evaluation, or on-site review, if feasible, of miners trained. The evaluation should focus on what changes the trained miners made to abate hazards and improve workplace conditions, or to incorporate the training in the workplace, or both.

For training materials, include an evaluation from individuals trained on the clarity of the presentation, organization, and the quality of the information provided on the subject matter and whether they would continue to use the training materials. Include timetables for follow-up and for submitting a summary of the assessment results to MSHA.

C. Submission Date, Times, and Addresses

The closing date for receipt of applications under this announcement is August 31, 2013 (no later than 11:59 p.m. EDST). Grant applications must be submitted electronically through the Grants.gov Web site. The Grants.gov site provides all the information about submitting an application electronically through the site as well as the hours of operation. Interested parties can locate the downloadable application package by the CFDA number 17.603.

Applications received by Grants.gov are electronically date and time stamped. An application must be fully uploaded and submitted (and must be date and time stamped by the Grants.gov system) before the application deadline date. Once an interested party has submitted an application, Grants.gov will notify the interested party with an automatic notification of receipt that contains a Grants.gov tracking number. MSHA then will retrieve the application from Grants.gov and send a second notification to the interested party by email.

D. Intergovernmental Review

The Brookwood-Sago grants are not subject to Executive Order 12372, ''Intergovernmental Review of Federal Programs.'' MSHA, however, reminds applicants that if they are not operating MSHA-approved State training grants, they should contact the State grantees and coordinate any training or educational program. Information about each state grant and the entity operating the state grant is provided online at: *http://www.msha.gov/TRAINING/STATES/STATES.asp.*

E. Funding Restrictions

MSHA will determine whether costs are allowable under the applicable Federal cost principles and other conditions contained in the grant award.

1. Allowable Costs

Grant funds may be spent on conducting training, conducting outreach and recruiting activities to increase the number of mine operators and miners participating in the program, developing educational materials, and on necessary expenses to support these activities. Allowable costs are determined by the applicable Federal cost principles identified in Part VII.B.

Program income earned during the award period shall be retained by the recipient, added to funds committed to the award, and used for the purposes and under the conditions applicable to the use of the grant funds.

2. Unallowable Costs

Grant funds may not be used for the following activities under this grant program:

(a) Any activity inconsistent with the goals and objectives of this SGA;

(b) Training on topics that are not targeted under this SGA;

(c) Purchasing any equipment unless pre-approved and in writing by the MSHA grant officer;

(d) Administrative costs that exceed 15% of the total grant budget; and

(e) Any pre-award costs.

Unallowable costs also include any cost determined by MSHA as not allowed according to the applicable cost principles or other conditions in the grant.

V. Application Review Information for New FY 2013 Grants

A. Evaluation Criteria.

MSHA will screen all applications to determine whether all required proposal elements are present and clearly identifiable. Those that do not comply with mandatory requirements will not be evaluated. The technical panels will review grant applications using the following criteria:

1. Program Design—40 Points Total

(a) Statement of the Problem/Need for Funds. (3 points)

The proposed training and education program or training materials must address either mine emergency

preparedness or mine emergency prevention.

(b) Quality of the Project Design. (25 points)

(1) The proposal to train mine operators and miners clearly estimates the number to be trained and clearly identifies the types of mine operators and miners to be trained.

(2) If the proposal contains a train-the-trainer program, the following information must be provided:

- What ongoing support the grantee will provide to new trainers;
- The number of individuals to be trained as trainers;
- The estimated number of courses to be conducted by the new trainers;
- The estimated number of students to be trained by these new trainers and a description of how the grantee will obtain data from the new trainers documenting their classes and student numbers if conducted during the grant period.

(3) The work plan activities and training are described.

- The planned activities and training are tailored to the needs and levels of the mine operators and miners to be trained. Any special constituency to be served through the grant program is described, e.g., smaller mines, limited English proficiency miners, etc. Organizations proposing to develop materials in languages other than English also will be required to provide an English version of the materials.
- If the proposal includes developing training materials, the work plan must include time during development for MSHA to review the educational materials for technical accuracy and suitability of content. If commercially developed training products will be used for a training program, applicants should also plan for MSHA to review the materials before using the products in their grant programs.
- The utility of the educational materials is described.
- The outreach or process to find mine operators, miners, or trainees to receive the training is described.

(c) Replication. (4 points)

The potential for a project to serve a variety of mine operators, miners, or mine sites, or the extent others may replicate the project.

(d) Innovativeness. (3 points)

The originality and uniqueness of the approach used.

(e) MSHA's Performance Goals. (5 points)

The extent the proposed project will contribute to MSHA's performance goals.

2. Budget—20 Points Total

(a) The budget presentation is clear and detailed. (15 points)

(1) The budgeted costs are reasonable.

(2) No more than 15% of the total budget is for administrative costs.

(3) The budget complies with Federal cost principles (which can be found in the applicable Office of Management and Budget (OMB) Circulars and with MSHA budget requirements contained in the grant application instructions).

(b) The application demonstrates that the applicant has strong financial management and internal control systems. (5 points)

3. Overall Qualifications of the Applicant—25 Points Total.

(a) Grant Experience. (6 points)

The applicant has administered, or will work with an organization that has administered, a number of different Federal or State grants. The applicant may demonstrate this experience by having project staff that has experience administering Federal or State grants.

(b) Mine Safety Training Experience. (13 points)

The applicant applying for the grant demonstrates experience with mine safety teaching or providing mine safety educational programs. Applicants that do not have prior experience in providing mine safety training to mine operators or miners may partner with an established mine safety organization to acquire mine safety expertise.

(1) Project staff has experience in mine safety, the specific topic chosen, or in training mine operators and miners.

(2) Project staff has experience in recruiting, training, and working with the population the organization proposes to serve.

(3) Applicant has experience in designing and developing mine safety training materials for a mining program.

(4) Applicant has experience in managing educational programs.

(c) Management. (6 points)

Applicant demonstrates internal control and management oversight of the project.

4. Outputs and Evaluations—15 Points Total.

The proposal should include provisions for evaluating the organization's progress in accomplishing the grant work activities and accomplishments, evaluating training sessions, and evaluating the program's effectiveness and impact to determine if the safety training and services provided resulted in workplace change or improved workplace conditions. The proposal should include a plan to follow up with trainees to determine the impact the program has had in abating hazards and reducing miner injuries and illnesses.

B. Review and Selection Process for New FY 2013 Grants

A technical panel will rate each complete application against the criteria described in this SGA. One or more applicants may be selected as grantees on the basis of the initial application submission or a minimally acceptable number of points may be established. MSHA may request final revisions to the applications, and then evaluate the revised applications. MSHA may consider any information that comes to its attention in evaluating the applications.

The panel recommendations are advisory in nature. The Deputy Assistant Secretary for Policy for Mine Safety and Health will make a final selection determination based on what is most advantageous to the government, considering factors such as panel findings, geographic presence of the applicants or the areas to be served, Agency priorities, and the best value to the government, cost, and other factors. The Deputy Assistant Secretary's determination for award under this SGA is final.

C. Anticipated Announcement and Award Dates

Announcement of these awards is expected to occur by September 29, 2013. The grant agreement will be signed no later than September 30, 2013.

VI. FY 2012 Renewal Grantees' Process For FY 2013 Funding

A. General

In this section, MSHA is providing the eligible FY 2012 renewal grantees the procedures and required documentation that they must submit to receive their FY 2013 funding. MSHA will notify all renewal grantees of their eligibility. The grantees are reminded that they are not required to apply for the second year of funding. If they do not wish to apply for the second-year funding, the grantees may apply for a new grant under the FY 2013 annual grant program instead.

B. The Process and Required Documentation

1. Documentation

Using its current grant number, each grantee must provide:

(a) Revised SF–424 and SF–424A forms; and

(b) If necessary, a revised workplan.

2. Submission Date, Times, and Addresses

The closing date for receipt of applications under this announcement

is August 31, 2013 (no later than 11:59 p.m. EDST). The renewal grantee must submit its application for FY 2013 funding electronically through the Grants.gov Web site.

C. Award Information

Announcement of these awards is expected to occur by September 29, 2013. The amendment to the FY 2012 grant agreement will be signed no later than September 30, 2013.

VII. Award Administration Information

A. Award Process

Before September 29, 2013, organizations selected as potential grant recipients will be notified by a representative of the Deputy Assistant Secretary, usually the Grant Officer or her staff. An applicant whose proposal is not selected will be notified in writing. The fact that an organization has been selected as a potential grant recipient does not necessarily constitute approval of the grant application as submitted (revisions may be required).

Before the actual grant award and the announcement of the award, MSHA may enter into negotiations with the potential grant recipient concerning such matters as program components, staffing and funding levels, and administrative systems. If the negotiations do not result in an acceptable submittal, the Deputy Assistant Secretary reserves the right to terminate the negotiations and decline to fund the proposal.

B. Administrative and National Policy Requirements

All grantees will be subject to applicable Federal laws and regulations (including provisions of appropriations law) and applicable OMB Circulars. The grants awarded under this competitive grant program will be subject to the following administrative standards and provisions, if applicable:

- 2 CFR Part 25, Universal Identifier and Central Contractor Registration.
- 2 CFR Part 170, Reporting Subawards and Executive Compensation Information.
- 2 CFR Part 175, Award Term for Trafficking in Persons.
- 2 CFR Part 220, Cost Principles for Educational Institutions. (OMB Circular A–21).
- 2 CFR Part 225, Cost Principles for State, Local, and Indian Tribal Governments (OMB Circular A–87).
- 2 CFR Part 230, Cost Principles for Non-profit Organizations (OMB Circular A–122).
- 29 CFR Part 2, Subpart D, Equal Treatment in Department of Labor programs for Religious Organizations, Protection of Religious Liberty of Department of Labor Social Service Providers and Beneficiaries.
- 29 CFR Part 31, Nondiscrimination in federally assisted programs of the Department of Labor—Effectuation of Title VI of the Civil Rights Act of 1964.
- 29 CFR Part 32, Nondiscrimination on the basis of handicap in programs or activities receiving federal financial assistance.
- 29 CFR Part 33, Enforcement of non-discrimination on the basis of handicap in programs or activities conducted by the Department of Labor.
- 29 CFR Part 35, Nondiscrimination on the basis of age in programs or activities receiving federal financial assistance from the Department of Labor.
- 29 CFR Part 36, Nondiscrimination on the basis of sex in education programs or activities receiving federal financial assistance.
- 29 CFR Part 93, New Restrictions on lobbying.
- 29 CFR Part 94, Governmentwide requirements for drug-free workplace (financial assistance).
- 29 CFR Part 95, Grants and agreements with institutions of higher education, hospitals, and other non-profit organizations, and with commercial organizations, foreign governments, organizations under the jurisdiction of foreign governments, and international organizations.
- 29 CFR Part 96, Audit requirements for grants, contracts, and other agreements.
- 29 CFR Part 97, Uniform administrative requirements for grants and cooperative agreements to state and local governments.
- 29 CFR Part 98, Governmentwide debarment and suspension (nonprocurement).
- 29 CFR Part 99, Audits of states, local governments, and non-profit organizations.
- Federal Acquisition Regulation (FAR) Subpart 31.2, Contracts cost principles and procedures (Codified at 48 CFR Part 31.2).

Administrative costs for these grants may not exceed 15%. Unless specifically approved, MSHA's acceptance of a proposal or MSHA's award of Federal funds to sponsor any program does not constitute a waiver of any grant requirement or procedure. For example, if an application identifies a specific sub-contractor to provide certain services, the MSHA award does not provide a basis to sole-source the procurement (to avoid competition).

C. Special Program Requirements

1. MSHA Review of Educational Materials

MSHA will review all grantee-produced educational and training materials for technical accuracy and suitability of content during development and before final publication. MSHA also will review training curricula and purchased training materials for technical accuracy and suitability of content before the materials are used. Grantees developing training materials must follow all copyright laws and provide written certification that their materials are free from copyright infringement.

When grantees produce training materials, they must provide copies of completed materials to MSHA before the end of the grant period. Completed materials should be submitted to MSHA in hard copy and in digital format (CD–ROM/DVD) for publication on the MSHA Web site. Two copies of the materials must be provided to MSHA. Acceptable formats for training materials include Microsoft XP Word, PDF, PowerPoint, and any other format agreed upon by MSHA.

2. License

As listed in 29 CFR 95.36, the Department of Labor reserves a royalty-free, nonexclusive, and irrevocable right to reproduce, publish, or otherwise use for Federal purposes any work produced under a grant, and to authorize others to do so. Grantees must agree to provide the Department of Labor a paid-up, nonexclusive, and irrevocable license to reproduce, publish, or otherwise use for Federal purposes all products developed, or for which ownership was purchased, under an award. Such products include, but are not limited to, curricula, training models, technical assistance products, and any related materials. Such uses include, but are not limited to, the right to modify and distribute such products worldwide by any means, electronic, or otherwise. Title 29 CFR 97.34 provides DOL and MSHA with similar rights for any work produced or purchased under the grant.

3. Acknowledgement on Printed Materials

All approved grant-funded materials developed by a grantee shall contain the following disclaimer: ''This material was produced under grant number XXXXX from the Mine Safety and Health Administration, U.S. Department of Labor. It does not necessarily reflect the views or policies of the U.S. Department of Labor, nor does mention of trade names, commercial products, or

organizations imply endorsement by the U.S. Government.''

When issuing statements, press releases, request for proposals, bid solicitations, and other documents describing projects or programs funded in whole or in part with Federal money, all grantees receiving Federal funds must clearly state:

(a) The percentage of the total costs of the program or project that will be financed with Federal money;

(b) The dollar amount of Federal financial assistance for the project or program; and

(c) The percentage and dollar amount of the total costs of the project or program that will be financed by non-governmental sources.

4. Use of U.S. Department of Labor (USDOL) and MSHA Logos

The USDOL or the MSHA logo may be applied to the grant-funded material including posters, videos, pamphlets, research documents, national survey results, impact evaluations, best practice reports, and other publications. The grantees must consult with MSHA on whether the logo may be used on any such items prior to final draft or final preparation for distribution. In no event shall the USDOL or the MSHA logo be placed on any item until MSHA has given the grantee written permission to use either logo on the item.

5. Reporting

Grantees are required by Departmental regulations to submit financial and project reports, as described below, each quarter (grant quarters match calendar quarters, i.e., January to March, April to June).

(a) Financial Reports

All financial reports are due no later than 30 days after the end of the quarter and shall be submitted to MSHA electronically. Grantees will be contacted with instructions on how to submit reports.

(b) Technical Project Reports

After signing the agreement, the grantee shall submit technical project reports to MSHA no later than 30 days after the end of each quarter. Technical project reports provide both quantitative and qualitative information and a narrative assessment of performance for the preceding three-month period. See 29 CFR 95.51 and 29 CFR 97.40. This should include the current grant progress against the overall grant goals as provided in Part IV.B.3.

Between reporting dates, the grantee shall immediately inform MSHA of significant developments or problems affecting the organization's ability to accomplish the work. See 29 CFR 95.51(f) and 29 CFR 97.40(d).

(c) Final Reports

At the end of each 12-month performance period, each grantee must provide a final financial report, a summary of its technical project reports, and an evaluation report. These final reports are due no later than 90 days after the end of the 12-month performance period.

H. Freedom of Information

Any information submitted in response to this SGA will be subject to the provisions of the Freedom of Information Act, as appropriate.

I. Transparency in the Grant Process

DOL is committed to conducting a transparent grant award process and publicizing information about program outcomes. Posting awardees' grant applications on public Web sites is a means of promoting and sharing innovative ideas. Under this SGA, DOL will publish the awardees' Executive Summaries, selected information from their SF–424s, and a version of awardees' Technical Proposals on the Department's Web site or similar location. None of the Attachments to the Technical Proposal provided with the applications will be published. The Technical Proposals and Executive Summaries will not be published until after the grants are awarded. In addition, information about grant progress and results may also be made publicly available.

DOL recognizes that grant applications sometimes contain information that an applicant may consider proprietary or business confidential information, or may contain personally identifiable information. Proprietary or business confidential information is information that is not usually disclosed outside your organization and disclosing this information is likely to cause you substantial competitive harm.

Personally identifiable information is any information that can be used to distinguish or trace an individual's identity, such as name, social security number, date and place of birth, mother's maiden name, or biometric records; and any other information that is linked or linkable to an individual, such as medical, educational, financial, and employment information.[1]

Executive Summaries will be published in the form originally submitted, without any redactions. Applicants should not include any proprietary or confidential business information or personally identifiable information in this summary. In the event that an applicant submits proprietary or confidential business information or personally identifiable information in the summary, DOL is not liable for the posting of this information contained in the Executive Summary. The submission of the grant application constitutes a waiver of the applicant's objection to the posting of any proprietary or confidential business information contained in the Executive Summary. Additionally, the applicant is responsible for obtaining all authorizations from relevant parties for publishing all personally identifiable information contained within the Executive Summary. In the event the Executive Summary contains proprietary or confidential business or personally identifiable information, the applicant is presumed to have obtained all necessary authorizations to provide this information and may be liable for any improper release of this information.

By submission of this grant application, the applicant agrees to indemnify and hold harmless the United States, the U.S. Department of Labor, its officers, employees, and agents against any liability or for any loss or damages arising from this application. By such submission of this grant application, the applicant further acknowledges having the authority to execute this release of liability.

In order to ensure that proprietary or confidential business information or personally identifiable information is properly protected from disclosure when DOL posts the selected Technical Proposals, applicants whose Technical Proposals will be posted will be asked to submit a second redacted version of their Technical Proposal, with any proprietary or confidential business information and personally identifiable information redacted. All non-public information about the applicant's staff or other individuals should be removed as well.

The Department will contact the applicants whose Technical Proposals will be published by letter or email, and provide further directions about how and when to submit the redacted version of the Technical Proposal.

Submission of a redacted version of the Technical Proposal will constitute permission by the applicant for DOL to make the redacted version publicly available. We will also assume that the applicant has obtained the agreement to the redacted version of the applicant's

[1] OMB Memorandum 07–16 and 06–19. GAO Report 08–536, *Privacy: Alternatives Exist for Enhancing Protection of Personally Identifiable Information,* May 2008, *http://www.gao.gov/assets/280/275558.pdf.*

Technical Proposal. If an applicant fails to provide a redacted version of the Technical Proposal by October 21, 2013, DOL will publish the original Technical Proposal in full, after redacting only personally identifiable information. (Note that the original, unredacted version of the Technical Proposal will remain part of the complete application package, including an applicant's proprietary and confidential business information and any personally identifiable information.)

Applicants are encouraged to disclose as much of the grant application information as possible, and to redact only information that clearly is proprietary, confidential commercial/business information, or capable of identifying a person. The redaction of entire pages or sections of the Technical Proposal is not appropriate, and will not be allowed, unless the entire portion merits such protection. Should a dispute arise about whether redactions are appropriate, DOL will follow the procedures outlined in the Department's Freedom of Information Act (FOIA) regulations (29 CFR Part 70).

Redacted information in grant applications will be protected by DOL from public disclosure in accordance with federal law, including the Trade Secrets Act (18 U.S.C. 1905), FOIA, and the Privacy Act (5 U.S.C. 552a). If DOL receives a FOIA request for your application, the procedures in DOL's FOIA regulations for responding to requests for commercial/business information submitted to the government will be followed, as well as all FOIA exemptions and procedures. 29 CFR 70.26. Consequently, it is possible that application of FOIA rules may result in release of information in response to a FOIA request that an applicant redacted in its ''redacted copy.''

VIII. Agency Contacts

Any questions regarding this solicitation for grant applications (SGA 13–3BS) should be directed to Robert Glatter at *glatter.robert@dol.gov* or at 202–693–9570 (this is not a toll-free number) or the Grant Officer, Nancy Sloanhoffer at *sloanhoffer.nancy@dol.gov* or at 202–693–9839 (this is not a toll-free number). MSHA's Web page at *www.msha.gov* is a valuable source of background for this initiative.

IX. Office Of Management and Budget Information Collection Requirements

This SGA requests information from applicants. This collection of information is approved under OMB Control No. 1225–0086 (expires January 31, 2016).

In accordance with the Paperwork Reduction Act of 1995, no person is required to respond to a collection of information unless such collection displays a valid OMB control number. Public reporting burden for the grant application is estimated to average 20 hours per response, for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Each recipient who receives a grant award notice will be required to submit nine progress reports to MSHA. MSHA estimates that each report will take approximately two and one-half hours to prepare.

Send comments regarding the burden estimated or any other aspect of this collection of information, including suggestions for reducing this burden, to the OMB Desk Officer for MSHA, Office of Management and Budget Room 10235, Washington DC 20503 and MSHA, electronically to Robert Glatter at *glatter.robert@dol.gov* or the Grant Officer, Nancy Sloanhoffer at *sloanhoffer.nancy@dol.gov* or by mail to Robert Glatter, Room 2148, 1100 Wilson Boulevard, Arlington, Virginia 22209.

This information is being collected for the purpose of awarding a grant. The information collected through this ''Solicitation for Grant Applications'' will be used by the Department of Labor to ensure that grants are awarded to the applicant best suited to perform the functions of the grant. Submission of this information is required in order for the applicant to be considered for award of this grant. Unless otherwise specifically noted in this announcement, information submitted in the respondent's application is not considered to be confidential.

Authority: 30 U.S.C. 965.

Dated: July 24, 2013.

Patricia W. Silvey,

Deputy Assistant Secretary for Operations, Mine Safety and Health.

[FR Doc. 2013–18209 Filed 7–29–13; 8:45 am]

BILLING CODE 4510–43–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA–2010–0017]

Occupational Exposure to Noise Standard; Extension of the Office of Management and Budget's (OMB) Approval of Information Collection (Paperwork) Requirements

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Request for public comments.

SUMMARY: OSHA solicits public comments concerning its proposal to extend OMB approval of the information collection requirements specified in the Occupational Exposure to Noise Standard (29 CFR 1910.95). The information collection requirements specified in the Noise Standard protect workers from suffering material hearing impairment.

DATES: Comments must be submitted (postmarked, sent, or received) by September 30, 2013.

ADDRESSES:

Electronically: You may submit comments and attachments electronically at *http://www.regulations.gov,* which is the Federal eRulemaking Portal. Follow the instructions online for submitting comments.

Facsimile: If your comments, including attachments, are not longer than 10 pages you may fax them to the OSHA Docket Office at (202) 693–1648.

Mail, hand delivery, express mail, messenger, or courier service: When using this method, you must submit a copy of your comments and attachments to the OSHA Docket Office, Docket No. OSHA–2010–0017, U.S. Department of Labor, Occupational Safety and Health Administration, Room N–2625, 200 Constitution Avenue NW., Washington, DC 20210. Deliveries (hand, express mail, messenger, and courier service) are accepted during the Department of Labor's and Docket Office's normal business hours, 8:15 a.m. to 4:45 p.m., e.t.

Instructions: All submissions must include the Agency name and OSHA docket number for the Information Collection Request (ICR) (OSHA–2010–0017). All comments, including any personal information you provide, are placed in the public docket without change, and may be made available online at *http://www.regulations.gov.* For further information on submitting comments see the ''Public Participation'' heading in the section of

this notice titled **SUPPLEMENTARY INFORMATION.**

Docket: To read or download comments or other material in the docket, go to *http://www.regulations.gov* or the OSHA Docket Office at the address above. All documents in the docket (including this **Federal Register** notice) are listed in the *http://www.regulations.gov* index; however, some information (e.g., copyrighted material) is not publicly available to read or download through the Web site. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office. You may also contact Theda Kenney at the address below to obtain a copy of the ICR.

FOR FURTHER INFORMATION CONTACT: Todd Owen or Theda Kenney, Directorate of Standards and Guidance, OSHA, U.S. Department of Labor, Room N–3609, 200 Constitution Avenue NW., Washington, DC 20210; telephone (202) 693–2222.

SUPPLEMENTARY INFORMATION:

I. Background

The Department of Labor, as part of its continuing effort to reduce paperwork and respondent (i.e., employer) burden, conducts a preclearance consultation program to provide the public with an opportunity to comment on proposed and continuing information collection requirements in accord with the Paperwork Reduction Act of 1995 (PRA–95) (44 U.S.C. 3506(c)(2)(A)). This program ensures that information is in the desired format, reporting burden (time and costs) is minimal, collection instruments are clearly understood, and OSHA's estimate of the information collection burden is accurate. The Occupational Safety and Health Act of 1970 (the OSH Act) (29 U.S.C. 651 *et seq.*) authorizes information collection by employers as necessary or appropriate for enforcement of the OSH Act or for developing information regarding the causes and prevention of occupational injuries, illnesses, and accidents (29 U.S.C. 657). The OSH Act also requires that OSHA obtain such information with minimum burden upon employers, especially those operating small businesses, and to reduce to the maximum extent feasible unnecessary duplication of efforts in obtaining information (29 U.S.C. 657).

The information collection requirements specified in the Noise Standard protect workers from suffering material hearing impairment. The Standard requires employers to: Monitor worker exposure to noise when it is likely that such exposures may equal or exceed 85 decibels measured on the A scale (dBA) for an 8-hour time-weighted average (TWA) (action level); take action to reduce noise exposures to the 90 dBA permissible exposure limit (PEL); and provide an effective hearing conservation program (HCP) for all workers exposed to noise at a level greater than, or equal to, a TWA of 85 dBA.

The HCP contains information on: Conducting noise monitoring; notifying workers when they are exposed at or above an 8-hour time-weighted average of 85 decibels; providing workers with initial and annual audiograms; notifying workers of a loss in hearing based on comparing audiograms; training workers on the effects of noise, hearing protectors, and audiometric examinations; maintaining records of workplace noise exposure and workers' audiograms; and allowing OSHA, workers, and their designated representatives access to materials and records required by the Standard.

II. Special Issues for Comment

OSHA has a particular interest in comments on the following issues:

- Whether the proposed information collection requirements are necessary for the proper performance of the Agency's functions, including whether the information is useful;
- The accuracy of OSHA's estimate of the burden (time and costs) of the information collection requirements, including the validity of the methodology and assumptions used;
- The quality, utility, and clarity of the information collected; and
- Ways to minimize the burden on employers who must comply; for example, by using automated or other technological information collection and transmission techniques.

III. Proposed Actions

OSHA is requesting an adjustment decrease of burden hours associated with the paperwork requirements in the Standard from 2,604,597 hours to 2,068,736 hours (a total decrease of 535,861 hours). The Agency is also requesting an adjustment decrease in the cost under Item 13 from $82,190,075 to $26,296,876; a total decrease of $55,893,199. The Agency determined that it had counted the cost of worker travel and the cost of worker time under Item 12 in previous ICRs. Thus, it found that it had been double counting hours under certain instances.

OSHA has reduced the number of establishments and workers by 19.6%. The 19.6% reduction reflects that virtually all sectors affected by the Noise Standard are in manufacturing; and, that the number of workers in manufacturing has decreased from 13.3 million in 2009 to 10.7 million today.

Additionally, the Agency has determined that training is not subject to PRA–95 and has removed the burden hours and cost associated with it.

The Agency is requesting a decrease in the burden hours from 2,604,597 to 2,068,736 hours for a total decrease of 535,861 hours. The reduction is a result of a 19.6% reduction in the number of workers and manufacturing establishments. Also, the Agency now assumes that 50% of small establishment workers will receive audiometric exams via mobile testing vans. The previous ICR assumed that all small establishment workers would go off-site to receive their audiometric examination.

OSHA will summarize the comments submitted in response to this notice, and will include this summary in its request to OMB to extend the approval of the information collection requirements contained in the Occupational Exposure to Noise Standard (29 CFR 1910.95).

Type of Review: Extension of a currently approved collection.

Title: Occupational Exposure to Noise (29 CFR 1910.95).

OMB Control Number: 1218–0048.

Affected Public: Business or other for-profits.

Number of Respondents: 209,851.

Total Responses: 16,458,932.

Frequency of Responses: On occasion.

Average Time per Response: Varies from 1 minute (.02 hour) for a manager to provide a worker with a copy of a referral or notification of the need for an ontological examination to 1 hour for a worker to travel to a testing site, take the audiometric exam and return to work.

Estimated Total Burden Hours: 2,068,736.

Estimated Cost (Operation and Maintenance): $26,296,876.

IV. Public Participation—Submission of Comments on This Notice and Internet Access to Comments and Submissions

You may submit comments in response to this document as follows: (1) Electronically at *http://www.regulations.gov,* which is the Federal e-Rulemaking Portal; (2) by facsimile (fax); or (3) by hard copy. All comments, attachments, and other materials must clearly identify the Agency name and the OSHA docket number for the ICR (Docket No. OSHA–2010–0017). You may supplement electronic submissions by uploading document files electronically. If you wish to mail additional materials in reference to an electronic or facsimile

submission, you must submit them to the OSHA Docket Office (see the section of this notice titled **ADDRESSES**). The additional materials must clearly identify your electronic comments by your name, date, and the docket number so the Agency can attach them to your comments.

Because of security procedures, the use of regular mail may cause a significant delay in the receipt of comments. For information about security procedures concerning the delivery of materials by hand, express delivery, messenger, or courier service, please contact the OSHA Docket Office at (202) 693–2350, (TTY (877) 889–5627).

Comments and submissions are posted without change at *http://www.regulations.gov.* Therefore, OSHA cautions commenters about submitting personal information such as social security numbers and dates of birth. Although all submissions are listed in the *http://www.regulations.gov* index, some information (e.g., copyrighted material) is not publically available to read or download through this Web site. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office. Information on using the *http://www.regulations.gov* Web site to submit comments and access the docket is available through the Web site's ''User Tips'' link. Contact the OSHA Docket Office for information about materials not available through the Web site, and for assistance in using the Internet to locate docket submissions.

V. Authority and Signature

David Michaels, Ph.D., MPH, Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice. The authority for this notice is the Paperwork Reduction Act of 1995 (44 U.S.C. 3506 *et seq.*) and Secretary of Labor's Order No. 1–2012 (77 FR 3912).

Signed at Washington, DC, on July 25, 2013.

David Michaels,

Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2013–18280 Filed 7–29–13; 8:45 am]

BILLING CODE 4510–26–P

NATIONAL CREDIT UNION ADMINISTRATION

Sunshine Act Meeting; Notice of Matter To Be Deleted from the Agenda of a Previously Announced Agency Meeting

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: July 22, 2013 (78 FR 43941).

TIME AND DATE: 10:00 a.m., Thursday, July 25, 2013.

PLACE: Board Room, 7th Floor, Room 7047, 1775 Duke Street (All visitors must use Diagonal Road Entrance), Alexandria, VA 22314–3428.

STATUS: Open.

Pursuant to the provisions of the ''Government in Sunshine Act'' notice is hereby given that the NCUA Board gave notice on July 22, 2013 (78 FR 43941) of the regular meeting of the NCUA Board scheduled for July 25, 2013. Prior to the meeting, on July 25, 2013, the NCUA Board unanimously determined that agency business required the deletion of the second item on the agenda with less than seven days' notice to the public, and that no earlier notice of the deletion was possible.

MATTER TO BE DELETED:

2. Board Briefing—Interagency Proposal, Joint Diversity Standards for Regulated Entities.

FOR FURTHER INFORMATION CONTACT: Gerard Poliquin, Secretary of the Board, Telephone: 703–518–6564

Gerard Poliquin,

Secretary of the Board.

[FR Doc. 2013–18416 Filed 7–26–13; 4:15 pm]

BILLING CODE 7535–01–P

NATIONAL SCIENCE FOUNDATION

National Science Board; Sunshine Act Meetings; Notice

The National Science Board's Subcommittee on Facilities of the Committee on Strategy and Budget, pursuant to NSF regulations (45 CFR part 614), the National Science Foundation Act, as amended (42 U.S.C. 1862n-5), and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice in regard to the scheduling of a teleconference for the transaction of National Science Board business and other matters specified, as follows:

DATE & TIME: Monday, August 5, 2013, from 2:00–3:00 p.m. EDT.

SUBJECT MATTER: (1) Chairman's opening remarks; (2) organize and plan activities for the August Board meeting; (3) review background materials for the Annual Portfolio Review (APR); and (4) receive an update on the APR .

STATUS: Open.

LOCATION: This meeting will be held by teleconference at the National Science Board Office, National Science Foundation, 4201Wilson Blvd., Arlington, VA 22230. A public listening line will be available. Members of the public must contact the Board Office [call 703–292–7000 or send an email message to *nationalsciencebrd@nsf.gov*] at least 24 hours prior to the teleconference for the public listening number.

UPDATES & POINT OF CONTACT: Please refer to the National Science Board Web site *www.nsf.gov/nsb* for additional information. Meeting information and updates (time, place, subject matter or status of meeting) may be found at *http://www.nsf.gov/nsb/notices/.* Point of contact for this meeting is: John Veysey, 4201Wilson Blvd., Arlington, VA 22230. Telephone: (703) 292–4527.

Ann Bushmiller,

Senior Counsel to the National Science Board.

[FR Doc. 2013–18324 Filed 7–26–13; 11:15 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. NRC–2013–0033]

Acceptability of Corrective Action Programs for Fuel Cycle Facilities

AGENCY: Nuclear Regulatory Commission.

ACTION: Draft NUREG; withdrawal and resolution of public comments.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is withdrawing draft NUREG–2154, ''Acceptability of Corrective Action Programs for Fuel Cycle Facilities,'' based on receipt and review of public comments. The draft NUREG provided guidance to NRC staff on how to determine whether a submittal for a Corrective Action Program (CAP), voluntarily submitted by fuel cycle facility licensees, was acceptable. The NRC staff has reviewed public comments received on draft NUREG–2154 and has decided to withdraw the draft NUREG and to proceed with the development and issuance of a draft Regulatory Guide (RG) to describe elements of an acceptable CAP for fuel cycle facilities.

DATES: Draft NUREG–2154 is withdrawn on July 30, 2013.

ADDRESSES: Please refer to Docket ID NRC–2013–0033 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, using any of the following methods:

• *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2013–0033. Address questions about NRC dockets to Carol Gallagher; telephone: 301–287–3422; email: *Carol.Gallagher@nrc.gov.* For technical questions, contact the individual(s) listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.

• *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 document (if that document is available in ADAMS) is provided the first time that a document is referenced.

• *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: Sabrina Atack, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–287–9075; email *Sabrina.Atack@nrc.gov.*

SUPPLEMENTARY INFORMATION: In response to the Commission's direction in the staff requirements memorandum (SRM) for SECY–10–0031 (ADAMS Accession No. ML102170054), the NRC staff revised Section 2.3.2. of the NRC Enforcement Policy to disposition Severity Level IV violations for fuel cycle facilities as non-cited violations if the NRC determines that the licensee's CAP is effective, the licensee enters the violation in its CAP, and other criteria are met, as delineated in Section 2.3.2 of the NRC Enforcement Policy. As part of its response to the SRM, the NRC staff also developed draft NUREG–2154, ''Acceptability of Corrective Action Programs for Fuel Cycle Facilities'' (ADAMS Accession No. ML13036A029). The intent of the draft NUREG was to provide guidance to NRC staff on how to determine, based on a licensee's CAP licensing submittal, that a CAP is acceptable. The NRC staff issued draft NUREG–2154 for public comment on February 20, 2013 (78 FR 11903).

By letter dated April 22, 2013 (ADAMS Accession No. ML13133A219), the Nuclear Energy Institute (NEI) provided comments on draft NUREG–2154. In the letter and its attachment, NEI suggested that the NRC consider converting the draft NUREG to a RG since RGs are typically the primary source of information for licensees and applicants filing for a license or requesting a licensing action. Further, during an April 11, 2013, public meeting held in Atlanta, GA (ADAMS Accession No. ML13113A251), members of industry identified that the burden of implementing a CAP could be eased if applicants and licensees were able to commit to a set of CAP requirements rather than undertake the process of submitting a written CAP for NRC review and approval. The comment resolution table that describes the NRC staff's resolution of the comments and recommendations related to draft NUREG–2154 is available for public review in ADAMS under Accession No. ML13158A143.

Based on the review of public comment submissions and feedback at public meetings, the NRC has decided to withdraw draft NUREG–2154 and to identify the elements of an acceptable fuel cycle facility CAP in a draft RG. The NRC staff has determined that a RG can effectively describe measures for establishing a CAP that is adequate to support the application of the provisions of Section 2.3.2 of the NRC Enforcement Policy (ADAMS Accession No. ML12340A295) by fuel cycle facilities. This approach will minimize the burden to licensees who wish to implement a CAP by streamlining the licensing actions associated with incorporating CAP commitments into the license. Licensees will be able to submit a simple license amendment request committing to comply with the RG and implementing documents established thereto rather than submitting a detailed CAP description for NRC review and approval. The draft RG, DG–3044, ''Corrective Action Programs for Fuel Cycle Facilities,'' will be issued for public comment in a forthcoming **Federal Register** Notice.

Proposed Action

By this action, the NRC is withdrawing draft NUREG–2154. The guidance contained in the draft NUREG will be reissued in the form of a draft regulatory guide (DG–3044, ''Corrective Action Programs for Fuel Cycle Facilities'').

Dated at Rockville, Maryland, this 22nd day of July 2013.

For the Nuclear Regulatory Commission.

Michael X. Franovich,

Chief, Programmatic Oversight and Regional Support Branch, Division of Fuel Cycle Safety and Safeguards, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 2013–18251 Filed 7–29–13; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos.: 50–029 and 72–31; NRC–2013–0165]

Yankee Atomic Electric Company, Yankee Nuclear Power Station

AGENCY: Nuclear Regulatory Commission.

ACTION: Environmental assessment and finding of no significant impact; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) issued a final rule amending certain emergency planning (EP) requirements in the regulations that govern domestic licensing of production and utilization facilities (November 23, 2011; 76 FR 72560) (EP Final Rule). The EP Final Rule was effective on December 23, 2011, with various implementation dates for each of the rule changes.

FOR FURTHER INFORMATION CONTACT: John Goshen, Project Manager, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–287–9250, email: *john.goshen@nrc.gov.*

1.0 Introduction

The Yankee Atomic Electric Company (YAEC) is the holder of Possession-Only License DPR–3 for the Yankee Nuclear Power Station (YNPS) facility. The license, issued pursuant to the Atomic Energy Act of 1954, as amended, and part 50 of Title 10 of the *Code of Federal Regulations* (10 CFR), allows YAEC to possess and store spent nuclear fuel at the permanently shutdown and decommissioned facility under the provision of 10 CFR part 72, Subpart K, ''General License for Storage of Spent Fuel at Power Reactor Sites.'' In a letter dated February 27, 1992, (Agencywide Document Access and Management System (ADAMS) Legacy Accession No. 9203020228), the YAEC informed the NRC that the YNPS had permanently ceased power operations, removed fuel from the reactor to the fuel pool and began to develop detailed plans to decommission the facility. By NRC

letter of August 5, 1992, (ADAMS Legacy Accession No. 9208110135), License DPR–3 was modified to a Possession-Only License.

After ceasing operations at the reactor, the YAEC began transferring spent nuclear fuel from the spent fuel pool to the YNPS Independent Spent Fuel Storage Installation (ISFSI) for long term dry storage. The YNPS ISFSI is a vertical dry cask storage facility for spent nuclear fuel.

On June 19, 2012, the YAEC submitted a letter, ''Request for Exemption to Revised Emergency Planning Regulations'' (ADAMS Accession No. ML121810053), requesting exemption from specific EP requirements of 10 CFR 50.47 and Appendix E to 10 CFR part 50 for the YNPS ISFSI.

The YAEC states that this exemption request and its impact on the corresponding emergency plan: (1) Is authorized by law, (2) will not present an undue risk to the public health and safety; and (3) is consistent with the common defense and security in accordance with 10 CFR 50.12. The YAEC states that its intent in submitting this exemption request is to maintain the regulatory structure in place prior to the issuance of the EP Final Rule and, therefore, does not propose any changes to the Emergency Plan or implementing procedures other than simple regulatory reference changes that can be implemented under 10 CFR 50.54(q).

2.0 Discussion

On July 2, 1992, (ADAMS Legacy Accession No. 9207070401), the YAEC requested an exemption from the provisions of 10 CFR 50.54(q) that required emergency plans to meet all of the standards of 10 CFR 50.47(b) and all of the requirements of Appendix E to 10 CFR Part 50 so that the licensee would have to meet only certain EP standards and requirements. Additionally, the YAEC requested approval of a proposed YNPS Defueled Emergency Plan (DEP) that proposed to meet those limited standards and requirements.

The NRC approved the requested exemption and the DEP on October 30, 1992, (ADAMS Legacy Accession No. 9211050354). The Safety Evaluation Report (SER) established EP requirements for the YAEC as documented in the DEP. The NRC staff concluded that the licensee's emergency plan was acceptable in view of the greatly reduced offsite radiological consequences associated with the defueled condition of the reactor with spent nuclear fuel in storage in the spent fuel pool. The staff found that the postulated dose to the general public from any reasonably conceivable accident would not exceed the U.S. Environmental Protection Agency (EPA) Protective Action Guides (PAGs), and for the bounding accident, the length of time available to respond to a loss of spent fuel cooling or reduction in water level gave confidence that offsite measures for the public could be taken without preparation.

The YAEC revised the DEP to incorporate plans for responding to emergencies that may arise during transfer of spent nuclear fuel and greater than Class C (GTCC) waste into dry storage at the YNPS ISFSI and submitted these revisions to the NRC through Revision 10 to the YAEC DEP on April 10, 2002, (ADAMS Accession No. ML021070683 [1]). According to YAEC, it had placed all spent nuclear fuel into dry storage at YNP ISFSI as of May, 2003, (ADAMS Accession No. ML031750537).

On March 8, 2005 (ADAMS Accession No. ML050740396 [1]), YAEC revised the YAEC DEP under 10 CFR 50.54(q) to reflect that all spent nuclear fuel had been transferred into the ISFSI, the Spent Fuel Pit was drained, no significant radiological source term remained on site, and no emergency action levels could be met or exceeded outside of the ISFSI. Therefore, the licensee eliminated all portions of the DEP not related to the ISFSI and transitioned the emergency plan to an ISFSI emergency plan. The ISFSI emergency plan reflects the emergency preparedness and response requirements applicable to the YAEC in light of the exemption granted in 1992. The basis for those exemptions has not changed since the exemptions were granted in 1992; therefore the YAEC continues to be exempt from the EP requirements for which the NRC previously granted exemptions. The current YAEC Emergency Plan for the ISFSI provides reasonable assurance that adequate protective measures can and will be taken in the event of a radiological emergency at the YR ISFSI for the same reasons that the NRC found that the DEP met the applicable EP requirements in 1992. Since the NRC issued the approval and SER for the original YR DEP, the YAEC has not requested nor received substantive exemptions from emergency planning requirements.

Revision 17 of the YNPS Emergency Plan, dated October 31, 2012, (ADAMS Accession No. ML12321A053 [1]) reflects the current conditions, where only the ISFSI and its related support systems, structures, and components remain.

With the EP Final Rule, several requirements in 10 CFR Part 50 were modified or added, including changes in sections 50.47, and 50.54, and Appendix E. Specific implementation dates were provided for each EP rule change. The EP Final Rule codified certain voluntary protective measures contained in NRC Bulletin 2005–02, ''Emergency Preparedness and Response Actions for Security-Based Events,'' and generically applicable requirements similar to those previously imposed by NRC Order EA–02–026, ''Order for Interim Safeguards and Security Compensatory Measures,'' dated February 25, 2002.

In addition, the EP Final Rule amended other licensee emergency plan requirements to: (1) Enhance the ability of licensees in preparing for and in taking certain protective actions in the event of a radiological emergency; (2) address, in part, security issues identified after the terrorist events of September 11, 2001; (3) clarify regulations to effect consistent emergency plan implementation among licensees; and (4) modify certain EP requirements to be more effective and efficient. However, the EP Final Rule was only an enhancement to the NRC's regulations and was not necessary for adequate protection. On page 76 FR 72563 of the **Federal Register** notice for the EP Final Rule, the Commission ''determined that the existing regulatory structure ensures adequate protection of public health and safety and common defense and security.''

3.0 Regulatory Evaluation

In the Final Rule for Storage of Spent Fuel in NRC-Approved Storage Casks at Power Reactor Sites (55 FR 29181; July 18, 1990), the NRC amended its regulations to provide for the storage of spent nuclear fuel under a general license on the site of any nuclear power reactor. In its Statement of Considerations (SOC) for the Final Rule (55 FR 29185), the Commission responded to comments related to emergency preparedness for spent fuel dry storage, stating, ''The new 10 CFR 72.32(c) . . . states that, 'For an ISFSI that is located on the site of a nuclear power reactor licensed for operation by the Commission, the emergency plan required by 10 CFR 50.47 shall be deemed to satisfy the requirements of this Section.' One condition of the general license is that the reactor licensee must review the reactor emergency plan and modify it as necessary to cover dry cask storage and related activities. If the emergency plan

[1] Document contains sensitive security related information and is not publically available.

is in compliance with 10 CFR 50.47, then it is in compliance with the Commission's regulations with respect to dry cask storage.''

In the SOC for the Final Rule for EP requirements for ISFSIs and Monitored Retrievable Storage Installation (MRS) (60 FR 32430; June 22, 1995), the Commission stated, in part, that ''current reactor emergency plans cover all at-or near reactor ISFSI's. An ISFSI that is to be licensed for a stand-alone operation will need an emergency plan established in accordance with the requirements in this rulemaking'' (60 FR 32431). The Commission responded to comments (60 FR 32435) concerning offsite emergency planning for ISFSIs or an MRS and concluded that ''the offsite consequences of potential accidents at an ISFSI or a MRS would not warrant establishing Emergency Planning Zones.''

As part of the review for YAEC's current exemption request, the staff also used the EP regulations in 10 CFR 72.32 and Spent Fuel Project Office Interim Staff Guidance (ISG)—16, ''Emergency Planning,'' (ADAMS Accession No. ML003724570) as references to ensure consistency between specific-licensed and general-licensed ISFSIs.

4.0 Technical Evaluation

Pursuant to 10 CFR 50.12, the Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of 10 CFR Part 50 when: (1) The exemptions are authorized by law, will not present an undue risk to public health or safety, and are consistent with the common defense and security; and (2) when special circumstances are present. The staff reviewed this request to determine whether the specific exemptions should be granted, and the staff evaluation (SE) is provided in its letter to YAEC, dated May 7, 2013, (ADAMS Accession No. ML13121A560). After evaluating the exemption requests, the staff determined that the YAEC should be granted the exemptions detailed in the SE.

The NRC has found that the YAEC meets the criteria for an exemption in 10 CFR 50.12. The NRC has determined that granting the exemption will not result in a violation of the Atomic Energy Act of 1954, as amended, or the Commission's regulations. Therefore, the exemption is authorized by law.

As noted in Section 2.0, ''Discussion,'' above, the YAEC's compliance with the EP requirements that were in effect before the effective date of the EP Final Rule demonstrated reasonable assurance of adequate protection of public health and safety and common defense and security. In its SE., the NRC staff explains that the YAEC's implementation of its Emergency Plan, with the exemptions, will continue to provide this reasonable assurance of adequate protection. Thus, granting the exemptions will not present an undue risk to public health or safety and is not inconsistent with the common defense and security.

For the Commission to grant an exemption, special circumstances must exist. Under 10 CFR 50.12(a)(2)(ii), special circumstances are present when ''[a]pplication of the regulation in the particular circumstances would not serve the underlying purpose of the rule or is not necessary to achieve the underlying purpose of the rule.'' These special circumstances exist here. The NRC has determined that the YAEC's compliance with the regulations that the staff describes in its SE is not necessary for the licensee to demonstrate that, under its emergency plan, there is reasonable assurance that adequate protective measures can and will be taken in the event of a radiological emergency. Consequently, special circumstances are present because requiring the YAEC to comply with the regulations that the staff describes in its SE is not necessary to achieve the underlying purpose of the EP regulations.

5.0 Evironmental Assessment (EA)

Identification of Proposed Action: By letter dated July 19, 2012, the YAEC submitted a request in accordance with 10 CFR 50.12 for exemption from specific EP requirements of 10 CFR 50.47 and Appendix E to 10 CFR Part 50 for the YNPS ISFSI. Specifically, the exemption would eliminate unnecessary requirements associated with offsite consequences, protective actions, hostile action and emergency facilities due to the current status of the YNPS ISFSI.

Need for the Proposed Action: In accordance with 10 CFR 50.82, the 10 CFR Part 50 licensed area for the YNPS ISFSI has been reduced to a small area surrounding the ISFSI. In this condition, the YNPS ISFSI poses a significantly reduced risk to public health and safety from design basis accidents or credible beyond design basis accidents since these cannot result in radioactive releases which exceed EPA PAGs at the site boundary. Because of this reduced risk, compliance with all the requirements in 10 CFR 50.47 and 10 CFR Part 50 Appendix E is not appropriate. The requested exemption from portions of 10 CFR 50.47 and 10 CFR Part 50 Appendix E is needed to continue implementation of the YNPS Emergency Plan that is appropriate for a stand-alone ISFSI and is commensurate with the reduced risk posed by the facility. The requested exemption will allow spent fuel storage to continue without imposing burdensome and costly new requirements that provide no increased safety benefit.

Environmental Impacts of the Proposed Action: The NRC has determined that, given the continued implementation of the YNPS Emergency Plan, with the exemptions noted in its SE, no credible events would result in doses to the public beyond the owner controlled area boundary that would exceed the EPA PAGs. Additionally, the staff has concluded that the YNPS Emergency Plan, with the exemptions described in its SE, provides for an acceptable level of emergency preparedness at the YNPS facility in its shutdown and defueled conditon, and also provides reasonable assurance that adequate protective measures can and will be taken in the event of a radiological emergency at the YNPS facility. Based on these findings, the NRC concludes that there are no radiological environmental impacts due to granting the approval of the exemption. The proposed action will not increase the probability or consequences of accidents. No changes are being made in the types or quantities of effluents that may be released offsite, and there is no significant increase in occupational or public radiation exposure. Therefore, there are no significant radiological environmental impacts associated with the proposed action. The proposed action does not affect non-radiological plant effluents and has no other environmental impact. Therefore, there are no significant non-radiological impacts associated with the proposed action. Based on the assessment above, the proposed action will not have a significant effect on the quality of the human environment.

Alternative to the Proposed Action: Since there is no significant environmental impact associated with the proposed action, any alternatives with equal or greater environmental impact are not evaluated. The alternative to the proposed action would be to deny approval of the exemption. This alternative would have the same environmental impact.

Finding of No Significant Impact

The environmental impacts of the proposed action have been reviewed in accordance with the requirements set forth in 10 CFR Part 51. Based upon the EA, the NRC finds that the proposed

action of granting an exemption will not significantly impact the quality of the human environment. Accordingly, the NRC has determined not to prepare an environmental impact statement for the proposed exemption.

6.0 Conclusion

The NRC concludes that the licensee's request for an exemption from certain requirements of 10 CFR 50.47(b) and 10 CFR Part 50, Appendix E, Section IV as specified in this SE are acceptable in view of the greatly reduced offsite radiological consequences associated with the ISFSI.

The YNPS Emergency Plan has been reviewed against the acceptance criteria included in 10 CFR 50.47, Appendix E to 10 CFR Part 50, 10 CFR 72.32 and Interim Staff Guidance—16. The review considered the ISFSI and the low likelihood of any credible accident resulting in radiological releases requiring offsite protective measures. These evaluations were supported by the previously documented licensee and staff accident analyses. The staff concludes that: The YNPS Emergency Plan provides: (1) An adequate basis for an acceptable state of emergency preparedness; and (2) the Emergency Plan, in conjunction with arrangements made with offsite response agencies, provides reasonable assurance that adequate protective measures can and will be taken in the event of a radiological emergency at the YNPS facility.

The NRC has determined that pursuant to 10 CFR 50.12, the exemptions described in the SE are authorized by law, will not endanger life or property or the common defense and security, and are otherwise in the public interest, and special circumstances are present.

7.0 Further Information

Documents related to this action, including the application for renewal and supporting documentation, are available electronically at the NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html.* From this site, you can access the NRC's ADAMS, which provides text and image files of NRC's public documents. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) Reference staff at 1–800–397–4209, 301–415–4737 or by email to *pdr.resource@nrc.gov.* These documents may also be viewed electronically on the public computers located at the NRC's PDR, O 1 F21, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852. The PDR reproduction contractor will copy documents for a fee.

Dated at Rockville, Maryland, this 17th day of July 2013.

For the Nuclear Regulatory Commission.

Michele M. Sampson,

Chief, Licensing Branch, Division of Spent Fuel Storage and Transportation, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 2013–18252 Filed 7–29–13; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 52–025 and 52–026; NRC–2008–0252]

Vogtle Electric Generating Station, Units 3 and 4; Southern Nuclear Operating Company; Change to the Primary Sampling System

AGENCY: Nuclear Regulatory Commission.

ACTION: Exemption and combined license amendment: issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is granting an exemption to allow a departure from the certification information of Tier 1 of the generic design control document (DCD) and is issuing License Amendment No. 10 to Combined Licenses (COL), NPF–91 and NPF–92. The COLs were issued to Southern Nuclear Operating Company, Inc., and Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, and the City of Dalton, Georgia (the licensee); for construction and operation of the Vogtle Electric Generating Plant (VEGP), Units 3 and 4, located in Burke County, Georgia. The amendment requests to modify the Primary Sampling System (PSS) design, including changes to Tier 1 information located in Tables 2.2.1–2, 2.3.13–1, and 2.3.13–3, Figures 2.2.1–1 ''Containment System'' and 2.3.13–1 ''Primary Sampling System,'' and Subsection 2.3.13, ''Primary Sampling System'' of the Updated Final Safety Analysis Report (UFSAR). The granting of the exemption allows the changes to Tier 1 information asked for in the amendment. Because the acceptability of the exemption was determined in part by the acceptability of the amendment, the exemption and amendment are being issued concurrently.

ADDRESSES: Please refer to Docket ID NRC–2008–0252 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, using any of the following methods:

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2008–0252. Address questions about NRC dockets to Carol Gallagher; telephone: 301–492–3668; email: *Carol.Gallagher@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *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 document (if that document is available in ADAMS) is provided the first time that a document is referenced. The request for the amendment and exemption were submitted by letter dated December 7, 2012 (ADAMS Accession No. ML12346A396). The licensee supplemented this request on January 25, 2013 (ADAMS Accession No. ML13028A267), and March 29, 2013 (ADAMS Accession No. ML13091A056).
- *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: Anthony Minarik, Office of New Reactors, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–6185; email: *Anthony.Minarik@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

The NRC is granting an exemption from Paragraph B of Section III, ''Scope and Contents,'' of Appendix D, ''Design Certification Rule for the AP1000,'' to part 52 of Title 10 of the *Code of Federal Regulations* (10 CFR) and issuing License Amendment No. 10 to COLs, NPF–91 and NPF–92, to the licensee. The exemption is required by Paragraph A.4 of Section VIII, ''Processes for Changes and Departures,'' Appendix D to 10 CFR part 52 to allow the licensee to depart from Tier 1 information. With the requested amendment, the licensee

sought to modify the design of the Primary Sampling System (PSS). As part of this request, the licensee needed to change Tier 1 information located in Tables 2.2.1–2, 2.3.13–1, and 2.3.13–3, Figures 2.2.1–1 ''Containment System'' and 2.3.13–1 ''Primary Sampling System,'' and Subsection 2.3.13, ''Primary Sampling System'' of the UFSAR. These changes were necessary as part of a design modification which changes the type of valve used as the air return check valve from a check valve to a solenoid-operated valve (SOV); redesigns the PSS inside-containment header; and adds a PSS containment penetration.

Part of the justification for granting the exemption was provided by the review of the amendment. Because the exemption is necessary in order to issue the requested license amendment, the NRC granted the exemption and issued the amendment concurrently, rather than in sequence. This included issuing a combined safety evaluation containing the NRC staff's review of both the exemption request and the license amendment. The exemption met all applicable regulatory criteria set forth in 10 CFR 50.12, 10 CFR 52.7, and Section VIII.A.4. of Appendix D to 10 CFR part 52. The license amendment was found to be acceptable as well. The combined safety evaluation is available in ADAMS under Accession No. ML13150A088.

Identical exemption documents (except for referenced unit numbers and license numbers) were issued to the licensee for Vogtle Units 3 and 4 (COLs NPF–91 and NPF–92). These documents can be found in ADAMS under Accession Nos. ML13150A064 and ML13150A066. The exemption is reproduced (with the exception of abbreviated titles and additional citations) in Section II of this document. The amendment documents for COLs NPF–91 and NPF–92 are available in ADAMS under Accession Nos. ML13150A070 and ML13150A077. A summary of the amendment documents is provided in Section III of this document.

II. Exemption

Reproduced below is the exemption document issued to Vogtle Units 3 and Unit 4. It makes reference to the combined safety evaluation that provides the reasoning for the findings made by the NRC (and listed under Item 1) in order to grant the exemption:

1. In a letter dated December 7, 2012, and as supplemented by letters dated January 25, 2013, and March 29, 2013, the licensee requested from the Commission an exemption from the provisions of 10 CFR part 52, Appendix D, Section III.B, as part of license amendment request 12–012R, ''Changes to the Primary Sampling System'' (LAR 12–012R).

For the reasons set forth in Section 3.1, ''Evaluation of Exemption,'' of the NRC staff's Safety Evaluation, which can be found in ADAMS under Accession No. ML13150A088, the Commission finds that:

A. The exemption is authorized by law;

B. the exemption presents no undue risk to public health and safety;

C. the exemption is consistent with the common defense and security;

D. special circumstances are present in that the application of the rule in this circumstance is not necessary to serve the underlying purpose of the rule;

E. the special circumstances outweigh any decrease in safety that may result from the reduction in standardization caused by the exemption; and

F. the exemption will not result in a significant decrease in the level of safety otherwise provided by the design.

2. Accordingly, the licensee is granted an exemption to the provisions of 10 CFR part 52, Appendix D, Section III.B, to allow deviations from the certified Design Control Document Tier 1 Section 2.3.13, Tables 2.2.1–2, 2.3.13–1, and 2.3.13–3, and Figures 2.2.1–1 and 2.3.13–1, as described in the licensee's request dated December 7, 2012, and as supplemented on January 25, 2013, and March 29, 2013. This exemption is related to, and necessary for the granting of License Amendment No. 10, which is being issued concurrently with this exemption.

3. As explained in Section 3.1, ''Evaluation of Exemption,'' of the NRC staff's Safety Evaluation (ADAMS Accession No. ML13150A088), this exemption meets the eligibility criteria for categorical exclusion set forth in 10 CFR 51.22(c)(9). Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment needs to be prepared in connection with the issuance of the exemption.

4. This exemption is effective as of June 19, 2013.

III. License Amendment Request

By letter dated December 7, 2012, the licensee requested that the NRC amend the COLs for VEGP, Units 3 and 4, COLs NPF–91 and NPF–92. The licensee supplemented this application on January 25, 2013, and March 29, 2013. The proposed amendment would depart from Tier 2 Material previously incorporated into the UFSAR. Additionally, these Tier 2 changes involve changes to Tier 1 Information in the UFSAR, and the proposed amendment would also revise the associated material that has been included in Appendix C of each of the VEGP, Units 3 and 4 COLs. The requested amendment will revise the Tier 2 UFSAR information pertaining to the PSS air return valve, and various Tier 2 tables and sections regarding the PSS design. These Tier 2 changes require modifications to particular Tier 1 information located in Tables 2.2.1–2, 2.3.13–1, and 2.3.13–3, Figures 2.2.1–1 ''Containment System'' and 2.3.13–1 ''Primary Sampling System,'' and Subsection 2.3.13, ''Primary Sampling System'' of the UFSAR, as well as the corresponding information in Appendix C. These changes were necessary as part of a design modification which changes the type of valve used as the air return check valve from a check valve to a SOV; redesigns the PSS inside-containment header; and adds a PSS containment penetration.

The Commission has determined for these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

A notice of consideration of issuance of amendment to facility operating license or combined license, as applicable, proposed no significant hazards consideration determination, and opportunity for a hearing in connection with these actions, was published in the **Federal Register** on February 19, 2013 (78 FR 11693). The January 25, 2013 supplement revised the original no significant hazards consideration determination, but this revision was captured in the February 19, 2013 **Federal Register** Notice. The March 29, 2013 supplement had no effect on the no significant hazards consideration determination, and no comments were received during the 60-day comment period.

The Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments.

IV. Conclusion

Using the reasons set forth in the combined safety evaluation, the staff granted the exemption and issued the amendment that the licensee requested

on December 7, 2012, and supplemented by letters dated January 25, 2013, and March 29, 2013. The exemption and amendment were issued on June 19, 2013 as part of a combined package to the licensee. (ADAMS Accession No. ML13150A052).

Dated at Rockville, Maryland, this 23rd day of July 2013.

For the Nuclear Regulatory Commission.

Lawrence Burkhart,

Chief, Licensing Branch 4, Division of New Reactor Licensing, Office of New Reactors.

[FR Doc. 2013–18246 Filed 7–29–13; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 52–025 and 52–026; NRC–2008–0252]

Vogtle Electric Generating Station, Units 3 and 4; Southern Nuclear Operating Company; Change to the Primary Sampling System

AGENCY: Nuclear Regulatory Commission.

ACTION: Exemption and combined license amendment: Issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is granting an exemption to allow a departure from the certification information of Tier 1 of the generic design control document (DCD) and is issuing License Amendment No. 10 to Combined Licenses (COL), NPF–91 and NPF–92. The COLs were issued to Southern Nuclear Operating Company, Inc., and Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, and the City of Dalton, Georgia (the licensee); for construction and operation of the Vogtle Electric Generating Plant (VEGP), Units 3 and 4, located in Burke County, Georgia. The amendment requests to modify the Primary Sampling System (PSS) design, including changes to Tier 1 information located in Tables 2.2.1–2, 2.3.13–1, and 2.3.13–3, Figures 2.2.1–1 ''Containment System'' and 2.3.13–1 ''Primary Sampling System,'' and Subsection 2.3.13, ''Primary Sampling System'' of the Updated Final Safety Analysis Report (UFSAR). The granting of the exemption allows the changes to Tier 1 information asked for in the amendment. Because the acceptability of the exemption was determined in part by the acceptability of the amendment, the exemption and amendment are being issued concurrently.

ADDRESSES: Please refer to Docket ID NRC–2008–0252 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, using any of the following methods:

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2008–0252. Address questions about NRC dockets to Carol Gallagher; telephone: 301–287–3422; email: *Carol.Gallagher@nrc.gov.* For technical questions, contact the individual listed in the document.
- *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 document (if that document is available in ADAMS) is provided the first time that a document is referenced. The request for the amendment and exemption were submitted by letter dated December 7, 2012 (ADAMS Accession No. ML12346A396). The licensee supplemented this request on January 25, 2013 (ADAMS Accession No. ML13028A267), and March 29, 2013 (ADAMS Accession No. ML13091A056).
- *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: Anthony Minarik, Office of New Reactors, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–6185; email: *Anthony.Minarik@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

The NRC is granting an exemption from Paragraph B of Section III, ''Scope and Contents,'' of Appendix D, ''Design Certification Rule for the AP1000,'' to part 52 of Title 10 of the *Code of Federal Regulations* (10 CFR) and issuing License Amendment No. 10 to COLs, NPF–91 and NPF–92, to the licensee. The exemption is required by Paragraph A.4 of Section VIII, ''Processes for Changes and Departures,'' Appendix D to 10 CFR part 52 to allow the licensee to depart from Tier 1 information. With the requested amendment, the licensee sought to modify the design of the Primary Sampling System (PSS). As part of this request, the licensee needed to change Tier 1 information located in Tables 2.2.1–2, 2.3.13–1, and 2.3.13–3, Figures 2.2.1–1 ''Containment System'' and 2.3.13–1 ''Primary Sampling System,'' and Subsection 2.3.13, ''Primary Sampling System'' of the UFSAR. These changes were necessary as part of a design modification which changes the type of valve used as the air return check valve from a check valve to a solenoid-operated valve (SOV); redesigns the PSS inside-containment header; and adds a PSS containment penetration.

Part of the justification for granting the exemption was provided by the review of the amendment. Because the exemption is necessary in order to issue the requested license amendment, the NRC granted the exemption and issued the amendment concurrently, rather than in sequence. This included issuing a combined safety evaluation containing the NRC staff's review of both the exemption request and the license amendment. The exemption met all applicable regulatory criteria set forth in 10 CFR 50.12, 10 CFR 52.7, and Section VIII.A.4. of Appendix D to 10 CFR part 52. The license amendment was found to be acceptable as well. The combined safety evaluation is available in ADAMS under Accession No. ML13150A088.

Identical exemption documents (except for referenced unit numbers and license numbers) were issued to the licensee for Vogtle Units 3 and 4 (COLs NPF–91 and NPF–92). These documents can be found in ADAMS under Accession Nos. ML13150A064 and ML13150A066. The exemption is reproduced (with the exception of abbreviated titles and additional citations) in Section II of this document. The amendment documents for COLs NPF–91 and NPF–92 are available in ADAMS under Accession Nos. ML13150A070 and ML13150A077. A summary of the amendment documents is provided in Section III of this document.

II. Exemption

Reproduced below is the exemption document issued to Vogtle Units 3 and Unit 4. It makes reference to the combined safety evaluation that provides the reasoning for the findings made by the NRC (and listed under Item 1) in order to grant the exemption:

1. In a letter dated December 7, 2012, and as supplemented by letters dated January 25, 2013, and March 29, 2013,

the licensee requested from the Commission an exemption from the provisions of 10 CFR part 52, Appendix D, Section III.B, as part of license amendment request 12–012R, ''Changes to the Primary Sampling System'' (LAR 12–012R).

For the reasons set forth in Section 3.1, ''Evaluation of Exemption,'' of the NRC staff's Safety Evaluation, which can be found in ADAMS under Accession No. ML13150A088, the Commission finds that:

A. The exemption is authorized by law;

B. the exemption presents no undue risk to public health and safety;

C. the exemption is consistent with the common defense and security;

D. special circumstances are present in that the application of the rule in this circumstance is not necessary to serve the underlying purpose of the rule;

E. the special circumstances outweigh any decrease in safety that may result from the reduction in standardization caused by the exemption; and

F. the exemption will not result in a significant decrease in the level of safety otherwise provided by the design.

2. Accordingly, the licensee is granted an exemption to the provisions of 10 CFR part 52, Appendix D, Section III.B, to allow deviations from the certified Design Control Document Tier 1 Section 2.3.13, Tables 2.2.1–2, 2.3.13–1, and 2.3.13–3, and Figures 2.2.1–1 and 2.3.13–1, as described in the licensee's request dated December 7, 2012, and as supplemented on January 25, 2013, and March 29, 2013. This exemption is related to, and necessary for the granting of License Amendment No. 10, which is being issued concurrently with this exemption.

3. As explained in Section 3.1, ''Evaluation of Exemption,'' of the NRC staff's Safety Evaluation (ADAMS Accession No. ML13150A088), this exemption meets the eligibility criteria for categorical exclusion set forth in 10 CFR 51.22(c)(9). Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment needs to be prepared in connection with the issuance of the exemption.

4. This exemption is effective as of June 19, 2013.

III. License Amendment Request

By letter dated December 7, 2012, the licensee requested that the NRC amend the COLs for VEGP, Units 3 and 4, COLs NPF–91 and NPF–92. The licensee supplemented this application on January 25, 2013, and March 29, 2013. The proposed amendment would depart from Tier 2 Material previously incorporated into the UFSAR. Additionally, these Tier 2 changes involve changes to Tier 1 Information in the UFSAR, and the proposed amendment would also revise the associated material that has been included in Appendix C of each of the VEGP, Units 3 and 4 COLs. The requested amendment will revise the Tier 2 UFSAR information pertaining to the PSS air return valve, and various Tier 2 tables and sections regarding the PSS design. These Tier 2 changes require modifications to particular Tier 1 information located in Tables 2.2.1–2, 2.3.13–1, and 2.3.13–3, Figures 2.2.1–1 ''Containment System'' and 2.3.13–1 ''Primary Sampling System,'' and Subsection 2.3.13, ''Primary Sampling System'' of the UFSAR, as well as the corresponding information in Appendix C. These changes were necessary as part of a design modification which changes the type of valve used as the air return check valve from a check valve to a SOV; redesigns the PSS inside-containment header; and adds a PSS containment penetration.

The Commission has determined for these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

A notice of consideration of issuance of amendment to facility operating license or combined license, as applicable, proposed no significant hazards consideration determination, and opportunity for a hearing in connection with these actions, was published in the **Federal Register** on February 19, 2013 (78 FR 11693). The January 25, 2013 supplement revised the original no significant hazards consideration determination, but this revision was captured in the February 19, 2013 **Federal Register** Notice. The March 29, 2013 supplement had no effect on the no significant hazards consideration determination, and no comments were received during the 60-day comment period.

The Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments.

IV. Conclusion

Using the reasons set forth in the combined safety evaluation, the staff granted the exemption and issued the amendment that the licensee requested on December 7, 2012, and supplemented by letters dated January 25, 2013, and March 29, 2013. The exemption and amendment were issued on June 19, 2013 as part of a combined package to the licensee. (ADAMS Accession No. ML13150A052).

Dated at Rockville, Maryland, this 23rd day of July 2013.

For the Nuclear Regulatory Commission.

Lawrence Burkhart,

Chief, Licensing Branch 4, Division of New Reactor Licensing, Office of New Reactors.

[FR Doc. 2013–18247 Filed 7–29–13; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 52–025 and 52–026; NRC–2008–0252]

Vogtle Electric Generating Station, Units 3 and 4; Southern Nuclear Operating Company; Change to the Bracing Design in the Turbine Building and Corresponding Change to Structural Design Code

AGENCY: Nuclear Regulatory Commission.

ACTION: Exemption and combined license amendment: Issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is granting both an exemption to allow a departure from the certification information of Tier 1 of the generic design control document (DCD) and is issuing License Amendment No. 8 to Combined Licenses (COL), NPF–91 and NPF–92. The COLs were issued to Southern Nuclear Operating Company, Inc., and Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, and the City of Dalton, Georgia (the licensee); for construction and operation of the Vogtle Electric Generating Plant (VEGP), Units 3 and 4, located in Burke County, Georgia. The amendment requests to revise the design of the bracing used to support the Turbine Building structure. This request requires changing Tier 1 information found in the Design Description portion of Updated Final Safety Analysis Report (UFSAR) Section 3.3, ''Buildings.'' The granting of the exemption allows the changes to Tier 1 information asked for in the amendment. Because the acceptability of the exemption was determined in part by the acceptability

of the amendment, the exemption and amendment are being issued concurrently.

ADDRESSES: Please refer to Docket ID NRC–2008–0252 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, using any of the following methods:

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2008–0252. Address questions about NRC dockets to Carol Gallagher; telephone: 301–287–3422; email: *Carol.Gallagher@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *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 document (if that document is available in ADAMS) is provided the first time that a document is referenced. The request for the amendment and exemption were submitted by letter dated February 8, 2013 (ADAMS Accession No. ML13043A075). The licensee supplemented this request on February 15, 2013 (ADAMS Accession No. ML13050A201).
- *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: Anthony Minarik, Office of New Reactors, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–6185; email: *Anthony.Minarik@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

The NRC is granting an exemption from Paragraph B of Section III, ''Scope and Contents,'' of Appendix D, ''Design Certification Rule for the AP1000,'' to part 52 of Title 10 of the *Code of Federal Regulations* (10 CFR) and issuing License Amendment No. 8 to COLs, NPF–91 and NPF–92, to the licensee. The exemption is required by Paragraph A.4 of Section VIII, ''Processes for Changes and Departures,'' Appendix D to 10 CFR part 52 to allow the licensee to depart from Tier 1 information. With the requested amendment, the licensee sought to revise UFSAR information related to the design of the bracing used to support the non-seismic portion of the Turbine Building. As part of this request, the licensee needed to change Tier 1 information located in the ''Design Description'' portion of Section 3.3, ''Buildings'' of the UFSAR. These changes sought to allow the licensee to use a mixed bracing system of both eccentrically and concentrically braced framing versus only eccentrically braced framing in the Turbine Building.

Part of the justification for granting the exemption was provided by the review of the amendment. Because the exemption is necessary in order to issue the requested license amendment, the NRC granted the exemption and issued the amendment concurrently, rather than in sequence. This included issuing a combined safety evaluation containing the NRC staff's review of both the exemption request and the license amendment. The exemption met all applicable regulatory criteria set forth in 10 CFR 50.12, 10 CFR 52.7, and Section VIII.A.4. of Appendix D to 10 CFR Part 52. The license amendment was found to be acceptable as well. The combined safety evaluation is available in ADAMS under Accession No. ML13121A421.

Identical exemption documents (except for referenced unit numbers and license numbers) were issued to the licensee for Vogtle Units 3 and 4 (COLs NPF–91 and NPF–92). These documents can be found in ADAMS under Accession Nos. ML13121A376 and ML13121A385. The exemption is reproduced (with the exception of abbreviated titles and additional citations) in Section II of this document. The amendment documents for COLs NPF–91 and NPF–92 are available in ADAMS under Accession Nos. ML13121A392 and ML13121A397. A summary of the amendment documents is provided in Section III of this document.

II. Exemption

Reproduced below is the exemption document issued to Vogtle Unit 3 and Unit 4. It makes reference to the combined safety evaluation that provides the reasoning for the findings made by the NRC (and listed under Item 1) in order to grant the exemption:

1. In a letter dated February 8, 2013, and as supplemented by letter dated February 15, 2013, the licensee requested from the Commission an exemption from the provisions of 10 CFR Part 52, Appendix D, Section III.B, as part of license amendment request 13–005 ''Turbine Building Eccentric and Concentric Bracing'' (LAR 13–005).

For the reasons set forth in Section 3.1, ''Evaluation of Exemption,'' of the NRC staff's Safety Evaluation, which can be found in ADAMS under Accession No. ML13121A421, the Commission finds that:

A. The exemption is authorized by law;

B. the exemption presents no undue risk to public health and safety;

C. the exemption is consistent with the common defense and security;

D. special circumstances are present in that the application of the rule in this circumstance is not necessary to serve the underlying purpose of the rule;

E. the special circumstances outweigh any decrease in safety that may result from the reduction in standardization caused by the exemption; and

F. the exemption will not result in a significant decrease in the level of safety otherwise provided by the design.

2. Accordingly, the licensee is granted an exemption to the provisions of 10 CFR part 52, Appendix D, Section III.B, to allow deviations from the certified Design Control Document Tier 1 Section 3.3, as described in the licensee's request dated February 8, 2013, and supplemented on February 15, 2013. This exemption is related to, and necessary for the granting of License Amendment No. 8, which is being issued concurrently with this exemption.

3. As explained in Section 3.1, ''Evaluation of Exemption,'' of the NRC staff's Safety Evaluation (ADAMS Accession No. ML13121A421), this exemption meets the eligibility criteria for categorical exclusion set forth in 10 CFR 51.22(c)(9). Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment needs to be prepared in connection with the issuance of the exemption.

4. This exemption is effective as of May 21, 2013.

III. License Amendment Request

By letter dated February 8, 2013, the licensee requested that the NRC amend the COLs for VEGP, Units 3 and 4, COLs NPF–91 and NPF–92. The licensee supplemented this application on February 15, 2013. The licensee sought to change Tier 2 information previously incorporated into the UFSAR. Additionally, these Tier 2 changes involved changes to Tier 1 material in the UFSAR, and would revise the associated material that has been

included in Appendix C of each of the VEGP, Units 3 and 4, COLs. The Tier 2 changes modified sections of the UFSAR related to the design information and code requirements regarding the supports used in the Turbine Building. These Tier 2 changes require modifications to particular Tier 1 information located in the ''Design Description'' portion of Section 3.3 ''Buildings'' of the UFSAR. In this section the licensee sought to revise the original design of only using eccentrically braced framing in the non-seismic portion of the Turbine Building. Instead the licensee plans to use a mixed bracing system consisting of both eccentrically and concentrically braced framing. The staff determined that these changes did not alter any relevant conclusions made for the AP1000 standard design.

The Commission has determined for these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

A notice of consideration of issuance of amendment to facility operating license or combined license, as applicable, proposed no significant hazards consideration determination, and opportunity for a hearing in connection with these actions, was published in the **Federal Register** on March 4, 2013 (78 FR 14137). The February 15, 2013, supplement revised the original no significant hazards consideration determination, but this revision was captured in the March 4, 2013 **Federal Register** Notice. No other supplements were received after the acceptance was noticed so the published no significant hazards consideration determination was not affected and no comments were received during the 60-day comment period.

The Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments.

IV. Conclusion

Using the reasons set forth in the combined safety evaluation, the staff granted the exemption and issued the amendment that the licensee requested on February 8, 2013, and supplemented by letter dated February 15, 2013. The exemption and amendment were issued on May 21, 2013 as part of a combined package to the licensee. (ADAMS Accession No. ML13121A359).

Dated at Rockville, Maryland, this 23rd day of July 2013.

For the Nuclear Regulatory Commission.

Lawrence Burkhart,

Chief, Licensing Branch 4, Division of New Reactor Licensing, Office of New Reactors.

[FR Doc. 2013–18249 Filed 7–29–13; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Sunshine Act Meetings

AGENCY HOLDING THE MEETINGS: Nuclear Regulatory Commission [NRC–2013–0001]

DATES: Weeks of July 29, August 5, 12, 19, 26, September 2, 2013.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

Week of July 29, 2013

There are no meetings scheduled for the week of July 29, 2013.

Week of August 5, 2013—Tentative

There are no meetings scheduled for the week of August 5, 2013.

Week of August 12, 2013—Tentative

There are no meetings scheduled for the week of August 12, 2013.

Week of August 19, 2013—Tentative

There are no meetings scheduled for the week of August 19, 2013.

Week of August 26, 2013—Tentative

Tuesday, August 27, 2013—

9:00 a.m. Briefing on NRC's Construction Activities (Public Meeting) (Contact: Michelle Hayes, 301–415–8375).

This meeting will be webcast live at the Web address—*http://www.nrc.gov.*

3:00 p.m. Briefing on NRC International Activities (Closed – Ex. 1 & 9) (Contact: Karen Henderson, 301–415–0202).

Week of September 2, 2013—Tentative

There are no meetings scheduled for the week of September 2, 2013.

* * * * *

*The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings, call (recording)—301–415–1292. Contact person for more information: Rochelle Bavol, 301–415–1651.

* * * * *

The NRC Commission Meeting Schedule can be found on the Internet at: *http://www.nrc.gov/public-involve/public-meetings/schedule.html.*

* * * * *

The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings, or need this meeting notice or the transcript or other information from the public meetings in another format (e.g. braille, large print), please notify Kimberly Meyer, NRC Disability Program Manager, at 301–287–0727, or by email at *kimberly.meyer-chambers@nrc.gov.* Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

* * * * *

This notice is distributed electronically to subscribers. If you no longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 (301–415–1969), or send an email to *darlene.wright@nrc.gov.*

Dated: July 25, 2013.

Rochelle C. Bavol,

Policy Coordinator, Office of the Secretary.

[FR Doc. 2013–18368 Filed 7–26–13; 4:15 pm]

BILLING CODE 7590–01–P

OFFICE OF SCIENCE AND TECHNOLOGY POLICY

National Science and Technology Council; Notice of Meeting: Open Meeting of the National Science and Technology Council; Committee on Technology; Nanoscale Science, Engineering, and Technology Subcommittee National Nanotechnology Coordination Office

ACTION: Notice of public meeting.

SUMMARY: The National Nanotechnology Coordination Office (NNCO), on behalf of the Nanoscale Science, Engineering, and Technology (NSET) Subcommittee of the Committee on Technology, National Science and Technology Council (NSTC), will hold a workshop on September 10–11, 2013, to engage stakeholders in discussion of perspectives on the perception, assessment, and management of the potential risks of nanotechnology. Representatives of the U.S. research community, industry, non-governmental organizations, and interested members

of the general public are invited to participate. This workshop aims to facilitate: understanding of the state of practice for the consideration of risk used by industry, academia, and the general public; analysis of the role of comparative risk assessment in these evaluations, including decision analysis tools and gap analysis tools; identification, through case study presentations, of stakeholder values and risk perceptions that inform their decision making, and the potential integration of these values and perceptions that guide effective risk communication; current risk management practices in technology development communities; and determination of steps to improve the linkage of risk assessment to risk management and risk communication.

DATES: September 10, 2013, from 8:30 a.m. until 6:00 p.m. and September 11, 2013, from 8:30 a.m. until 3:00 p.m.

ADDRESSES: The workshop will be held at the U.S. Department of Agriculture Conference & Training Center, Patriots Plaza III, 355 E Street SW., Washington, DC 20024.

Type of Meeting: Public.

Registration: Due to space limitations, pre-registration for the workshop is required. Registration is on a first-come, first-served basis until capacity is reached. Registration will open on August 2, 2013, and remain open until September 3, 2013, or until capacity is reached. Individuals planning to attend the workshop should register online at *www.nano.gov/r3workshop*. Please provide your full name, title, affiliation, and email or mailing address when registering.

Those interested in presenting 3–5 minutes of public comments at the meeting must be registered *and must be granted approval to present. Please submit your request to present* at *www.nano.gov/r3workshop* or by mail to Tarek Fadel, 4201 Wilson Blvd., Stafford II, Suite 405, Arlington, VA 22230. All requests to present must be received by midnight on August 23, 2013.

FOR FURTHER INFORMATION CONTACT: For information regarding this Notice, please contact Tarek Fadel at National Nanotechnology Coordination Office, by telephone (703–292–7926) or email: *tfadel@nnco.nano.gov* or *cdavid@nnco.nano.gov.*

Updates to this Notice and additional information about the meeting, including the agenda, is posted at *www.nano.gov/r3workshop.*

Meeting Accomodations: Individuals requiring special accommodation to access this public meeting should contact Tarek Fadel (telephone 703–292–7926) or Cheryl David-Fordyce (703–292–2424) at least ten business days prior to the meeting so that appropriate arrangements can be made.

Ted Wackler,

Deputy Chief of Staff and Assistant Director.

[FR Doc. 2013–18217 Filed 7–29–13; 8:45 am]

BILLING CODE 3270–F3–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94–409, that the Securities and Exchange Commission will hold a Closed Meeting on Thursday, August 1, 2013 at 2:00 p.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the Closed Meeting. Certain staff members who have an interest in the matters also may be present.

The General Counsel of the Commission, or her designee, has certified that, in her opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (7), 9(B) and (10) and 17 CFR 200.402(a)(3), (5), (7), 9(ii) and (10), permit consideration of the scheduled matters at the Closed Meeting.

Commissioner Gallagher, as duty officer, voted to consider the items listed for the Closed Meeting in a closed session.

The subject matter of the Closed Meeting will be: Institution and settlement of injunctive actions; institution and settlement of administrative proceedings; consideration of amicus participation; and other matters relating to enforcement proceedings.

At times, changes in Commission priorities require alterations in the scheduling of meeting items.

For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact the Office of the Secretary at (202) 551–5400.

Dated: July 25, 2013.

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2013–18350 Filed 7–26–13; 11:15 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–70036; File No. SR–NASDAQ–2013–097]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Offer a New Dedicated OUCH Port Infrastructure Connectivity Option and Adopt Related Fees

July 25, 2013.

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 July 23, 2013 The NASDAQ Stock Market LLC (''NASDAQ'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') a proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

NASDAQ is proposing to offer a new Dedicated OUCH Port Infrastructure connectivity option and adopt related fees under Rule 7015(g). The Exchange will implement the new service in October 2013, and will provide public notice thereof at least five days prior to the implementation date. NASDAQ will accept subscriptions to the service immediately; however, it will not assess the monthly subscription fee until the service is offered in October 2013. NASDAQ will begin assessing the installation fee immediately, but waive the fee for all subscriptions received by August 15, 2013.[3]

The text of the proposed rule change is below. Proposed new language is italicized; proposed deletions are in brackets.

* * * * *

7015. Access Services

The following charges are assessed by Nasdaq for connectivity to systems operated by NASDAQ, including the Nasdaq Market Center, the FINRA/NASDAQ Trade Reporting Facility, and FINRA's OTCBB Service. The following fees are not applicable to the NASDAQ

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Exchange notes that the planned implementation timeframe is designed to provide it with adequate time to purchase and install new hardware, and to program and test the system.

Options Market LLC. For related options fees for Access Services refer to Chapter XV, Section 3 of the Options Rules.

(a)–(f) No change.

(g) Other Port Fees

REMOTE MULTI-CAST ITCH WAVE PORTS

Description	Installation fee	Recurring monthly fee
MITCH Wave Port at Secaucus, NJ	$2,500	$7,500
MITCH Wave Port at Weehawken, NJ	2,500	7,500
MITCH Wave Port at Newark, NJ	2,500	7,500

The following port fees shall apply in connection with the use of other trading telecommunication protocols:

- $500 per month for each port pair, other than Multicast ITCH® data feed pairs, for which the fee is $1000 per month for software-based TotalView-ITCH or $2,500 per month for combined software- and hardware-based TotalView-ITCH.
- An additional $200 per month for each port used for entering orders or quotes over the Internet.
- An additional $600 per month for each port used for market data delivery over the Internet.

Dedicated OUCH Port Infrastructure

The Dedicated OUCH Port Infrastructure subscription allows a member firm to assign up to 30 of its OUCH ports to a dedicated server infrastructure for its exclusive use. A Dedicated OUCH Port Infrastructure subscription is available to a member firm for a fee of $5,000 per month, which is in addition to the standard fees assessed for each OUCH port. A one-time installation fee of $5,000 is assessed subscribers for each Dedicated OUCH Port Server subscription. NASDAQ is waiving the $5,000 installation fee for all subscriptions received through August 15, 2013.

(h) No change.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NASDAQ 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

NASDAQ is proposing to offer a new connectivity option, and adopt related installation and subscription fees, which will provide member firms with remote access to dedicated server hardware for OUCH port connectivity [4] to the NASDAQ System. Currently, NASDAQ distributes a member firm's OUCH ports among shared servers in order to facilitate all member firms' connectivity to NASDAQ. These servers act as switches, channeling the message traffic member firms send through their ports to the System. NASDAQ is proposing to provide individual member firms with access to a dedicated OUCH port server from NASDAQ. This service is optional and is available to all NASDAQ member firms.

NASDAQ is proposing to offer the service for a one-time installation fee of $5,000 per subscription and a monthly subscription fee of $5,000. The monthly subscription fee is in addition to the standard per port fee assessed a member firm for the OUCH ports assigned to the Dedicated OUCH subscription [5] and any other connectivity costs currently assessed member firms.[6] The proposed fees are associated with the additional capital expenditures (hardware) and operating expenditures (personnel) associated with offering, supporting and maintaining this service. NASDAQ notes that the dedicated server assigned to a member firm for each subscription is limited to a maximum of 30 OUCH ports. As a consequence, a member firm with an excess of 30 OUCH ports that it would like assigned to dedicated infrastructure must have more than one Dedicated OUCH subscription.[7] NASDAQ is proposing to assess the monthly subscription fee beginning with the rollout of the service in October 2013. NASDAQ is proposing to assess the installation fee effective immediately, but waive the fee for subscriptions received by August 15, 2013.

NASDAQ notes that member firms will not have physical access to their dedicated server within the NASDAQ data center and thus cannot make any modifications to the server. All port servers (including servers used for this service) are owned and operated by NASDAQ. NASDAQ will assign the same type of server to Dedicated OUCH subscribers as is provided to existing OUCH port users on shared servers.

2. Statutory Basis

NASDAQ believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[8] in general, and with Section 6(b)(5) of the Act [9] in particular, in that the proposal is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Exchange notes that the servers under the proposed new service are owned and operated by the Exchange. A subscribing member firm will not have the ability to modify the infrastructure in any way. In addition, the proposed dedicated infrastructure will not change the process by which order message traffic reaches the System. Rather, it merely provides certainty to a subscribing member firm that its OUCH ports are not on shared infrastructure.

The Exchange also believes the proposed rule change is consistent with Section 6(b)(4) of the Act [10] in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which the Exchange operates or controls, and it does not unfairly

[4] An ''OUCH port'' is a connectivity port designated to accept only OUCH protocol messaging. *See http://www.nasdaqtrader.com/Trader.aspx?id=OUCH* for a description of the OUCH protocol. Ports are available to member firms for the purpose of transacting on the Exchange system. Unlike other protocols, the OUCH protocol only provides a method for subscribers to send orders and receive status updates on those orders (*see, e.g. http://www.nasdaqtrader.com/Trader.aspx?id=RASH*).

[5] The OUCH ports assigned to the service may be currently subscribed ports, newly-subscribed, or a combination thereof.

[6] All the fees a member firm is currently assessed will continue, unaffected by a subscription to the Dedicated OUCH service.

[7] In such a case, a member firm may assign its OUCH ports to its multiple dedicated servers in any ratio it wishes, so long as no one server has more than 30 OUCH ports assigned to it.

[8] 15 U.S.C. 78f.

[9] 15 U.S.C. 78f(b)(5).

[10] 15 U.S.C. 78f(b)(4).

discriminate between customers, issuers, brokers or dealers.

The Exchange determined that the proposed fees are reasonable based on market demand as well as the costs associated with purchasing hardware (capital expenditures) and supporting and maintaining the infrastructure (operating expenditures) for this Dedicated OUCH connectivity option for member firms. To the extent such costs are covered, the proposed fees may provide NASDAQ with a profit. Member firms are not obligated to subscribe to this service and may continue to access the NASDAQ System through shared servers at no additional cost. As such, the Exchange believes that if a member firm determines that the installation and subscription fees are not cost-efficient for its needs or does [sic] not provide sufficient value to the firm, it may elect not to subscribe to the service and continue to access the System, unchanged. NASDAQ notes that member firms may subscribe to OUCH ports at any time, in addition to or in replacement of, existing means of accessing NASDAQ. NASDAQ also believes that waiver of the installation fee is reasonable as it promotes member firms' subscription to the connectivity option, thus providing NASDAQ with a successful launch of the new service option while also promoting a wider use of the connectivity among member firms that might not be initially realized without the waiver.

The Exchange believes that the proposed fees are equitable and not unfairly discriminatory because member firms that voluntarily elect to subscribe to this service will be charged the same fees. Furthermore, this service is optional and is available to all NASDAQ member firms. With Dedicated OUCH, member firms can develop a tailored trading solution by controlling their message traffic in order to optimize their trading strategies. In this regard, some member firms may find little benefit in having [sic] dedicated server, and may continue their use of the shared servers, unchanged. The Exchange has no plans to eliminate shared servers and require subscription to the dedicated infrastructure. NASDAQ also believes that the waiver of the installation fee is equitable and not unfairly discriminatory because it is offered to all member firms and it is applied equally to all member firms that subscribe by a date certain.

B. Self-Regulatory Organization's Statement on Burden on Competition

NASDAQ 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, as amended. NASDAQ notes that the connectivity option is wholly optional and therefore member firms are not compelled to subscribe. Moreover, NASDAQ believes that the proposed rule change is pro-competitive as it adds an additional connectivity option available to NASDAQ members.

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 [11] and subparagraph (f)(6) of Rule 19b–4 thereunder.[12]

A proposed rule change filed under Rule 19b–4(f)(6) [13] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[14] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing.

The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. The Exchange proposes to offer a waiver of the installation fee for those who subscribe to this new connectivity option by August 15, 2013. NASDAQ's waiver of the installation fee will benefit those who purchase this new connectivity option by August 15, 2013, and will allow NASDAQ to begin without delay the process of purchasing hardware and installation so that subscribers may use the service beginning with its commencement in October 2013. The proposed rule change presents no novel issues, and waiver of the operative delay provides benefits to NASDAQ and member firms subscribing to the service. Therefore, the Commission hereby waives the 30-day operative delay and designates the proposal operative upon filing.[15]

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. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B) [16] of the Act to determine whether the proposed rule change 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–NASDAQ–2013–097 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2013–097. 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

[11] 15 U.S.C. 78s(b)(3)(A).

[12] 17 CFR 240.19b–4(f)(6).

[13] 17 CFR 240.19b–4(f)(6).

[14] 17 CFR 240.19b–4(f)(6)(iii).

[15] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[16] 15 U.S.C. 78s(b)(2)(B).

those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal offices of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASDAQ–2013–097, and should be submitted on or before August 20, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[17]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–18282 Filed 7–29–13; 8:45 am]

BILLING CODE 8011–01–P

[17] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[File No. 500–1]

Duoyuan Printing, Inc.; Order of Suspension: of Trading

July 26, 2013.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Duoyuan Printing, Inc., because Duoyuan Printing, Inc. has not filed any periodic reports for any reporting period subsequent to March 31, 2010.

The Commission is of the opinion that the public interest and the protection of the investors require a suspension of trading in securities of Duoyuan Printing, Inc.

Therefore, it is ordered, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in Duoyuan Printing, Inc. is suspended for the period from 9:30 a.m. EDT, July 26, 2013, through 11:59 p.m. EDT, on August 8, 2013.

By the Commission.

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2013–18362 Filed 7–26–13; 11:15 am]

BILLING CODE 8011–01–P

SMALL BUSINESS ADMINISTRATION

Interagency Task Force on Veterans Small Business Development

AGENCY: U.S. Small Business Administration.

ACTION: Notice of open Federal Interagency Task Force meeting.

SUMMARY: The SBA is issuing this notice to announce the location, date, time, and agenda for its public meeting of the Interagency Task Force on Veterans Small Business Development. The meeting will be open to the public.

DATES: August 28, 2013, from 9:00 a.m. to 12:00 noon in the newly designed Eisenhower Conference Room, located on the concourse level.

ADDRESSES: SBA Headquarters, 409 3rd Street SW., Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C., Appendix 2), SBA announces the meeting of the Interagency Task Force on Veterans Small Business Development. The Task Force is established pursuant to Executive Order 13540 and focused on coordinating the efforts of Federal agencies to improve capital, business development opportunities and pre-established Federal contracting goals for small business concerns owned and controlled by veterans (VOB's) and service-disabled veterans (SDVOSB'S). Moreover, the Task Force shall coordinate administrative and regulatory activities and develop proposals relating to ''six focus areas'': (1) Access to capital (loans, surety bonding and franchising); (2) Ensure achievement of pre-established contracting goals, including mentor protégé and matching with contracting opportunities; (3) Increase the integrity of certifications of status as a small business; (4) Reducing paperwork and administrative burdens in accessing business development and entrepreneurship opportunities; (5) Increasing and improving training and counseling services; and (6) Making other improvements to support veteran's business development by the Federal government.

On November 1, 2011, the Interagency Task Force on Veterans Small Business Development submitted its first report to the President, which included 18 recommendations that were applicable to the ''six focus areas'' identified above.

The purpose of the meeting is to discuss progress on the recommendations and next steps identified by the Interagency Task Force (IATF) in the Fiscal Year (FY) 12 Annual Report. The agenda will include updates from each of the members, public comment, and planning for the FY13 IATF Annual Report.

In addition, the Task Force will allow time to obtain public comment from individuals and representatives of organizations regarding the areas of focus.

FOR FURTHER INFORMATION CONTACT: The meeting is open to the public; however, advance notice of attendance is requested. Anyone wishing to attend and/or make a presentation to the Task Force must contact Barbara Carson, by August 16, 2013, by email in order to be placed on the agenda. Comments for the Record should be applicable to the ''six focus areas'' of the Task Force and emailed prior to the meeting for inclusion in the public record, verbal presentations; however, will be limited to five minutes in the interest of time and to accommodate as many presenters as possible.

Written comments should be emailed to Barbara Carson, Deputy Associate Administrator, Office of Veterans Business Development, U.S. Small Business Administration, 409 3rd Street SW., Washington, DC 20416, at the email address for the Task Force, *vetstaskforce@sba.gov.* Additionally, if you need accommodations because of a disability or require additional information, please contact Barbara Carson, Designated Federal Official for the Task Force at (202) 205–6773; or by email at: *Barbara Carson@sba.gov,* SBA, Office of Veterans Business Development, 409 3rd Street SW., Washington, DC 20416. For more information, please visit our Web site at *www.sba.gov/vets.*

Dated: July 23, 2013.

Christopher R. Upperman,

SBA Committee Management Officer.

[FR Doc. 2013–18220 Filed 7–29–13; 8:45 am]

BILLING CODE P

DEPARTMENT OF TRANSPORTATION

Connected Vehicle Planning and Policy Stakeholder Meeting; Notice of Public Meeting

AGENCY: ITS Joint Program Office, Research and Innovative Technology Administration, U.S. Department of Transportation.

ACTION: Notice.

The U.S. Department of Transportation (USDOT) Intelligent Transportation System Joint Program Office (ITS JPO), in conjunction with the Federal Highway Administration

(FHWA) and Federal Transit Administration (FTA), will conduct a free public meeting focused on soliciting input from the planning community and related national associations on policy and legal aspects of Connected Vehicle implementation. The meeting will include an overview of the Connected Vehicle technologies from the planning and policy perspective and the opportunity for participants to identify questions and concerns regarding the implementation of these technologies.

The meeting will be held on Thursday, September 12, 2013, from 9:00 a.m. to 12:30 p.m. at the USDOT, 1200 New Jersey Avenue SE., Washington, DC 20590, across the street from the Navy Yard Metro Station.

Advanced registration is required. Please RSVP no later than Wednesday, September 4, 2013 with your name and a business email address to Elizabeth Machek of the Research and Innovative Technology Administration at *Elizabeth.machek@dot.gov.* Please note if you are not a U.S. citizen, additional information will be required in compliance with USDOT security procedures. Detailed meeting location and materials will be provided to registered attendees.

For more information about Connected Vehicles, visit *http://www.its.dot.gov/.*

Issued in Washington, DC, on the 24th day of July 2013.

John Augustine,

Managing Director, ITS Joint Program Office.

[FR Doc. 2013–18232 Filed 7–29–13; 8:45 am]

BILLING CODE 4910–HY–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Notice of Final Federal Agency Actions on Transportation Project in Washington State

AGENCY: Federal Highway Administration (FHWA), U.S. DOT.

ACTION: Notice of Limitation on Claims for Judicial Review of Actions by FHWA and Other Federal Agencies.

SUMMARY: This notice announces actions taken by the FHWA and other Federal agencies that are final within the meaning of 23 U.S.C. 139(l)(1). The actions relate to the State Route 167 Puyallup to SR 509, Puyallup River Bridge Replacement Project, located in the City of Puyallup (Milepost [MP] 6.40) in Pierce County, Washington. The action by FHWA is the Record of Decision (ROD), which selects a new bridge and roadway alignment for southbound traffic, which will accommodate the future SR 167 Extension interchange and removes the existing steel truss as a last order of work. Actions by other Federal agencies include issuing permits.

DATES: By this notice, FHWA is advising the public of final agency actions subject to 23 U.S.C. 139(l)(1). A claim seeking judicial review of the Federal agency actions on the listed highway project will be barred unless the claim is filed on or before December 27, 2013. If the Federal law that authorizes judicial review of a claim provides a time period of less than 150 days for filing such claim, then that shorter time period still applies.

FOR FURTHER INFORMATION CONTACT: Dean Moberg, Area Engineer, Olympic Region, Federal Highway Administration, 711 South Capital Way, Suite 501, Olympia, WA 98501–0943, telephone: (360) 534–9344, email address: *Dean.Moberg@dot.gov;* or Jeff Sawyer, Environmental Manager, Olympic Region, Washington State Department of Transportation, 6639 Capitol Blvd. SW., Suite 302, Tumwater, WA 98501, telephone: (360) 570–6701, email address: *sawyerj@wsdot.wa.gov.*

SUPPLEMENTARY INFORMATION: Notice is hereby given that the FHWA and other Federal agencies have taken final agency actions related to the State Route 167 Puyallup to SR 509, Puyallup River Bridge Replacement Project in the State of Washington. The FHWA, in cooperation with the Washington State Department of Transportation (WSDOT), prepared a Draft Environmental Impact Statement (EIS) (FHWA–WA–EIS–2002–02–D) and Final EIS (FHWA–WA–EIS–2002–02–F) for the proposed completion of the SR 167 freeway between SR 161 (Meridian Street North) in north Puyallup and the SR 509 freeway in the City of Tacoma. The preferred alternative entailed removing the Meridian Street Bridge and constructing a new five-lane northbound bridge in its place. The FHWA issued a ROD for the project in October 2007 and funding for engineering and to begin purchasing right of way was approved. The FHWA and WSDOT prepared a Draft Supplemental EIS (FHWA–WA–EIS–2002–02–DS) to evaluate the design modification, which includes construction of a new two-lane bridge that will be built to the west of the existing concrete bridge, instead of at the current location of the Meridian Street Bridge. Funding for this bridge replacement project was expedited due to deterioration of the bridge. When funding to complete the SR 167 Puyallup to SR 509 Extension project is available, the two-lane northbound bridge will be removed to make way for the ultimate configuration of a five-lane northbound bridge that was detailed in the 2007 ROD.

The actions by the Federal agencies, and the laws under which such actions were taken, are described in the Final Supplemental EIS (FHWA–WA–EIS–2002–02–FS) and ROD issued concurrently on July 16, 2013, and in other documents in the FHWA administrative record. These documents are available by contacting FHWA or WSDOT at the addresses provided above. The combined Final Supplemental EIS and ROD can also be downloaded electronically from the project Web site at *www.wsdot.wa.gov/projects/sr167/puyallupriverbridge/,* or viewed at area public libraries.

This notice applies to all Federal agency decisions on the project as of the issuance date of this notice and all laws under which such actions were taken, including but not limited to:

General: National Environmental Policy Act [42 U.S.C. 4321–4351]; Federal-Aid Highway Act [23 U.S.C. 109].

Wildlife: Endangered Species Act [16 U.S.C. 1531–1544]; Migratory Bird Treaty Act [16 U.S.C. 703–712].

(Catalog of Federal Domestic Assistance Program No. 20.205, Highway Research, Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Authority: 23 U.S.C. 139(l)(1), as amended by Moving Ahead for Progress in the 21st Century Act (MAP–21), Pub. L. 112–141, sec. 1308, 126 Stat. 405 (2012).

Issued on: July 16, 2013.

Daniel M. Mathis,

Division Administrator, Olympia, WA.

[FR Doc. 2013–17877 Filed 7–29–13; 8:45 am]

BILLING CODE 4910–RY–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2013–0033; Notice 1]

Notice of Receipt of Petition for Decision That Nonconforming 1996 Chevrolet Impala Passenger Cars Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition.

SUMMARY: This document announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a decision that nonconforming 1996 Chevrolet Impala passenger cars that were not originally manufactured to comply with all applicable Federal Motor Vehicle Safety Standards (FMVSS), are eligible for importation into the United States because they are substantially similar to vehicles that were originally manufactured for sale in the United States and that were certified by their manufacturer as complying with the safety standards (the U.S.-certified version of the 1996 Chevrolet Impala passenger cars) and they are capable of being readily altered to conform to the standards.

DATES: The closing date for comments on the petition is August 29, 2013.

ADDRESSES: Comments should refer to the docket and notice numbers above and be submitted by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Mail:* Docket Management Facility: U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001
- *Hand Delivery or Courier:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal holidays.
- *Fax:* 202–493–2251.

Instructions: Comments must be written in the English language, and be no greater than 15 pages in length, although there is no limit to the length of necessary attachments to the comments. If comments are submitted in hard copy form, please ensure that two copies are provided. If you wish to receive confirmation that your comments were received, please enclose a stamped, self-addressed postcard with the comments. Note that all comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided. Please see the Privacy Act heading below.

Privacy Act: Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78).

How To Read Comments Submitted to the Docket: You may read the comments received by Docket Management at the address and times given above. You may also view the documents from the Internet at *http://www.regulations.gov.* Follow the online instructions for accessing the dockets. The docket ID number and title of this notice are shown at the heading of this document notice. Please note that even after the comment closing date, we will continue to file relevant information in the Docket as it becomes available. Further, some people may submit late comments. Accordingly, we recommend that you periodically search the Docket for new material.

FOR FURTHER INFORMATION CONTACT: George Stevens, Office of Vehicle Safety Compliance, NHTSA (202–366–5308).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable FMVSS shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable FMVSS.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

U.S. Specs of Havre de Grace, Maryland (Registered Importer R–03–321) has petitioned NHTSA to decide whether nonconforming 1996 Chevrolet Impala passenger cars are eligible for importation into the United States. The vehicles which U.S. Specs believes are substantially similar are 1996 Chevrolet Impala passenger cars that were manufactured for sale in the United States and certified by their manufacturer as conforming to all applicable FMVSS.

The petitioner claims that it compared non-U.S. certified 1996 Chevrolet Impala passenger cars to their U.S.-certified counterparts, and found the vehicles to be substantially similar with respect to compliance with most FMVSS.

U.S. Specs submitted information with its petition intended to demonstrate that non-U.S. certified 1996 Chevrolet Impala passenger cars, as originally manufactured, conform to many FMVSS in the same manner as their U.S. certified counterparts, or are capable of being readily altered to conform to those standards. Specifically, the petitioner claims that non-U.S. certified 1996 Chevrolet Impala passenger cars are identical to their U.S. certified counterparts with respect to compliance with Standard Nos. 102 *Transmission Shift Lever Sequence, Starter Interlock, and Transmission Braking Effect,* 103 *Windshield Defrosting and Defogging Systems,* 104 *Windshield Wiping and Washing Systems,* 106 *Brake Hoses,* 109 *New Pneumatic Tires,* 113 *Hood Latch System,* 116 *Motor Vehicle Brake Fluids,* 124 *Accelerator Control Systems,* 135 *Light Vehicle Brake Systems,* 202 *Head Restraints,* 204 *Steering Control Rearward Displacement,* 205 *Glazing Materials,* 207 *Seating Systems,* 210 *Seat Belt Assembly Anchorages,* 212 *Windshield Mounting,* 214 *Side Impact Protection,* 216 *Roof Crush Resistance,* 219 *Windshield Zone Intrusion,* 301 *Fuel System Integrity,* and 302 *Flammability of Interior Materials.*

The petitioner also contends that the vehicles are capable of being readily altered to meet the following standards, in the manner indicated:

Standard No. 101 *Controls and Displays:* Recalibration of the speedometer to read in MPH instead of KPH; inscription of the word ''BRAKE'' on the brake failure indicator in place of the ECE warning symbol.

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment:* Replacement of the headlamps, side marker lamps, and tail lamps with U.S.-model components and installation of U.S.-model high-mounted stop lamp if the vehicle is not already so equipped.

Standard No. 110 *Tire Selection and Rims for Motor Vehicles with a GVWR of 4,536 kilograms (10,000 pounds) or Less:* Installation of a tire information placard if the vehicle is not already so equipped.

Standard No. 111 *Rearview Mirrors:* Replacement of the passenger side rearview mirror with a U.S.-model vehicle component or inscription of the required warning statement on the face of that mirror.

Standard No. 114 *Theft Protection and Rollaway Prevention:* Installation of a warning buzzer if the vehicle is not already so equipped or reprogramming the buzzer to comply with the standard.

Standard No. 118 *Power-operated Window, Partition, And Roof Panel Systems:* Inspection of each vehicle to verify compliance with the standard and reprogramming and/or rewiring of the system to meet the standard if it does not already comply

Standard No. 201 *Occupant Protection in Interior Impact:* Inspection of components subject to this standard and replacement as necessary with U.S.-model components.

Standard No. 206 *Door Locks and Door Retention Components:* Inspection of door locks and retention components and installation of U.S.-model components if the vehicle is not already so equipped.

Standard No. 208 *Occupant Crash Protection:* Installation of a seat belt warning lamp and audible buzzer if the vehicle is not already so equipped; inspection of vehicle to ensure that airbags, control unit, sensors, seatbelts, and knee bolsters bearing U.S.-model part numbers have been installed.

Standard No. 209 *Seat Belt Assemblies:* Inspection of all seat belts and replacement with U.S.-model components if vehicle is not already so equipped.

The petitioner states that a vehicle identification plate must be affixed to the vehicles near the left windshield post if not already present to meet the requirements of 49 CFR part 565.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above addresses both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Authority: 49 U.S.C. 30141(a)(1)(A), (a)(1)(B), and (b)(1); 49 CFR 593.7; delegation of authority at 49 CFR 1.95 and 501.8.

Issued On: July 25, 2013.

Claude H. Harris,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 2013–18245 Filed 7–29–13; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2013–0020; Notice 1]

Notice of Receipt of Petition for Decision That Nonconforming 2005 Jaguar XKR Passenger Cars Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition.

SUMMARY: This document announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a decision that nonconforming 2005 Jaguar XKR passenger cars that were not originally manufactured to comply with all applicable Federal Motor Vehicle Safety Standards (FMVSS), are eligible for importation into the United States because they are substantially similar to vehicles that were originally manufactured for sale in the United States and that were certified by their manufacturer as complying with the safety standards (the U.S.-certified version of 2005 Jaguar XKR passenger cars) and they are capable of being readily altered to conform to the standards.

DATES: The closing date for comments on the petition is August 29, 2013.

ADDRESSES: Comments should refer to the docket and notice numbers above and be submitted by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Mail:* Docket Management Facility: U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal holidays.
- *Fax:* 202–493–2251.

Instructions: Comments must be written in the English language, and be no greater than 15 pages in length, although there is no limit to the length of necessary attachments to the comments. If comments are submitted in hard copy form, please ensure that two copies are provided. If you wish to receive confirmation that your comments were received, please enclose a stamped, self-addressed postcard with the comments. Note that all comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided. Please see the Privacy Act heading below.

Privacy Act: Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78).

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FOR FURTHER INFORMATION CONTACT: George Stevens, Office of Vehicle Safety Compliance, NHTSA (202–366–5308).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable FMVSS shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable FMVSS.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR Part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible

for importation. The agency then publishes this decision in the **Federal Register**.

U.S. Specs of Havre de Grace, Maryland (Registered Importer R–03–321) has petitioned NHTSA to decide whether nonconforming 2005 Jaguar XKR passenger cars are eligible for importation into the United States. The vehicles which U.S. Specs believes are substantially similar are 2005 Jaguar XKR passenger cars that were manufactured for sale in the United States and certified by their manufacturer as conforming to all applicable FMVSS.

The petitioner claims that it compared non-U.S. certified 2005 Jaguar XKR passenger cars to their U.S.-certified counterparts, and found the vehicles to be substantially similar with respect to compliance with most FMVSS.

U.S. Specs submitted information with its petition intended to demonstrate that non-U.S. certified 2005 Jaguar XKR passenger cars, as originally manufactured, conform to many FMVSS in the same manner as their U.S. certified counterparts, or are capable of being readily altered to conform to those standards. Specifically, the petitioner claims that non-U.S. certified 2005 Jaguar XKR passenger cars are identical to their U.S. certified counterparts with respect to compliance with Standard Nos. 102 *Transmission Shift Lever Sequence, Starter Interlock, and Transmission Braking Effect,* 103 *Windshield Defrosting and Defogging Systems,* 104 *Windshield Wiping and Washing Systems,* 105 *Hydraulic and Electric Brake Systems,* 106 *Brake Hoses,* 109 *New Pneumatic Tires,* 113 *Hood Latch System,* 116 *Motor Vehicle Brake Fluids,* 124 *Accelerator Control Systems,* 135 *Light Vehicle Brake Systems,* 202 *Head Restraints,* 204 *Steering Control Rearward Displacement,* 205 *Glazing Materials,* 207 *Seating Systems,* 210 *Seat Belt Assembly Anchorages,* 212 *Windshield Mounting,* 214 *Side Impact Protection,* 216 *Roof Crush Resistance,* 219 *Windshield Zone Intrusion,* 301 *Fuel System Integrity,* and 302 *Flammability of Interior Materials.*

The petitioner also contends that the vehicles are capable of being readily altered to meet the following standards, in the manner indicated:

Standard No. 101 *Controls and Displays:* recalibration of the speedometer to read in MPH instead of KPH if the speedometer is not already so calibrated; inscription of the word ''BRAKE'' on the brake failure indicator in place of the ECE warning symbol, if the vehicle is not already so equipped.

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment:* Replacement of the headlamps, side marker lamps, and tail lamps with U.S.-model components; installation of a U.S.-model high-mounted stop lamp.

Standard No. 110 *Tire Selection and Rims for Motor Vehicles with a GVWR of 4,536 kilograms (10,000 pounds) or Less:* installation of a tire information placard.

Standard No. 111 *Rearview Mirrors:* replacement of the passenger side rearview mirror with a U.S.-model component or inscription of the required warning statement on the face of that mirror.

Standard No. 114 *Theft Protection and Rollaway Prevention:* Installation of a warning buzzer if the vehicle is not already so equipped or reprogramming the buzzer to comply with the standard.

Standard No. 118 *Power-operated Window, Partition, And Roof Panel Systems:* Inspection of each vehicle to verify compliance with the standard and reprogramming and/or rewiring of the system to meet the standard if it does not already comply.

Standard No. 201 *Occupant Protection in Interior Impact:* Inspection of components subject to this standard and replacement as necessary with U.S.-model components.

Standard No. 206 *Door Locks and Door Retention Components:* Inspection of door locks and retention components and installation of U.S.-model components if the vehicle is not already so equipped.

Standard No. 208 *Occupant Crash Protection:* Installation of a seat belt warning lamp and audible buzzer if the vehicle is not already so equipped; inspection of the vehicle to ensure that airbags, control unit, sensors, seatbelts, and knee bolsters bearing U.S.-model part numbers have been installed.

Standard No. 209 *Seat Belt Assemblies:* Inspection of all seat belts and replacement with U.S.-model components if the vehicle is not already so equipped.

Standard No. 225 *Child Restraint Anchorage Systems:* Installation of a U.S.-model restraint anchorage system if the vehicle is not already so equipped.

Standard No. 401 *Interior Trunk Release:* Installation of a compliant interior trunk release system.

The petitioner states that a vehicle identification plate must be affixed to the vehicle near the left windshield post if not already present to meet the requirements of 49 CFR Part 565.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above addresses both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Authority: 49 U.S.C. 30141(a)(1)(A), (a)(1)(B), and (b)(1); 49 CFR 593.7; delegation of authority at 49 CFR 1.95 and 501.8.

Issued on July 25, 2013.

Claude H. Harris,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 2013–18244 Filed 7–29–13; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2012–0008; Notice 2]

Osram Sylvania Products Incorporated, Grant of Petition for Decision of Inconsequential Noncompliance

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Grant of petition.

SUMMARY: Osram Sylvania Products, Inc.[1] (Osram) has determined that certain Type HB2 replaceable light sources, manufactured between September 25 2011 and October 8, 2011, do not fully comply with paragraph S7.7 of Federal Motor Vehicle Safety Standard (FMVSS) No. 108, *Lamp, Reflective Devices, and Associated Equipment.* Osram has filed an appropriate report dated November 23, 2011,[2] pursuant to 49 CFR part 573, *Defect and Noncompliance Responsibility and Reports.*

Pursuant to 49 U.S.C. 30118(d) and 30120(h) and the rule implementing those provisions at 49 CFR part 556, Osram has petitioned for an exemption from the notification and remedy requirements of 49 U.S.C. Chapter 301 on the basis that this noncompliance is inconsequential to motor vehicle safety. Notice of receipt of the petition was published, with a 30-day public comment period, on April 9, 2012 in the **Federal Register** (77 FR 21152). No comments were received. To view the petition and all supporting documents log onto the Federal Docket Management System (FDMS) Web site

[1] Osram Sylvania Products Inc. is a manufacturer of motor vehicle replacement equipment and is registered under the laws of the state of Delaware.

[2] Osram submitted an amended version of the report on January 6, 2012.

at: *http://www.regulations.gov/.* Then follow the online search instructions to locate docket number ''NHTSA–2012–0008.''

For further information on this decision contact Mr. Michael Cole, Office of Vehicle Safety Compliance, the National Highway Traffic Safety Administration (NHTSA), telephone (202) 366–2334, facsimile (202) 366–7002.

Equipment Involved: Affected are approximately 40,544 Type HB2 replaceable light sources that were manufactured by Osram Sylvania Products, Inc., between September 25, 2011, and October 8, 2011.

Summary of Osram's Analysis and Arguments: Osram explains that the noncompliance is due to an error in the production facility. Certain Type HB2 replaceable light sources were produced with an incorrect upper beam filament wire which results in an upper beam luminous flux outside (below) the specifications as required in paragraph S7.7 of FMVSS No. 108.

Osram stated that although the subject Type HB2 replaceable light source may not meet the required luminous flux specifications, the noncompliance is inconsequential to motor vehicle safety. Osram came to this conclusion based on the following results of testing that it conducted on a large sample of lamps using the subject noncompliant Type HB2 replaceable light sources:

(1) In half of the vehicle/lamp applications, the upper beam photometry specified for HB2 lamps will continue to be met;

(2) In the remaining applications, the photometry performance falls just below the specified minimums for HB2 lamps (and in no more than three, but typically just one or two, test points on a per-measured headlamp basis); and

(3) All lamps using the noncompliant bulbs perform at or above the upper beam photometry requirements of other lamp types, such as HB1 and HB5, that are currently permitted by FMVSS 108 and in prevalent use on U.S. roads.

Osram also stated that the issue that caused the subject noncompliance has been corrected at the production facility and all products currently being shipped meet the applicable requirements.

In summation, Osram believes that the described noncompliance of its Type HB2 replaceable light sources to meet the requirements of FMVSS No. 108 is inconsequential to motor vehicle safety, and that its petition, to exempt from providing recall notification of noncompliance as required by 49 U.S.C. 30118 and remedying the recall noncompliance as required by 49 U.S.C. 30120 should be granted.

NHTSA Analysis and Decision:

Requirement Background

Section S7.7 of FMVSS No. 108 specifically states:

> S7.7 Each replaceable light source shall be designed to conform to the dimensions and electrical specifications furnished with respect to it pursuant to part 564 of this chapter, and shall conform to the following requirements: . . .

NHTSA has reviewed and accepts Osram's analyses that this noncompliance is inconsequential to motor vehicle safety. While the replaceable light source marginally fails to comply with the luminous flux requirements of Docket No. NHTSA–1998–3397–0011, when it is placed into a headlamp, it does meet the FMVSS photometry requirements.

The subject replaceable light source fell 4% below the lower limit for the upper beam of HB2 bulbs, rendering it noncompliant. According to Osram, this was due to an incorrect filament wire being used during production. When this noncompliance was determined, the entire inventory of suspect light sources of Osram's sole customer of original equipment was returned to Osram. Therefore, this petition only applies to aftermarket products. Headlamp performance is primarily affected by luminous flux output and filament geometry. Osram found that while bulbs produced with the incorrect filament wire did not meet the upper beam luminous flux requirements, they did comply with upper beam filament geometry requirements. This allowed headlamps using the subject replaceable light sources to pass the upper beam photometry requirements specified in section UB3 of Table XVIII in FMVSS No. 108. Furthermore, in a 2006 University of Michigan Transportation Research Institute report,[3] researchers observed that upper beams were only used for 3.1% of the distance driven at night. This indicates that the potential safety risk with slightly less intensity lighting would be further diminished because the noncompliance only applies to upper beam performance.

As such, NHTSA agrees that due to a combination of the following factors: The subject replaceable light source only fell 4% below the lower limit, headlamps with the subject light sources pass FMVSS 108 photometry requirements, only aftermarket products are affected, and only the upper beam is affected; an occupant using the noncompliant subject light source would not be exposed to a significantly greater risk than an occupant using a similar compliant light source. Therefore the noncompliance is inconsequential to motor vehicle safety.

In consideration of the foregoing, NHTSA has decided that Osram has met its burden of persuasion that the FMVSS No. 108 noncompliance in the Type HB2 replaceable light sources identified in Osram's Noncompliance Information Report is inconsequential to motor vehicle safety. Accordingly, Osram's petition is granted and the Osram is exempted from the obligation of providing notification of, and a remedy for, that noncompliance under 49 U.S.C. 30118 and 30120.

NHTSA notes that the statutory provisions (49 U.S.C. 30118(d) and 30120(h)) that permit manufacturers to file petitions for a determination of inconsequentiality allow NHTSA to exempt manufacturers only from the duties found in sections 30118 and 30120, respectively, to notify owners, purchasers, and dealers of a defect or noncompliance and to remedy the defect or noncompliance. Therefore, this decision only applies to the subject Type HB2 replaceable light sources that Osram no longer controlled at the time it determined that a noncompliance existed.

Authority: 49 U.S.C. 30118, 30120: delegations of authority at 49 CFR 1.95 and 501.8.

Issued on July 25, 2013.

Claude H. Harris,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 2013–18243 Filed 7–29–13; 8:45 am]

BILLING CODE 4910–59–P

[3] ''Real-World Use of High-Beam Headlamps''. Report No: UMTRI–2006–11, Mefford, Flannagan, and Bogard, April 2006.

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

July 25, 2013.

The Department of the Treasury will submit the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, Public Law 104–13, on or after the date of publication of this notice.

DATES: Comments should be received on or before August 29, 2013 to be assured of consideration.

ADDRESSES: Send comments regarding the burden estimate, or any other aspect of the information collection, including suggestion for reducing the burden, to (1) Office of Information and Regulatory

Affairs, Office of Management and Budget, Attention: Desk Officer for Treasury, New Executive Office Building, Room 10235, Washington, DC 20503, or email at *OIRA_Submission@OMB.EOP.GOV* and (2) Treasury PRA Clearance Officer, 1750 Pennsylvania Ave. NW., Suite 8140, Washington, DC 20220, or email at *PRA@treasury.gov.*

FOR FURTHER INFORMATION CONTACT: Copies of the submission(s) may be obtained by calling (202) 927–5331, email at *PRA@treasury.gov*, or the entire information collection request maybe found at *www.reginfo.gov.*

Bureau of the Fiscal Service

OMB Number: 1510–0007.

Type of Review: Extension of a currently approved collection.

Title: Direct Deposit Sign-Up Form and Go Direct Sign Up Form.

Form: SF–1199A, FMS 1200, FMS 1200VADE, FMS 1201L, FMS form 1201S.

Abstract: The Direct Deposit Sign-Up Forms are used by recipients to authorize the deposit of Federal payments into their accounts at financial institutions. The information is used to route the Direct Deposit payment to the correct account at the correct financial institution. It identifies persons who have executed the form.

Affected Public: Individuals or Households.

Estimated Total Burden Hours: 69,142.

OMB Number: 1510–0035.

Type of Review: Extension of a currently approved collection.

Title: Assignment Form.

Form: FMS Form 6314.

Abstract: This form is used when an award holder wants to assign or transfer all or part of his/her award to another person. When this occurs, the award holder forfeits all future rights to the portion assigned.

Affected Public: Individuals or Households.

Estimated Annual Burden Hours: 75.

OMB Number: 1510–0066.

Type of Review: Extension of a currently approved collection.

Title: 31 CFR Part 208—Management; Final Rule.

Abstract: This regulation requires that most Federal payments be made by Electronic Funds Transfer (EFT); sets forth waiver requirements; and provides for a low-cost Treasury-designated account to individuals at a financial institution that offers such accounts.

Affected Public: Private Sector: Businesses or other for-profit.

Estimated Annual Burden Hours: 325.

Dawn D. Wolfgang,

Treasury PRA Clearance Officer.

[FR Doc. 2013–18228 Filed 7–29–13; 8:45 am]

BILLING CODE 4810–35–P

DEPARTMENT OF THE TREASURY

Community Development Financial Institutions Fund

Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The U.S. Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Community Development Financial Institutions Fund (the CDFI Fund), an office within the Department of the Treasury, is soliciting comments concerning the Bank Enterprise Award (BEA) Program Awardee Reporting Form.

DATES: Written comments should be received on or before September 30, 2013 to be assured of consideration.

ADDRESSES: Direct all comments to Mia Sowell, Senior Policy and Program Officer, Community Development Financial Institutions Fund, U.S. Department of the Treasury, 1500 Pennsylvania Avenue NW., Washington, DC 20220, by email to *cdfihelp@cdfi.treas.gov,* by phone to (202) 653–0421, or by facsimile to (202) 508–0083. Please note that these are not toll free numbers.

FOR FURTHER INFORMATION CONTACT: The BEA Program Awardee Reporting Form may be obtained from the BEA Program page of the CDFI Fund's Web site at *http://www.cdfifund.gov/bea.* Requests for additional information should be directed to Mia Sowell, Senior Policy and Program Officer, Community Development Financial Institutions Fund, U.S. Department of the Treasury, 1500 Pennsylvania Avenue NW., Washington, DC 20220, by email to *cdfi@cdfi.treas.gov,* by phone to (202) 653–0421, or by facsimile to (202) 508–0083. Please note that these are not toll free numbers.

SUPPLEMENTARY INFORMATION:

OMB Number: 1559–0032.

Title: Bank Enterprise Award (BEA) Program Awardee Reporting Form.

Abstract: The purpose of the BEA Program is to provide an incentive to insured depository institutions to increase their activities in the form of loans, investments, services, and technical assistance within distressed communities and provide financial assistance to certified Community Development Financial Institutions through grants, stock purchases, loans, deposits, and other forms of financial and technical assistance. Applicants submit applications and are evaluated in accordance with statutory and regulatory requirements (12 CFR 1806). Beginning in the FY 2009 funding round, the CDFI Fund required BEA awardees to use an amount equivalent to the BEA Award amount for BEA Qualified Activities, as defined in the BEA Program regulations. Awardees with awards over $50,000 and/or Persistent Poverty County (PPC) commitments are required to report to the CDFI Fund on these Qualified Activities.

Current Actions: There are no changes being made to this collection.

Type of Review: Extension of a currently approved collection.

Affected Public: Insured depository institutions that receive a BEA Program award.

Estimated Number of Respondents: 40.

Estimated Annual Time per Respondent: 1 hour.

Estimated Total Annual Burden Hours: 40 hours.

Requests for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval. All comments will become a matter of public record and will be published on the CDFI Fund Web site at *http://www.cdfifund.gov.* Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collections of

information displays a valid OMB control number.

Authority: 12 U.S.C. 1834a, 4703, 4713, 4717; 12 CFR part 1806.

Dated: July 24, 2013.

Dawn D. Wolfgang,

Treasury PRA Clearance Officer.

[FR Doc. 2013–18195 Filed 7–29–13; 8:45 am]

BILLING CODE 4810–70–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0588]

Agency Information Collection (Special Notice) Activities Under OMB Review; Correction

AGENCY: Office of Acquisition and Logistics, Department of Veterans Affairs.

ACTION: Notice; correction.

SUMMARY: The Department of Veterans Affairs (VA) published an information collection notice in the **Federal Register** on July 16, 2013 (78 FR 42593), that contained several errors. The notice announced that the Office of Acquisition will submit the collection of information titled ''Veterans Affairs Acquisition Regulation (VAAR) Provision 852.211–74, Special Notice (previously 852.210–74), to the Office of Management and Budget (OMB) for review and comment. This document corrects error in the **SUPPLEMENTARY INFORMATION** section by removing ''852.211–74'' wherever it appears and adding, in its place ''852.211–71''. Also, we have removed ''(previously 852.210–74)'' from the title.

FOR FURTHER INFORMATION CONTACT: Crystal Rennie, Enterprise Records Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, at (202) 632–7492.

Correction

In FR Doc. 2013–17023, published on July 16, 2013, at 78FR42593, make the following corrections.

On page 42593, in the first column, under the **SUPPLEMENTARY INFORMATION** section, in the Title, remove ''852.211–74'' and add, in its place, ''852.211–71'' and remove ''(previously 852.210–74)''. Also, in the Abstract, remove ''852.211–74'' and add, in its place, ''852.211–71''.

Crystal Rennie,

VA Clearance Officer, U.S. Department of Veterans Affairs.

[FR Doc. 2013–18278 Filed 7–29–13; 8:45 am]

BILLING CODE 8320–01–P

FEDERAL REGISTER

Vol. 78 Tuesday,

No. 146 July 30, 2013

Part II

Environmental Protection Agency

40 CFR Parts 122,123,127, et al.
NPDES Electronic Reporting Rule; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 122, 123, 127, 403, 501, and 503

[EPA–HQ–OECA–2009–0274; FRL 9818–9]

RIN 2020–AA47

NPDES Electronic Reporting Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing a regulation that would require electronic reporting for current paper-based NPDES reports. This action will save time and resources for permittees, states, tribes, territories, and EPA while improving compliance and providing better protection of the Nation's waters. The proposed Clean Water Act regulation would require permittees and regulators to use existing, available information technology to electronically report information and data related to the NPDES permit program in lieu of filing written reports. The proposal will also allow better allocation and use of limited program resources and enhance transparency and public accountability by providing regulatory agencies and the public with more timely, complete, accurate, and nationally-consistent sets of data about the NPDES program and potential sources of water pollution. The benefits of this proposed rulemaking should allow NPDES-authorized programs in states, tribes, and territories to shift precious resources from data management activities to those more targeted to solving water quality and noncompliance issues. This in turn may contribute to increased compliance, improved water quality, and a level playing field for the regulated community.

Given the large scope of this proposal, EPA commits to offer an additional opportunity for transparency and engagement by publishing a supplemental notice should we receive comments on the proposed rule that require significant changes. States, tribes, territories, permittees, and other stakeholders can review and comment on the supplemental notice. EPA plans to publish the supplemental notice within 180 days after the public comment period for this proposed rule has closed.

DATES: Comments on this proposed action must be received on or before October 28, 2013.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OECA–2009–0274 by one of the following methods:

- *Federal Rulemaking Portal: http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *Email: docket.oeca@epa.gov,* Attention Docket ID No. EPA–HQ–OECA–2009–0274.
- *Mail:* Send the original and three copies of your comments to: U.S. Environmental Protection Agency, EPA Docket Center, Enforcement and Compliance Docket, Mail Code 28221T, 1200 Pennsylvania Avenue NW., Washington, DC 20460, Attention Docket ID No. EPA–HQ–OECA–2009–0274. In addition, if applicable, please mail a copy of your comments on the information collection provisions to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attn: Desk Officer for EPA, 725 17th St. NW., Washington, DC 20503.
- *Hand Deliver:* Deliver your comments to: EPA Docket Center, EPA West Building, Room 3334, 1301 Constitution Avenue NW., Washington, DC, 20004, Attention Docket ID No. EPA–HQ–OECA–2009–0274. Such deliveries are only accepted during the EPA Docket Center's normal hours of operation and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–HQ–OECA–2009–0274. EPA's policy is that all comments received by the deadline will be included in the public docket without charge, 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 for which disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or email. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it within 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, if applicable, 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 and any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket, please visit the EPA Docket Center homepage at *http://www.epa.gov/dockets/.*

Docket: All documents in the docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information for which 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 Enforcement and Compliance Docket in the EPA Docket Center, EPA West Building, Room 3334, 1301 Constitution Avenue NW., Washington, DC, 20004. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Docket for the Office of Enforcement and Compliance Assurance (OECA) is (202) 566–1752. Docket visitors are required to show photographic identification, pass through a metal detector, and sign the EPA visitor log. All visitor bags are processed through an X-ray machine and are subject to search. Visitors will be provided an EPA visitor's badge that must be visible at all times in the building and returned upon departure. The ''User Guide to the Docket for the NPDES Electronic Reporting Rule [DCN 0010]'' is document that provides easy to follow instructions on how to access documents through *www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information, please contact John Dombrowski, Director, Enforcement Targeting and Data Division, Office of Compliance (mail code 2222A), Environmental Protection Agency, 1200 Pennsylvania Avenue NW., Washington, DC 20460; telephone number: (202) 566–0742; email address: *dombrowski.john@epa.gov.*

SUPPLEMENTARY INFORMATION:

How is this document organized?

The outline of this notice follows the following format:

I. General Information
II. Background

III. Purpose and Needs
IV. Discussion of Key Features of This Rule
V. Matters for Which Comments Are Sought
VI. Outreach
VII. Non-Monetary Benefits and Economic Analysis
VIII. Statutory and Executive Order Reviews

I. General Information

A. Executive Summary

1. Purpose of the Regulatory Action

Pursuant to the Clean Water Act (CWA), 33 U.S.C. 1251 et seq., the U.S. Environmental Protection Agency (EPA) is proposing the National Pollutant Discharge Elimination System (NPDES) Electronic Reporting Rule. The proposed rule would substitute electronic reporting for paper-based reports, and over the long term save time and resources for permittees, states, tribes, territories, and EPA while improving compliance and better protecting the Nation's waters. The proposed rule would require permittees and regulators to use existing, available information technology to electronically report information and data related to the NPDES permit program in lieu of filing written reports.

The purpose and need for the proposed rule was re-confirmed in the development of the Clean Water Act Action Plan. Announced by EPA Administrator Lisa Jackson in October 2009, the Plan was a collaborative effort by EPA and state environmental agencies to explore opportunities to improve water quality by emphasizing and adopting new approaches that will improve how the NPDES permitting and enforcement program is administered. The goals of the Plan include improving transparency of the information on compliance and enforcement activities in each state, connecting this information to local water quality, and providing the public with real-time, easy access to this information. The proposed NPDES Electronic Reporting Rule would make achievement of these goals possible through the use of available technology to electronically report facility locational and operational data, and discharge, monitoring, compliance, and enforcement data.

Historically, EPA and NPDES-authorized states have focused on the largest or ''major'' facilities as a way of prioritizing resources for permitting, enforcement and data reporting to EPA. Over time, there has been a growing recognition that other sources also impact water quality. Storm water discharges, concentrated animal feeding operations, mines, and raw sanitary sewage overflows are all significant contributors to water quality impairment but are not currently considered ''major'' facilities under the NPDES program. The proposed rule improves data quality for major and nonmajor facilities, thereby providing the states, tribes, territories, and EPA with more complete and comparable data on a substantial majority of NPDES permittees, and allowing targeted action to address the biggest water quality problems.

EPA is proposing this rule under CWA sections 101(f), 304(i), 308, 402, and 501. EPA notes that the Congressional Declaration of goals and policy of the CWA specifies, in CWA section 101(f), ''It is the national policy that to the maximum extent possible the procedures utilized for implementing this chapter shall encourage the drastic minimization of paperwork and interagency decision procedures, and the best use of available manpower and funds, so as to prevent needless duplication and unnecessary delays at all levels of government.''

Implementation of information technology that is now a common part daily life is an important step toward reaching these aspirations for implementation of the CWA. EPA is proposing this rule under the authority of CWA section 304(i) that authorizes EPA to establish minimum procedural and other elements of State programs under section 402, including reporting requirements and procedures to make information available to the public. In addition, EPA is proposing this rule under section 308 of the CWA. Section 308 of the CWA authorizes EPA to require information to carry out the objectives of the Act, including sections 301, 305, 306, 307, 311, 402, 404, 405, and 504. Section 402 of the CWA establishes the NPDES permit program for the control of the discharge of pollutants into the nation's waters. EPA is proposing this rule under CWA sections 402(b) and (c), which require each authorized state, tribe, or territory to ensure that permits meet certain substantive requirements, and provide EPA information from point sources, industrial users, and authorized programs in order to ensure proper oversight. Finally, EPA is proposing to issue this rule under the authority of section 501 of the Act, authorizing EPA to prescribe such regulations as are necessary to carry out provisions of the Act.

2. Summary of the Major Provisions

This proposed rule would require that reports submitted in writing now (i.e., Discharge Monitoring Reports (DMRs), Notices of Intent to discharge in compliance with a general permit, other general permit waivers, certifications, and notices of termination of coverage, and program reports) be submitted electronically by NPDES-permitted facilities to EPA through the National Environmental Information Exchange Network or to the authorized state, tribe, or territory NPDES program. Importantly, while the proposed rule changes the method by which information on NPDES notices of intent for coverage under general permits, facility discharges, monitoring of compliance, facility reports, and enforcement responses is provided (i.e., electronic rather than paper-based), it does not increase the amount of information required from NPDES-permitted facilities under existing regulations.

States, tribes, and territories that are authorized to implement the NPDES program are the sources of certain key information regarding the regulated facilities. For example, states have facility information from NPDES permit applications, permit information including outfalls, limits, and permit conditions, compliance determination information including that from inspections, and enforcement response information. Under this regulation, NPDES permitting authorities are required to share this information electronically with EPA.

To promote transparency and accountability, EPA intends to make this more complete set of data available to the public, providing communities and citizens with easily accessible information on facility and government performance. Such data provides a powerful incentive to improve performance by giving government, permittees, and the public ready access to compliance information. This can serve to elevate the importance of compliance information and environmental performance within regulated entities, providing opportunity for them to quickly address any noncompliance. It opens the opportunity for two-way communication between authorized NPDES programs or EPA and regulated facilities to immediately address data quality issues and to provide compliance assistance or take other action when potential problems are identified. Complete and accurate data also will allow EPA to compare performance across authorized programs.

Key provisions of this proposed rule are identified in the implementation schedule in Table IV.3 of the preamble. These include the preliminary indication of the anticipated initial recipient of the NPDES program data,

NPDES information submission from states, tribes, and territories regarding their implementation activities, program and permit changes, and NPDES information submission electronically from regulated facilities for their discharge monitoring reports, notices of intent, general permit waivers, certifications, or notices of termination, and program reports.

Given the large scope of this proposal, EPA commits to offer an additional opportunity for transparency and engagement by publishing a supplemental notice should we receive comments on the proposed rule that require significant changes. EPA plans to publish the supplemental notice within 180 days after the public comment period for this proposed rule has closed.

3. Costs and Benefits

To fully implement this regulation, there will be initial investment costs associated with needed changes to information technology and infrastructure. EPA plans to develop NPDES electronic reporting tools, or states may choose to devote their resources to develop their own such tools while meeting the regulatory requirements of 40 CFR part 3, 40 CFR 122.22, and 40 CFR part 127. EPA is committed to working with the states, tribes, and territories to develop their electronic databases and capabilities in a cost-effective manner.

The cost of implementing the proposed rule in the first four years after the effective date is approximately $50.6 million. The cost is estimated to drop to $2.9 million per year after that time period, when all regulated facilities will be converted to electronic reporting. However, two years after rule promulgation, annual savings greatly outweigh annual costs, by approximately $29 million per year.

EPA anticipates that the proposed rule will save money for states, tribes, and territories as well as EPA and NPDES permittees, while resulting in a more complete, accurate, and nationally-consistent set of data about the NPDES program. By the fifth year of implementation, the anticipated savings for the states is $28.9 million annually; for the permittees, $1.2 million annually; and for EPA, $0.7 million annually.

Costs				
Year	EPA Headquarters	EPA Regions	States	Permittee
0	$4,440,000	$0	$0	$0
1	$920,000	$200,000	$19,820,000	$17,570,000
2	$880,000	$340,000	$2,720,000	$250,000
3	$850,000	$300,000	$1,820,000	$470,000
4	$820,000	$290,000	$1,760,000	$0
5	$800,000	$280,000	$1,710,000	$0
6	$780,000	$270,000	$1,660,000	$0
7	$750,000	$270,000	$1,610,000	$0
8	$730,000	$260,000	$1,570,000	$0
9	$710,000	$250,000	$1,520,000	$0
10	$690,000	$240,000	$1,480,000	$0

Cost Savings				
Year	EPA Headquarters	EPA Regions	States	Permittee
0	$0	$0	$0	$0
1	$0	($700,000)	($12,600,000)	($300,000)
2	$0	($800,000)	($30,800,000)	($1,300,000)
3	$0	($800,000)	($30,600,000)	($1,200,000)
4	$0	($800,000)	($29,700,000)	($1,200,000)
5	$0	($700,000)	($28,900,000)	($1,200,000)
6	$0	($700,000)	($28,000,000)	($1,100,000)
7	$0	($700,000)	($27,200,000)	($1,100,000)
8	$0	($700,000)	($26,400,000)	($1,100,000)
9	$0	($700,000)	($25,600,000)	($1,000,000)
10	$0	($600,000)	($24,900,000)	($1,000,000)

The electronic submittal of data may result in improved water quality and will result in significant cost savings for the states, as well as savings for the permittees, tribes and EPA, when the rule is fully implemented. The proposal will also reduce the reporting burden currently borne by the states, improve overall facility compliance, allow better allocation and use of limited program resources, and enhance transparency and public accountability by providing the public with timely information on potential sources of water pollution.

Other anticipated benefits for the proposed rule include efficiencies and reduced costs of processing paper forms, improved quality and accuracy of the data available to regulatory agencies and the public, more timely and expanded use of the data to identify, target, and address problems, quicker availability of the data for use, and increased accessibility and transparency of the

data to the public. These benefits should allow NPDES-authorized programs in states, tribes, and territories to shift precious resources from data management activities to those more targeted to solving water quality and noncompliance issues. This in turn may contribute to increased compliance, improved water quality, and a level playing field for the regulated community.

The proposed rule will also lighten the reporting burden currently placed on the states. Upon successful implementation, the proposed rule would provide states with regulatory relief from reporting associated with the Quarterly Non-Compliance Report (QNCR), the Annual Non-Compliance Report (ANCR), the Semi-Annual Statistical Summary Report, and the biosolids information required to be submitted to EPA annually by states.

B. Does this action apply to me?

Entities potentially affected by this action would include all NPDES-permitted facilities, whether covered by an individually-issued permit or by a general permit, industrial users located in cities without approved local pretreatment programs, and governmental entities that have received NPDES program authorization or are implementing portions of the NPDES program in a cooperative agreement with EPA. These entities would include:

Category	Examples of regulated entities
NPDES-permitted facilities	Publicly-owned treatment works (POTW) facilities, treatment works treating domestic sewage (TWTDS), municipalities, counties, stormwater management districts, state-operated facilities, Federally-operated facilities, industrial facilities, construction sites, and concentrated animal feeding operations (CAFOs).
Facilities seeking coverage under NPDES general permits	Stormwater management districts, construction sites, CAFOs, publicly-owned treatment works (POTW), treatment works treating domestic sewage (TWTDS), municipalities, counties, stormwater management districts, and state-operated facilities.
Industrial users located in cities without approved local pretreatment programs.	Industrial facilities discharging to POTWs and for which the designated pretreatment Control Authority is EPA or the authorized state, tribe, or territory rather than an approved local pretreatment program.
State and territorial government	States and territories that have received NPDES program authorization from EPA, that are implementing portions of the NPDES program in a cooperative agreement with EPA, or that operate NPDES-permitted facilities.
Tribal government	Tribes that have received NPDES program authorization from EPA, that are implementing portions of the NPDES program in a cooperative agreement with EPA, or that operate NPDES-permitted facilities.
Federal government	Federal facilities with a NPDES permit and EPA Regional Offices acting for those states, tribes, and territories that do not have NPDES program authorization or that do not have program authorization for a particular NPDES subprogram (*e.g.,* biosolids or pretreatment).

This table is not intended to be an exhaustive list, but rather provides readers with some examples of the types of entities likely to be regulated by this action. Other types of entities not listed in this table may also be regulated.

C. What should I consider as I prepare comments for EPA?

You may find the following suggestions helpful when preparing your comments to EPA on this preamble and proposed rule:

- To ensure proper receipt by EPA, identify the appropriate docket identification number (found in the **ADDRESSES** section of this **Federal Register** notice) in the subject line on the first page of your comments or response.
- To help ensure that your submission is routed correctly, on the first page of your submission, provide the name of the proposed rule; date of the **Federal Register** notice; and the **Federal Register** citation (*e.g.,* ___ [volume number] FR ___ [page number]) related to your comments or response.
- Clearly identify those sections of the preamble or the proposed rule on which you are commenting.
- Explain why you agree or disagree, and explain your views as clearly as possible.
- Describe clearly any assumptions that you used as a basis for your comments.
- Provide any technical information and/or data that you used to support your views.
- If you provide any estimate of potential economic burdens or costs, please carefully consider the information provided in the preamble to this proposed rule, particularly in Sections VII (Non-Monetary Benefits and Economic Analysis), VIII.A (Regulatory Planning and Review), VIII.C (Regulatory Flexibility Act), and IV.D (Data Considerations), and provide detailed explanations of how you arrived at your estimate.
- Provide specific examples to illustrate your comments or concerns.
- Clearly identify preferred options and, if applicable, offer feasible alternatives that will effectively meet the same goals.

Submit your comments as directed in the Addresses section of this **Federal Register** notice before the comment period deadline identified in the **DATES** section of this notice.

II. Background

A. Definitions

Approval Authority: The Approval Authority is responsible for authorizing and overseeing approved local pretreatment programs and is defined in 40 CFR 403.3(c) as the: ''Director in an NPDES State with an approved State pretreatment program and the appropriate Regional Administrator in a non-NPDES State or NPDES State without an approved State pretreatment program.''

Authorized state, tribe, or territory: Authorized states, tribes, and territories (''authorized states'' or ''authorized programs'') are governmental entities that have applied for and received authorization from EPA to issue permits, implement, and enforce the NPDES program. EPA authorizes state,

tribal, or territorial NPDES programs to administer NPDES programs under state, tribal, or territorial law after EPA determines that the state, tribal, or territorial program meets the requirements of CWA section 402(b) and conforms with NPDES program regulations at 40 CFR part 123 issued by EPA under CWA section 304(i)(2). Some states are authorized to implement the basic NPDES program but have not received authorization to implement other NPDES subprograms (e.g., pretreatment, biosolids programs). See the following EPA Web page for a listing of authorized NPDES programs: *http://cfpub.epa.gov/npdes/statestribes/astatus.cfm.*

Batch data entry: The electronic transfer of large amounts of data from one location (such as a state database) to another data system in a format compatible with the recipient data system. In more technical terminology as it applies to this proposed rule, batch data entry in the NPDES part of the Integrated Compliance System (ICIS–NPDES) is the transmission of eXtensible Markup Language (XML) data files through a Central Data Exchange (CDX). In the Permit Compliance System (PCS), defined below, batch data entry occurred via upload of fixed format data files to the mainframe.

Biosolids: The organic materials (sewage sludge) resulting as a byproduct from the treatment of domestic and industrial sewage in a municipal wastewater treatment facility. Sewage sludge is defined in more detail at 40 CFR 503.9(w). As defined in the NPDES program, the relevant biosolids (sewage sludge) regulations are contained in 40 CFR part 501 (State Sludge Management Program Regulations) and in 40 CFR part 503 (Standards for the Use or Disposal of Sewage Sludge). The key NPDES-permitted facilities covered under the biosolids requirements are generally referred to as Treatment Works Treating Domestic Sewage (TWTDS).

Category I noncompliance: Under 40 CFR 123.45 (a)(2)(ii), the following instances of noncompliance by major dischargers are considered Category I noncompliance: (1) Violations of conditions in enforcement orders (except compliance schedules and reports); (2) violations of compliance schedule milestones for starting construction, completing construction, and attaining final compliance by 90 days or more from the date of the milestone specified in an enforcement order or a permit; (3) violations of permit effluent limits that exceed those specified in Appendix A to 40 CFR 123.45 ''Criteria for Noncompliance Reporting in the NPDES Program;'' and (4) failure to provide a compliance schedule report for final compliance or a monitoring report.

Combined sewer overflow (CSO): This is a discharge from a combined sewer system at a point prior to the POTW [as defined in 40 CFR 403.3(p)]. CSOs are point sources subject to NPDES permit requirements including both technology-based and water-quality-based requirements of the CWA. CSOs are sewage overflows from sewer systems otherwise conveying domestic waste, industrial waste, debris, and stormwater to the municipal wastewater treatment plant for treatment. During periods of heavy rainfall or snowmelt, these combined sewer systems (CSSs), numbering fewer than 800 in the nation, can overflow at various points in the sewage system, discharging a combination of untreated sewage, industrial waste, and stormwater into nearby water bodies.

Control Authority: The Control Authority is responsible for overseeing compliance by Industrial Users of municipal sewer systems and is defined in 40 CFR 403.3(f) as the POTW if the POTW's Pretreatment Program Submission has been approved in accordance with the requirements of § 403.11; or the Approval Authority if the Submission has not been approved.

Core data: The subgroup of critical, and therefore required, NPDES information associated with facility, permit, compliance monitoring, and enforcement data types common to all NPDES-regulated facilities. Other ''non-core'' information specific to NPDES subprograms (such as concentrated animal feeding operations, stormwater, biosolids, pretreatment, sewer overflows, etc.) would also be required to be submitted electronically under the proposed rule.

Data element: A specific field or column where data is entered into the national NPDES data systems, ICIS–NPDES, or PCS. For example, the NPDES permit number is a data element.

Direct data entry: Entry of data by use of a keyboard into a recipient data system. For example, when a state or EPA regional office uses PCS or ICIS–NPDES as its primary NPDES program management system, employees enter data directly into that data system.

Direct user state: An authorized state which uses or will be using ICIS–NPDES to manage the NPDES program rather than using a state-designed data system. Direct users enter data into ICIS–NPDES using their computer keyboard and a web browser. All states that had formerly been direct users of PCS have had their data migrated to ICIS–NPDES.

Director: This term generally refers to the NPDES permitting authority. As defined in 40 CFR 122.2, ''the Regional Administrator or the State Director, as the context requires, or an authorized representative'' (additional circumstances are also described in that definition). As defined in 40 CFR 403.3(g), ''the term Director means the chief administrative officer of a State or Interstate water pollution control agency with an NPDES permit program approved pursuant to section 402(b) of the Act and an approved State pretreatment program.''

Discharge Monitoring Report (DMR): As defined in 40 CFR 122.2, a Discharge Monitoring Report ''means the EPA uniform national form, including any subsequent additions, revisions, or modifications for the reporting of self-monitoring results by permittees.'' The term ''eDMR'' refers to a DMR that is electronically submitted by a NPDES-regulated facility.

Effluent limitation: Defined in 40 CFR 122.2 and CWA section 502(11) as ''any restriction imposed by the Director on quantities, discharge rates, and concentrations of pollutants which are discharged from point sources into waters of the United States, the waters of the contiguous zone, or the ocean.''

ICIS–NPDES: The Integrated Compliance Information System for the National Pollutant Discharge Elimination System program (ICIS–NPDES) is one of EPA's two existing NPDES national data systems, designed as an effort to modernize and eventually replace its predecessor system, the Permit Compliance System (PCS). The ICIS–NPDES system is currently operational and, as of December 2012, contains NPDES information for all 50 states, 10 EPA regions, 19 territories, and 2 tribes. All States have had their NPDES data migrated from PCS into ICIS–NPDES. EPA plans to decommission PCS by the third quarter of the federal fiscal year 2013 (April–June 2013).

Major facility: According to the definition at 40 CFR 122.2, a major facility means ''any NPDES 'facility or activity' classified as such by the Regional Administrator, or, in the case of 'approved State programs,' the Regional Administrator in conjunction with the State Director.'' For a municipal facility, a major facility has a design flow of 1 million gallons per day or more, a service population of 10,000 or greater, or a significant impact on water quality; industrial facilities are considered major facilities based on a

rating system that allocates points against various factors including flow, pollutant loadings, and water quality factors.

NetDMR: A nationally-available electronic reporting tool, initially designed by states and later adapted for national use by EPA, which can be used by NPDES-regulated facilities to submit discharge monitoring reports (DMRs) electronically to EPA through a secure Internet application over the National Environmental Information Exchange Network (NEIEN). EPA can then share this information with authorized states, tribes, and territories.

Non-direct user state: An authorized state that uses a software system other than ICIS–NPDES to manage the NPDES program. These states also submit data to ICIS–NPDES to satisfy national reporting responsibilities. These users are expected to rely heavily on electronic transfer (batch) using EPA's Central Data Exchange (CDX) and the NEIEN to submit information to EPA from an existing state data system.

Nonmajor facility: A facility in the universe of facilities regulated under the NPDES program that does not fall under the definition of ''major facilities.'' Nonmajor facilities may also be referred to as minor facilities.

NPDES: The National Pollutant Discharge Elimination System program. According to the definition at 40 CFR 122.2 and CWA section 402, this is ''the national program for issuing, modifying, revoking and reissuing, terminating, monitoring and enforcing permits, and imposing and enforcing pretreatment requirements . . . .'' Under this system, wastewater dischargers must apply to the permitting authority (*i.e.,* EPA or authorized states, tribes, or territories) for a permit to discharge pollutants to U.S. waters; these permits contain specific conditions, reporting requirements, and possibly monitoring requirements and applicable numeric or non-numeric limits for particular pollutants.

Permit Compliance System (PCS): PCS was EPA's NPDES national data system from 1982 to December 2012. NPDES program data for all 50 states, 10 EPA Regions, 19 territories, and 2 tribes is now available in EPA's newer NPDES national data system, ICIS–NPDES. EPA plans to decommission PCS by the third quarter of the federal fiscal year 2013 (April–June 2013).

Permit component: A group of ICIS–NPDES data elements which are specific to a permit for a particular type of facility or NPDES subprogram [*e.g.,* CAFOs, pretreatment, CSOs, Sanitary Sewer Overflows (SSOs), biosolids, or municipal separate storm sewer systems (MS4s)]. For example, for a permitted facility that is a concentrated animal feeding operation (CAFO), the permit component would be a CAFO and would include several permit data elements specific to CAFOs, such as the type and number of animals at the facility.

Point source: According to the definition at 40 CFR 122.2 and CWA section 502(14), any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, vessel, or other floating craft from which pollutants are or may be discharged. This term does not include agricultural stormwater discharges and return flows from irrigated agriculture.

Pretreatment: The National Pretreatment Program requires industrial and commercial dischargers to treat or otherwise control the pollutant levels in their wastewater prior to their discharge, usually to a POTW or discharge to treatment works treating domestic sewage (TWTDS). Pretreatment, as defined by 40 CFR 403.3(q), ''means the reduction of the amount of pollutants, or the alteration of the nature of pollutant properties in wastewater prior to or in lieu of discharging or otherwise introducing such pollutants into a POTW.'' *Sewage Sludge:* Under CWA section 405 and EPA regulations at 40 CFR 503.9(w), sewage sludge means any solid, semi-solid, or liquid residue generated during the treatment of domestic sewage in a treatment works. Sewage sludge includes, but is not limited to, solids removed during primary, secondary, or advanced wastewater treatment, scum, septage, portable toilet pumpings, Type III Marine Sanitation device pumpings (33 CFR part 59), and material derived from sewage sludge. Sewage sludge does not include ash generated during the incineration of sewage sludge or grit and screenings generated during preliminary treatment of domestic sewage in a treatment works.

Single event violation: A violation of an NPDES permit or regulatory requirement that is observed or determined by the regulatory authority, and is distinct from violations that are identified by the data system through comparison of information. Examples of single event violations include an unauthorized bypass or discharge, a violation detected during an inspection, a narrative requirement of the permit not met but reported on a DMR, or a pretreatment implementation violation. Note: Effluent limit violations identified from DMR submission or compliance schedule violations could be examples of system-identified violations, as opposed to single event violations.

System-required data: Key data that must be entered into PCS or ICIS–NPDES in order to submit additional information, create a record, or proceed to the next data entry screen.

Treatment works treating domestic sewage (TWTDS): TWTDSs include POTWs that discharge to surface waters and ''sludge-only'' facilities. ''Sludge-only'' facilities include POTWs that do not discharge their effluent stream to surface waters, but which do in many cases receive discharges from industrial users and other sewage sludge preparers, such as composting operations, which do not produce an effluent stream.

Wet weather point sources: Point sources that discharge as a result of precipitation events, such as rainfall or snowmelt. Wet weather point sources include stormwater discharges from industrial and municipal sites, discharges from CAFOs, bypasses, and overflows from CSSs and sanitary sewer systems (SSSs).

B. Acronyms

ACWA Association of Clean Water Administrators [formerly known as Association of Water Pollution Control Administrators (ASIWPCA)]
ANCR Annual Noncompliance Report
BMP Best Management Practice
CAFO Concentrated Animal Feeding Operation
CDX Central Data Exchange
CFR Code of Federal Regulations
CGP Construction General Permit
CMS Compliance Monitoring Strategy (October 17, 2007)
CROMERR Cross-Media Electronic Reporting Regulation
CSO Combined Sewer Overflow
CSS Combined Sewer System
CWA Clean Water Act
DMR Discharge Monitoring Report
ECHO Enforcement and Compliance History Online
ECOS Environmental Council of the States
eDMR Electronic Discharge Monitoring Report
EMS Enforcement Management System
ENLC Exchange Network Leadership Council
eNOI Electronic Notice of Intent
EPA U.S. Environmental Protection Agency
FWPCA Federal Water Pollution Control Act, or Clean Water Act
FY Fiscal Year (Federal)
ICIS Integrated Compliance Information System
ICR Information Collection Request

IU Industrial User
LEW Low Erosivity Waiver
MSGP Multi-Sector General Permit
MS4 Municipal Separate Storm Sewer System
NEC No Exposure Certification
NEIEN National Environmental Information Exchange Network
NetDMR Net-based Discharge Monitoring Report
NNCR NPDES Noncompliance Report
NOI Notice of Intent
NPDES National Pollutant Discharge Elimination System
OECA EPA's Office of Enforcement and Compliance Assurance
OMB Office of Management and Budget
PCS Permit Compliance System
PIN Personal Identification Number
POTW Publicly-Owned Treatment Works
PRA Paperwork Reduction Act
QA/QC Quality Assurance, Quality Control
QNCR Quarterly Noncompliance Report
RNC Reportable Noncompliance (according to EPA policy and guidance)
SEV Single Event Violation
SNC Significant Noncompliance (according to EPA policy and guidance)
SSL Secure Socket Layer
SSO Sanitary Sewer Overflow
SSS Sanitary Sewer System
TLS Transport Layer Security
TWTDS Treatment Works Treating Domestic Sewage
VGP Vessel General Permit
WENDB Water Enforcement National Data Base
XML eXtensible Markup Language

C. The Clean Water Act

The 1948 Federal Water Pollution Control Act (FWPCA) and subsequent amendments are now commonly referred to as the Clean Water Act (CWA). The CWA establishes a comprehensive program for protecting and restoring our nation's waters. The CWA established the national pollutant discharge elimination system (NPDES) permit program to authorize and control the discharges of pollutants to waters of the United States (CWA section 402(a)). This proposed electronic reporting rule, which is intended to reduce resource burdens associated with the paper-based system and increase the speed, quality, and scope of information received by EPA, the states, tribes, territories, and the public, echoes the goals of CWA section 101(f).

EPA is proposing this rule under CWA sections 101(f), 304(i), 308, 402, and 501. EPA notes that the Congressional Declaration of goals and policy of the CWA specifies, in CWA section 101(f), ''It is the national policy that to the maximum extent possible the procedures utilized for implementing this chapter shall encourage the drastic minimization of paperwork and interagency decision procedures, and the best use of available manpower and funds, so as to prevent needless duplication and unnecessary delays at all levels of government.''

Implementation of information technology that is now a common part daily life is an important step toward reaching these aspirations for implementation of the CWA. EPA is proposing this rule under the authority of CWA section 304(i) that authorizes EPA to establish minimum procedural and other elements of State programs under section 402, including reporting requirements and procedures to make information available to the public. In addition, EPA is proposing this rule under section 308 of the CWA. Section 308 of the CWA authorizes EPA to require information to carry out the objectives of the Act, including sections 301, 305, 306, 307, 311, 402, 404, 405, and 504. Section 402 of the CWA establishes the NPDES permit program for the control of the discharge of pollutants into the nation's waters. EPA is proposing this rule under CWA sections 402(b) and (c), which require each authorized state, tribe, or territory to ensure that permits meet certain substantive requirements, and provide EPA information from point sources, industrial users, and the authorized program in order to ensure proper oversight. Finally, EPA is proposing to issue this rule under the authority of section 501 of the Act, authorizing EPA to prescribe such regulations as are necessary to carry out provisions of the Act.

D. National Pollutant Discharge Elimination System

As authorized by the Clean Water Act, the NPDES permit program protects the nation's waters by controlling the discharge of pollutants into waters of the United States. Such discharges are illegal unless authorized by an NPDES permit. NPDES permits may be issued by EPA or by a state, tribe, or territory authorized by EPA to implement the NPDES program. As of October 1, 2011, EPA has authorized 46 states and the Virgin Islands to implement the basic NPDES program as well as the general permits program; as of that same date, no tribe was currently authorized to implement the NPDES program. There are several subprograms of the NPDES program that states, tribes, and territories may also receive authorization from EPA to administer, including the pretreatment and the biosolids programs. As of October 1, 2011, 36 states are authorized to implement the pretreatment program and eight states are authorized to implement the biosolids program as part of the NPDES program.

NPDES permit authorization to discharge may be provided under an individual NPDES permit, which is developed after a process initiated by the facility submission of a permit application (40 CFR 122.21), or under a general NPDES permit (*e.g.,* most oil and gas extraction facilities, most seafood processors). See 40 CFR 122.28(a)(2). Authorization to discharge under a general NPDES permit typically occurs following the submission of a ''notice of intent'' (NOI) by the facility seeking authorization to discharge under the permit (40 CFR 122.28(b)(2)) and approval of that NOI by the permitting authority. Submission of a notice of intent is not required for specified types of discharges under certain circumstances (40 CFR 122.28(b)(2)(v)). Approximately 95 percent of NPDES-permitted sources are regulated under general permits.

EPA has developed criteria to determine which sources should be considered ''major'' facilities. The distinction was made initially to assist EPA, states, tribes, and territories in setting priorities for permitting, compliance, and enforcement activities. Historically, EPA has placed greater priority on major facilities and has required NPDES-authorized states, tribes, and territories to provide more information about these dischargers. The existing regulations establish annual, semi-annual, and quarterly reporting requirements (some of which focused on major facilities) that organize violation information, thus facilitating EPA's assessment of the effectiveness of authorized programs and EPA regional program activities (*e.g.,* permitting, compliance monitoring, and enforcement). This information has guided EPA in the management and oversight of program activities.[1] For more background information regarding the NPDES program, *see* DCN 0005.

E. Evolution of the NPDES Program

In order to support development of appropriate permit limits and conditions, issuance of effective permits, compliance monitoring, and appropriate enforcement actions, EPA has developed policies, guidance, requirements, and expectations to track,

[1] See 50 FR 34649.

measure, evaluate, and report on these efforts on a nationwide basis. Over the past 25 years, these efforts, focused primarily on major facilities, to establish significant pollutant controls have resulted in important pollutant discharge reductions from traditional major sources.

Although large municipal and industrial point sources continue to be significant sources of pollution, NPDES permits of smaller sources show that these point sources also contribute significant amounts of pollutants to our nation's waters. About 29,000 nonmajor facilities have individual permits which have requirements similar to the permits for major facilities. As the understanding of water quality issues has grown, the universe of regulated nonmajor sources has also expanded. In order to efficiently manage the growing universe of regulated facilities, smaller sources are often regulated under general permits rather than individual permits. In many cases, nonmajor facilities use pollutant control measures based on best management practices in operational activities rather than on implementation of pollutant control technologies, which are measured with numeric effluent limits on pollutant discharges. Several hundred thousand nonmajor facilities are covered by NPDES general permits; therefore, the number of nonmajor dischargers covered by general permits is very large compared to the number of major or nonmajor dischargers covered by individual permits. The universe of nonmajor dischargers also includes some large volume dischargers (*e.g.,* MS4s) that had not previously been regulated with the same types of individual permits used to regulate discharges from major facilities.

The most recent state water quality assessment reports submitted under CWA section 305(b) and compiled by EPA in the National Water Quality Inventory Reports indicate the growing significance and link between nonmajor sources and impairments in water quality of U.S. waters, particularly from precipitation-induced or ''wet-weather'' point sources of pollutants.[2] These sources include discharges of stormwater associated with construction, concentrated animal feeding operations (CAFOs), and overflows from combined sewer systems (CSSs) and sanitary sewer systems (SSSs). Stormwater discharges include a variety of pollutants, such as sediment, oil and grease, chemicals, nutrients, metals, and bacteria. Discharges from CAFOs often include bacteria, nutrients, organic matter, pathogens, and trace metals. Overflows from combined and separate sanitary sewer systems pose a significant threat to public health and the environment due to high concentrations of bacteria from fecal contamination, as well as disease-causing pathogens. The pollution controls for wet-weather sources are often best management practices (BMPs) rather than traditional end-of-pipe controls. These wet-weather sources are high priorities for the enforcement and compliance programs of EPA, states, tribes, and territories and have been for over a decade.

In the past, states, tribes, and territories were not generally required to consistently report information to EPA on most wet-weather sources. Therefore, EPA and the public do not currently have complete information on these additional sources of pollution. Electronic reporting provides an efficient and cost-effective solution to the problem of gaining access to this data, and assists EPA, states, tribes, and territories in focusing their limited resources on significant water pollution sources and serious violations, whether from major or nonmajor facilities.

F. Existing NPDES Program Requirements and Expectations of the States, Territories, Tribes, and NPDES-regulated Facilities

In the context of developing this proposed rule, EPA has reviewed the existing NPDES program reporting requirements and expectations (as identified in existing statutes, regulations, policy documents, and guidance documents) as they apply to states, tribes, and territories, and NPDES-regulated facilities. For a detailed description of these reporting requirements and expectations, *see* DCN 0006 and DCN 0007.

G. National NPDES Data Systems: PCS and ICIS–NPDES

Historically, EPA has used the Permit Compliance System (PCS), a national data system developed in 1982, to support the NPDES program. As of December 2012, all States have had their NPDES data migrated from PCS into ICIS–NPDES, the updated replacement NPDES data system for PCS. EPA plans to decommission PCS by the third quarter of the federal fiscal year 2013 (April–June 2013).

The Integrated Compliance Information System (ICIS) serves as the repository for multi-media facility, compliance, and enforcement data at the federal level. ICIS–NPDES is the incorporation of NPDES program-specific requirements into ICIS. ICIS–NPDES ensures that the NPDES information regarding major facilities remains available, accessible, and in a nationally consistent format for analyses. ICIS–NPDES also provides means to track and access nonmajor NPDES information that was not historically available in PCS (particularly regarding various NPDES subprograms). For more background information regarding PCS and ICIS–NPDES, *see* DCN 0008. As of December 2012, ICIS–NPDES contains NPDES information for all 50 states, 10 EPA regions, 19 territories, and 2 tribes.

III. Purpose and Needs

A. Purpose: what would this proposed rule do?

On October 15, 2009, EPA Administrator Lisa Jackson announced an action plan focused on the revitalization of the Clean Water Act NPDES program, with an emphasis on compliance and enforcement (''U.S. EPA Administrator Jackson Takes New Steps to Improve Water Quality,'' DCN 0009). The goals of this Clean Water Act Action Plan include:

- Raising the bar for Clean Water Act enforcement performance and ensuring a focus on the most significant sources and the most serious violators threatening water quality;
- Improving performance in authorized states and EPA where EPA is the permitting authority;
- Improving and enhancing the information available on the EPA Web site regarding compliance and enforcement activities in each state, tribe, and territory, showing connections to local water quality where possible; and
- Providing public access to information in a user-friendly format that is easily understandable and useable. See DCN 0042.

Historically, EPA has relied on its EPA regional offices and authorized NPDES programs in states, tribes, and territories to submit the information in EPA's national NPDES data systems. As currently drafted, and subject to public comment, this proposed rule would require, under the authority of sections 304(i), 308, and 402 of the CWA, that the unique source of the NPDES information electronically submit the

[2] The link provides access to the 2004 Water Quality Report to Congress, which was the last hard-copy version of this report. Since 2004 these data are made directly via the ATTAINS database (link provided at site below). The ATTAINS database provides state information showing the water quality impairments and the likely causes of impairments. In particular, ''Urban-Related Runoff/Stormwater'' ranks high among the list of impairment causes. See: *http://ofmpub.epa.gov/waters10/attains_nation_cy.control*

information identified in Appendix A to 40 CFR part 127 to EPA or the authorized NPDES program. Accordingly, as the unique source of DMRs, NOIs, and program reports, for example, NPDES-regulated facilities would be required to electronically submit this information to EPA or authorized NPDES programs. As reflected in this proposed rule, EPA is considering requiring authorized states, tribes, and territories to electronically submit information regarding NPDES implementation such as permit issuance, inspections, violation determinations, and enforcement through the National Environmental Information Exchange Network. EPA, states, tribes, and territories will use electronic reporting and 21st century information technology to increase the speed, accuracy, quality, and scope of the information that EPA, states, tribes, and territories, regulated facilities, and the public receive on permits, water pollution, and regulatory agency actions implementing the NPDES permitting, compliance, and enforcement program.

This proposed rule identifies essential NPDES facility-specific information that EPA and authorized programs need to receive electronically from NPDES-permitted facilities and information that NPDES-authorized programs need to submit to EPA. This information would be submitted to EPA in a nationally-consistent manner [*i.e.,* using national data standards, in a format fully compatible with the NPDES national data system (ICIS–NPDES currently), and using consistent units of measure].

Under this approach to electronic reporting, EPA is proposing to revise the existing federal regulations addressing state, tribe, and territory NPDES program requirements, pretreatment, biosolids management, and other parts of NPDES subprograms (such as concentrated animal feeding operations, stormwater, and sewer overflows) to change the mode by which NPDES information is provided. EPA has identified the following NPDES data types for which electronic submission will be required from the NPDES-regulated facilities:

- Self-monitoring information as reported on Discharge Monitoring Reports (DMRs) for major and nonmajor facilities (including subprograms as appropriate), and similar self-monitoring pretreatment-related information submitted by industrial users located in cities without approved local pretreatment programs. Facilities are already required to report this information via paper reports. It also represents the largest current reporting burden on states as they are required to report this information to EPA for major facilities;
- General permit reports [Notice of Intent to be covered (NOI); Notice of Termination (NOT); No Exposure Certifications (NECs); Low Erosivity Waivers (LEWs)], which are required for initial permit coverage, permit coverage termination, approval for permit coverage, or permit exclusion. These reports would be submitted electronically from facilities in relation to coverage under a general NPDES permit (rather than an individually-issued NPDES permit);
- Sewer overflow event and bypass event reports for POTWs or other sewerage systems with CSOs, SSOs, or bypass events, as required by the NPDES permit, and incidents of noncompliance as required by 40 CFR 122.41(l)(6);
- Annual or more frequent pretreatment reports from facilities with approved local pretreatment programs;
- Annual reports from CAFOs;
- Annual reports from NPDES-regulated biosolids generators and handlers; and
- Annual reports (or less frequent reports as required by the permit) from MS4 permittees.

Existing federal regulations already require the submission of each of these reports; however, most of these reports are submitted on paper. As indicated in this proposed rule, EPA is considering requiring NPDES-regulated facilities to submit these reports electronically. The data types associated with these reports are described in greater detail in Section IV.E.

Under the proposed rule, EPA would continue to require certain NPDES information from the authorized states, tribes, and territories, particularly information linked to the NPDES-related implementation, compliance monitoring, and enforcement activities and responsibilities of the states, tribes, and territories. The types of NPDES information that EPA proposes to require the NPDES-authorized states, tribes, and territories to report would include:

- Facility and permit information for individually-issued NPDES permits (much of this information is already reported to EPA and resides in national NPDES databases) and for industrial users located in cities without approved local pretreatment programs;
- Information associated with general permits (generally to be entered by states, tribes, and territories once in the permit cycle, and when the permit is modified, and linked to facility-submitted NOI information);
- Information regarding compliance monitoring and inspection activities;
- Compliance determination information;
- Enforcement action information;
- Other NPDES information required to be submitted electronically from permittees but routed by the electronic reporting tools to the states, tribes, or territories rather than to EPA; and
- Other NPDES information covered by this proposed rule but submitted by the permittee to the state, tribe, or territory in paper form under an approved temporary waiver.

Each of these NPDES data types to be submitted by NPDES-authorized programs is described in Section IV.F. In addition, upon the successful implementation of this rule and the significant use of electronic reporting tools for submission of NPDES information from permittees and regulated entities, EPA would also plan to phase out the state, tribe, and territory responsibilities for several existing authorized program reporting requirements to EPA, including those associated with: (1) The Quarterly Non-Compliance Report (QNCR) regarding major facilities (40 CFR 123.45(a)); (2) the semi-annual statistical summary report regarding major facilities (40 CFR 123.45(b)); (3) the Annual Noncompliance Report (ANCR) regarding nonmajor facilities (40 CFR 123.45(c)); and (4) the annual authorized program biosolids reports (40 CFR 501.21). Proposed changes to these reporting requirements are described in more detail in Section III.B.6 and Sections IV.F.5 of the preamble.

B. Need for the Proposed Rule

In the sections that follow, EPA presents information regarding practical examples of the feasibility of electronic reporting, the benefits of improved NPDES program transparency, the utility of NPDES information gathered, and the advantages of a central data system.

1. Why require electronic reporting?

As information technology has advanced, electronic reporting of information, as well as other electronic transactions, has become relatively commonplace in government, business, and everyday life. Moving many of the NPDES program's reporting requirements to electronic submission will likely provide significant benefits, specifically by:

- Saving permittees, states, tribes, territories, and EPA time and money and freeing up resources to tackle the most serious water pollution problems;

• Improving water quality through a better basis for targeting of resources;

• Improving facility compliance by creating a new awareness of a facility's compliance status for the facility, the regulated community, the public, and across all levels of government;

• Empowering the public by improving transparency and accountability through the provision of more complete and accurate information about sources of water pollution in their communities;

• Improving EPA-state relationships by focusing on performance rather than on data quality or completeness issues;

• Improving the basis for decision-making by states and EPA due to more accurate, timely and complete information about the NPDES program; and

• Enabling EPA, states, tribes, and territories to better develop compliance monitoring approaches to target the most serious problems.

Furthermore, these benefits will accrue sooner if electronic reporting of NPDES information is required, has significant national consistency, and happens in a timely manner. Development and implementation of a consistent set of electronic reporting tools would significantly help make required electronic reporting feasible, practical, and cost-effective.

Electronic reporting implemented in some states has significantly improved its data quality and data availability while reducing its costs. Requiring electronic reporting is an efficient way to achieve complete data on the expanded NPDES regulated universe in an efficient and cost-effective manner. Better nationally-available information will help improve the NPDES program overall.

2. Feasibility of Electronic Reporting

Electronic reporting is not a new concept. Identified below are three practical examples of the use of electronic reporting by or within (1) state government (Ohio's experience with electronic DMRs); (2) federal government (the Internal Revenue Service); and (3) the regulated community (an industry perspective). Additional examples [such as the U.S. Securities and Exchange Commission's Division of Corporate Finance (regarding possible hardship exemptions for electronic reporting), medical records, the Toxic Release Inventory, recent EPA air rules, and NetDMR] are described in Section VII and DCN 0011.

a. Ohio's DMR Case Study

A case study of the efforts of the Ohio Environmental Protection Agency (Ohio EPA) to require electronic reporting of DMRs highlights how a successful implementation of a mandatory electronic reporting system can dramatically improve the way a state, tribe, or territory manages its NPDES program.[3] As of 2011, Ohio has achieved a 99 percent electronic reporting rate for DMRs. Ohio's system uses electronic reporting to allow permittees to report their discharge measurements quickly and easily online. The automated compliance tools within the state's eDMR system inform permittees if their discharges exceed their authorized permit limits or if there are data errors. As a result, errors have dropped by 90 percent (from approximately 50,000 per month to 5,000 per month), giving the Ohio EPA more accurate and complete data. This improved data quality allows Ohio EPA to better allocate its resources to respond to significant noncompliance and water quality concerns, further improving Ohio's enforcement and compliance program.

Prior to use of its eDMR, Ohio EPA needed five full-time staff members to support the DMR program. By switching to an eDMR program, however, Ohio EPA was able to shift its staffing responsibilities to run the program without any full-time staff members, effectively redirecting its resources to address the most important water pollution problems in Ohio.

b. Internal Revenue Service

The Internal Revenue Service (IRS) provides tax payers and preparers the option of filing their tax forms electronically. After a tax return is complete and signed by the appropriate person, tax preparation software approved by the IRS for electronic filing provides the necessary instructions to electronically submit the return and authorize the filing via IRS e-file. During this process, the electronic return data is converted into the format defined by IRS for electronic filing. IRS-authorized e-file providers or taxpayers may transmit directly to IRS or use a third party transmitter. Transmitters use the internet to transmit electronic return data to the IRS Modernized e-File system (MeF). MeF is a web-based system that allows electronic filing of corporate, partnership, exempt organization, and excise tax returns through the Internet. MeF uses the widely accepted extensible Markup Language (XML) format and provides benefits including more explicit identification of errors, faster acknowledgements, and an integrated payment option.[4]

In 2011, 79 percent of all individual Federal tax returns were e-filed, a noticeable increase over prior years. Both preparer and self-prepared e-file rates increased, which IRS officials attributed to different factors. IRS officials said an e-file mandate was one key factor in the growth of preparer e-filing. Several preparers also noted that they now find that e-filing helps their business—for example, by reducing the time needed to file returns (see DCN 0012).

c. Industry Perspective: Integration With Environmental Management Systems

In recent years, environmental management software solutions have become the standard for any organization seeking to craft a streamlined, effective and proactive environmental management system (see DCN 0013). These tools allow facilities to ensure their regulatory compliance, conform to widely accepted environmental management standards (*e.g.* ISO 14001)[5], and conserve resources. These environmental management system software tools provide the means for electronic storage of facility performance data, and the use of these data to analyze environmental metrics and leverage quantifiable data into cost savings, risk avoidance, or opportunities for revenue generation. Environmental management system software tools also store NPDES compliance monitoring information and allow facilities to more easily report this information to their regulatory agency. Currently, some of these environmental management system software tools allow regulated facilities to easily export DMR data into state eDMR tools or NetDMR. EPA is also exploring an ''open platform e-file'' option, which could allow third-party commercial software providers the opportunity to provide electronic reporting services to their clients (*e.g.,* NPDES-permitted facilities). See ''Proof of Concept Demonstration for Electronic Reporting of Clean Water Act Compliance

[3] EPA 305–F–10–001, see DCN 0011.

[4] See: *http://www.irs.gov/efile/article/0,,id=146364,00.html.*

[5] The ISO 14000 is an international voluntary standard that is used by organizations to continually minimize how their operations (processes etc.) negatively affect the environment and to improve their compliance with applicable laws, regulations, and other environmentally-oriented requirements.

Monitoring Data,'' June 23, 2011 (76 FR 36919).

C. Development of Electronic Reporting Tools

EPA intends to work with states, tribes, territories, and third-party software vendors to develop and have in place all of the electronic reporting tools and National Environmental Information Exchange Network protocols required to implement this regulation prior to the effective date of the final rule. EPA is not proposing that NPDES-regulated facilities must use an EPA-developed electronic reporting tool. Rather, EPA is providing the flexibility for facilities to have a range of options including an EPA electronic reporting tool, a tool developed by a state authorized to implement the NPDES program, or potentially tools developed by third-party vendors, if such tools meet the requirements of this proposed rule. EPA is proposing this flexibility because it recognizes that many states, tribes, and territories have their own electronic data systems and reporting tools for managing NPDES data. For example, EPA is aware that, as of October 2011, 24 states have a working version of an electronic DMR (eDMR), 10 states have an eDMR system planned, and eight states have some form of electronic NOI (eNOI [6]). For states that elect to use their own data systems and electronic reporting tools to collect this NPDES information, this proposed rule would require the states to transmit the federally-required data (identified in Appendix A to 40 CFR part 127) to EPA.

All of the electronic reporting tools, whether already existing or to be developed (by EPA, state, or third-party software vendors), utilized to support this regulation would need to be compliant with EPA's Cross-Media Electronic Reporting Regulation (CROMERR) [7] (*see* 40 CFR part 3) if they transmit the information to EPA. All tools would need to flow data to data systems of states, tribes, and territories and to ICIS–NPDES, provide some capacity for the entry and retrieval of state-specific data in addition to the federally-required data, and have internal administration, user management, and email notification infrastructure. These tools would use the National Environmental Information Exchange Network's Central Data Exchange (CDX) services for the different electronic ICIS–NPDES exchanges.

EPA, states, tribes, territories, and third-party software vendors could choose to build these tools through incremental approaches such that each tool implementation would benefit from the existing framework and intellectual capital established during the previous phase of tool implementation. In addition, users and regulatory authorities would experience familiar, repeatable processes and activities when interacting with tools developed using this framework. The tools to be developed for the electronic submission of the information would support regulated users who are applying for coverage under a general permit, or submitting information required by EPA regulations (*e.g.,* DMRs, biosolids and pretreatment data). Section IV.I of the preamble and 40 CFR 127.27 describe the process for determining the point of first contact for electronic data submissions (EPA or authorized program), compliance dates for electronic reporting, and the available electronic reporting tools. In particular, EPA intends to provide notice to regulated entities on its Web site of the available tools for electronically reporting data; the point of first contact for electronic data submissions; compliance dates for each state, tribe, and territory; and the data source (*e.g.,* DMR, NOI, five different program reports, and implementation and enforcement data from the state, tribe, or territory).

One of the goals of this regulatory effort is to increase electronic reporting from NPDES-regulated entities. Simplifying the process for preparing these reports would help to promote and increase electronic reporting. One option for simplifying the preparation of reports is to build electronic reporting into software which is available for use by the reporting entity. For example, several facilities currently use software to compile information used in preparing required reports, such as DMRs.

EPA could utilize an open platform option similar to the IRS model for electronic reporting, which uses third-party software vendors for tax data collection and transmission (*e.g.,* TurboTax, TaxACT, or others) [8]. Under this option, EPA would specify the required data for collection and the requirements necessary for exchanging data (*e.g.,* data delivery protocols, standards, guidelines, and procedures will likely include CROMERR requirements) for each NPDES data flow. There are benefits to this open platform model as compared with tools built and maintained solely by EPA (closed platform system), including that:

- This open platform model also builds on the ''good government'' recommendations from the White House Forum on Modernizing Government. In particular, the report from this forum strongly encouraged federal agencies to ''consider available technology solutions before defaulting to costly, long-term system development efforts'';[9]
- Open market competition would give software vendors a stake in client satisfaction, with the result that they would strive to develop and maintain software that is easy and user-friendly, provide additional support, and integrate with other data management systems. These data management systems, developed to be used by regulated entities, will likely need to be certified or approved by EPA before use;
- Software vendors would likely have a good understanding of the business needs of their clients;
- Software vendors would likely compete with one another through tiered services, which would keep costs lower for those clients who want minimum data management and reporting capabilities. Software vendors could also provide other services (*e.g.,* technical assistance to clients with other program challenges) or offer competitive prices for smaller entities;
- Competition between vendors would enhance the quality of the electronic data collection tool in terms of creating greater utility from the data, which could improve facility operations and lead to better environmental performance;
- Software vendors are better equipped at quickly adapting new technologies and other opportunities for efficiencies and cost savings; and
- Finally, the open platform concept would lead to faster adoption of new software and technologies (*e.g.,* new personal computer operating systems).

EPA solicits comment on this open platform option of allowing software vendors to offer their clients federal electronic reporting services compliant with the final rule and on potential methods for determining whether third-party software vendors meet the minimum federal electronic reporting requirements. EPA would need to

[6] EPA has developed its own eNOI system for federally-issued general permits. These state systems do not utilize EPA's eNOI system.

[7] EPA's Office of Environmental Information is examining ways to streamline the CROMERR approval process.

[8] **Note:** References to specific products are for informational purposes only. EPA and the federal government do not endorse any specific product, service, or enterprise.

[9] ''White House Forum on Modernizing Government: Overview and Next Steps'' March 2010—*http://www.whitehouse.gov/omb/modernizing_government*, p. 8, DCN 0014.

certify or approve the methods used by the software to authenticate, encrypt, and send compliance monitoring and other data.

D. Transparency Improvements That Would Accrue From the Rule

EPA shares with the public NPDES information that is currently available (except for that information which is specifically exempted from disclosure by statute, or confidential enforcement and business information), but recognizes that increased transparency of NPDES program implementation and compliance is essential. This proposed rule, in combination with efforts by EPA and the authorized programs to make facility compliance information readily available and accessible, and parallel efforts by EPA, states, tribes, and territories to provide more information regarding their implementation efforts, would enable the public to be better informed on local and national problems and on efforts being made to address those problems. To keep pace with program and technology changes, this proposed rule seeks to increase the transparency and utility of reporting requirements and to facilitate the ability of EPA, states, tribes, and territories to focus on the problems of greatest concern to protect human health and water quality. Increased information may also help the public to press for improved performance from the regulated community, federal, state, tribal, and territorial governments, and for better protection of human health and the environment. EPA has received feedback from states and public data users that they find the existing terminology and nomenclature for categorizing violations to be confusing. The proposed changes to noncompliance reporting would provide clarity for categorizing violations.

Among the many benefits of the proposed NPDES Electronic Reporting Rule would be the opportunity to enhance EPA's existing publicly accessible NPDES information. EPA's Enforcement and Compliance History Online (ECHO) Web site currently provides online access to compliance monitoring and enforcement data for approximately 800,000 regulated facilities across the United States. The information provided is an integrated compilation of federal and authorized program environmental inspections, violation determinations, enforcement actions, and other environmental records collected pursuant to the Clean Water Act, Clean Air Act, and the Resource Conservation and Recovery Act. The information collected/reported by EPA, state, and local environmental agencies or facilities is submitted through EPA's national and federal databases, such as PCS and ICIS. The web interface ultimately provides the public, government officials, investors, with environmental reports and compliance information.

The proposed NPDES Electronic Reporting Rule would enhance the features of ECHO in several ways, for example:

- The proposed rule would provide a complete inventory of NPDES-permitted facilities which can be included in ECHO; All violations identified through inspections and other compliance monitoring activities by EPA, states, tribes, and territories would be made available through public search. Currently, the EPA PCS Policy Statement (as amended) states that state NPDES programs must enter inspection related violation determinations into EPA's data system for facilities with NPDES permits designated as majors and pretreatment related violations associated with POTWs that have an approved pretreatment program. States are not currently expected to enter any other inspection related violation determinations into EPA's data system;
- Compliance information would become available from smaller facilities, such as DMRs and program reports, closing important knowledge gaps;
- Information on enforcement actions and associated penalties would be more complete;
- Documents related to noncompliance (e.g., the proposed NPDES Noncompliance Report) would be more accessible, resulting in increased efficiency in tracking and resolving noncompliance status;
- Comparative analysis would be made easier by utilizing a national consistent set of data (i.e., Appendix A to part 40 CFR part 127);
- Timeliness of data would improve; and
- Integration of permit and water quality assessment information would also be improved through better linkage of facility locational data (e.g., latitude and longitude data) and information on the receiving waters (e.g., receiving waterbody name for permitted feature).

In conclusion, the requirement of electronic reporting of NPDES information is expected to result in greater availability of timely and complete information to the public because of reliance on electronic transmission and retrieval of information. Tracking data electronically is less expensive, more efficient, more accurate, and better able to support program management decisions than is paper tracking. Furthermore, electronic tracking allows more information to be shared with the public. This eliminates transaction costs for the public and for permitting authorities previously involved in obtaining or exchanging information kept only in hard-copy format.

E. EPA Uses of NPDES Data

In the development of this proposed rule, and particularly in the identification of required NPDES data, EPA has identified several key EPA uses for the NPDES information. These include:

- Permitting, compliance, and enforcement decisions affecting individual facilities or watersheds;
- Informing national program decisions and rulemakings;
- Managing and overseeing national and state, tribal, or territorial program performance, management and oversight;
- Leveling the playing field between dischargers, and between states, tribes, and territories, regarding availability of compliance information;
- Establishing program performance indicators;
- Developing trend data on facility compliance and government performance; and
- Preparing for and responding to emergencies.

Each of these EPA uses of NPDES information is described in more detail in DCN 0015. Better availability and consistency of NPDES information through electronic reporting will enhance the usefulness of this data for a variety of purposes.

F. Key Characteristics for Data

Congress and the public expect environmental program managers at every level of government—local, state, tribal, territorial, and federal—to design and implement programs that deliver environmental results. In order to target the most important pollution problems and most serious noncompliance, to better ensure environmental protection and public health, and to enable more integrated program assessment and planning at the national level, data used by EPA should have the following characteristics:

- *The data should be current.* Recent data are more likely to be representative of current conditions. Although historical data may be useful in identifying trends and patterns, data that are not representative of current conditions are not as reliable for drawing conclusions as to the current condition of the environment or the compliance status at permitted facilities, or for making plans for improvements.

• *The data should generally be comparable in format, reporting units, frequency, etc.* In order to aggregate and compare data across the states, tribes, and territories for national program planning and reporting purposes, it is important that the data from the individual states, tribes, and territories be reported in a similar format (*e.g.,* the reporting units are the same, the metric being measured must be defined identically) and with the same frequency (*e.g.,* annual reports required for certain types of NPDES-regulated facilities). For example, for a national statement to be made regarding the volume of waste discharged by publicly owned treatment works, those providing the data would need to consistently provide data to EPA, share the same definition of publicly-owned treatment works, the same definition of volume (per day, per week, per month) and express the measure in the same units (gallons, million gallons, cubic feet, liters, etc.) However, states can certainly institute more stringent reporting requirements than does EPA (if data remain nationally consistent).

• *The data should be complete.* Incomplete, inaccurate data can lead to wrong conclusions. For example, the significant noncompliance rate for major facilities is a key indicator of the health of the NPDES compliance and enforcement program. This rate is derived in large part from effluent data self-reported in DMRs to EPA, the states, tribes, and territories by major facilities. These data are then entered into or provided to PCS or ICIS–NPDES by the states, tribes, territories, or EPA. Incomplete compliance data in PCS or ICIS–NPDES prevent EPA from adequately assessing industry, state, and national noncompliance rates and identifying any potential corrective actions. Consequently, program planning and authorized program evaluation resulting from such incomplete data can be unreliable.

Similarly, incomplete data may result in inaccurate conclusions as to noncompliance rates for nonmajor permittees. EPA found through the Annual Noncompliance Report (ANCR) (*see* DCN 0016) [10] for NPDES Nonmajor Permittees that the reported noncompliance rate for serious violations is much higher for those authorized NPDES programs with detailed compliance data in EPA's national data systems than it is for authorized NPDES programs that only provide only summary data. Based on 2008 data, states, tribes, and territories with DMR information for nonmajor permittees in the national data systems report a 60 percent Category I noncompliance [11] rate, whereas states, tribes, and territories that did not routinely provide the facility-specific compliance data to EPA's national data systems reported a national Category I noncompliance rate of just less than 18 percent. The findings presented in the 2008 ANCR suggest that instances of noncompliance may be higher than reported by states, tribes, and territories that non-electronically review and report data and do not routinely provide facility-specific compliance data to EPA's national data systems. The proposed rule would ensure that DMR information from facilities would be received electronically, making that information more readily available for identification of violations by the data system while at the same time reducing the burden on states, tribes, territories, and EPA to independently identify effluent violations.

• *The data should be made available so that the basis for EPA program evaluation and subsequent planning is transparent and reproducible.* The bases for EPA's planning and conclusions about the status of program implementation need to be readily available to those affected, including the regulated community, the general public, Congress, federal, state, tribal, and territorial agencies. For example, the data that EPA needs to evaluate the performance of an authorized program should be readily available to EPA from the state, tribe, or territory (and readily available from EPA to the state, tribe, or territory) and the state, tribe, or territory should be able to easily duplicate EPA's analysis.

The above examples demonstrate the need for a shared definition and central management of the information necessary to manage the NPDES program, ready access to that information by states, tribes, territories, and EPA, and assurance that the data across the states, tribes, and territories are complete, accurate, and timely-reported. The proposed rule would provide definitions for the shared data, ensure the accessibility of that information, and provide the basis for ensuring that the data are nationally consistent, complete, accurate, and timely.

G. The National Environmental Information Exchange Network (NEIEN)

1. Purpose

Today, the NEIEN is making environmental protection more efficient and helping to improve the quality of the environmental decision-making processes. The proposed rule utilizes the NEIEN for sharing NPDES program data between regulated entities; NPDES permit programs, and EPA. This information sharing network helps facilitate the reporting and information sharing requirements in the proposed rule.

Many environmental problems cross jurisdictions. The business of managing and solving these problems has become very information-intensive. Environmental policymakers and other stakeholders need access to timely, accurate, and consistent data that present a holistic picture of the environment in order to make better decisions.

Previous approaches to environmental information exchange were often inefficient. Currently, most environmental data are stored in electronic data management systems. Electronic data sharing between agencies is not a simple and automatic process; because, many of these systems are incompatible with each other. Even similar systems can have difficulties exchanging information when the data are not identically structured.

The National Environmental Information Exchange Network (''NEIEN'') supported by EPA uses eXtensible markup language (XML), web services, and common data standards to overcome system incompatibility, allowing partners to securely and automatically exchange environmental data. The NEIEN is helping participants to reduce costs, save time, and overcome delays in making better informed decisions and responding to environmental emergencies.

For example, states in the Pacific Northwest are using the NEIEN to share ambient water quality data to improve decision-making for the protection of water quality.[12] Laboratories are able to quickly share sampling results with regulators, allowing real-time monitoring of drinking water for public health and homeland security concerns. Governments and industry are seamlessly sharing reporting data, realizing savings, and improving environmental protection. State, tribal, and territorial environmental agencies

[10] 2008 ANCR, available at *http://www.epa-echo.gov/echo/ancr/us/docs/ancr_report_2008.pdf.*

[11] Category I noncompliance is defined in Section II.A. of the preamble; examples of Category I noncompliance are identified in existing federal regulations at 40 CFR 123.45(a)(2)(ii).

[12] See: *http://www.exchangenetwork.net/data-exchange/pacific-northwest-water-quality-exchange/*

and the EPA can fulfill regulatory and reporting requirements efficiently through automated processes that reduce the need for non-electronic or duplicative data entry directly into national data systems.

2. Enhancements to the NEIEN

Where authorized programs elect to electronically receive data from reporting entities, they should work with EPA to ensure that their data systems can automate data transfers to EPA of the data required in the new 40 CFR part 127 and Appendix A to part 127 developed for this proposed rule, rather than having NPDES-regulated facilities in their state, tribe, or territory electronically report directly to EPA. Likewise, EPA intends to work with states to ensure that any data collected by EPA on behalf of an authorized NPDES program can be shared with the state, tribe, or territory via an automated process in a timely manner. These EPA-to-authorized-program and authorized-program-to-EPA data exchanges are expected to use the National Environmental Information Exchange Network. Using the NEIEN and an automated data flow between EPA and the states, tribes, and territories would allow states, tribes, and territories to benefit from electronic reporting in the event they have not yet developed their own electronic reporting tools or choose not to develop them.

The NEIEN options for electronically flowing permit data from states, tribes, and territories to EPA were made available at the end of February 2011 and the NEIEN options to transfer enforcement and compliance data to ICIS–NPDES are under development as of October 2011. States and EPA are meeting regularly as an Integrated Project Team (IPT) to jointly discuss the design of the remaining components of the ICIS–NPDES data flow and the ongoing transition from the Permit Compliance System (PCS) to the modernized ICIS–NPDES data system. Authorized programs are encouraged to participate in the IPT to keep abreast of development timelines and progress. When the ICIS–NPDES compliance and enforcement data flows are complete and all state data has been migrated from PCS to ICIS–NPDES, the PCS data system is expected to be retired by EPA (in 2013, prior to full implementation of this rule).

H. Relation to the Clean Water Act Action Plan

As mentioned earlier in Section III.A, on October 15, 2009, EPA Administrator Lisa Jackson announced the Clean Water Act Action Plan focused on the revitalization of the Clean Water Act NPDES program, with an emphasis on compliance and enforcement (see DCN 0009). EPA Administrator Jackson also then announced to the Committee on Transportation and Infrastructure of the United States House of Representatives that, as part of the CWA Action Plan, she was directing her staff to ''quickly develop a proposed rule requiring electronic reporting from regulated facilities, to replace the current paper based system.'' [13]

The CWA Action Plan recognizes that EPA lacks nationally consistent and complete information on the facilities, permits, pollutant discharges, and compliance status of most NPDES-regulated facilities.[14] This information gap affects the ability of EPA, states, tribes, and territories to identify violations, target their actions, connect violations to water quality impacts, and share information with the public. This proposed rule would use technology to address this gap.

Electronic reporting is identified as a key component of the new system envisioned by the CWA Action Plan and would greatly reduce the burden on states, tribes, territories, EPA, and regulated facilities of submitting and processing paper forms. Under the CWA Action Plan, EPA intends to find innovative, resource-efficient ways of collecting, using, and making available to the public information about where pollution sources are located, what pollution they produce, their relationship to water quality, and where violations are most severe.

Through the Clean Water Act Action Plan Discussion Forum, EPA solicited ideas from the public that encompassed a broad range of perspectives (DCN 0017). Outreach to states, tribes, territories, community groups, industry, and environmental organizations ensured an opportunity for participation in the forum.

As currently drafted, and subject to public comment, this proposed NPDES Electronic Reporting Rule would help to achieve the CWA Action Plan goals. By requiring reports to be submitted electronically by regulated facilities, EPA would be able to provide more complete, accurate, and timely information to both regulators and the public. This would improve transparency and accountability, and help EPA, states, tribes, and territories to monitor compliance with NPDES permits.

I. Relation to the State Burden Reduction Initiative

In an effort to address state concerns over escalating reporting requirements, EPA and the Environmental Council of the States (ECOS) launched the Burden Reduction Initiative in October 2006.[15] This initiative aimed to identify and reduce high-burden reporting requirements for various media (*e.g.,* air, water, waste).

EPA asked states to identify their top five reporting requirements with potential for streamlining or elimination. Thirty-nine states responded to the October 2006 data call by EPA, recommending more than 200 ways to reduce reporting frequency and level of detail, increase electronic data entry, and standardize regional differences in reporting requirements to the greatest extent possible.

Several states identified NPDES compliance reporting as a priority area for burden reduction. Specifically, those states recommended that reporting requirements for three NPDES reports required under EPA's NPDES regulations (40 CFR 123.45) be reduced or eliminated. They recommended that EPA reduce the reporting frequency for the Quarterly Noncompliance Report (QNCR) required under 40 CFR 123.45(a) and eliminate the Semi-Annual Statistical Summary, required under 40 CFR 123.45(b), and the Annual Noncompliance Report (ANCR), required under 40 CFR 123.45(c). States suggested the elimination of these reports to reduce their burden of implementing the NPDES program.

The QNCR is a quarterly report regarding major NPDES-regulated facilities in noncompliance; under 40 CFR 123.45(a), this report is required to be submitted to EPA by states, tribes, and territories authorized to implement the NPDES program. These reports are used by EPA, states, tribes, and territories to track progress and assess the effectiveness of NPDES compliance monitoring and enforcement activities.

The ANCR is an annual report submitted to EPA by states, tribes, and territories authorized to implement the NPDES program; in this report, as required under 40 CFR 123.45(c), the states, tribes, and territories provide information regarding the total number of nonmajor NPDES-regulated facilities that have been reviewed for the purpose of making compliance determinations, the number of non-complying nonmajor

[13] U.S. EPA, 2009. ''Testimony of Lisa P. Jackson, Administrator, U.S. Environmental Protection Agency, Before the Committee on Transportation and Infrastructure, United States House of Representatives, 15 October 2009.

[14] See: *http://www.epa.gov/enforcement/water/documents/policies/actionplan101409.pdf*

[15] See *http://www.ecos.org/section/projects/?id=3683.*

permittees, the number of enforcement actions taken against these nonmajor NPDES-regulated facilities, and the number of permit modifications extending compliance deadlines for these nonmajor NPDES-regulated facilities.

The semi-annual statistical summary report is a semi-annual report regarding major NPDES-regulated facilities exhibiting a particular type of noncompliance; under 40 CFR 123.45(b), this report is required to be submitted to EPA by states authorized to implement the NPDES program.

As part of the proposed rule, EPA is seeking comment on changes to 40 CFR 123.45, entitled ''Noncompliance and program reporting by the Director.'' The purposes of these changes would be to: (1) Reduce the state reporting burden by phasing out reports that can be produced automatically by EPA from a national data system—(such as the QNCR); (2) provide a more accurate and comprehensive report of known violations using a more complete set of noncompliance data that would flow to EPA as a result of this proposed NPDES Electronic Reporting Rule; (3) improve EPA's ability to analyze, track, and manage violations and ensure that the full universe of NPDES sources is considered in tracking, analyzing, and managing compliance and enforcement programs; and (4) establish a better process to ensure EPA is focused on the appropriate pollutants and can keep pace with changes to the permitting program and new limit types.

EPA is proposing to establish a new public inventory, the NPDES Noncompliance Report (NNCR), of all reported violations. The proposed changes to the reporting requirements in 40 CFR 123.45 are discussed in greater detail in Section IV.F.5 of the preamble.

As currently drafted, and subject to public comment, the proposed rule should allow EPA to eliminate the state, tribe, and territory reporting requirements within the existing QNCR, semi-annual statistical summary report, and ANCR requirements because the proposed rule would enable EPA to generate this report directly from information in its federal data systems based on facility, state, tribe, and territory reporting. The regulatory changes would eliminate the requirements that states, tribes, and territories submit the QNCR, semi-annual statistical summary report, and ANCR by a date certain after rule implementation. EPA would then take over the obligation of generating all summary reports currently covered by 40 CFR 123.45 and generate the new NNCR, reducing the reporting burden on states, tribes, and territories.

For more detailed information on the State Burden Reduction Initiative, please visit *www.epa.gov/burdenreduction*.

J. Issues Related to Critical Infrastructure Security Information

EPA and the Department of Defense (DOD) wish to clarify how this rule will intersect with recent amendments to the Freedom of Information Act (FOIA) as enacted in The National Defense Authorization Act of 2012 (NDAA). Under NDAA, the Department of Defense (DOD) may designate ''critical infrastructure security information'' that can be withheld from release under FOIA (see 10 U.S.C. 130e). If DOD receives a FOIA request for information on NPDES-regulated federal facilities, it may designate particular data as critical infrastructure security information that is then withheld from public release in response to the FOIA request. NPDES program data designated as critical infrastructure security information in response to a FOIA request will also be withheld from public release under this rule. DOD will contact EPA and identify the specific data elements for specific NPDES-regulated entities that are to be withheld from public disclosure under a FOIA request because it has been designated as critical infrastructure security information.

EPA will not release information that has been designated as critical infrastructure security information in response to a FOIA request to the public. The critical infrastructure security information designation is expected to be used rarely for the type of information required to be electronically reported by this rule and any determination by DOD to withhold information from public release will be made at the data element level (see Appendix A to 40 CFR part 127) for each DOD facility. Additionally, the DOD process for designating particular data as critical infrastructure security information (see DCN 0067) is prospective and does not affect data already publicly available (i.e., the DOD process will not be used to withdraw data that is already available to the public). In the instance where an NPDES program data element for a particular facility is designated as critical infrastructure security information in response to a FOIA request, a separate filtered set of data without the redacted information will be shared with the public; however, all NPDES program data will continue to be provided to EPA and the authorized state, tribe, or territorial NPDES program.

IV. Discussion of Key Features of This Rule

A. Overview of Existing Regulation Citations Impacted by the Proposed Rule

As indicated in the proposed rule, and subject to public comment, EPA is considering amendments to the current NPDES regulations to require electronic reporting by NPDES-regulated facilities for many of the existing NPDES reporting requirements, to require electronic reporting of NPDES information by the states, tribes, and territories to EPA, and to eliminate some existing reporting requirements, particularly those for states, tribes, and territories. Under this approach, in addition to the creation of a new 40 CFR part 127, the affected regulations would include:

- 40 CFR 122.22. Signatories to permit applications and reports;
- 40 CFR 122.26(b)(15), (c)(1)(ii), and (g)(1)(iii). Stormwater discharges (applicable to State NPDES programs, see 40 CFR 123.25);
- 40 CFR 122.28(b)(2). General Permits (applicable to State NPDES programs, see 40 CFR 123.25);
- 40 CFR 122.34(g)(3). Reporting [as related to small Municipal Separate Storm Sewer Systems (MS4s)];
- 40 CFR 122.41(l)(4)(i). Monitoring reports [Discharge Monitoring Reports];
- 40 CFR 122.41(l)(6). Twenty-four hour reporting;
- 40 CFR 122.41(l)(7). Other noncompliance;
- 40 CFR 122.41(m)(3). Notice [as related to Bypass];
- 40 CFR 122.42(c). Municipal separate storm sewer systems [as related to medium or large systems];
- 40 CFR 122.42(e)(4). Annual reporting requirements for CAFOs;
- 40 CFR 122.43. Establishing permit conditions (applicable to State NPDES programs, see 40 CFR 123.25);
- 40 CFR 122.44(i). Monitoring requirements;
- 40 CFR 122.48(c). Requirements for recording and reporting of monitoring results (applicable to State NPDES programs, see 40 CFR 123.25);
- 40 CFR 122.63(f). Minor modifications of permits.
- 40 CFR 122.64(c) Termination of permits (applicable to State NPDES programs, see 40 CFR 123.25);
- 40 CFR 123.22. Program description.
- 40 CFR 123.24(b)(3). Memorandum of Agreement with the Regional Administrator;

- 40 CFR 123.25(a). Requirements for permitting;
- 40 CFR 123.26. Requirements for compliance evaluation programs;
- 40 CFR 123.41(a). Sharing of information;
- 40 CFR 123.43(d). State data-transmission of information from states to EPA;
- 40 CFR 123.45. Noncompliance and program reporting by the Director;
- 40 CFR 403.10(f). State Pretreatment Program requirements;
- 40 CFR 403.12(e). Periodic reports on continued compliance [Pretreatment program reports for Categorical Industrial Users];
- 40 CFR 403.12(h). Reporting requirements for Industrial Users not subject to categorical Pretreatment Standards [Pretreatment program reports for Significant Industrial Users not subject to EPA categorical pretreatment standards];
- 40 CFR 403.12(i). Annual POTW reports [Pretreatment program report];
- 40 CFR 501.21. Program Reporting to EPA (State Sludge Management Program);
- 40 CFR 503.18. Reporting [Biosolids annual program report for land application];
- 40 CFR 503.28. Reporting [Biosolids annual program report for surface disposal];
- 40 CFR 503.48. Reporting [Biosolids annual program report for incineration].

B. Derivation of Required NPDES Data Elements

From FY 2002 through FY 2007, EPA and the states worked to identify the data needed for permitting authorities to successfully implement and manage the NPDES program. Various iterations of critical data elements were discussed by the state and EPA members of the PCS Steering Committee, the PCS Modernization Executive Council, and the Expanded PCS Steering Committee, which added representatives from the Environmental Council of States (ECOS) and the Association of Clean Water Administrators (ACWA).[16] Those efforts led to the April 2007 issuance by EPA of a draft ICIS–NPDES Policy Statement that included the list of NPDES data elements that states, tribes, and territories would report to EPA.

After receipt of numerous comments on the draft ICIS–NPDES Policy Statement from the states, EPA began to develop a federal regulation that would require electronic reporting of specific NPDES information from the regulated permittees, states, tribes, and territories. In 2010, EPA initiated an effort to carefully review the data needs and uses (as described in Section III), identify the types of information and specific data elements that would allow EPA to meet those needs and uses, and evaluate whether the information should be sought directly from NPDES-regulated facilities or from states, tribes, and territories. This was done with full acknowledgement that for certain activities (such as permit issuance, inspections, compliance determinations, and issuance of enforcement actions), the states, tribes, and territories are the unique source of the identified NPDES information.

During summer 2010, EPA conducted a series of concurrent technical analyses of various data types and facility types which examined the feasibility of electronic reporting, the existing regulatory data and reporting requirements, key considerations, and preliminary information regarding costs and benefits (see DCN 0018, 0019, 0020, 0021, 0022).

EPA then conducted extensive examinations of the data elements list. The result of these efforts is this proposed rule, as currently drafted and subject to public comment, and the list of minimum set of federal NPDES data (Appendix A to 40 CFR part 127). EPA invites comment on the data identified in Appendix A to 40 CFR part 127.

C. NPDES Data Groups

EPA has identified several data groups of NPDES information based on the source of the information. These ''NPDES Data Groups'' are defined and listed in 40 CFR 127.2(c) and in Table 1 to Appendix A of 40 CFR part 127. As defined in 40 CFR 127.2(c), the term NPDES data group means the group of related data elements identified in Table 1 in Appendix A to 40 CFR part 127. These NPDES data groups have similar regulatory reporting requirements and have similar data sources. The proposed rule uses the NPDES Data Groups to identify the minimum set of data elements for each type of NPDES reporting (*e.g.,* DMRs, NOIs, program reports) and to help permittees and regulated entities identify the initial recipient of electronic NPDES data submissions.

D. Data Considerations

Based on EPA's national program management needs, the approach taken by EPA in the proposed rule, as currently drafted, identifies a variety of NPDES data that permittees would be required to provide electronically to states or EPA and that states, tribes, and territories would be required to submit to EPA on a regular basis. These data are supported by existing collection requirements and are essential to successfully manage, implement, and enforce the NPDES program. EPA notes that other required data submissions that are not proposed to be collected electronically (*e.g.,* NPDES permit applications) are also essential to successfully manage, implement, and enforce the NPDES program, even though they remain unchanged by this proposed rule. This section of the preamble discusses the reasons for each required electronic data submission (*e.g.,* DMRs, general permit reports, program reports) covered by this proposed rule, as currently drafted and subject to public comment.

A large number (over 60 percent) of these required NPDES data are specific to particular NPDES subprograms (*e.g.,* pretreatment, biosolids, CAFO, MS4, sewer overflow and bypass events). Additionally, it is unlikely that there is any NPDES-permitted facility that has a permit that covers all subprograms, meets all of the conditions that would require reporting of all of the conditional data elements (described later), and has also had enforcement actions that included compliance schedules, milestones, and penalties. In addition, certain types of data may not be generally expected for certain types of facilities. Therefore, any potential workload or burden estimates for reporting burden or data entry burden based on the entire list of NPDES required data would be incorrect and very misleading if applied to the entire NPDES-regulated universe.

A number of other considerations associated with these required data are described below.

1. Data Entry/Reporting Frequency

The frequency at which data would be required to be reported electronically is a key consideration in estimating workload or burden estimates of data entry. In this proposed rule, as currently drafted and subject to public comment, the required data entry frequency would vary considerably based upon the data type.

Data that has already been entered into PCS or ICIS–NPDES would not need to be re-entered by EPA, states, tribes, or territories unless that data has changed. NPDES information has been migrated from PCS to ICIS–NPDES for all states as of December 2012.

Under the approach described in the proposed rule, states, tribes, and territories would still need to update or change particular facility or permit information as permits are modified or

[16] Formerly known for 50 years as the Association of State and Interstate Water Pollution Control Agencies (ASIWPCA).

when the permits are re-issued, generally every five years. A similar timeframe would apply to facilities electronically submitting a NOI to be covered under a NPDES general permit. States, tribes, and territories would also have a similar reporting frequency for providing EPA with information regarding the general permit, such as limits, permitted features, etc.

The required data entry frequency for inspection-related information would be linked directly to the inspection. The inspection frequency itself may vary considerably depending on the type of inspection and the type of facility. For example, major NPDES-regulated facilities might be inspected every two years, whereas nonmajor NPDES-regulated facilities might be inspected once every five years. Under the approach described in the proposed rule, information related to inspections, violations, and enforcement actions, would be entered after those events occur.

Electronic submissions of NPDES data (*e.g.,* DMRs, program reports, NOIs) by NPDES-regulated entities would be linked to the required reporting frequency specified in the regulations or in the permit, and may therefore vary across permittees and type of reports (*e.g.,* may be reported semi-annually, quarterly, or monthly).

2. Conditionally-Required Data

Conditionally-required NPDES data must be reported when certain rare circumstances occur. For example, as currently drafted, this proposed rule requires POTWs to report in their Pretreatment Program Annual Report [see 40 CFR 403.12(i)] information regarding their administration of pollutant removal credits. In practice, POTWs would rarely be required to report these data as there are only four POTWs nationwide that have removal credits authority, as of October 1, 2011.

3. Programs Broader in Scope

NPDES data entry/availability requirements specified in this proposed rule would not apply to those particular portions of a state, tribal, or territorial program which are broader in scope than the minimum requirements of the approved NPDES program. States, tribes, and territories are welcome to track these additional aspects, but this proposed rule does not require that such additional information be reported to EPA. Under the proposed rule, state, tribal, and territory programs have the option to use EPA's data collection tools, which would be capable of both collecting data that are in addition to the minimum set of federal NPDES data (Appendix A to 40 CFR part 127) and passing these data to state, tribal, and territory NPDES data systems.

4. Appropriate Linkages Between NPDES Data Groups by the Permitting Authorities

As previously noted, under the approach described in this proposed rule, as currently drafted and subject to public comment, EPA, states, tribes, and territories would submit the minimum set of federally-required NPDES data (see Appendix A to 40 CFR part 127). Having this minimum set of federally-required NPDES data would ensure that the appropriate linkages are made between the data for permitting, compliance monitoring, violations, and enforcement actions within EPA's NPDES information system. For example, an inspection would be linked to all violations identified during the inspection, which in turn would be linked to any resulting enforcement action, penalty, or enforcement compliance schedule. Such linkages would ensure that the compliance status of the facility would show whether the violations have been addressed and resolved. In another situation, it would also be possible to link the information in EPA's NPDES data system for an unpermitted facility that subsequently becomes an NPDES permittee (*e.g.,* an inspection might discover an unpermitted discharge and the resolution would be to issue a permit to this discharger).

5. Major and Nonmajor Designations

In PCS, some of the designated Water Enforcement National Data Base (WENDB) data applied to every facility regardless of whether the NPDES permittee was a major or nonmajor facility. Other WENDB data elements in PCS only applied to major NPDES-regulated facilities (see DCN 0023). For the purposes of this proposed rule, few distinctions would be made in data entry requirements between major and nonmajor NPDES facilities (*e.g.,* the proposed rule requires the electronic submission of DMRs from major and nonmajor NPDES facilities). There are only a few examples where the major and nonmajor status, or facility size, of a permittee would affect reporting based on existing regulations (*e.g.,* MS4 and biosolids program reports).

6. Facilities Without NPDES Permits

The NPDES information described in the proposed rule would generally not be required for facilities without NPDES permits, with the following exceptions:

- Unpermitted facilities that have been subject to a formal enforcement action, an administrative penalty order, or an informal enforcement action (if such informal action addressed significant noncompliance);
- Unpermitted facilities that have been inspected; and
- Industrial users located in cities without approved local pretreatment programs.

For the first two types of exceptions identified above, EPA, authorized states, tribes, and territories would be expected to electronically provide the following information: basic facility information; inspection-related information; and, if applicable, violations, and information regarding enforcement actions. For the first two exceptions, there would not be any expectation for data to be submitted to EPA regarding narrative permit conditions, permitted features, permit limit sets, permit limits, DMRs, or program reports.

Facilities included in the third exception would be operating under a control mechanism, which may or may not be a permit (see 40 CFR 403.8). These indirect discharging facilities would also electronically submit to EPA, authorized states, tribes, or territories their bi-annual compliance reports, which are similar to DMRs for direct dischargers. Authorized states, tribes, and territories would be expected to provide to EPA the following information for these indirect dischargers: basic facility information, basic permit or control mechanism information (the latter would apply to industrial users located in cities without approved local pretreatment programs) (possibly including, if applicable, information regarding permit issuance, narrative conditions, limits, limit sets, permitted features, etc.), inspection-related information, and violations and information regarding enforcement actions, if applicable.

7. Retroactive Data Entry

Due primarily to an increased focus on the various NPDES subprograms (e.g., CAFOs, pretreatment, biosolids, sewer overflow event reports, MS4 program reports), the required data set as defined by this proposed rule, as currently drafted, is more comprehensive than what was previously identified as WENDB. For inspections and enforcement actions that occur prior to the effective date of this rulemaking, the proposed rule does not require states or permittees to submit the data not covered by WENDB in the minimum set of federal NPDES data (Appendix A to 40 CFR part 127) However, under the approach described in the proposed rule, EPA is considering requiring states, tribes, and territories to

provide information to EPA regarding the existing permits before the beginning of the required electronic reporting from permitted facilities, even if that permit was issued prior to effective date of the final rule. EPA will work closely with states, tribes, and territories to ensure that states, tribes, and territories report all WENDB data for all permits into ICIS–NPDES prior to the effective date of this rulemaking. Additionally, the data in PCS have been migrated to ICIS–NPDES, and would not need to be re-entered into ICIS–NPDES.

E. Electronic Reporting by NPDES Regulated Entities

1. What Data From Which Regulated Entities

As described in Section IV.B, EPA has spent considerable time and effort in analyzing the data needs and uses of information, the types of data that would meet those needs and uses, and the technical, legal, and economic considerations associated with obtaining that information. Based on these efforts, EPA solicits comment on the following NPDES data types for electronic submission from NPDES-regulated facilities or other regulated entities:

- Self-monitoring information as reported on Discharge Monitoring Reports (DMRs) for major and nonmajor facilities (including subprograms as appropriate), and similar self-monitoring pretreatment-related information submitted by industrial users located in cities without approved local pretreatment programs;
- General permit reports [Notice of Intent (NOI) to discharge; Notice of Termination (NOT); No Exposure Certification (NEC); and Low Erosivity Waiver (LEW)], which are required for initial permit coverage, permit coverage termination, or consideration for permit exclusion.[17] These reports will come from facilities in relation to coverage under a general NPDES permit (rather than an individually-issued NPDES permit);
- Annual reports from concentrated animal feeding operations (CAFOs);
- Sewer overflow or bypass event reports for POTWs with combined sewer overflow (CSO), sanitary sewer overflow (SSO), or bypass events;
- Annual or more frequent pretreatment reports from facilities with approved local pretreatment programs;
- Annual reports from NPDES-regulated biosolids generators and handlers; and
- Program reports (annual or less frequent reports as may be indicated by the permit) from municipal separate storm sewer system (MS4) permittees.

Existing federal regulations already require each of these reports to be submitted to the permitting authority. Currently, most of these compliance reports are submitted on paper. EPA is soliciting comment on switching the submission of these reports from paper reporting to electronic reporting. Each of the data types associated with these reports is described in more detail in Section IV.

EPA notes that some NPDES permits require additional reports from NPDES-regulated entities than the reports identified in the proposed NPDES Electronic Reporting Rule (40 CFR part 127) (*e.g.,* engineering construction completion reports, large-scale construction blue prints). Reports that are not specifically listed in the NPDES Electronic Reporting Rule (40 CFR part 127) are not required to be electronically submitted under EPA regulations, and NPDES-regulated entities should continue to report these documents as required by the NPDES-authorized program.

EPA is soliciting comment on the minimum set of NPDES program data that NPDES-regulated facilities or other regulated entities would electronically submit to their authorized programs and the process for the authorized programs receiving these electronic data to forward these data electronically to EPA. The minimum set of NPDES program data is provided in Appendix A to 40 CFR part 127. This proposed rule does not expand the reportable data from NPDES-regulated facilities or other regulated entities beyond what is required by existing regulations.

EPA is soliciting comment on the minimum set of data to be reported electronically to ensure that there is consistent and complete reporting nationwide, and to expedite the collection and processing of the data, thereby making it more timely, accurate, and complete. EPA notes that authorized states, tribes, and territories may also require permittees to submit additional data electronically (data in addition to the minimum set of data provided in Appendix A to 40 CFR part 127). EPA's electronic reporting tools would be flexible to allow the collection and transfer of these additional data to authorized NPDES programs. This is consistent with EPA's requirements for approving NPDES program authorizations, in which state forms need to collect at least the same basic information as the forms used by EPA (*e.g.,* 40 CFR 123.22).

Taken together, electronically reporting the information described above would save the states, tribes, and territories considerable resources, make reporting easier for permittees, make it easier for the states and EPA to exchange data with each other and to provide it to the public, and enable better environmental decision-making.

a. Discharge Monitoring Report (DMR) Data

i. Background

EPA's regulations require reporting of samples and measurements taken for the purpose of compliance monitoring at intervals specified in the NPDES permit [40 CFR 122.41(j) and (l)(4)]. When self-monitoring results are reported to the permitting authority, they are compared with current permit limits and any existing enforcement orders to determine facility compliance. The sample collection and analytical results required by the NPDES permit must be reported to the permitting authority through the submission of Discharge Monitoring Reports (DMRs) [40 CFR 122.41(l)(4)(i)]. It is extremely important that the data reported on the DMR is timely, accurate, complete, and legible to ensure that the facility's compliance status is correctly reflected; electronic reporting will likely improve each of these qualities.

As of October 1, 2011, there are approximately 63,000 facilities submitting DMRs to their permitting authorities; the majority of these are individually-permitted facilities that directly discharge to surface waters. The universe of NPDES-regulated facilities has grown since the passage of the Clean Water Act and some facilities in these new sectors (*e.g.,* some regulated stormwater discharges and vessels) are required to submit DMRs.

The DMR submission process that is most frequently used requires the permittee to mail a hard-copy form of a pre-printed form (OMB Control No. 2040–0004) to the authorized NPDES permitting authority. After receiving the hard copy version of the DMR, the authorized NPDES permitting authority enters this data into an electronic database (ICIS-NPDES or state database system). When a state, tribe, or territory applies for and obtains the authority to implement the NPDES permitting and enforcement program, the state, tribe, or territory is required to have a system for evaluating all DMRs [40 CFR 123.26(e)].

[17] It is important to note that EPA general permit regulations (40 CFR 122.28) do not require all general permit covered facilities to submit NOIs for all general permits issued by EPA and authorized state NPDES programs. Some general permits provide for automatic coverage.

ii. Existing Reporting Requirements and Expectations

The permittee is responsible for understanding and meeting all permit requirements and submitting timely, accurate, complete, and legible self-monitoring data in accordance with the CWA and its implementing regulations. The sample collection and analytical results required by the NPDES permit must also be reported to the permitting authority through the submission of DMRs at the frequency specified in the permit [see 40 CFR 122.41(j) and (l)(4)]. DMRs must be signed and submitted to the permitting authority by the date specified in the permit [40 CFR 122.41(k) and (l)(4)]. All facilities must submit DMRs at least annually [40 CFR 122.44(i)(2)], at the frequency specified in the permit.

EPA's PCS Policy Statement (as amended) created the expectation that the permitting authority enter facility information for all permitted facilities and DMR information from major facilities into ICIS-NPDES. About half of NPDES-authorized states also transmit DMR data for nonmajor facilities to ICIS-NPDES. EPA also notes that some NPDES permits require the electronic reporting of baseline monitoring data on DMR forms [*e.g.,* EPA's Multi-Sector General Permit (MSGP)], as baseline monitoring and effluent monitoring both relate to wastewater discharges and the same data elements as DMRs. Authorized states, tribes, and territories currently report DMR data to EPA (ICIS-NPDES) by one of the following means:

- Collecting paper-based DMR forms, manually entering the information into the state, tribe, or territory database, and entering the expected federal data into ICIS-NPDES either on the web or through Batch eXtensible Markup Language (XML) files.
- Developing and using a customized state, tribe, or territory electronic DMR (eDMR) tool that allows regulated entities to enter and electronically submit DMR data into a web-based application. The DMR data is then sent to the state, tribe, or territory database and the state, tribe, or territory is responsible for entering the expected federal data into ICIS-NPDES either on the web or through Batch XML files.
- Sending data directly from the regulated entity to ICIS-NPDES through a customized installation of NetDMR, which is the federal eDMR tool.
- Allowing regulated entities to enter data into the National Installation of NetDMR.

Because there is a significant burden on states, tribes, or territories associated with manually entering DMR data into a data system, some states, tribes, or territories found that they were not able to meet their regulatory requirement [see 40 CFR 123.26(e)] to evaluate all DMR data for violations (see 2008 and 2009 Clean Water Act Annual Noncompliance Reports, DCN 0016 and 0025) or meet EPA's ICIS-NPDES data entry policy expectations (see DCN 0026). As documented in the Agency's 2008 Annual Noncompliance Reports, eight states reported reviewing less than 50 percent of their nonmajor facilities for noncompliance (see DCN 0016). The lack of an automated, searchable NPDES data tracking system for each authorized state, tribe, or territory contributes to this gap in compliance oversight and environmental protection.

To address such problems, 34 states (as of October 1, 2011) have or are planning to use electronic reporting tools where the permittee transfers DMR data over the internet into state or Federal databases. These tools include NetDMR, EPA's current eDMR tool, which was released in June 2009. NetDMR allows NPDES-regulated facilities to enter and electronically submit DMR data through EPA's CDX to ICIS-NPDES as an alternative to the paper-based DMR submission process. NetDMR and other comparable state, tribe, or territory tools essentially reproduce the pre-printed DMR in electronic format. Some of these tools allow for a properly formatted file [*e.g.,* comma-separated value file or Extensible Markup Language (XML) file] to be shared between EPA, states, tribes, and territories, which is an important step towards more efficient data sharing. Most of these state, tribe, or territory DMR tools submit data to the state, tribe, or territory data system, which in turn sends the data to either ICIS-NPDES. These electronic reporting tools provide a successful model for transforming the paper-driven process with e-reporting.

The adoption rate, or percent of permittees that use electronic reporting, in the states where electronic reporting of DMRs is an option as of October 1, 2011, is generally less than half. EPA believes this is because electronic reporting is not required, and/or release of electronic reporting tools is relatively recent (see DCN 0027). However, as described in more detail in Section III.B.1, Ohio is an example of a state that has been able to achieve close to 100 percent of electronic reporting of DMRs by implementing a phased approach for requiring permittees to use the eDMR system and by providing comprehensive training. EPA believes the Ohio experience validates the position that national electronic reporting of DMRs is feasible.

iii. What Data Would be Required to be Submitted Electronically and Why

EPA is soliciting comment on having NPDES-regulated facilities electronically submit DMRs in accordance with the proposed 40 CFR 122.41(l)(4), which would reference the need for these submissions to be compliant with 40 CFR part 3, 122.22, and part 127. Some permitting authorities may require baseline monitoring discharge data to also be reported on DMR forms. The data elements specific to DMRs are listed in Appendix A to 40 CFR part 127. EPA is proposing to revise 40 CFR 122.41(l)(4)(i) to include electronic reporting requirements.

iv. Additional Considerations

EPA intends to expand the current NetDMR system and encourage the expansion of state, tribe, and territory eDMR systems to include DMRs for the existing and anticipated NPDES-regulated community. To support the requirements under the proposed rule, EPA will expand NetDMR by the effective date of this rule to include all facilities that report DMRs and to add functionality, streamline overlapping system functionality, and provide a more robust platform for permitting authorities to manage and submit DMR data, including the addition of state-specific data that is not listed in the minimum set of federal data (Appendix A to 40 CFR part 127).

EPA is also exploring the development of an ''open platform'' option that would allow NPDES-regulated facilities to use third-party software for electronically submitting NPDES program data (*e.g.,* DMRs) to the state, tribe, territory, or EPA in compliance with 40 CFR part 3, 122.22, and part 127 (see June 23, 2011; 76 FR 36919). As previously discussed in Section III.B.1 of this preamble, this open platform option would be similar to the IRS model for electronic reporting, which uses third-party software vendors (*e.g.,* TurboTax, TaxACT, or others) for tax data collection and transmission.[18]

[18] **Note:** Any references to specific products are for informational purposes only. EPA and the federal government do not endorse any specific product, service or enterprise.

b. General Permit Reports: Notice of Intent (NOI) to discharge; Notice of Termination (NOT); No Exposure Certification (NEC); Low Erosivity Waiver (LEW)

i. Background

EPA and authorized states, tribes, and territories issue general permits to cover multiple similar facilities under a single permit. Where a large number of similar facilities require permits, a general permit allows the permitting authority to allocate resources in a more efficient manner and provide more timely permit coverage than would occur if individual permits had to be issued to each similar facility. States, tribes, and territories must seek EPA approval to administer general permits.[19] EPA's regulations governing the General Permit Program are located at 40 CFR 122.28. EPA and authorized programs have issued over 700 general permits nationwide.

General permits typically share common elements:[20]

- Sources that involve the same or substantially similar types of operations;
- Sources that discharge the same types of wastes or engage in the same types of sludge use or disposal;
- Sources that require the same effluent limitations or operating conditions, or standards for sewage sludge use or disposal; or
- Sources that require the same monitoring where tiered conditions may be used for minor differences within a class (*e.g.,* size or seasonal activity).

The regulations at 40 CFR 122.28(a)(1) provide for general permits to cover dischargers within an area corresponding to specific geographic or political boundaries such as the following:

- Designated planning area;
- Sewer district; and
- City, county, or state boundary.

The process for developing and issuing NPDES general permits is similar to the process for individual permits; however, there are some differences in the sequence of events. For general permits, the permitting authority first identifies the need for a general permit and collects data that demonstrate that a group or category of dischargers has similarities that warrant a general permit. In deciding whether to develop a general permit, permitting authorities consider whether:

- A large number of facilities will be covered;
- The facilities have similar production processes or activities;
- The facilities generate similar pollutants; and
- Whether uniform water quality-based effluent limits (WQBELs) (where necessary) will appropriately implement water quality standards.

The remaining steps of the general permit process are the same as for individual permits. The permitting authority develops a draft permit that includes effluent limitations (if applicable), monitoring conditions, special conditions, and standard conditions. The permitting authority then issues a public notice and addresses public comments, coordinates with EPA as appropriate in the review process, completes a CWA section 401 certification process, develops the administrative record, and issues the final permit. The final permit will also establish the requirements for the specific information that must be submitted by a facility that wishes to be covered under the general permit.

After the final general permit has been issued, there are several general permit reports that facilities must submit to their permitting authority, including:

- Notice of Intent (NOI) to discharge: This is the initial submission seeking coverage under a general permit [40 CFR 122.28(b)(2)(i) and (ii)];
- Notice of Termination (NOT): A request by the permittee to terminate their coverage under an existing permit (40 CFR 124.5);
- No Exposure Certification (NEC): A certification from a facility indicating that coverage under an existing stormwater general permit is not necessary due to certain facility-specific conditions [40 CFR 122.26(g)(1) and (4)]; and
- Low Erosivity Waiver (LEW): A certification from a facility indicating that coverage under an existing construction stormwater general permit is not necessary due to certain facility-specific or climate conditions [40 CFR 122.26(b)(15)].

It is important to note that EPA general permit regulations (40 CFR 122.28) do not require all general permit covered facilities to submit NOIs for all general permits issued by EPA and authorized state NPDES programs. Some general permits provide for automatic coverage.

This means that neither EPA nor the authorized state, tribe, or territory programs will have information regarding exactly which facilities are regulated under these general permits. General permits cover a wide range of facility types that range from the very large (*e.g.,* offshore oil and gas facilities, seafood processors) to very small discharges. Discharges from facilities covered under general permits include a variety of pollutants, such as total suspended solids, biochemical oxygen demand, oil and grease, bacteria, nutrients, hydrocarbons, metals, and toxics. The following table presents an estimate of several types of general permit covered facilities:

TABLE IV.1—ESTIMATE OF FACILITIES COVERED BY GENERAL PERMITS

General permit type	Current number of facilities[21]	Estimated total number of facilities over 5 years
Construction Stormwater	222,000	[22] 1,010,000
Industrial Stormwater	100,000	171,000
CAFO	11,600	14,000
Small Municipal Separate Stormwater Sewer Systems	6,300	8,000
Vessel General Permit[23]	69,000	100,000
Pesticide Applicators[24]	365,000	645,000
Other Industrial General Permits (*e.g.,* oil and gas extraction, seafood processors)	31,800	40,000
Combined Sewer Systems (CSSs)	38	38
Sanitary Sewer Systems (SSSs)	1,900	1,900
Total	816,138	1,989,938

[19] See *http://cfpub.epa.gov/npdes/statestats.cfm.*

[20] See 40 CFR 122.28(a)(2).

Finally, EPA notes that POTWs with approved pretreatment programs can use general control mechanisms, such as general permits, to regulate the activities of groups of significant industrial users (SIUs). Provided that the POTW has the necessary legal authority, it may issue a general control mechanism for a group of SIUs that meet certain minimum criteria for being considered substantially similar [40 CFR 403.8(f)(1)(A)(1)]. Pretreatment reporting is discussed in Section IV.E.1.e.

ii. Existing Reporting Requirements

In general, there is significantly less data in ICIS–NPDES on facilities covered by general permits than facilities regulated under individual permits due to reduced state reporting requirements for non-major facilities. Most facilities covered by general permits are classified as non-majors. States, tribes, territories, and EPA regions are required to enter data concerning the general permit and some limited data regarding general permit covered facilities. Limited data on general permit covered facilities impedes an accurate assessment of this part of the NPDES program. .

In particular, there are significantly less DMR data and linkages to receiving waters for these facilities as compared to facilities controlled by individual permits. EPA estimates that approximately 90 percent of general permit covered facilities regulated by a non-stormwater general permit are required to submit DMRs. However, most of the general permit covered facilities are nonmajors and their DMR data is not yet incorporated into ICIS–NPDES. This lack of data significantly inhibits public transparency on discharge data and compliance with permit effluent limits, as roughly 95 percent of all NPDES-regulated entities are covered by general permits.

iii. What data would be required to be submitted electronically and why?

EPA is soliciting comment on having facilities electronically submit NOIs and NOTs for permit coverage or requesting the termination of permit coverage in accordance with 40 CFR 122.28(b)(2)(i) and (ii), 122.41(l), 122.26(b)(15) and (g)(4), and 124.5, which are proposed to be updated to reference the need for these submissions to comply with 40 CFR part 3, 122.22, and part 127. Similarly, as required, NECs and LEWs are to be completed and submitted electronically by the facility in accordance with 40 CFR 122.26(b)(15) and (g)(4), which references the need for these submissions to comply with 40 CFR part 3, 122.22, and part 127. The data elements specific to these general permit reports are listed in Appendix A to 40 CFR part 127.

In addition to notifying the permitting authority of a facility's desire to obtain, waive, or terminate permit coverage, the general permit reports submitted by facilities also provide EPA, the state, tribe, or territory with data about the facility and its operations. These data include: information identifying the facility; a description of the facility's processes, wastewater volumes, and pollutant characteristics; discharge point locations, including the name of the receiving water body; projected start and end dates of permit coverage; effects of discharge on threatened or endangered species; certification statements; and other site-specific data. Although each general permit can impose slightly different reporting requirements, the process is consistent and may include some of the following types of data:

- Facility information (*e.g.,* ownership, name, address, location, non-government contacts);
- Permit information (*e.g.,* NPDES ID, permit number, permit type, various permit dates, permitted flow information, information about permit status, industry category and codes, permit limits, and permittee address information);
- Certain information for cooling water intake structures and thermal variances where applicable (*e.g.,* intake type, number of intakes, design intake flow);
- Report information associated with NOTs, NECs, and LEWs;
- Biosolids information, where applicable (*e.g.,* sewage sludge production and disposal information);
- CAFO information, where applicable (*e.g.,* animal types and numbers, confinement types and capacity, storage types and capacities);
- Stormwater discharge information, where applicable (*e.g.,* receiving water body name, project size, residual designation information, MS4 data, project termination data);
- CSO information, where applicable (*e.g.,* incorporated controls, population served, information on collection system and satellite systems);
- Pretreatment information, where applicable (*e.g.,* program indicators and dates, receiving POTW, streamlining dates, control authority); and
- POTW information, where applicable (*e.g.,* population served, and satellite collection system information).

EPA is soliciting comment on a minimum set of data (see Appendix A to 40 CFR part 127) be submitted electronically to ensure consistent and complete reporting nationwide and to expedite the collection and processing of the data, thereby making it more timely, accurate, complete, and available to the public. EPA estimates that the electronic submission of these general permit reports will save the states, tribes, and territories considerable resources, make reporting easier for NPDES-regulated entities, streamline permit renewals (as permit writers typically review previous noncompliance events during permit renewal), ensure full exchange of NPDES general permit data between states, tribes, territories, and EPA to the public, and improve environmental decision-making. The standard minimum data elements are provided in Appendix A to 40 CFR part 127. This proposed rule does not expand the reporting requirements for permittees beyond what is required by existing regulations.

In most cases, a business or facility will only be required to submit such forms once during each permit cycle. Most of these general permit reports are currently being received by the states, tribes, territories, or EPA in hard-copy form (*i.e.,* printed on paper) for distribution within the permitting authority for approval processing and management. In addition to the four general permit reports (*i.e.,* NOIs, NOTs, LEWs, and NECs), facilities operating under some general permits are also required to electronically submit other NPDES data (e.g., DMRs).

iv. Additional Considerations

During the implementation period, EPA will address variations in the four general permit reports (e.g., NOIs, NOTs, LEWs, NECs) across the different authorized NPDES programs. EPA's goal is to implement a general permit reporting system that can capture general permits data nationally. For example, EPA currently operates an electronic reporting system for NOIs and a Vessels One Time Report supporting four EPA-issued general permits: Multi-Sector General Permit (MSGP) [25];

[21] As of October 2011.

[22] Although EPA anticipates the need to manage data flows for approximately 1 million CGP permittees over the next 5 years, due to rapid turnover there will only be approximately 202,000 permittees at any given time.

[23] Not covered in this proposed rule; the reasons are described in Section IV.E.6.c.

[24] Not covered in this proposed rule; the reasons are described in Section IV.E.6.d.

[25] See *http://cfpub.epa.gov/npdes/stormwater/msgp.cfm.*

Construction General Permit (CGP) [26]; Vessels General Permit (VGP) [27]; and the Pesticides General Permit (PGP). The MSGP and CGP regulate facilities where EPA is the permitting authority (*e.g.,* in non-authorized states, tribes, and territories) and the VGP is a nationwide permit administered by EPA. On October 31, 2011, EPA issued a final NPDES Pesticide General Permit (PGP) for point source discharges from the application of pesticides to waters of the United States.

All state, tribe, and territory MSGPs and CGPs should be collecting similar data, but some states, tribes, and territories might be collecting additional data elements for their own needs. For these general permits, EPA believes a reporting tool based on the federal MSGP and CGP, which includes a number of definable data fields can accommodate the full range of state, tribe, or territory variability. In essence, the reporting tool could merge the EPA data fields with other definable fields to produce a ''customized'' general permit reporting tool specifically for use by permittees within that state, tribe, or territory. EPA anticipates a certain amount of data commonality that will help limit the number of truly unique fields on reporting forms.

Several factors could reduce the number of unique reporting tools that would be needed. First, substantial portions of all general permits are quite similar–such as the data identifying the facility and its owners and operators. In addition, many of the general permit types would be tracked by multiple states, tribes, or territories and may be similar due to common permittee operations, discharges, or monitoring. Several states, tribes, or territories have either developed general permits for specific industries, or have developed a more generic general permit that includes an industry as a subset under a broader category. Where common general permit data are identified across states, tribes, and territories, a limited number of industry-specific templates, each of which includes a limited number of definable fields, might be able to accommodate the full range of variability among non-EPA issued general permits. EPA solicits comment on how to best address the variability of general permits issued by EPA, states, tribes, and territories. There are a number of scenarios as states, tribes, and territories move toward the electronic submission of general permit reports.

- Permits Covered by State, Tribal, and Territory General Permit Electronic Reporting Tools—As of October 1, 2011, approximately 15 states use an electronic reporting tool for NOIs for at least some of their permit types (see DCN 0027). EPA expects these states to continue using their existing NOI electronic reporting tools. EPA will review these tools to determine if they comply with 40 CFR part 3, 122.22, and part 127 (see 40 CFR 127.27). States, tribes, and territories will also be required to share with EPA the minimum set of federal data (Appendix A to CFR part 127). EPA will provide the states, tribes, and territories with information on how to provide the data to EPA's CDX node on the Exchange Network, which will provide the data to ICIS–NPDES.
- States, Tribes, and Territories Opting to Use EPA's General Permit Report System- Some states, tribes, and territories do not have an electronic reporting system for general permit reports and would prefer not to develop one. States, tribes, and territories have the option to adopt EPA's electronic reporting tool for general permit reports. EPA's electronic reporting tool would allow users to enter their general permit report data into a fillable PDF electronic form and then electronically sign and submit the form to the authorized NPDES program. The appropriate authorized NPDES program will approve or deny the form, and approved forms would be sent to ICIS–NPDES by the tool through CDX. EPA's electronic reporting tool for general permit reports will also offer users the capability of sending the approved general permit data to a particular state, tribe, and territory NPDES data system.

When a state, tribe, or territory notifies EPA that they intend to use EPA's tools to allow their permittees to electronically submit general permit reports, the EPA system administrator will set up a general permit report workspace within the federal tool for use by EPA regions and authorized state, tribe, or territory programs. After that workspace has been set up, the tool will solicit essential general permit data and monitoring requirements from ICIS–NPDES via CDX to populate electronic forms. EPA regions and authorized state, tribe, or territory programs will also have the capability of creating new general permits in the new federal tool. These forms would be accessible to facilities through the workspace. An authorized NPDES program administrator would be responsible for approving general permit reports from users, establishing the limit monitoring requirements for an approved NOI, and submitting the data to ICIS–NPDES.

The authorized NPDES program user would be responsible for confirming that ICIS–NPDES has processed the data and would either communicate errors back to the facility user or generate a confirmation letter for the facility user along with a permit identifier that has been assigned by ICIS–NPDES. The new federal tool will provide an easy means for the authorized NPDES program to manage these general permit data without requiring direct access to ICIS–NPDES.

As noted in the implementation section (see Section IV.K), facilities seeking coverage, waiver, or termination from a general permit would be required to submit the information required by this rule electronically. If the general permit does not require electronic reporting, then these facilities would be required to submit paper copy general permit reports to their permitting authority for approval and (unless the permitting authority is EPA) also report electronically to EPA under Sections 304(i) and 308 of the Clean Water Act. If that general permit requires electronic reporting, it must be compliant with 40 CFR part 3 (CROMERR) and 40 CFR part 127 (NPDES Electronic Reporting Rule), including submission to the appropriate initial recipient, as identified by EPA, and as described in Section IV.I.

c. CAFO Program Reports

i. Background

Concentrated animal feeding operations (CAFOs) are animal feeding operations where animals are kept and raised in confinement, as defined at 40 CFR 122.23(b)(2), and that meet certain regulatory criteria or are designated by the permitting authority or Regional Administrator. In the absence of facility-specific data, EPA's Office of Water estimates there are approximately 14,400 large or medium CAFOs nationwide. The Office of Water estimates that of this universe, approximately 8,300 CAFOs have NPDES permits. Of the remaining large and medium CAFOs, it is unknown how many of them discharge and need permit coverage (see DCN 0029). Failure to properly manage manure, litter, and process wastewater at CAFOs can negatively impact the environment and public health. Discharges of manure and wastewater from CAFOs have the potential to contribute pollutants such as nitrogen, phosphorus, organic matter, sediments, pathogens, heavy metals, hormones, and ammonia to surface waters.

[26] See *http://cfpub.epa.gov/npdes/stormwater/cgp.cfm.*

[27] *http://cfpub.epa.gov/npdes/vessels/vgpermit.cfm.*

ii. Existing Reporting Requirements

Under the existing NPDES regulations, pursuant to 40 CFR 122.23(d)(1), every CAFO that discharges must apply for either an individual NPDES permit or seek coverage under a general permit, if available. NPDES-permitted CAFOs are required to submit an annual report to the State Director or Regional Administrator pursuant to 40 CFR 122.42(e)(4). The annual report must include: (1) The number and type of animals, whether in open confinement or housed under roof; (2) estimated amount of total manure, litter, and process wastewater generated by the CAFO in the previous 12 months (tons or gallons); (3) estimated amount of total manure, litter, and process wastewater transferred to other persons by the CAFO in the previous 12 months (tons or gallons); (4) total number of acres for land application covered by the CAFO's nutrient management plan; (5) total number of acres under control of the CAFO that were used for land application of manure, litter, and process wastewater in the previous 12 months; (6) summary of all manure, litter, and process wastewater discharges from the production area that have occurred in the previous 12 months, including date, time, and approximate volume; (7) a statement indicating whether the current version of the CAFO's nutrient management plan was developed or approved by a certified nutrient management planner; and (8) specified supporting agricultural data and calculations including the actual crop(s) planted and actual yield(s) for each field, and the actual nitrogen and phosphorus content of the manure, litter, and process wastewater.

iii. What Data Would Be Required To Be Submitted Electronically and Why?

EPA is soliciting comment on requiring CAFO permitted facilities electronically submit CAFO annual reports in accordance with 40 CFR 122.42(e)(4), which references the need for these submissions to be compliant with 40 CFR part 3, 122.22, and part 127. The data elements specific to these annual reports are listed in Appendix A to 40 CFR part 127. EPA is proposing to revise 40 CFR 122.42(e)(4) to include electronic reporting requirements.

The electronic submission of annual reports would help permitting authorities collect and process CAFO information more efficiently, and aid in the evaluation of the compliance status of NPDES-permitted CAFOs. Electronic annual reports would provide the data elements already required under 40 CFR 122.42(e)(4) in a more efficient and accessible form, allowing EPA, the states, tribes, territories, and the public to obtain updated information such as how many permitted CAFOs there are in the U.S., how many animals of each animal type are being raised at permitted CAFOs, how many permitted CAFOs have had discharges within the previous year, the type and amounts of manure generated by permitted CAFOs in the previous year, and the requirements and controls on these CAFOs.

Electronic reporting of CAFO annual reports will also improve compliance monitoring. EPA, states, tribes, and territories rely on the information contained in annual program reports to augment inspections and effectively monitor compliance. The electronic submittal of annual reports will supply basic information on permitted CAFOs as well as more detailed discharge information.

Finally, EPA is soliciting comment on eliminating the reporting of ''time'' of discharge from the annual report [see 40 CFR 122.42(e)(4)(vi)]. EPA estimates that the reporting of the ''date'' of a discharge is sufficient for permitting and compliance determinations. EPA solicits comment on this proposed change.

iv. Additional Considerations

EPA recognizes that electronic reporting could be impracticable for some CAFO facilities, particularly those that do not have broadband access to the internet. In general, electronic reporting tools require faster Internet connection speeds to work most effectively. Taking into account the limitations of broadband availability and technological capabilities, EPA is considering providing a temporary exception to the electronic reporting requirements for certain CAFO facilities or other facilities lacking broadband capability or high-speed Internet access and solicits comment on such an exception. See 40 CFR 127.15. In that section, EPA solicits comment on whether to allow such facilities to receive a temporary waiver from electronic reporting, and temporarily be required to submit their NPDES compliance information on paper-based forms.

d. Sewer Overflow and Bypass Reports

i. Background

This section of the preamble discusses CSOs and SSOs (together referred in this proposal as ''sewer overflow events''), and wastewater treatment works bypasses. CSO discharges generally occur at known outfall locations and are covered by an NPDES permit. SSOs generally do not occur at designated locations, but can occur from various locations in the system (*e.g.,* manholes). A bypass at a POTW is an intentional diversion of wastewater from any portion of the treatment facility. See 40 CFR 122.41(m)(l).

ii. Existing Program Reporting Requirements

Reporting requirements for sewer overflows and bypasses in NPDES permits are to be at least as stringent as specified in the ''standard conditions'' applicable to all NPDES permits [40 CFR 122.41(l), and (m)(3)] or the CSO Control Policy [59 FR 18688, April 19, 1994)] The following summarizes the current reporting requirements for sewer overflows and bypasses.

Combined Sewer Overflows

Under Section 402(q)(1) of the Clean Water Act, NPDES permits for combined sewer system discharges shall conform to EPA's 1994 CSO Control Policy.[28] The CSO Control Policy calls for a phased approach to permitting. In Phase I permits, all permittees with combined sewer systems were initially required to immediately implement Best Available Technology/Best Control Technology, which at a minimum includes the ''nine minimum controls'' as determined on a Best Professional Judgment (BPJ) basis by the permitting authority and develop a long-term CSO control plan that will ultimately result in compliance with the requirements of the CWA, including water quality standards. Phase II permits contain requirements for implementing the permittees' long-term CSO control plans (LTCPs).

The nine minimum controls are measures to reduce the prevalence and impacts of CSOs and include two information-related measures. Permittees are required to provide ''public notification to ensure that the public receives adequate notification of CSO occurrences and CSO impacts,'' and to conduct ''monitoring to effectively characterize CSO impacts and the efficacy of CSO controls.'' Development and implementation of the LTCPs entails the following, which include monitoring and reported activities:

- Characterizing, monitoring, and modeling of the combined sewer system (see CSO Control Policy Section II.C.1);
- Prohibiting new or significantly increased overflows to sensitive areas, which requires monitoring and

[28] See EPA's Web site at: *http://cfpub.epa.gov/npdes/cso/cpolicy.cfm.*

assessment of the CSO events (see CSO Control Policy Section II.C.3.a);

• Conducting an evaluation of CSO controls based on frequency, duration, volume, location, treatment, and compliance with water-quality standards (see CSO Control Policy Section II.C.4);

• Conducting a cost and performance analysis of the LTCP based on characterization, monitoring, and modeling data (see CSO Control Policy Section II.C.5);

• Maximizing treatment at the existing POTW treatment plant based on characterization, monitoring, and modeling data (see CSO Control Policy Section II.C.7); and

• Conducting a post-construction compliance monitoring program, according to a plan which details the monitoring protocols to be followed, such as the necessary effluent, ambient, and other water-quality monitoring, which must be approved by the NPDES authority (see CSO Control Policy Section II.C.9).

The characterization, monitoring, modeling, and reporting measures help the permittee and the NPDES permitting authority determine the appropriate controls to be implemented and the effectiveness of the controls selected in the LTCP in meeting CWA requirements and achieving applicable water quality standards. The NPDES permitting authority uses CSO monitoring and assessment data from the permittee in order to develop appropriate permit conditions and demonstrate compliance with the CSO Control Policy. NPDES permits must identify the CSO outfalls and permitted discharges. All discharges from these outfalls, whether dry or wet-weather discharges, are subject to reporting requirements under NPDES permits. CSO discharges from CSO permitted outfalls (dry or wet-weather) that constitute noncompliance are required to be reported under 40 CFR 122.41(l)(6) and (7). CSO discharges from CSO permitted outfalls (wet-weather) that do not result in noncompliance can be reported on DMRs [40 CFR 122.41(l)(4)(i)] at the frequency identified by the permit, and are subject to public notification requirements, one of the nine minimum measures under the CSO Control Policy. However, one of the nine minimum measures is to prohibit CSO discharges during dry weather. Therefore, EPA regulations require that these and other noncompliance events must be reported under 40 CFR 122.41(l)(6) and (7).

Sanitary Sewer Overflows

Separate sanitary sewer systems, unlike combined sewer systems, are designed to carry only domestic sewage. SSOs are generally unplanned and can occur anywhere in a collection system, although generally they are due to excessive infiltration and inflow during and following wet weather events. SSOs, including those that do not reach waters of the United States, may be indicative of improper operation and maintenance of the sewer system and thus may violate NPDES permit conditions requiring proper operation and maintenance [40 CFR 122.41(e)]. These noncompliance events are required to be reported to the NPDES permitting authority in compliance with EPA's standard permit conditions [40 CFR 122.41(l)(6) and (7)]. POTWs must provide an oral report within 24 hours for any overflow event that ''may endanger health or the environment'' and follow-up the oral report with a ''written submission'' within 5 days of the permittee's discovery of the overflow event [see 40 CFR 122.41(l)(6)]. All other overflows are required to be reported by the permittee with the next regularly scheduled monitoring report [40 CFR 122.41(l)(7)].

Bypass Events

EPA regulations [40 CFR 122.41(m)] prohibit ''bypassing'' any portion of a treatment facility. If the permittee knows that a bypass will occur, it is required to submit notice to the permitting authority, if possible at least ten days in advance of anticipated bypass events [see 40 CFR 122.41(m)(3)(i)]. If a bypass is unanticipated, permittees must provide an oral report within 24 hours and follow-up the oral report with a ''written submission'' within 5 days of the permittee's discovery of the bypass event [see 40 CFR 122.41(m)(3)(ii) which references 40 CFR 122.41(l)(6)]. Where a POTW has a combined sewer system, and the permit includes an approved anticipated bypass, the permit should specify monitoring and reporting related to the bypass. This proposed rule does not change the reporting requirements for bypass events related to non-POTW facilities (industrial facilities).

iii. What data would be required to be submitted electronically and why?

EPA is soliciting comment on requiring POTWs to report sewer overflow, sanitary sewer overflow, and bypass reports in compliance with permit conditions implementing 40 CFR 122.41(l)(4),(6), and (7), (m)(3), and CSO Control Policy would be required to be completed electronically. These data submissions would be subject to 40 CFR part 3, 122.22, and part 127. The data for these reports would be based on current reporting requirements and listed in Appendix A to 40 CFR part 127. EPA is proposing to revise 40 CFR 122.41(l)(6) and (7), and (m)(3)(i) to include electronic reporting requirements for sewer overflows and bypass events.

With respect to CSOs, this proposed language would only require electronic reporting for noncompliant combined sewer overflows. EPA is not proposing to require the electronic submission of LTCPs as these reports are unique to each POTW. EPA solicits comment on this approach. In addition, under section 402(q), permits issued to POTWs with combined sewer systems must require monitoring and reporting of wet-weather CSO events in accordance with the CSO Control Policy. As previously noted, wet weather CSO discharges that do not result in noncompliance can be reported on DMRs [40 CFR 122.41(l)(4)(i)] at the frequency identified by the permit. EPA is soliciting comment on amending 40 CFR 122.41(l)(4) to require the same data that would be required to be reported under proposed section 122.41(l)(6) and Appendix A to 40 CFR part 127 be reported electronically by such POTWs in their DMRs.

With respect to unanticipated bypasses, EPA is soliciting comment that the reporting requirements in 40 CFR 122.41(m)(3)(ii) would also be changed from paper-based reporting to electronic reporting as this section cross-references section 122.41(l)(6), which EPA is proposing to amend as above. This proposed rule would not change the reporting requirements for bypass events related to non-POTW facilities (industrial facilities).

The collection, management, analysis, and reporting of data from the sewer overflow and bypass reports, which have been identified for conversion from paper-based to electronic reporting under the proposed rule, would aid EPA oversight of state NPDES programs as well as provide the public with better access to this data. CSO, SSO, and bypass events are of special concern with respect to public health because they can expose the public to bacteria, viruses, intestinal parasites, and other microorganisms that can cause serious illness such as cholera, dysentery, hepatitis, cryptosporidiosis, and giardiasis. Precipitation and snowmelt entering combined and separate sanitary sewer systems may result in sewer overflow events, which in turn may be responsible for beach closings, swimming and fishing advisories, and habitat degradation. Sewer overflows contribute to 15 percent of impaired

rivers and streams, 6 percent of impaired lakes, and 33 percent of impaired bays and estuaries.[29] The Office of Water's (OW) 2004 Report to Congress on ''Impacts and Control of CSOs and SSOs'' estimated the annual CSO and SSO discharge volumes of untreated wastewater at 850 billion and three to ten billion gallons per year, respectively.[30]

As a result of this proposed rule, EPA, states, tribes, and territories would be able to better estimate the location, frequency, magnitude, and duration of sewer overflows, the environmental and public health impacts, and the potential causes. This sewer overflow data would provide the public with meaningful information on the number and frequency of sewer overflows in their communities. This data could also be used to prioritize decisions on how best to upgrade aging infrastructure and could be integrated with health warnings by local municipalities to protect public health.

EPA also solicits comment on whether these sewer overflow reports should be limited to sewer overflows at a threshold volume or include *de minimis* releases (minor volumes associated with routine operation and maintenance). Finally, EPA also solicits comment on whether the list of minimum federal data for sewer overflows and bypasses (Appendix A to 40 CFR part 127) provide sufficient distinction between the different types of sewer overflows and bypasses.

e. Pretreatment Program Reports

i. Background

POTWs receive wastewater from households (domestic waste), as well as from a wide variety of commercial and industrial facilities, referred to as industrial users (IUs). The types of IUs range widely, from small restaurants to hospitals to large and complex organic chemical manufacturers. EPA has further identified some IUs as categorical industrial users (CIUs), *i.e.,* IUs subject to EPA's pretreatment standards developed for particular industrial categories, and significant industrial users (SIUs), *i.e.,* IUs that are either CIUs or discharge process wastewater above the thresholds set in 40 CFR 403.5. EPA has developed a comprehensive pretreatment program implemented through EPA Regions, state, tribes, territories, and POTWs to control IU discharges of pollutants that might pass through or interfere with POTW treatment processes or contaminate sewage sludge, thereby posing a threat to human health or the environment. POTWs with approved pretreatment programs are required to develop, implement, and enforce pretreatment program elements through provisions written into their NPDES permits or waste discharge requirements. POTWs with approved pretreatment programs are also required to annually report biosolids compliance monitoring data to EPA or an authorized state program. NPDES regulations also require POTWs to disclose information to the Director of the permitting authority about IU discharges into their collection system and to identify when these discharges substantially change [see 40 CFR 122.42(b) and 122.44(j)(1)].

The pretreatment program primarily focuses on controlling pollutants from IUs that: (1) Have the potential to cause the POTW to violate its NPDES permit discharge limits; (2) may pose a safety concern to the POTW or its workers; or (3) affect the POTW's sewage sludge disposal method. [See 40 CFR 403.3(i).] The pretreatment program also has several other equally important regulatory requirements and initiatives. First, the pretreatment program ensures implementation and compliance with the technology-based categorical pretreatment standards (see 40 CFR 403.6). Second, the pretreatment program contains regulatory provisions for preventing sewer blockages and collection system overflows due to fats, oils, and grease.[31] Finally, municipal pretreatment programs are the source of significant pollution prevention and innovation initiatives. For example, such efforts include best management practices and controls for dental mercury and unused pharmaceuticals.

Through the pretreatment program regulations at 40 CFR part 403 and requirements within the NPDES regulations at 40 CFR part 122, EPA and approved state pretreatment programs directly oversee and regulate over 1,500 approved pretreatment programs. These approved pretreatment programs, in turn, oversee approximately 20,000 SIUs [see 40 CFR 403.8(f)]. The total number of SIUs is approximately three times the number of NPDES major dischargers.

The pretreatment program is considered a component of the NPDES program; however, in a larger sense, its regulatory framework is as comprehensive as the NPDES permit program itself. As with the NPDES permit program, EPA can authorize states to implement and enforce the NPDES pretreatment program. EPA has authorized pretreatment programs in 36 states as of October 1, 2011. The pretreatment program has additional complexity as authorized states, tribes, and territories (approval authorities) can further authorize pretreatment program authority to local governments. This complexity is reflected in the different types of compliance monitoring reporting, the associated report preparers and reviewers, and report timing.

ii. Existing Program Reporting Requirements

EPA identified 23 different pretreatment program reports as candidates for electronic reporting; these reports are currently managed in hard-copy format between industrial users, control authorities, and approval authorities. See Table IV.2. In general, these reports fall into the following categories:

- *Approval Authority Reports:* Program reports from approval authorities to EPA;
- *Control Authority Reports:* Program reports from control authorities to approval authorities (states or EPA Regions); and
- *Industrial User Reports:* Program reports from industrial users to control authorities (local POTWs, authorized states, tribes, territories, or EPA Regions in cities without approved programs).

TABLE IV.2—LIST OF PRETREATMENT PROGRAM REPORTS

Regulation	Report	Reporting entity	Receiving entity	Frequency
40 CFR 403.6	Categorical Determination Request.	CIU/POTW	Approval Authority	Once per request.
40 CFR 403.7	Removal Credit Authorization and Compliance Monitoring.	Control Authority	Approval Authority	Once per request.

[29] U.S. EPA, 2009. ''FY 2010 Office of Enforcement and Compliance Assurance (OECA) National Program Manager (NPM) Guidance, April 23, 2009, DCN 0044.

[30] U.S. EPA, 2004. '' Report to Congress: Impacts and Control of CSOs and SSO,'' EPA 833–R–04–001, August, DCN 0045.

[31] U.S. EPA, 2007, ''Controlling Fats, Oils, and Grease Discharges from Food Service Establishments,'' EPA–833–F–07–007, July, DCN 0046.

TABLE IV.2—LIST OF PRETREATMENT PROGRAM REPORTS—Continued

Regulation	Report	Reporting entity	Receiving entity	Frequency
40 CFR 403.09	POTW pretreatment programs and/or authorization to revise pretreatment standards: Submission for approval.	Control Authority	Approval Authority	Once per request.
40 CFR 403.10	Application and Reporting Requirements for States to Seek Approval from EPA to Run Their State Pretreatment Program.	Approval Authority	EPA	Once per request.
40 CFR 403.11	Removal Credit Authorization	Control Authority	Approval Authority	Case by Case.
40 CFR 403.12 (b).	Baseline Monitoring Report	CIU	Control Authority	Once per EPA categorical standard rulemaking.
40 CFR 403.12 (d).	Initial report on Compliance with Categorical Pretreatment Standard.	CIU	Control Authority	Once per EPA categorical standard rulemaking.
40 CFR 403.12 (e).	Periodic Reports on Continued Compliance for CIUs.	CIU	Control Authority	Biannually.
40 CFR 403.12 (f).	Notice of Potential Problems, Including Slug Loading.	IU	Control Authority	Case by Case.
403.12(g)(2)	24 hour notification of violations, 30 day re-sampling.	SIU	Control Authority	Case by Case.
40 CFR 403.12 (h).	Periodic Reports on Continued Compliance for Non-CIUs.	SIU	Control Authority	Biannually.
40 CFR 403.12 (i)	Annual POTW Reports	Control Authority	Approval Authority	Annually.
40 CFR 403.12 (j)	Notification of Changed Discharge	IU	Control Authority	Case by Case.
40 CFR 403.12 (k).	Compliance Schedule for POTWs	Control Authority	Approval Authority	Once per event.
40 CFR 403.12 (p).	Hazardous Waste Notification and BMP Certification.	IU	Control Authority	Case by Case.
40 CFR 122.42(b)	POTW Disclosure Requirements on IU Discharges for NPDES Permitting.	POTW	NPDES Program Director	Case by Case.
40 CFR 122.44(j)(1).	SIUs, identify in terms of volumes and character of pollutants.	POTW	NPDES Program Director	Case by Case.
40 CFR 403.12 (q).	Annual Certification by Non-Significant Categorical Industrial Users.	CIU	Control Authority	Annually.
40 CFR 403.13	Variances from categorical pretreatment standards for fundamentally different factors.	IU, POTW, or Other Interested Person.	Approval Authority and EPA.	Case by Case.
40 CFR 403.15	Net/Gross calculations	IU	Control Authority	Case by Case.
40 CFR 403.16	Upset	CIUs	Control Authority	Case by Case.
40 CFR 403.17	Bypass	IUs	Control Authority	Case by Case.
40 CFR 403.18	Modifications of POTW pretreatment programs.	Control Authority	Approval Authority	Case by Case.

Note: EPA's pretreatment regulations (40 CFR part 403) also require other reports (*e.g.,* reports required by administrative orders). These reporting requirements are case-by-case events.

These reports are submitted in hard-copy format to local pretreatment programs, authorized states, tribes, territories, or EPA Regions. Key data from these reports are not generally standardized, publicly available, or shared because these data are mostly in hard-copy format and reported in different forms.

Currently, authorized states, tribes, territories, or EPA Regions enter or otherwise transfer basic POTW data (*e.g.,* POTW name, address, latitude and longitude, POTW NPDES ID, POTW effluent limits, name of receiving waterbody) into ICIS–NPDES (see DCN 0031). Pretreatment program audits and compliance inspection summary data, collected by the authorized states, tribes, territories, or EPA, is entered into ICIS–NPDES; similar summary data on POTW performance actions is submitted annually by the POTW [in accordance with NPDES permit conditions and also 40 CFR 403.12(i)], but is not necessarily entered into state or federal data systems. EPA limited the number of WENDB pretreatment data elements as a means of reducing the reporting burden on states, tribes, and territories. Consequently, ICIS–NPDES pretreatment data only provide very general information about pretreatment programs and do not contain programmatic or compliance information on individual significant industrial users.

In the absence of approved local pretreatment programs, EPA, state, tribe, or territory functions as the control authority with the direct responsibility of overseeing these industrial users. EPA estimates that there are approximately 1,400 industrial users located in cities without approved local pretreatment programs. Failure to track and enforce compliance of IUs for which states, tribes, territories, or EPA are the control authority was cited as a weakness by EPA's Office of Inspector General (see DCN 0032). Some states and EPA Regions acting as control authorities have entered some information regarding industrial users located in cities without approved local pretreatment programs, but such data is very limited in the national NPDES data systems.

There are also inconsistencies in data entry between the state, tribe, territory, and Regional pretreatment programs. EPA recently reviewed pretreatment data in PCS and ICIS–NPDES and

interviewed EPA Regional pretreatment data entry staff. In doing this, EPA identified considerable inconsistencies in data entry, including use of database codes, types of data entered, and whether the data is entered at all. This lack of timely, accurate, and complete data limits EPA's oversight of the pretreatment program at the national level. Finally, there is limited public access to pretreatment data in ICIS–NPDES.

iii. What data would be required to be submitted electronically and why?

EPA solicits comment on having certain pretreatment program reports submitted electronically in accordance with 40 CFR 403.12(e), (h), and (i), which references the need for these submissions to be compliant with 40 CFR part 3, part 127, and 403.12(l). The data elements for these reports are listed in Appendix A to 40 CFR part 127. EPA notes that these reporting requirements do not apply to facilities *solely* regulated under state, tribe, and territory pretreatment statutes and regulations (*i.e.,* facilities that are exempt from EPA regulations but are regulated under more stringent state, tribe, and territory statutes or regulations).

EPA reviewed all pretreatment reports in Table IV.2 as potential candidates for electronic reporting. EPA evaluated the feasibility and necessity of converting paper-based pretreatment program reports to electronic reports against the following factors: (1) The ability to standardize a pretreatment report; (2) the frequency of the pretreatment report; (3) the need to collect and manage data from the pretreatment report on a national basis for measuring programmatic and compliance activities; and (4) what summary data from various paper-based reports could be combined into another existing reporting requirement. EPA proposes that reports that are not identified for electronic reporting in this proposed rulemaking would remain as paper-based reporting requirements unless future regulations are implemented. Additionally, the pretreatment program reports that are not identified for electronic reporting in this proposed rulemaking may still be good candidates for being managed as electronic documents (*e.g.,* searchable PDFs) and for posting on EPA, state, tribe, territory, or local government Web sites. Making these documents available to the public will increase the transparency of the pretreatment program. For the reports not identified in this proposed rule for electronic submission, EPA solicits comment on which other pretreatment reports (if any) EPA should require for electronic submission as electronic documents (*e.g.,* searchable PDFs).[32]

Annual POTW Report

Using the criteria described above, EPA identified the Annual POTW Report [40 CFR 403.12 (i)], as a pretreatment report that could be converted from a paper-based report to an electronic submission compliant with 40 CFR part 3, part 127, and 403.12(l). In developing this proposal, EPA noted that summary data (*e.g.,* the number of slug loadings) from the following reports are already included in the existing Annual POTW Report [40 CFR 403.12(i)] requirements:

- 40 CFR 403.7 Removal credits;
- 40 CFR 403.12(f) Notice of potential problems including slug loadings;
- 40 CFR 403.12(j) Notice of change in Industrial User discharge;
- 40 CFR 403.12(p) Hazardous waste notification and BMP certification;
- 40 CFR 403.12(q) Annual certification by Non-significant CIUs;
- 40 CFR 122.42(b) POTW disclosure requirements to NPDES Director;
- 40 CFR 122.44(j)(1) POTW identification of industrial users;
- 40 CFR 403.16 Upset notification; and
- 40 CFR 403.17 Bypass notification.

The data elements that comprise the Annual POTW Report are provided in Appendix A to 40 CFR part 127. EPA is proposing to revise 40 CFR 403.12(i) to include electronic reporting requirements.

Industrial User Reports

Using the criteria cited previously, EPA also identified that the following industrial user reports could be collected electronically for SIUs and CIUs in cities without approved pretreatment programs(EPA notes that SIUs and CIUs in cities *with* an approved pretreatment programs will continue to send their reports to their control authority; such reports may or may not be electronic submissions).

- 40 CFR 403.12(e) Periodic reports on continued compliance for CIUs; and
- 40 CFR 403.12(h) Periodic reports on continued compliance for Non-CIUs.

This will facilitate tracking and enforcing compliance of SIUs and CIUs for which states, tribes, territories, and EPA are the control authorities. Standardizing and electronically collecting these reports will help address deficiencies in EPA's National Pretreatment Program that were identified by EPA's Office of Inspector General (see DCN 0032). The data elements that comprise these industrial users reports in cities without approved pretreatment programs are provided in Appendix A to 40 CFR part 127 and in the rulemaking record (see DCN 0022). EPA is proposing to revise 40 CFR 403.12(e) and (h) to include electronic reporting requirements. EPA is not proposing to require electronic reporting from IUs that are not SIUs or CIUs as these facilities discharge smaller volumes of process wastewater and the number of IUs far exceeds the number of SIUs and CIUs. EPA solicits comment on whether it should require electronic reporting from IUs that are not SIUs or CIUs located in cities where EPA, the state, tribe, or territory is the control authority.

EPA solicits comment on making changes to 40 CFR 403.10 to require approved state, tribe, or territory pretreatment programs to incorporate the electronic reporting changes and submit their programs to EPA for review and approval. This state, tribe, or territory submission must require that the approval authority regularly notify each control authority that it must electronically submit its annual report in compliance with 40 CFR part 3, part 127, and 403.12(l) (including the requirement for the control authority to identify the initial recipient for electronic submissions). EPA considers these state tribe, territory, and local pretreatment program submissions to be a non-substantial modification, which means that the approval authority has 45 days to either approve or disapprove the modification. Where the approval authority does not notify the POTW within 45 days of its decision to approve or disapprove the modification or to treat the modification as substantial, the POTW may implement the modification as if it were approved by the Approval Authority. The proposed rule would make changes to 40 CFR 403.10(f)(2) to add the following language: Regularly notify all Control Authorities of electronic submission requirements of 40 CFR part 3, 122.22, and part 127.

iv. Additional Considerations

Due to the extensive number of entities either implementing or regulated under the National Pretreatment Program—approximately 1,600 approved pretreatment programs nationwide oversee approximately 20,000 SIUs—EPA is not proposing to convert paper-based reports between all

[32] The Missouri DNR Web site is an example of such a PDF repository of static searchable documents. See *http://www.dnr.mo.gov/env/wpp/permits/wpcpermits-issued.htm.*

IUs and POTWs to electronic submissions at this time. EPA is first focusing its efforts on collecting annual reports electronically from control authorities, acknowledging that these reports include summary data from IU reports, and collecting compliance reports electronically from IUs in cities without pretreatment programs. EPA solicits comment on whether EPA should re-examine this decision for the final rulemaking. Local pretreatment programs on their own initiative may convert these other paper-based reports to electronic submissions.

f. Biosolids Program Reports

i. Background

Wastewater treatment necessarily produces the end products effluent, sewage sludge, methane and other gases for energy, and water for reuse. Sewage and wastewater generated in homes, businesses, industries, and other venues that are conveyed to wastewater treatment plants are treated to allow effluent discharges or beneficial uses. The National Research Council has identified that compliance with EPA standards can promote the effective treatment and safe return of sewage sludge to the environment (see DCN 0034). Sewage sludge treatment usually involves a variety of processes and factors (*e.g.,* aerobic or anaerobic microbial degradation, time and temperature, high pH, lime stabilization and dewatering). Without proper controls, biosolids (sewage sludge) can present health hazards and cause water quality impairments.

Based upon the 2008 Clean Watershed Needs Survey (CWNS) Report to Congress, there are now 14,780 POTWs, which would represent an updated universe of sewage sludge (biosolids) generators. Note that the same 2008 CWNS Report (updated with more accurate data from the states) to Congress indicates that the 14,780 POTWs annually serve 73.7 percent of the U.S. population (226,302,213) and treat over 32 billion gallons of wastewater. Biosolids incinerators and septage removed from the numerous onsite/decentralized treatment systems are also covered by the 40 CFR part 503 requirements.

In almost equal amounts, these biosolids are either beneficially re-used or disposed (*e.g.,* municipal landfill, incineration). This volume of biosolids production will continue to increase with population growth and more stringent treatment requirements (*e.g.,* nutrient removal). The most recent national survey estimated that over seven million tons (dry weight) of biosolids were nationally generated by POTWs in 2004.[33] Also, there are currently 218 sewage sludge incineration (SSI) units in the United States and Puerto Rico.[34]

Section 405 of the CWA sets the statutory framework for regulating sewage sludge (biosolids). EPA has established a protective regulatory framework to manage the use and disposal of biosolids at 40 CFR part 503. Part 503 is a ''self implementing'' rule, which means that entities producing biosolids are regulated whether or not these requirements are included in a permit. Depending on use or disposal practice, EPA's sewage sludge regulations require monitoring and control of up to 10 metals and pathogen indicators.

Limited biosolids data can be found in national databases such as ICIS–NPDES or the Toxics Release Inventory (TRI). More detailed information on monitoring and biosolids management is provided in annual reports submitted by Class I sewage sludge management facilities, POTWs with a design flow rate equal to or greater than one million gallons per day, and POTWs that serve 10,000 people or more. Class I sewage sludge management facilities are facilities that have an approved pretreatment program or are in one of the five states that have assumed direct pretreatment responsibilities under 40 CFR 403.10(e). EPA and authorized states, tribes, and territories can also identify other sewage sludge management facilities as Class I facilities because of the potential for their sewage sludge use or disposal practices to affect public health and the environment adversely.[35]

The vast majority of biosolids annual reports are submitted in hard-copy format to EPA's regional offices. These reports document the measures taken to protect human health and watersheds from the mismanagement of biosolids. Key data from these reports are not generally standardized, publicly available, or shared because these data are mostly in hard-copy format and are reported in different forms. The following quote provides a good example of the effort required to complete a one-time assessment of the biosolids program, which mostly relies upon non-standardized hard-copy reports: ''Consistent data on biosolids management is difficult to obtain and compile . . . With no centralized data collection and storage system yet in place, disparate pieces of data from various states and EPA regions must be painstakingly collected and interpreted to produce a useful national picture.'' [36] As of October 1, 2011, eight states are authorized to carry out the biosolids program under the NPDES program for EPA relative to at least part of the biosolids management practices under Part 503. Not all authorizations are complete (*e.g.,* Michigan has authorization for land application only). Some states incorporate EPA's biosolids regulations in other state programs outside of their NPDES program (*e.g.,* solid waste management programs).

ii. Existing Program Reporting Requirements

EPA's ICIS–NPDES data system has data fields for collecting and reporting some biosolids data. Some of these data fields were identified as required data elements for entry into EPA's data system (i.e., WENDB). [37] It is the responsibility of the biosolids regulatory authority to enter these WENDB data elements into ICIS–NPDES. A review of these two databases shows that currently there are comparatively few biosolids data in either ICIS–NPDES.

As indicated previously, EPA's sewage sludge regulations (40 CFR part 503) require certain POTWs to submit to the authorized state or EPA region an annual biosolids report. POTWs that must submit an annual report include POTWs with a design flow rate equal to or greater than one million gallons per day, POTWs that serve 10,000 people or more, and Class I sewage sludge management facilities. In general, Class I sewage sludge management facilities must report annually to the permitting authority biosolids monitoring data, quantity of biosolids managed, ultimate end use or disposal of the biosolids, end use or disposal location(s), and vector and pathogen reduction measures. The most recent national review of state management of biosolids data found a variety of data collection, management, and reporting activities.[38] Ten states are able to efficiently produce data on biosolids management projects in their state. Nine states require extensive help

[33] North East Biosolids and Residual Association, 2007. A National Biosolids Regulation, Quantity, End Use & Disposal Survey, July 20, DCN 0034.

[34] U.S. EPA, 2010. Standards of Performance for New Stationary Sources and Emission Guidelines for Existing Sources: Sewage Sludge Incineration Units. Fact Sheet, DCN 0047.

[35] See: 40 CFR 503.9 (c).

[36] See DCN 0004.

[37] U.S. EPA, 1994. ''WENDB Data Elements for Sludge. Memorandum from Carol Galloway, Chief, Compliance Information Evaluation Branch, and Richard Kuhlman, Acting Branch Chief, Policy Development Branch, January 25, DCN 0048.

[38] See DCN 0034.

to collect and analyze their state data on biosolids management projects.[39]

There are no data collection requirements on sludge removal from septic systems, which is also regulated by EPA (Part 503). Additionally, there are no existing reporting requirements for smaller POTWs without approved local pretreatment programs (*e.g.,* design flow rate less than one million gallons per day and serving less than 10,000 people) and treatment works treating domestic sewage (TWTDS) that are not identified by EPA or the authorized state, tribe, or territory as Class I sewage sludge management facilities.

iii. What data would be required to be submitted electronically and why?

EPA solicits comment on having POTWs electronically submit their biosolids annual reports in compliance with existing biosolids reporting requirements at 40 CFR 503.18, 503.28, and 503.48. The standard data elements for these annual biosolids reports are provided in Appendix A to 40 CFR part 127. EPA solicits comment on standardizing biosolids reporting in the following areas:

- Type and amount of biosolids generated and managed;
- Sampling and analytical methods;
- Location of biosolids disposal and management practices;
- Land application data;
- Surface disposal data; and
- Incineration data.

EPA is proposing to revise 40 CFR 503.18, 503.28, and 503.48 to include electronic reporting requirements.

The electronic collection, management, analysis, and reporting of data from these annual biosolids reports would aid EPA oversight of state, tribe, and territory biosolids programs as well as providing the public with better access to biosolids data. The improved accessibility to biosolids data, in accordance with the proposed rule, would provide the public with useful information on how well POTWs and other biosolids generators are managing their biosolids. These data could also be used to prioritize decisions on EPA, state, tribe, and territory inspections in order to best protect public health and the environment.

g. Municipal Separate Storm Sewer System (MS4) Program Reports

i. Background

EPA and authorized programs issue NPDES permits to municipal separate storm sewer systems (MS4s) which require MS4s to reduce pollutants in stormwater discharges and which prohibit illicit discharges pursuant to CWA section 402(p)(3)(B)(iii). The Phase I Stormwater Rule, issued in 1990, requires MS4s serving populations of 100,000 or more to obtain NPDES permit coverage for their stormwater discharges (55 FR 47990). The Phase II Rule, issued in 1999, requires small MS4s in urbanized areas, as well as small MS4s outside the urbanized areas that are designated by the permitting authority, to obtain NPDES permit coverage for their stormwater discharges. Individual permits tend to cover Phase I MS4s and general permits cover most Phase II MS4s.

Stormwater discharges, including discharges from municipal separate storm sewers, industrial facilities and construction sites, can have a significant impact on water quality (DCN 0070, 0071, and November 16, 1990; 55 FR 47991). Such discharges are responsible for beach closings, swimming and fishing advisories, and habitat degradation. Several studies reveal that stormwater discharges from urban areas can include a variety of pollutants, such as turbidity, pathogens, organic nutrients, hydrocarbons, metals, oil and grease, and debris. Stormwater picks up a variety of pollutants such as sediment, debris, pesticides, petroleum products, chemicals, solvents, asphalts and acids on its way over streets, buildings, landscaping, construction sites, and industrial areas, and in extreme cases it can alter the pH of the receiving stream or river. These pollutants can harm the environment and public health.

As of October 1, 2011, EPA estimates that there are approximately 6,600 MS4 permits nationwide. Approximately 280 Phase I MS4 permits cover approximately 1,000 permittees in total (many MS4 permits include two or more co-permittees). According to ICIS–NPDES (including data for 34 states, plus territories and tribes), 1,673 permits are designated as having MS4 requirements (*i.e.,* with an MS4 permit component). Due to system limitations in PCS, permits that include MS4 requirements are unable to be identified and evaluated easily for compliance and enforcement rates.

Many MS4 permits contain requirements to implement stormwater management programs to prohibit illicit (non-stormwater) discharges in order to reduce pollutants discharged to the ''maximum extent practicable'' (MEP). EPA regulations require that permit language for MS4s include the development and implementation of stormwater management plans (SWMPs), which incorporate the use of best management practices (BMPs) to meet these pollutant reduction and illicit discharge elimination requirements. See 40 CFR 122. 26(d)(2)and 122.34. Phase I MS4 permit applications must include estimated reductions in pollutant loadings expected from implementation of the SWMP [see 40 CFR 122.26(d)(2)(v)]. To be covered by a general permit, Phase II MS4 applications and notices of intent must include ''measurable goals'' for each of the BMPs to be implemented through the MS4's SWMP [see 40 CFR 122.34(d)(ii)]. Measurable goals are objectives and milestones that quantify the progress of program implementation and the performance of the MS4 BMPs, which EPA can use to track the progress and effectiveness of SWMPs in reducing pollutants to the MEP.

EPA has recommended that measurable goals include, where appropriate, the following three components: (1) The activity, or BMP, to be completed; (2) a schedule or date of completion; and (3) a quantifiable target to measure progress toward achieving the activity or BMP.[40] Measurable goals that include these three components and are easily quantifiable would allow EPA, states, tribes, territories, and MS4 operators to assess the level of progress in reducing pollutants to the MEP.

ii. Existing Program Reporting Requirements

EPA regulations at 40 CFR 122.42(c) require operators of large or medium MS4s and municipal separate storm sewer systems that have been designated by the Director of the regulatory authority under § 122.26(a)(1)(v) to submit an annual program report. However, because state-issued MS4 permits vary significantly nationwide in areas such as the breadth and specificity of annual report requirements and because SWMPs are developed and implemented by different MS4s, there is tremendous variability in the content and quality of annual program reports. Additionally, these program reports are a mix of narrative and numeric information. EPA regulations at 40 CFR 122.34(g)(3) require less information to be reported for small MS4s than for large and medium MS4s, and, except for the initial permit term for small MS4s, the regulation specifies small MS4 reporting to be every two years rather than the annual reporting frequency required for large or medium MS4 permittees.

[39] *Id.*

[40] Web-based Measurable Goals Guidance for Phase II MS4s, available at *http://cfpub.epa.gov/npdes/stormwater/measurablegoals/index.cfm.*

iii. What would be required under the proposed rule and why?

EPA solicits comment on having MS4 permittees electronically submit their reports in a standardized format using divisible data elements (*e.g.,* not PDF files) in compliance with 40 CFR part 3, part 127, and 122.22. EPA is soliciting comment on changing 40 CFR 122.34(g)(3) and 122.42(c) to require regulated entities to electronically submit their MS4 reports in compliance with 40 CFR part 3, 122.22, and part 127. Specific data elements proposed to be required for the MS4 reports are provided in Appendix A to 40 CFR part 127.

EPA is also not proposing to change the frequency of MS4 program reporting. Some MS4 permits may also include numeric benchmarks or numeric parameters that are not themselves effluent limits, but help to determine whether narrative effluent limits are met or whether BMPs are working effectively. Enhancements to NetDMR to include unscheduled reporting would allow for electronic collection of DMR effluent reporting from MS4s; currently, ICIS–NPDES provides for unscheduled DMR data to be manually entered in the database. Finally, EPA is proposing to allow states, tribes, and territories to add their own unique set of data elements, including document attachments (*e.g.,* PDF) as needed.

The MS4 program report should document the MS4 actions during the previous year, evaluate program results, and describe planned changes towards continuous improvement. Although generally program reports are written for the permitting authority, they can also be written for members of the community as a way of divulging progress made towards meeting water quality goals. Electronically collecting these program reports would allow compliance monitoring data to be more easily shared with EPA, states, tribes, territories, and the public. These changes would provide the public with the opportunity to observe and examine the progress made by various MS4 programs towards controlling stormwater discharges. In particular, collecting MS4 program report data electronically would enable EPA, states, tribes, territories, and the public to more readily evaluate the effectiveness of MS4 stormwater control programs. Additionally, electronic collection of data would help permitting authorities to identify and share information on the most effective BMPs for controlling stormwater discharges and avoiding associated violations. Improved data availability through electronic reporting should improve the control of stormwater discharges by more quickly exchanging knowledge amongst permitting authorities and MS4s.

iv. Additional Considerations

In concert with state, tribe, and territory NPDES permit programs, EPA will likely need to adapt ICIS–NPDES to reflect current MS4 permitting practices. Specifically, some EPA Regions and states issue an individual MS4 permit to regulate multiple MS4s in a geographic area. For example, an MS4 permit issued to the San Francisco Bay Area covers multiple municipalities. Consequently, compliance for individual municipalities cannot adequately be tracked in ICIS–NPDES due to geospatial limitations. EPA would likely need to modify ICIS–NPDES to reflect a data structure more akin to a general permit, which allows for one permit to cover multiple facilities. This is particularly important when one MS4 permit includes multiple urban areas contributing to multiple different urban waters.

2. Where an NPDES-Regulated Facility Should Send Its Data

As previously noted, EPA is also soliciting comment on changing its regulations governing the standard conditions applicable to all NPDES permits by adding a new standard permit condition [see 40 CFR 122.41(1)(9)] that would require NPDES-regulated facilities to ensure that, for each type of electronic NPDES submission, the information is sent to the appropriate initial recipient, as identified by EPA, and as defined in 40 CFR 127.2(b). Authorized NPDES programs would include this requirement in all permits and control mechanisms. See Section IV.K for the implementation plans for the proposed rule. The new standard permit condition at 40 CFR 122.41(1)(9) would ensure that NPDES-regulated facilities know where to send their NPDES compliance data electronically.

The proposed rule also would require EPA to publish on its Web site and in the **Federal Register** a listing of the initial recipients for electronic NPDES information from NPDES regulated entities by state, tribe, and territory, and by NPDES data group. Some states, tribes, and territories are not authorized to implement all aspects of the NPDES program (*e.g.,* pretreatment, biosolids) so not all states, tribes, and territories are capable of being the initial recipient of these electronic submissions (in addition to electronic reporting readiness on part of the state, tribe, or territory). EPA would update this listing on its Web site and in the **Federal Register** if a state, tribe, or territory gains authorization to administer a NPDES program and is also approved by EPA to be the initial recipient of NPDES electronic data submissions for that NPDES data group. See 40 CFR 127.27.

3. Electronic Data Collection Tools

The proposed rule would allow authorized NPDES programs to use their own electronic reporting tools provided that the tools meet all of the minimum federal reporting requirements in 40 CFR part 3, 122.22, and part 127. States, tribes, and territories would be required to share the minimum set of federal NPDES data (Appendix A to 40 CFR part 127) that are collected through these electronic state reporting tools with EPA. This sharing of information could be easily accomplished through the NEIEN and EPA's Central Data Exchange. States, tribes, and territories would be able to elect to use EPA's electronic reporting tools or EPA-approved third-party software provider tools. NPDES regulated entities would be required to use an EPA-approved tool to electronically submit their data. When authorized NPDES programs or their electronic reporting tools are not compliant with EPA's electronic reporting requirements (40 CFR part 3, 122.22, and part 127) then NPDES regulated entities in that state, tribe, or territory would be required to electronically send their NPDES data to EPA. Regardless of whether a state's, tribe's, territory's, or EPA's, or a third-party electronic reporting tool is used, NPDES program data would be included in ICIS–NPDES and made available to the public through EPA's Web site.

4. Signature and Certification Standards for Electronic Reporting

EPA seeks to ensure that electronic reporting has at least the same level of legal defensibility and dependability as information that EPA would obtain through hard-copy paper submission. The Cross-Media Electronic Reporting Regulation (CROMERR), promulgated October 13, 2005, provides the legal framework for electronic reporting requirements established under all EPA environmental regulations (40 CFR part 3). CROMERR establishes signatory, certification, and security standards for information systems that receive reports and other documents electronically (including email, but excluding disks, CDs, and other magnetic and optical media). CROMERR establishes the electronic reporting criteria that must be met in order to ensure that a particular electronic reporting tool can provide

electronic information to EPA that meets EPA's needs.

CROMERR applies to (a) regulated entities that electronically submit reports and other documents directly to EPA under Title 40 of the Code of Federal Regulations, and (b) states, tribes, and local governments that administer or seek to administer EPA-authorized programs under Title 40 and provide electronic information to EPA. Regulated entities should ensure that they use the electronic reporting tools designated by EPA, states, tribes, and territories to receive the specified information and meet the other CROMERR criteria set out in 40 CFR 3.10. NPDES-authorized states, tribes, and territories (and local governments) that wish to continue or begin using electronic reporting of NPDES information to EPA must revise or modify those authorized programs and their electronic reporting tools, if applicable, as appropriate to incorporate CROMERR criteria, and apply for and receive CROMERR approval by EPA under 40 CFR part 3.

At this time, several states have already developed or are developing electronic reporting tools for use by NPDES-regulated facilities. EPA has also developed electronic reporting tools, notably NetDMR. These electronic reporting tools, and other tools to be developed in the future, whether by EPA, states, tribes, territories, or the competitive marketplace, need to be CROMERR-compliant to ensure that they meet EPA's data needs and requirements.

EPA developed a CROMERR system checklist [41] that EPA, states, tribes, and territories and other electronic tool developers can use to identify the key features to be included in an electronic reporting system for it to be CROMERR-compliant. The checklist contains, among other things, requirements for a registration process which identity-proofs the registrant, to ensure that the individual using the electronic tool and signing the electronic documents has been determined with sufficient legal certainty, and to establish a subscriber agreement or electronic signature agreement. The CROMERR checklist also contains requirements for the signature process, the submission process, and the creation of a copy of record. Additional details may be found in the CROMERR checklist, or in the regulatory text or preamble of CROMERR itself (40 CFR 3.10; 70 FR 59848). Recently, EPA has initiated a workgroup with states to streamline the CROMERR approval process. EPA also notes that the transaction cost for authentication has dropped from tens of dollars per user to less than pennies per user (*e.g.,* DCN 0035).

NetDMR is an example of a CROMERR-compliant electronic reporting tool, described previously in Section IV.E.1.a in the context of DMRs. Among other features ensuring CROMERR compliance by this tool, NetDMR utilizes a subscriber agreement with a designated signatory authority for the NPDES permittee, a password, required responses to security questions, and Secure Socket Layer (SSL) communications.[42]

One person should be clearly designated as the signatory authority for the electronic reporting of particular NPDES information. The federal regulations at 40 CFR 122.22 describe the appropriate management level for anyone designated as a signatory authority for permit applications and reports. If the signatory authority plans to have someone else sign and submit the electronic DMRs, for example, then this individual must be a duly authorized representative of that signatory authority in accordance with 40 CFR 122.22(b). Under CROMERR, electronic systems that accept electronic signatures must be able to effectively prove that those electronic signatures are valid and were created with an electronic signature device that was not compromised. The use of a personal identification number (PIN) or password in combination with a requirement for the user to answer one or more security questions (*e.g.,* a ''challenge'' question from a set of questions for which the user provided answers previously [*e.g.,* during registration]) helps to ensure that the person submitting the information is who they claim to be and that the data is being sent on behalf of the appropriate NPDES permittee. The use of SSL communications, or the use of Transport Layer Security (TLS), is another key way of ensuring the integrity of the information. TLS and SSL make significant use of certificate authorities and provide the means to check that the certificate comes from a trusted party, is currently valid, and has a relationship with the site from which it is being sent.

5. Temporary Waivers or Exemptions From Electronic Reporting for NPDES-Regulated Facilities

A key decision in this proposed rule is determining whether electronic reporting requirements would be relatively easy to meet for most of the NPDES-regulated universe of facilities. For example, 50 percent of rural residents have broadband (see DCN 0030). Although not a necessity, broadband access makes it easier to submit NPDES reports that would be required under this proposed rule. Therefore, broadband access or other measures of the availability of sufficient upload speed may serve as reasonable indicators regarding possible computer access difficulties, particularly in the more remote rural areas.

In the development of this proposed regulatory requirement for electronic reporting by NPDES-regulated facilities, EPA has considered a number of alternatives (described in the paragraph below) for possible temporary waivers or exemptions based on certain criteria. Such a waiver or exemption from electronic reporting of NPDES information would be temporary in that it would remain valid only until the condition(s) meriting the exemption changed or for one year, whichever occurs first, during which time the permittee would still have the requirement to submit the required NPDES information non-electronically to EPA, the authorized state, tribe, or territory. EPA is proposing that these temporary waivers may be granted by EPA, states, tribes, and territories that have received authorization to implement the NPDES program. EPA solicits comment on the granting and duration of these temporary waivers.

For example, EPA has considered, and is seeking comment on, whether to automatically grant temporary waivers from NPDES electronic reporting requirements to each NPDES-permitted facility that is physically located (*i.e.,* not just a post office box) within one of the counties or zip codes for which less than 10 percent of the households have broadband access, based on the aforementioned February 2010 FCC report or subsequent similar official reports.

As another alternative, EPA has considered whether it should grant temporary exemptions for each NPDES-permitted facility which meets criteria demonstrating that such electronic reporting of NPDES information would pose an unreasonable burden or expense to the NPDES-permitted facility; this is the same concept that the Securities and Exchange Commission (SEC) [17 CFR

[41] CROMERR System Checklist, *available at http://www.epa.gov/cromerr/tools.html.*

[42] Originally developed by Netscape, SSL is an internet security protocol used by online banking sites, internet browsers and web servers to transmit sensitive information. SSL later became part of an overall security protocol known as Transport Layer Security (TLS).

232.202(a)] has applied to its (rare) granting of continued hardship exemptions for electronic filing. The process of applying to the SEC for a continued hardship exemption is described in 17 CFR 232.202. This process requires the submission of a written request made at least ten business days before the required due date of the submission. As identified in 17 CFR 232.202(b), this written request shall include, but not be limited to:

- The reason(s) that the necessary hardware and software are not available without unreasonable burden and expense;
- The burden and expense associated with using alternative means to make the electronic submission or posting, as applicable; and/or
- The reasons for not submitting the document, group of documents or Interactive Data File electronically, or not posting the Interactive Data File, as well as the justification for the requested time period.

The application for the continued hardship exemption is not deemed granted until the SEC notifies the applicant.

Although the SEC has successfully required electronic reporting from various size companies for the majority of its reports since 1993, it is still possible that a certain subset of NPDES-permitted facilities might claim that they either do not have computers on-site, do not have computer-savvy individuals available, or are a considerable distance away from a location where they could get computer access. EPA is considering the possible use of temporary waivers from electronic reporting of NPDES information for such facilities, although technological advances and computer access are such that there may be few valid instances of such situations. EPA may consider establishing a similar procedure for such temporary waivers if the criteria for such temporary waivers are broadened, in response to comments, beyond that in the proposed rule.

In addition to these possible temporary continued hardship exemptions for NPDES-regulated facilities from electronic reporting, EPA also recognizes that there may be a need for incident-specific one-time waivers or other adjustments for situations that are beyond the control of the reporting facility (*e.g.,* tornados, floods, EPA or state data system failures). In 17 CFR 232.201, the possibility of a temporary hardship exemption from electronic reporting to the SEC is described. In the SEC regulations, under this temporary hardship exemption, the electronic filer may instead file a written copy of the report. The SEC also will encourage the use of a one-time change to the filing due date rather than rely upon a temporary hardship exemption where the situation is beyond the control of the filer. EPA proposes to utilize one-time changes to due dates rather than waivers from electronic reporting in these types of emergency situations.

At this time, EPA solicits comment on the need for such temporary waivers or exemptions as well as which criteria should apply for the granting of such temporary exemptions. This proposed rule includes provisions for temporary waivers extending up to a maximum of one year, but comments are sought on all of these options or any other viable options which might be suggested during the official comment process. For comparison, EPA's recently proposed rule (August 13, 2010) regarding Toxic Substance Control Act (TSCA) Inventory Update Reporting Modifications did not include a provision for waivers or exemptions from electronic reporting; however, the preamble for that proposed rule did request comment on whether there are any circumstances in which a company may not have Internet access to report the required data electronically. EPA also solicits comment on whether EPA should also grant waivers to NPDES regulated entities with religious objections to using modern innovations such as electricity and computers.

6. EPA Consideration of Other Electronic NPDES Reporting by Permittees, but Not Included in This Proposed Rule

As described in more detail in Section IV.B, during summer 2010, EPA conducted concurrent technical analyses, which examined various aspects of possible electronic reporting of NPDES information for NPDES-permitted facilities. Based on these analyses, EPA decided what should and should not be included as requirements in this proposed rule.

Among the NPDES reporting requirements that EPA considered but did not include in this proposed rule are the following:

- Electronic submission of applications for individually-issued NPDES permits;
- Electronic submission of annual compliance certifications;
- Electronic submission of certain program reports for vessels;
- Electronic submission of program reports for pesticide applicators;
- Electronic submission of all follow-up reports required under 40 CFR 122.41(l)(6) and (7).

Each of these is discussed briefly below.

a. Electronic Permit Application Information and Possible Electronic Permit Generation

EPA examined the feasibility of requiring permit application information to be submitted electronically and of electronically creating the NPDES permit. This analysis focused on the individually-issued NPDES permits rather than on NPDES general permits; therefore, approximately 46,000 facilities would comprise the universe of facilities that might be covered by such a requirement to electronically submit permit application information.

EPA has developed particular permit application forms to be completed by facilities seeking individual EPA-issued NPDES permits. However, there is considerable state, tribe, and territory variability in permit application forms, data sought, ''boilerplate'' language, and templates used in the creation of the permit. There are extensive attachments to the permit application forms, including maps, flow charts, monitoring information, etc. Furthermore, the permit application information is not the only information used in constructing a permit. The complex permit writing process utilizes a variety of additional information, such as water quality information and background pollutant concentration data, beyond that provided in the permit application itself; such information would have to be integrated in or easily accessible by an electronic permit writing tool.

Given the complexity of the permitting process, the significant degree of state, tribe, and territory variability, and the extensive attachments that accompany permit application forms, it would be difficult to economically construct and maintain an electronic tool for permit application form submittals that would be nationally-consistent and could create an individual NPDES permit. The Office of Water previously attempted to develop such a national electronic-permitting (*i.e.,* e-permitting) tool. That effort was adversely impacted by high costs to develop and maintain the tool and by the significant state, tribe, and territory variability that must be addressed.

Based on EPA's analysis for this proposed rule, EPA has decided not to include in this proposed rule (1) requirements for electronic submission of nationally-consistent permit application information from facilities, and (2) implementation relying upon the availability of a nationally-

consistent electronic tool to generate individual NPDES permits by the states, tribes, territories, or EPA Regions. Therefore, for facilities covered by individually-issued NPDES permits, EPA would require authorized states, tribes, and territories to provide EPA with the key facility and permit information. Comment is sought on the feasibility of developing a nationally-consistent electronic tool that can be used by multiple states, tribes, and territories to obtain permit application information electronically from the permittees and to generate the individual NPDES permit. Comment is also sought on whether EPA should require electronic submission of the EPA-developed permit application forms from facilities seeking coverage under EPA-issued individual NPDES permits. In addition, EPA seeks comment on the feasibility of third-party software vendor development of such tools.

b. Consideration of Annual Compliance Certifications

Not every facility covered by a NPDES permit has an existing requirement to submit self-monitoring information in the form of a DMR or similar report. Furthermore, not every facility covered by a NPDES permit has an existing requirement to submit a program report regarding its compliance status (*e.g.,* industrial stormwater, active construction sites) (see DCN 0021). Annual compliance certifications could help address facilities that do not have a requirement to submit self-monitoring information, or a program report regarding its compliance status. This would constitute new regulatory requirements for reporting and recordkeeping, and would require new Information Collection Requests (ICRs) identifying the estimated burden hours to submit, process, and analyze these certifications; therefore, EPA has not included this new requirement in the proposed rule. However, comment is sought on the usefulness of this concept of electronic submission of annual compliance certifications by permitted facilities that do not have DMR submission requirements and program report submission requirements.

c. Vessels Program Reports

EPA's NPDES vessels program regulates incidental discharges from the normal operation of vessels. The centerpiece of the NPDES vessel program is the EPA Vessel General Permit (VGP). The VGP is a general permit that is issued and implemented by EPA. The 2008 VGP regulates discharges incidental to the normal operation of vessels operating in a capacity as a means of transportation (see 29 December 2008; 73 FR 79473). All vessel-related requirements are in the VGP. EPA estimates that approximately 61,000 domestically-flagged commercial vessels and approximately 8,000 foreign-flagged vessels may be affected by this permit.

The 2008 VGP identifies information that must be sent to EPA. These requirements include:

- The Notice of Intent (NOI) form (see Appendix E of the VGP);
- Annual report of noncompliance (see section 4.4.1 of the VGP);
- Additional reporting (noncompliance which may endanger health or the environment) (see section 4.4.3 of the VGP); and
- A one-time permit report (see section 4.4.4 of the VGP).

EPA collects the NOI information for vessels electronically, and has built a system to collect the one-time vessel permit report electronically. The 2008 VGP does not require the use of the eNOI system, nor does it require any DMRs or one-time reports to be submitted electronically. Although the vessel eNOI information EPA currently receives is not available through ICIS–NPDES or PCS, EPA plans to adapt ICIS–NPDES and ECHO to make such information available to the public.

EPA's 2008 VGP currently contains monitoring, reporting, inspection, operation and maintenance requirements pertaining to vessels. EPA is not proposing to use this proposed rule to make any changes to NPDES regulations that would be specific to the vessels program. EPA anticipates that any electronic reporting for vessels would be required through a new version of the VGP. EPA solicits public comment on this approach.

d. Pesticide Applicators Program Reports

On October 31, 2011, EPA issued a final NPDES Pesticide General Permit (PGP) for point source discharges from the application of pesticides to waters of the United States. While the permit requirements must be met as of October 31, 2011, operators will be covered automatically under the PGP without submitting a Notice of Intent (NOI) for any discharges before January 12, 2012. To continue coverage after January 12, 2012, those Operators who are required to submit NOIs will need to do so at least 10 days (or 30 days for discharges to National Marine Fisheries Service (NMFS) Listed Resources of Concern) prior to January 12, 2012. For the first 120 days that the permit is in effect, EPA will focus on providing compliance assistance and education of the permit requirements, rather than on enforcement actions.

The Agency's final PGP covers Operators that apply pesticides that result in discharges from the following use patterns: (1) Mosquito and other flying insect pest control; (2) weed and algae control; (3) animal pest control; and (4) forest canopy pest control. The permit requires permittees to minimize pesticide discharges through the use of pest management measures and monitor for and report any adverse incidents. Some permittees are also required to submit NOIs prior to beginning to discharge and implement integrated pest management (IPM)-like practices. Recordkeeping and reporting requirements will provide valuable information to EPA and the public regarding where, when, and how much pesticides are being discharged to waters of the U.S. Pesticide application use patterns not covered by EPA's Pesticide General Permit may need to obtain coverage under an individual permit or alternative general permit if they result in point source discharges to waters of the U.S.

This general permit will provide coverage for discharges in the areas where EPA is the NPDES permitting authority, which include four states (Idaho, Massachusetts, New Hampshire, New Mexico), Washington, DC, most U.S. territories and Indian country lands, and many federal facilities (for details, click here (PDF) (5 pp, 239K)). In the remaining 46 states (and the Virgin Islands), the states are authorized to develop and issue the NPDES pesticide permits.

At this time, prior to the effective date of the requirement for these discharges from pesticide applications to be covered under a NPDES permit, EPA does not envision the NPDES Electronic Reporting Rule making any changes to NPDES regulations that would be specific to such discharges. Given the various implementation approaches, compliance and reporting requirements that may be contained in EPA's final PGP as well as in the NPDES-authorized state-, tribe-, or territory-issued permits, any changes that EPA might make with respect to electronic reporting for discharges from pesticide applications could be made through the notice and comment process of the pesticide general permit. EPA solicits public comment on this approach.

e. Electronic Reporting of All 5-Day Non-Compliance Reports Identified in 40 CFR 122.41(l)(6) and (7)

NPDES regulations require permittees to report any noncompliance which may

endanger health or the environment. See 40 CFR 122.41(l)(6). These regulations require both an oral report and written report within 24 hours and 5 days, respectively, from the time the permittee becomes aware of the circumstances. Existing NPDES regulations also require permittees to report all instances of noncompliance not otherwise reported elsewhere at the time monitoring reports are submitted. See 40 CFR 122.41(l)(7).

This proposed regulation amends the existing regulation at 40 CFR 122.41(l)(6) for combined sewer overflows, sanitary sewer overflows, and bypass incidents to require these follow-up reports to be submitted electronically within 5 days from the time the permittee becomes aware of the circumstances. This proposed regulation also would require electronic reporting of CSOs, SSOs, and POTW bypasses that are in noncompliance per 40 CFR 122.41(l)(7).

EPA solicits comment on whether it should expand electronic noncompliance reporting to other forms of noncompliance that are not already addressed in the above referenced proposed changes incorporated into today's proposed regulation.

F. Data Submissions From Authorized State, Tribe, or Territory NPDES Programs

Historically, EPA has relied upon the permitting authority for submission of the NPDES information in EPA's national NPDES data systems. With this proposed rule, as currently drafted and subject to public comment, EPA would require permittees to submit a large portion of that NPDES data electronically, which would significantly reduce the amount of information that would otherwise be required from the authorized state, tribe, or territory NPDES programs.

Nevertheless, under the approach described in this proposed rule, EPA would still require NPDES information from authorized state, tribe, or territory NPDES programs, particularly information linked to the implementation activities and responsibilities of the authorized state, tribe, or territory NPDES programs. The types of NPDES information EPA would require to be reported by the states, tribes, and territories with authorization to implement the NPDES program would include:

- Facility information for individually-issued NPDES permits;
- Permit information for individually-issued NPDES permits and master general permits [including information specific to subprograms such as CAFOs, CSOs, SSOs, pretreatment, biosolids, stormwater, cooling water intakes, and thermal variances;
- Compliance monitoring and inspection activities;
- Compliance determination information;
- Enforcement action information;
- Other NPDES information required to be submitted electronically from permittees or other regulated entities, but routed by the electronic reporting tools to the states, tribes, or territories initially rather than to EPA; and
- Other NPDES information listed in Appendix A to 40 CFR part 127 that permittees submit non-electronically to their authorized state, tribe, or territory.

Each of these NPDES data types are described further in the sections that follow.

A. Why Require This Information From Authorized States, Tribes, and Territories

The states, tribes, and territories which have received authorization to implement the NPDES program are the entities that have the primary responsibility to issue permits, perform inspections, make compliance determinations, and take enforcement actions. Most of the data that this proposed rule, as currently drafted and subject to public comments, would require the authorized NPDES programs to submit to EPA would be generated during the course of those activities. As such, the authorized NPDES programs are the unique and appropriate sources to provide these types of NPDES data to EPA and to be responsible for the quality and accuracy of that data.

Another key part of this proposed rule is ensuring that, if submissions of NPDES information are sent by the NPDES-regulated facilities to the states, tribes, or territories initially rather than to EPA, the states, tribes, and territories would provide that information electronically to EPA. In turn, EPA would provide the states, tribes, and territories with NPDES information it receives from the NPDES-regulated facilities. In either case, the key would be to ''complete the circuit'' electronically through the NEIEN, so that all of the required information submitted by the NPDES-regulated facilities would be available, timely, accurate, complete, in a nationally consistent manner for use by EPA, states, tribes, and territories, and for presentation to the public.

B. What Data Would Be Required and Why From Authorized States, Tribes, and Territories?

For the proposed rule, as currently drafted and subject to public comment, the types of information that would be required to be submitted to EPA electronically by the states, tribes, and territories authorized to implement the NPDES program are described briefly below. Rather than establish different timeliness criteria for different types of data, EPA proposes that the required NPDES data be provided by the states, tribes, and territories to EPA within 30 days of the date of permit issuance, date of inspection, date of violation determination, date of enforcement action, or date of receipt of the information electronically (or non-electronically under a temporary waiver) from the permittee, as applicable. EPA invites comment on the 30-day timeliness criterion.

C. Facility Data From Authorized States, Tribes, and Territories

In EPA's NPDES national data systems, it is necessary to create a facility record before other information may be entered or otherwise made available. Therefore, this core set of basic facility data, as identified in an attachment to the 1985 PCS Policy Statement (as amended), are essential to EPA national data systems in order to create a facility record to which other NPDES information may be linked, such as permit information, compliance status, inspection information, violation determinations, enforcement action information, etc.

Through this proposed rule, as currently drafted and subject to public comment, the types of basic facility information that the states, tribes, and territories would be required to provide EPA for the facilities covered by NPDES individually-issued permits would include information regarding the facility itself (such as the site name of the facility and the type of ownership), information regarding the facility's location (such as address, city, state, zip code, and information meeting EPA's data standards associated with latitude and longitude), and information regarding a contact for that facility (such as name, title, address, etc.). The complete list of such basic facility information that would be required through this proposed rule is identified in Appendix A to 40 CFR part 127.

Much of this basic facility information already exists in EPA's national NPDES data systems, particularly for major permittees, and some of the information not found in the national data system,

particularly regarding nonmajor permittees, may be found in state, tribe, or territory NPDES data systems. This proposed rule would require states, tribes, and territories to provide EPA with such basic facility information for all facilities covered by individually-issued NPDES permits and to update that information as appropriate, in accordance with stated quality assurance and quality control procedures (see 40 CFR part 127). Unless otherwise specified in a permit, or unless the permit is modified significantly, EPA anticipates that such facility data would generally be updated only once per permit cycle, which generally means every five years, if that often, because this type of basic facility data rarely changes.

Under the approach described in the proposed rule, if, for whatever reason, facilities covered by NPDES general permits do not provide the NOI data electronically by the compliance deadline, then the authorized NPDES programs would be responsible for also ensuring that basic facility information for facilities operating under general permits is provided electronically to EPA.

D. Permit Data From Authorized States, Tribes, and Territories

Through this proposed rule, as currently drafted and subject to public comment, the type of permit information that the states, tribes, and territories would be required to provide EPA for the facilities covered by NPDES individually-issued or general permits would consist of:

- Basic permit information;
- Information regarding designated outfalls or permitted features;
- Information regarding the applicable limit sets;
- Information regarding the applicable effluent limitations;
- Information regarding narrative conditions and permit schedules; and
- Information relevant to specific NPDES subprograms, such as CAFOs, CSOs, SSOs, pretreatment, biosolids, stormwater, cooling water intakes, and thermal variances.

Basic information regarding the permit refers primarily to some of the key identifier information for that permit. Such information includes the permit number or other identifier, the permit type, the program components covered by the permit, the permit status and key dates related to application and issuance, information regarding whether the facility is a major permittee, industrial classification codes indicating the type of facility, the permit issuing organization, applicable effluent guidelines, and the permittee's name and address. See Appendix A to 40 CFR part 127 for a complete list of required data.

Under this proposed rule, information would also be required regarding the permitted features or outfalls identified in the permit. Such information includes the design flow and actual flow from such outfalls, an identifier for such outfalls, the type of permitted feature, the receiving waterbody, and the physical location (latitude and longitude) of such permitted features. See Appendix A to 40 CFR part 127 for a complete list of required data. This information is essential in compliance tracking because permit limits and limit sets are identified for specific outfalls or permitted features.

Under this proposed rule, as currently drafted and subject to public comment, to enable electronic reporting and evaluation of DMRs, information would also be required regarding the specific set of numerical or narrative limits, and the limits themselves, identified for each permitted feature identified in the permit. The proposed rule would require the permitting authority to provide NPDES permit limits (*e.g.,* numerical limits) and NPDES permit limits set types (*e.g.,* seasonal or interim limits) for major and nonmajor permittees (including general NPDES-regulated facilities) to EPA into the national data system. Permit limits information would include the monitoring location, the start and end dates for such limits, the limit type, information regarding all permit modifications to such limits, information regarding enforcement actions which may have imposed enforcement action limits, the regulated pollutant parameter, the months that the limit applies, a text description of the limit (*e.g.,* 30-day average), an arithmetic qualifier (*e.g.,*"<"), the actual numeric limit, the quantity or concentration units specified for that limit, and information regarding if a particular limit has been stayed. See Appendix A to 40 CFR part 127 for a complete list of required data.

Information regarding permit limits sets would include a text description of the limit set (*e.g.,* summer limits), the type of limits (*e.g.,* scheduled), the number of months that the limit set applies, the initial monitoring date, the due date for monitoring reports, the number of months for each monitoring period, the frequency of monitoring report submission, whether that set of limits is active, and a start date associated with that limits set. See Appendix A to 40 CFR part 127 for a complete list of required data.

Under this proposed rule, information would also be required from the narrative conditions or permit-contained schedules, including such information as the type of narrative condition, an identifier code or description of the permit schedule event, the scheduled and actual dates for the achievement or occurrence of that event, and the received date for the report which documented that achievement or occurrence. As an example, such narrative conditions or permit schedules frequently impose a permit requirement that a particular type of report be sent to the permitting agency on a specific repeating schedule (*e.g.,* annually). See Appendix A to 40 CFR part 127 for a complete list of required data.

In addition, this proposed rule, as currently drafted and subject to public comment, would also require permit-related data from the NPDES permit application. This permit application data includes information on particular NPDES subprograms such as biosolids, SSOs, pretreatment, CSOs, stormwater, CAFOs, cooling water intakes, and thermal variances. The complete list of data that would be required through this proposed rule is identified in Appendix A to 40 CFR part 127. Additionally, some facilities seeking coverage under a general permit will submit similar data to their permitting authority. Authorized states, tribes, and territories would be required to share these facility-supplied data with EPA.

a. Inspection Data From Authorized States, Tribes, and Territories

Historically in the NPDES program and in accordance with existing policy, the authorized programs implementing the NPDES program have been expected for several decades to provide the basic inspection information to EPA for major permittees and for nonmajor permittees. For example, in the PCS Policy Statement (as amended), EPA indicated that the states, tribes, and territories are expected to provide a core set of such basic inspection data to EPA through PCS.

As discussed previously in this preamble, in addition to information submitted by the NPDES-regulated facilities, some NPDES data, including inspection information, is also needed from the states, tribes, and territories. EPA, states, tribes, and territories perform these inspection activities, and therefore they are the unique source of the inspection information provided to EPA.

These inspections could identify the compliance status of the facilities, potential remedies needed, and changes

from the permit application information. Through receipt of such facility-specific information regarding inspections, EPA is interested in determining how well the NPDES-authorized state, tribe, or territory is implementing the inspection responsibilities associated with NPDES program authorization, better evaluating potential targeting of inspections, better characterizing and addressing the compliance status of the facilities, and identifying common problems that occur at the NPDES-regulated facilities.

Through this proposed rule, as currently drafted and subject to public comment, the type of basic inspection information that the states, tribes, and territories would be required to provide EPA would include the end date of such a compliance monitoring activity, the facility inspected, the type of compliance monitoring, the reason for such compliance monitoring, the lead office for such compliance monitoring, and the law sections evaluated and potentially violated at the facility (*e.g.,* pretreatment). The complete list of such basic inspection information that would be required through this proposed rule is identified in Appendix A to 40 CFR part 127.

In addition to the basic information that would be required for any NPDES inspection, required compliance monitoring information also would include information specific to the NPDES subprograms. For example, there are specific items that would apply if a CAFO facility had been inspected, or for pretreatment, CSOs, SSOs, etc. The complete list of such subprogram-specific inspection information that would be required through this proposed rule is identified in Appendix A to 40 CFR part 127.

This proposed rule would require authorized states, tribes, and territories to provide EPA with inspection information for all NPDES-regulated facilities, in accordance with stated quality assurance and quality control procedures. EPA anticipates that such inspection data would be provided at a reporting frequency approximating the inspection frequency specified in the EPA Compliance Monitoring Strategy (October 2007 or as subsequently revised), or as delineated in alternative inspection strategies contained in EPA-state, EPA-tribe, or EPA-territory agreements.

b. Compliance Determination Information From Authorized States, Tribes, and Territories

In the existing federal regulations [40 CFR 123.26(e)(2) and (4)], states, tribes, and territories that have received authorization to implement the NPDES program ''shall have procedures and ability for'':

- Initial screening (*i.e.,* pre-enforcement evaluation) of all permit or grant-related compliance information to identify violations and to establish priorities for further substantive technical evaluation; and
- Maintaining a management information system which supports the compliance evaluation activities of this part.

Under the existing data reporting structure, if the DMRs for the NPDES major permittees and the relevant numeric effluent limitations from the NPDES permit requirements are in EPA's national data systems, the data systems can automatically identify violations of numeric effluent limitations. These violation determinations, which can be made for individual pollutants and at the facility level, also identify what would constitute Category I and Category II noncompliance based upon the regulations at 40 CFR 123.45 and EPA's national guidance and policy [see EPA's Enforcement Management System (EMS), DCN 0037]. These determinations can then be used in the creation of the required quarterly and annual noncompliance reports to track the compliance status of NPDES-regulated facilities (see 40 CFR 123.45). In addition, if the appropriate due dates and milestone dates have been entered by the states, tribes, or territories, EPA's national NPDES data systems have also been designed to identify whether reports are late and whether milestones have been missed in permit schedules or in compliance schedules. These additional violation determinations could determine whether a facility is in noncompliance for reporting violations or for schedule violations.

Violation determinations may also be made based upon other information available to the states, tribes, territories, or EPA, such as inspection information, review of program report information, public complaints, information collection requests, incident reports, etc. For these identifications of noncompliance, EPA has developed guidance (the ''PCS Single Event Data Entry Guide'', May 2006, and the ''ICIS–NPDES Single Event Violation Guide'', October 2008) on how to track such violations [referred to as single event violations (SEVs)] in the NPDES national data systems.

SEVs include one-time events as well as violations with longer durations. SEVs may be used by the states, tribes, territories, and EPA to report the compliance status of a facility for permit or regulatory violations that are not automatically flagged by the database. In the case of unpermitted facilities, SEVs may be entered in response to violations of CWA NPDES regulations.

Since 1988, SEVs identified by EPA, states, tribes, and territories are expected to be entered into EPA's national NPDES databases by the authorized NPDES program for major NPDES-regulated facilities and facilities covered by EPA's General Pretreatment Standards (40 CFR part 403). A joint memorandum from the EPA Office of Compliance and Office of Civil Enforcement issued in October 2008 clarified the expectation that EPA regional offices to enter into PCS or ICIS–NPDES all SEVs discovered by EPA regional offices for other nonmajor permits/facilities, starting in FY 2009.

These compliance determinations are one of the many responsibilities and activities of the states, tribes, and territories with NPDES program authorization. The availability of such compliance determination information from states, tribes, territories, and EPA is critical to determining the compliance status of NPDES-permitted facilities. This information is needed on a facility-specific basis to better identify potential problems; ensure that appropriate action is taken to address noncompliance; better quantify national or state noncompliance rates; and to provide a more complete and transparent picture to permitting authorities, the public, Congress, and other stakeholders of the overall implementation and effectiveness of the NPDES program.

EPA has facility-specific information regarding the compliance status of NPDES-regulated facilities for only a very small percentage (less than 1 percent of the total NPDES universe; *i.e.,* essentially the major permittees). Therefore, through this proposed rule, EPA would require this compliance determination information to be provided to EPA by the states, tribes, and territories with NPDES program authorization for all major and nonmajor NPDES-regulated facilities, whether covered by an individually-issued permit or by a general permit. EPA notes that the list of minimum Federal data (Appendix A to 40 CFR part 127) only includes construction stormwater inspection data from the authorized state, tribe, or territory when the authorized program identifies violations and completes a formal enforcement action (*i.e.,* authorized state programs are not required to report construction stormwater inspection data to EPA for inspections that do not identify violations). EPA made this distinction based on the large number of

facilities in this segment of the NPDES universe (approximately new 200,000 facilities each year). EPA solicits comment on this approach.

The list of information that would be required under this proposed rule, as currently drafted and subject to public comment, includes such basic items as the start and end dates for the violations, the type of violation, which agency identified the violation, when noncompliance was identified, and when it was resolved. In addition, some compliance-related data are tracked at the basic permit level, including whether noncompliance tracking is occurring automatically in EPA's NPDES national data system, and the noncompliance status and fiscal quarters of noncompliance. A complete listing of these data is provided in Appendix A to 40 CFR part 127. The proposed rule also updates 40 CFR 123.26 to reflect the new electronic reporting requirements.

c. Enforcement Action Information From Authorized States, Tribes, and Territories

One of the key activities for states, tribes, and territories implementing the NPDES program is taking enforcement actions as appropriate to address and remedy noncompliance by the NPDES-regulated facilities. Historically in the NPDES program and in accordance with policy, the states, tribes, and territories have been expected to provide basic information regarding enforcement actions (whether formal or informal) to EPA for major permittees. In the PCS Policy Statement (as amended) and the ICIS Addendum to the Appendix of the 1985 Permit Compliance System Statement, EPA indicated that the states, tribes, and territories were expected to provide a core set of such basic enforcement action data for major permittees to EPA through PCS and ICIS–NPDES.

In addition to information submitted by the NPDES-regulated facilities, some NPDES data, including enforcement action information, are also needed from the states, tribes, and territories, as they are the unique source of the enforcement action information.

In the context of the State Review Framework (a tool to evaluate state enforcement program performance) and development of the ANCR, several states have voiced concerns that EPA did not fully recognize and credit the extent to which states rely on compliance achieved through the issuance of informal enforcement actions, including a variety of enforcement actions which do not impose a compliance schedule. These states expressed concern that without such information regarding informal enforcement actions, EPA and the public did not have a complete picture of the state efforts to obtain compliance by the NPDES-regulated facilities. EPA has made efforts to ensure that information from the states regarding such informal enforcement actions is considered and made available. Similarly, this proposed rule would require states, tribes, and territories to provide EPA with facility-specific information regarding formal and informal enforcement actions for all NPDES-regulated permittees.

As indicated in this proposed rule, the type of basic information that the states, tribes, and territories would be required to provide EPA regarding enforcement actions would include the type of enforcement action, information specific to final orders (administrative or judicial), penalty information, information regarding permit schedules or compliance schedules, and information regarding milestones or sub-activities identified in permit schedules or compliance schedules. The complete list of enforcement action information that would be required through this proposed rule is identified in Appendix A to 40 CFR part 127.

d. Authorized States, Tribes, and Territories NPDES Data Transmissions to EPA

In addition to the NPDES information related to implementation and enforcement activities by the regulatory authorities, the proposed rule, as currently drafted and subject to public comment, would also require that the regulatory authorities ensure that the information submitted to the regulatory authorities by the NPDES-regulated facilities would then be provided to EPA in a timely, accurate, complete, and nationally-consistent manner. The requirements regarding timeliness, accuracy, completeness, and national consistency for these data submissions to EPA are defined in 40 CFR 127.23. This concept of ''completing the circuit,'' for the NPDES information, is critical to ensuring that the regulatory authority and EPA have access to the permittee's information. This requirement to share such NPDES information from the regulatory authority to EPA (and vice versa) would be created under the proposed rule even if the electronic reporting tool provides permittee information only to the regulatory authority or if the permittee supplies hard-copy information under the terms of a temporary waiver.

E. Additional Considerations

Although 46 states and the Virgin Islands have authorization to implement the NPDES program as of October 2011, not all of these authorized programs implement the entire NPDES program. For example, 10 of these states and the Virgin Islands have not received authorization to implement the pretreatment program. As another example, only eight states have received authorization to implement the NPDES biosolids program. EPA expects states, tribes, and territories to provide EPA with the required NPDES information to the extent that those authorities have received NPDES program authorization. States, tribes, and territories that do not have authority to implement particular parts of the NPDES program would not be expected to provide information on those parts of the program.

Similarly, certain states, tribes, and territories may not have a particular type of facility within their boundaries. For example, several states do not have any combined sewer systems (CSSs) within their states; therefore, EPA would not expect to receive any CSS information from those particular states.

Other states, tribes, or territories may have too few of a particular type of facility to warrant the expense of developing electronic reporting systems by the regulatory authority to capture data from those facilities. As an alternative, electronic reporting tools would be made available by EPA and by third-party software vendors. These tools must fully meet EPA's electronic reporting requirements in 40 CFR part 3, 122.22, and part 127. EPA seeks comment on whether, in such instances where only a few of a particular type of facility exist within a particular regulatory authority, EPA should allow the regulatory authority to decide whether their permittees should report to EPA electronically using a national tool, or report in a hard-copy format to the regulatory authority, in which case the regulatory authority would then assume the responsibility for processing the data into electronic form and providing that information to EPA.

It is conceivable that some regulatory authorities may not have implemented certain portions of the NPDES program that are included in these authorizations; nonetheless, EPA would expect to receive the required NPDES information regarding each of those subprograms included in their NPDES authorized program.

Regardless of the regulatory authority's current level of electronic reporting from permittees or data system development, the regulatory authorities

are still required to meet their responsibilities to implement and enforce the NPDES program, to issue permits, to conduct inspections, to make compliance determinations, and to issue enforcement actions. Therefore, EPA and the public should still expect that the required NPDES information regarding such activities would be provided to EPA by the regulatory authorities in a timely, accurate, complete, and nationally-consistent manner (*i.e.,* in conformance with national data standards, in consistent units of measure, and in a format compatible with the NPDES national data system).

G. Changes to QNCR, Semi-Annual Statistical Summary Report, and ANCR (40 CFR 123.45)

1. Background

On August 26, 1985, EPA promulgated final revisions to regulations for the National Pollutant Discharge Elimination System (NPDES) permit program to require Quarterly Noncompliance Reports (QNCR) to be prepared and submitted by the states, tribes, and territories that are authorized to implement the NPDES program and by EPA regions for states, tribes, and territories not yet authorized. Those revised regulations are found in 40 CFR 123.45 and include two types of noncompliance which must be reported on the QNCR for major facilities, Category I and Category II. The regulations at 40 CFR 123.45 also require semi-annual noncompliance reports for major facilities and summary-level annual noncompliance reports for nonmajor facilities.

As reflected in this proposed rule, as currently drafted and subject to public comment, the Agency is proposing to modify these requirements in 40 CFR 123.45 of the NPDES regulations to more accurately reflect the technological environment of the 21st century that includes the new e-reporting requirements being proposed today and the evolution of the NPDES regulatory program over the last 25 years. Today's proposed rule would remove requirements for obsolete paper reports that can instead be generated from data in EPA's data systems through electronic reporting. By removing obsolete reports, the proposed rule would lessen state, tribe, and territory burden, while also updating the regulations to allow all authorized programs and EPA to more effectively track activities within the broader NPDES universe. The changes will make NPDES information easier to understand, and will provide the public with a complete inventory of violations that are self-reported by permittees or identified by regulatory agencies. The changes will also support EPA's 2009 Clean Water Act Action Plan goals of improving public transparency, identifying the most serious violations, and informing reviews of EPA, state, tribe, and territory enforcement programs.

Data collection for the NPDES program should be updated to reflect currently available technologies and the current NPDES universe and thus facilitate improved public transparency. The NPDES universe has grown and diversified substantially since the 1980s and now includes approximately one million diverse point sources of which only approximately 6,700 are majors. Focusing the QNCR only on majors excludes more than 99 percent of the regulated NPDES universe from more rigorous facility-level public accountability. Many regulated point sources—such as stormwater discharges, concentrated animal feeding operations, mines, and raw sewage overflows—are considered to be significant contributors to water quality impairment and human health risks today (DCN 0045, 0070, 0071, 0072, 0073, and 0074). However, because many of these sources do not meet the NPDES definition of major facilities, they have been excluded from the QNCR. This has set up a situation where there is very robust tracking, management, and public accountability for a very small subset (major facilities) of the NPDES regulated universe, but very little public information on locations, types of violations, and enforcement by authorized states, tribes, and territories regarding these other nonmajor facilities. As a result, EPA currently has difficulty accurately assessing the effectiveness of NPDES-authorized states, tribes, and territories, as well as its own activities, in these other important NPDES sectors and is not able to provide more complete NPDES noncompliance and enforcement information to Congress and the public.

EPA has also received feedback from states and public data users that the existing terminology and nomenclature for cataloguing violations is too confusing. This proposed rule seeks to simplify and improve the transparency and utility of violation information including facilitation of EPA's, states', tribes', and territories' abilities to focus on the problems of greatest concern.

2. Purpose of Existing Regulations

The existing annual, semi-annual, and quarterly reporting requirements are aimed at organizing violation information to facilitate EPA's assessment of the effectiveness of EPA, state, tribe, and territorial compliance activities and thereby best determine how to manage or oversee program activities.[43] EPA uses this information to provide noncompliance information to Congress and the public.

The primary purpose of the QNCR is to provide facility-specific information used to identify patterns of noncompliance by the largest contributors of pollutants (*i.e.,* the major facilities as defined and emphasized in the 1970s and 1980s) and to assess state and EPA regional enforcement activities. The QNCR is used solely for reporting purposes and does not dictate what constitutes a violation of permit conditions or whether EPA, states, tribes, or territories will take an enforcement action.

The Annual Noncompliance Report (ANCR) uses similar definitions as the QNCR, but was designed as a summary (not facility-specific) view of violations and enforcement response by the regulatory authority for nonmajor facilities. At the time the existing regulations were written, technology limitations required that monthly DMRs be entered into the data system manually one at a time by state and EPA regulators. The data entry burden for entering all DMR reports for major and nonmajor facilities with individual permits (over 45,000 facilities) was too high, so EPA required DMR data entry by the authorized states, tribes, and territories into the national data systems (PCS and ICIS) only for the major facilities. EPA and authorized NPDES states developed the major facility definition through guidance to screen and identify those facilities with the largest environmental footprints and thus deemed at the time to be most important to track for violations at the facility level.[44] The thorough data requirements for major facilities also dove-tailed with the Enforcement Management System (EMS); guidance developed by EPA which describes appropriate enforcement responses for violations at NPDES facilities.[45]

The ANCR summary report provides summary information about the number and types of violations and enforcement responses at nonmajor facilities during a one-year reporting period in a particular state, tribe, or territory. Over the last several years, the ANCR has shown that in many states, the rate of

[43] See 50 FR 34649.

[44] New NPDES Non-Municipal Permit Rating Worksheet, June 27, 1990, DCN 0049.

[45] The Enforcement Management System (1989), DCN 0037.

violations at nonmajor NPDES facilities where detailed DMR information is provided to EPA's data systems is more than twice as high as those where the states have provided only summary information.

With the transition to electronically-reported DMRs directly from facilities into the national data system or to existing state, tribe, or territory data systems, the need to maintain separate reporting formats and requirements for major facilities and nonmajor facilities are no longer relevant to the program. Furthermore, the proposed NPDES Electronic Reporting Rule allows EPA to remove the burden of producing these reports from the states; instead, EPA would be able to automatically produce the reports and make them available for use by states, tribes, territories, and the public.

The QNCR (for major facilities) and the ANCR (for nonmajor facilities) use identical numeric calculations to place violations into two categories. Violations that exceed certain thresholds of time, magnitude, or frequency of occurrence are specified in the regulations at 40 CFR 123.45 as being significant. ''Category I'' noncompliance involves applying certain specific ''technical review criteria'' or ''TRC'' [46] to certain violations of effluent limits for pollutants listed in Appendix. Category I noncompliance also includes specific criteria for violations of enforcement orders, compliance schedules, and required reports. ''Category II'' noncompliance includes effluent limit violations that do not rise to Category I, as well as unauthorized bypasses, unpermitted discharges, pass through of pollutants that cause or have the potential to cause a water quality or health problem, failure of a POTW to implement its approved pretreatment program, violations of interim compliance schedule milestones, incomplete required reports, violations of narrative requirements (*e.g.,* failure to develop Spill Prevention and Countermeasure Plans and implement Best Management Practices), and other violations or group of permit violations of substantial concern to the State, Tribe, or Territory Director or EPA Regional Administrator.

One additional consideration that EPA, states, tribes, and territories discussed at length under the Clean Water Act Action Plan was whether the existing Technical Review Criteria (TRC) identified in Appendix A to 40 CFR 123.45 for categorizing the severity of violations should be maintained. EPA has not proposed changing these violation determinations. Many of the EPA and state participants in the Clean Water Act Action Plan thought that the existing thresholds were useful and should be retained. However, there are some gaps that are addressed in this proposed rule.

3. Relationship Between Enforcement and Proposed Regulatory Changes to 40 CFR 123.45

The existing regulations do not determine the type of enforcement response required to be taken by the state, tribe, territory, or EPA. Title 40, Code of Federal Regulations, section 123.45 is a reporting regulation—focused on aligning key information that can assist with both enforcement priority-setting and transparency. Enforcement policy remains under the discretion of EPA and the permitting authority and outside the scope of this proposed rule. Over the past 25 years, EPA has developed policy and guidance documents that utilize information via the regulations to prioritize violations and determine appropriate responses. EPA wants to clarify that the proposed changes do not alter its enforcement expectations for the states, tribes, territories, or EPA regions. Any revisions to enforcement response guidelines would be accomplished via updates to existing guidance or policy, such as the EMS. The changes outlined in this proposed rule will make the NPDES data more inclusive and easier to use, and inform any future enforcement policy changes that are envisioned under the Clean Water Act Action Plan.

4. Overview of Proposed Regulatory Changes

Given the evolving NPDES program, advancing technology, and the updated reporting mechanisms and requirements included in this proposed rule, EPA is seeking comment on changes to 40 CFR 123.45, entitled, ''Noncompliance and program reporting by the Director.'' The purposes of these changes are to: (1) Provide a more accurate and comprehensive report of known violations using a more complete set of noncompliance information that would be flowing as a result of the NPDES Electronic Reporting Rule; (2) improve EPA's ability to analyze, track, and manage violations; (3) ensure the full universe of NPDES sources is considered in tracking, analyzing, and managing compliance and enforcement programs; (4) establish a better process to ensure EPA is focused on the most serious pollution problems and can keep pace with changes to the permitting program and new limit types; and (5) reduce state, tribe, and territory reporting burden by removing or phasing out requirements for existing hard-copy reports or other reports than can be produced by EPA from NPDES national data systems. Based on a date three years after the effective date of the final rule, the existing regulatory text in 40 CFR 123.45 would be replaced by the proposed new text for that section.

5. Proposal To Establish a NPDES Noncompliance Report

To accomplish these changes, EPA is proposing to reorganize noncompliance information and establish a new public inventory of all reported violations based on existing reporting requirements and other new requirements that would be phased in under this proposed rule. The content of the inventory would be very similar to what is currently provided by EPA on the Internet in the ECHO Web site, but will include reported violations from the broader universe of NPDES-regulated sources. The proposed rule establishes an EPA-generated NPDES Noncompliance Report (NNCR) that would include a complete, simplified listing of all recorded violations at major and nonmajor facilities. The report would incorporate the existing content of the QNCR and the ANCR (*e.g.,* reviewed facilities, violations, serious violations, enforcement taken), and would add other data that are required elsewhere under the NPDES Electronic Reporting Rule (for example, information regarding inspections, informal enforcement actions, and penalties assessed). The NNCR is essentially a quarterly, facility-based view of compliance monitoring, violations, and enforcement activity which would replace the QNCR and the ANCR.

The proposed rule is not designed to limit EPA's flexibility in providing data more frequently than quarterly. So, for example, if inspections or violations were identified one month after the official quarter ended, EPA would maintain the ability to provide that information prior to conclusion of the next official quarter. The NNCR provides a snapshot of the violation status within a quarter, which can be combined with other regulatory data, such as the frequency of inspection and follow-up enforcement action, to provide a full picture of compliance at a NPDES-regulated facility. The purpose of the NNCR is to provide regulators and the public with information about

[46] Forty percent over an effluent limit for conventional pollutants and 20 percent over the limit for toxic pollutants, as identified in Appendix A to 40 CFR 123.45, for two months in a six month period.

violations, including both numeric exceedances of effluent limits (*e.g.,* as reported on DMRs) and other violations [such as violations of narrative permit requirements or single event violations (both one-time and long-term) including sewer overflows, failure to implement best management practices, failure to implement a pretreatment program, failure to report, or failure to apply for a permit]. Non-numeric (*e.g.,* non-DMR) violations are used by EPA to maintain and report the compliance status of a facility for violations that are not automatically flagged by the national database. Methods of detection of non-numeric violations include inspections; information collection requests; state, tribal, or territorial referrals; annual reports, noncompliance reports, and other program reports required under the permit enforcement order, or regulation; facility self-audits; and public complaints. Single event violations include one-time events and long-term violations (as described in Section IV.F.2.d).

The listing of a facility on the NNCR for transparency purposes is not intended to dictate the appropriate enforcement response or in any way establish criteria for selecting enforcement actions. However, overall trends and rates (for example, the percent of facilities with violations) may be a useful tool for assessing violation trends on a regional or nationwide basis. Because EPA will produce the NNCR using data that are required to be reported to EPA electronically in a format compatible with ICIS–NPDES, there is no additional burden on states, tribes, or territories. In fact, in addition to eliminating the requirement for authorized programs to submit QNCR reports, EPA proposes to phase out the requirement that authorized programs submit semi-annual statistical and annual noncompliance reports (ANCRs).

6. Categorizing Violations

EPA's system for categorizing violations on public Web sites is based upon the existing regulations within 40 CFR 123.45. As indicated in the proposed rule, EPA is considering updating 40 CFR 123.45 to modify the definitions of Category I and Category II noncompliance to implement one of the Clean Water Act Action Plan objectives to improve how serious violations are categorized. As currently structured, the existing regulations do not sufficiently categorize violations based on severity and potential for water quality impacts.

The existing regulation assumes that ''Category I'' violations are considered more serious, while ''Category II'' violations are not as severe. EPA values classifying violations and that there is room for improvement in the existing regulation. Many of the most severe violations occurring in the today's NPDES program do not currently qualify as ''Category I.'' EPA has recognized this within the EMS by considering certain Category II violations to be ''significant noncompliance'' or SNC (and must be reported on the QNCR). This has created several inconsistencies between publicly-released data and the underlying regulations. This proposed rule seeks to remedy this problem. EPA is proposing to include those more serious violations into Category I, while all other violations become Category II. EPA is proposing an option that will retain most historically-used definitions that would move a facility from Category II into Category I. EPA is also proposing to leverage the data that would be required electronically under this proposed rule so that the severity of violations is evaluated for all facilities—not just the major facilities.

In addition to the establishment of a NNCR, there are two components to the proposed approach to classifying violations. The first component covers violation classification; applicability to regulatory entity types; and revisions to annual, semi-annual, and quarterly reporting. The second component sets up a procedure for EPA to regularly assess what pollutant types, limit types, and measurement types/frequency are considered in classifying the severity of violations. These components are described below.

a. Component 1—Revise and Simplify the Existing System of Violation Classification

EPA proposes to make adjustments to the existing regulation, while keeping the underlying concepts in place. First, the distinction between major and nonmajor regulated entities would be eliminated as it relates to 40 CFR 123.45. Second, Category I noncompliance, as defined under the existing regulation, would be slightly expanded to include a subset of violations currently classified as Category II. These include Category II noncompliance that pose a specific threat to water quality, including those that adversely impact water quality, human health, or designated uses of surface waters. EPA would retain the existing TRC for Group I and Group II Pollutants in 40 CFR 123.45, Appendix A. These thresholds would be applied to both major and nonmajor facilities, as they are within the existing regulation, but would ensure that other types of NPDES-regulated facilities that do not regularly report DMRs become eligible to be placed in Category I due to water quality impacts. The proposed regulatory text reflects how this change would be accomplished. All NPDES-regulated sources would be tiered into Category I if their effluent violations were significantly over the limit for a period of time, or if the violations are included in the existing definition of Category I (*e.g.,* violations of a compliance schedule, etc.). Other violations (such as sewer overflows, failure to implement best management practices, failure to implement a pretreatment program, failure to report, or failure to apply for a permit) that are not ascertained through numeric limits in permits and DMRs, but are directly related to water quality impairment or are likely to cause water quality impairment (such as fish kills, oil sheens, beach closings, restrictions of beneficial uses, etc.), would also be classified as Category I. The detection of these non-numeric violations is by a variety of means, including, for example, inspections, or review of reports. The regulations also provide for listing of violations as Category I, if, in the discretion of the Director or Regional Administrator, that grouping of violations pose a water quality threat (*e.g.,* geographic clusters or sectors of permittees with similar violations that are causing water quality issues).

The proposed revisions to 40 CFR 123.45 would simplify and improve the organization, completeness, and transparency of NPDES noncompliance information. EPA, states, tribes, and territories could utilize this improved information to inform future revisions to EPA's national enforcement guidance and policies to identify, prioritize, and address the most serious CWA NPDES violations.

b. Component 2—Developing a Process To Keep Pollutant Lists and Monitoring/Permit Limit Types Up To Date

As reflected in this proposed rule, EPA is considering adding a section to the existing regulation that requires EPA to establish a policy-making process with state, tribe, territory, and public involvement to add or delete pollutants that are subject to Category I classification for permit effluent limit violations, and to determine how criteria other than monthly average permit limit violations of a certain magnitude and frequency can be elevated to Category I classification.

Pollutant Types That Can Be Elevated to Category I Violation Classification

Under this proposed rule, as currently drafted and subject to public comment, EPA retains the existing lists of Group

I and Group II Pollutants in Appendix A to 40 CFR 123.45 that are evaluated as part of the Category I and Category II definition for effluent limit violations. Periodic review and update of these lists is consistent with the original intent of the regulation (as specified on page 34651 of EPA's preamble for the final rule for 40 CFR part 123, NPDES Noncompliance and Program Reporting—FR, Vol. 50, No. 165, Monday, August 26, 1985). The 1985 preamble describes the conventional and nonconventional/toxic pollutants and provided an expectation that new parameters may be added from time to time, and that EPA would provide a more detailed list of pollutants to authorized programs in guidance for preparing the QNCR. EPA has never added any new parameters to the list of pollutants currently in 40 CFR 123.45—in part due to the complexity of re-opening the regulation to make such changes. EPA did, however, include a much more exhaustive list of Group I (conventional) and Group II (generally toxic) pollutant parameters found in Appendix III of its 1986 national guidance for preparation of quarterly and semi-annual noncompliance reports.[47] This has resulted in a situation where a frequent cause of water impairment, pathogen pollution, (directly linked to NPDES pollutants such as fecal coliform and *E. coli*) is not listed in the regulations (see DCN 0038).

Monitoring Frequency/Thresholds and Connection to Category I Violation Classification

EPA proposes that the policy/guidance process for adding pollutant types that are eligible for Category I classification for permit effluent limit violations can also be used as the process for identifying potential changes to the reporting thresholds (*i.e.,* magnitude and frequency) that are used. For example, the current regulation focuses on monthly average effluent limit violations of a specified magnitude (20 percent or 40 percent above the applicable limit) and frequency (two or four months in a six-month period) because EPA believed that violations of monthly average permit effluent limits were indicative of more serious long-term noncompliance problems. EPA revised its management tool (*i.e.,* EPA's NPDES Significant Noncompliance Policy) in 1995 to also identify egregious NPDES violations of non-monthly permit effluent limits that meet EPA's criteria.[48] EPA and authorized programs are also now using other types of limits (*e.g.,* annual limits or seasonal limits) in some situations. Technical evaluation is needed to determine whether the existing magnitude and frequency reporting thresholds are viable for use for other types of limits.

In summary, the policy and guidance process discussed here would provide a forum for updating/changing: (1) Pollutants subject to Category I classification for permit effluent limit violations; (2) measurement frequency examined for Category I classification for permit effluent limit violations; and (3) reporting thresholds used for existing or new pollutants or measurement frequency that are associated with Category I classification for permit effluent limit violations. These decisions would be established in EPA national guidance and policy (like the EMS), which may be updated as needed.

c. Additional Changes

The proposed rule incorporates several small changes, including the synchronization of reports on a Federal fiscal year basis.

H. Changes to Biosolids Annual Reports by the States

The existing federal regulations at 40 CFR 501.21 require each authorized State, Tribe, or Territory Program Director to annually submit summary-level information to the Regional Administrator regarding state sewage sludge management programs. This required information includes: (1) a summary of the incidents of noncompliance which occurred in the previous year and any details; and (2) information to update the inventory of all sewage sludge generators and sewage sludge disposal facilities submitted with the program plan or in previous annual reports.

This proposed rule seeks comment on whether EPA should amend provision 40 CFR 501.21, which would allow EPA to eliminate the requirement for authorized programs to report biosolids information to EPA. The rationale for such an amendment is that, if EPA's NPDES Electronic Reporting Rule requires sufficient information directly and electronically from these permittees and ensures that authorized programs and EPA share such information, then EPA could generate such a report based upon that information and alleviate biosolids reporting burden for this existing regulatory requirement from authorized programs.

Ultimately, under this proposed rule, as currently drafted and subject to public comment, authorized programs would eventually no longer be required under this existing regulation to report on the status of their sewage sludge management programs, provide updates of their inventory to EPA of sewage sludge generators and sludge disposal facilities, or provide information on incidents of noncompliance, except for those identified during state biosolids inspections, because this requirement to supply information would fall on the facilities directly. Additionally, the electronic submission of this biosolids information from the permittees in accordance with the proposed rule will improve the timeliness, cost, and efficiency in the reporting of facility noncompliance and inventory data related to the biosolids subprogram.

Therefore, based on these considerations, this proposed rule eventually would remove state biosolids reporting requirements pursuant to 40 CFR 501.21, three years after the effective date of the final rule. EPA would be able to generate the reports based upon the available data provided directly from permittees, and supplemented by authorized program information regarding their biosolids program implementation activities, through the NPDES Electronic Reporting Rule.

I. Enforceability

For this proposed rule, as currently drafted and subject to public comment, the regulated entities are primarily the NPDES-regulated facilities [*e.g.,* NPDES permittees, biosolids generators subject to 40 CFR part 503, significant industrial users (SIU), categorical industrial users (CIUs), approved pretreatment programs] and NPDES-authorized states, tribes, and territories. The tools available to EPA to ensure compliance with this rule would differ depending on whether compliance was sought from a NPDES permittee or from a NPDES-authorized state, tribe, or territory, but the overall objective—compliance with the rule—would remain the same.

If NPDES-regulated facilities fail to comply with this federal regulation for electronic reporting of NPDES information, they may be subject to the same types of enforcement responses that are available for failure to submit written (paper-based) or oral reports. This proposed rule clearly identifies each report that must be electronically submitted to EPA or the authorized NPDES program.

In response to such noncompliance, EPA and the authorized programs

[47] See Chapter VII, Part 2, Appendix III in The Enforcement Management System (1989), DCN 0037.

[48] See DCN 0050.

would have available their full set of compliance and enforcement tools and actions to address the failure of a NPDES permittee to electronically submit required NPDES information, just as they do to address any other noncompliance by NPDES-regulated facilities. In addition, the public would also have the ability to initiate citizen suits under Section 505 of the CWA to ensure that noncompliance is remedied when there are violations of existing regulations, permit conditions, or requirements in enforcement actions.

EPA also needs to ensure that our regulatory partners responsible for NPDES implementation are meeting Federal requirements as set forth in this regulation. EPA would have the full range of options available to ensure state, tribal, and territorial compliance with this rule, as it would to ensure state, tribal, and territorial compliance with any other aspect of the NPDES program. In particular, the proposed rule outlines the procedure for ensuring the completeness and timeliness of data submissions from states, tribes, or territories that have received authorization from EPA to implement the NPDES program. This procedure includes public notification of the initial recipient of NPDES compliance data for each state, tribe, and territory and the requirement that authorized NPDES programs must maintain the capacity to share all the required NPDES information with EPA through automated data transfers. Finally, this procedure outlines the corrective actions necessary to ensure the seamless electronic collection from NPDES-regulated facilities and the sharing of NPDES compliance data with the public.

J. Effective Date and Compliance Dates

EPA is considering establishing the effective date for this regulation as 60 days after the promulgation date for most parts of the final rule, except for some specified components of the rule. See Section IV.K for a description of the series of compliance dates that follow the initial effective date for this regulation (*i.e.,* 60 days after the promulgation date for the final rule). Additionally, the effective date for the revisions to 40 CFR 123.45 (elimination of the QNCR, ANCR, and semi-annual statistical report; creation of the NNCR) would be three years after the effective date of the final rule. The reason for this separate effective date is that producing the quarterly and annual NNCR require at least one full year of electronic reporting for the complete set of NPDES-regulated entities. As described in Section IV.I, the entire set of NPDES electronic submissions is proposed to begin two years after the effective date of the final rule.

In accordance with 40 CFR 123.63, NPDES-authorized states, tribes, and territories as proposed to have one year after the effective date of the final rule to revise their NPDES program to comply with this rule through any necessary regulatory or policy changes and two years after the effective date of the final rule if statutory changes are needed to conform their programs to the requirements of the rule. Additionally, EPA is proposing to utilize a CWA request, conducted in accordance with the Paperwork Reduction Act, to start collecting NPDES program data by one year after the effective date of the final rule (Phase 1 data) and two years after the effective date of the final rule (Phase 2 data). States, tribes, and territories should review the ''State Readiness Criteria'' to determine the actions they need to take to ensure that facilities in their state, tribe, or territory would not need to report to EPA in addition to their authorized NPDES program. The rule implementation plan and compliance dates for NPDES-regulated facilities are described in Section IV.I.

Given the significant potential data entry cost savings that the states, tribes, and territories could accrue by moving sooner toward electronic reporting of NPDES information by the permittees, there should be significant incentive for these governmental entities to move in that direction. EPA notes that there will be some initial start up costs to switch to electronic reporting. Some states, tribes, and territories may examine whether they could easily adopt the new rulemaking by reference or even make a blanket change to all of their NPDES permits to more timely facilitate a change to electronic reporting by NPDES-regulated facilities. States, tribes, and territories could also consider utilizing EPA's database and electronic reporting tools as a cost savings measure.

Under certain circumstances, and as described in Section IV.E.5, temporary waivers from electronic reporting may be granted to NPDES-regulated facilities, NPDES permit applicants, and industrial users located in cities without approved local pretreatment programs. These temporary waivers may be granted by the states, tribes, and territories that have received authorization to implement the NPDES program (including the applicable subprograms). In situations where EPA is the permitting authority, EPA may choose to grant such temporary waivers, using procedures similar to those described in this section. Temporary waivers are to extend no more than one year at which time the facility must reapply for a waiver.

K. Rule Implementation Plan

EPA notes that the proposed implementation plan would expedite the electronic submission of NPDES program data as compared to implementing electronic reporting through the permit renewal cycle. As a potential backstop, EPA is considering using its authority under CWA sections 101, 304(i), 308, 402(b), and 501 to require the electronic collection and transfer of NPDES program data to EPA as part of this rule, where authorized states, tribes, and territories are not ready to implement electronic reporting. Under this proposal, EPA would utilize its existing authority under the CWA and current technology to allow everyone to more quickly realize the benefits of electronic reporting.

The benefits of this proposal include accelerated resource savings that states, tribes, and territories would realize through reduced data entry burden and reduced effort in responding to public requests for data, consistent requirements for electronic reporting across all states, tribes, and territories, increased data quality, and more timely access to NPDES program data in an electronic format for EPA, states, tribes, and territories, regulated entities, and the public. Under the proposal, a complete set of information for the regulated universe covered by this proposed rule would be required two years after the effective date of the final rule. The Agency's proposal to rely on its authority under the CWA to collect these data directly from NPDES-regulated facilities is supported by the availability of technologies for electronic reporting, the needs of EPA states, tribes, and territories for complete NPDES program data, and the stated goal to make this data available to the public.

By comparison, without this accelerated schedule, it would likely take at least until 2022 to make this information available electronically, including approximately seven years for states, tribes, and territories to update their statutes and NPDES permits to require electronic reporting (*i.e.,* two years for the states, tribes, and territories to revise their programs if statute changes are needed, plus a five-year permit reissuance cycle or longer).[49] EPA considered using the permit renewal cycle as a means to phase in electronic reporting but that approach would delay significant benefits such as

[49] See 40 CFR 123.62(e).

state savings and expedited access to complete NPDES program data in an electronic format for EPA, states, tribes, and territories, regulated entities, and the public. Furthermore, given current technology, it would be unreasonable to take nearly a decade to convert from hard-copy reporting to electronic reporting.

Given the different types of NPDES program data, EPA is proposing to phase in the electronic collection and transfer of NPDES program data on the following schedule. For NPDES-regulated entities that will use EPA's electronic reporting tools, EPA will work closely with states, tribes, territories, and NPDES-regulated entities to provide sufficient training and registration support prior to the start of each implementation phase. In addition, EPA would also provide technical assistance and support to help states, tribes, and territories make this transition to electronic reporting. EPA will also use this schedule to switch from the ANCR and QNCR noncompliance reports to the NPDES Noncompliance Report (NNCR). See also Section IV.E.5 for a discussion of the waivers for some regulated entities in rural areas without access to broadband internet access.

Phase 1 (One Year After Effective Date of Final Rule): EPA would electronically receive the basic facility and permit information from the authorized states, tribes, and territories and information from facilities covered by Federal general permits [*e.g.,* notices of intent to discharge (NOIs), notices of terminations (NOTs), no exposure certifications (NECs), and low erosivity waivers (LEWs)]. EPA would also begin to electronically receive information from states, tribes, and territories regarding inspections, violation determinations, and enforcement actions. EPA, states, tribes, and territories would electronically receive DMR information from NPDES permittees. Prior to the start of Phase 1, states, tribes, and territories that can make changes to their NPDES program without enacting a statute would need to implement 40 CFR part 3 (CROMERR), 40 CFR 122.22 (NPDES signature requirements), and 40 CFR part 127 (NPDES Electronic Reporting Rule within one year of the effective date of the rulemaking [see 40 CFR 123.62(e)]. After changes to the NPDES program are made, these states, tribes, and territories (and EPA where EPA is the permit writer) will begin re-issuing existing permits [through permit renewals or minor permit modification (40 CFR 122.63)] or begin issuing new permits that include EPA's electronic reporting requirements in 40 CFR part 3, 122.22, and part 127. EPA notes that some states, tribes, and territories may be able to make minor permit modifications to multiple permits through one action. EPA may also conduct such minor modifications for the NPDES permits it issues. EPA is the permit writer for all tribes and territories (except for the Virgin Islands) and four states that do not have authorized NPDES programs. States, tribes, and territories will also need to complete their updates to any needed NPDES data systems to accommodate the new information exchanges with EPA. Finally, during Phase 1, states, tribes, and territories that must make changes to their NPDES program, if applicable, by enacting a statute would be required to implement 40 CFR part 3 (CROMERR), 40 CFR 122.22 (NPDES signature requirements), and 40 CFR part 127 (NPDES Electronic Reporting Rule within two years of the effective date of the final rule [see 40 CFR 123.62(e)].

Phase 2 (Two Years After Effective Date of Final Rule): In this proposal, in addition to Phase 1 data, EPA, states, tribes, and territories would receive information from state, tribal, and territorial general permit covered facilities and program reports from all facilities (*i.e.,* all NPDES program data identified in Appendix A to 40 CFR part 127). Program reports are currently required by existing EPA regulations and include annual and episodic compliance reports from regulated entities to their permitting authority. These program reports include: Pretreatment Program Annual Reports, Industrial Users in Cities Without Approved Pretreatment Programs Periodic Compliance Monitoring Reports, Biosolids Program Annual Reports, CAFO Annual Reports, Municipal Separate Storm Sewer Systems (MS4) Annual Reports, and Sewer Overflow of Bypass Event Reports [Combined Sewer Overflows (CSOs), Sanitary Sewer Overflows (SSO), and Bypass Event Reports] (see Section IV).

During Phase 2, states, tribes, and territories that would be required to make changes to their NPDES program through enacting a statute would complete their changes to their NPDES program to implement 40 CFR part 3 (CROMERR), 40 CFR 122.22 (NPDES signature requirements), and 40 CFR part 127 (NPDES Electronic Reporting Rule [see 40 CFR 123.62(e)]. After these states, tribes, and territories update their NPDES program, all new permits issued or existing permits re-issued after this date for the entire nation shall contain a permit condition requiring the electronic reporting requirements in 40 CFR part 3, 122.22, and part 127. Regulated entities, which would then have the Federal electronic reporting requirements (40 CFR part 3, 122.22, part 127) in their permit, would start (or continue) electronic reporting to the initial recipient (as defined in 40 CFR 127.27) as of the effective date of their permit. Under both phases, EPA would continue to work with states, tribes, and territories to ensure the electronic flow of state NPDES program data from their systems to EPA's national NPDES data system (*e.g.,* ICIS–NPDES).

Finally, at the end of Phase 2 (two years after effective date of final rule) EPA will replace the QNCR, ANCR, semi-annual statistical reports with the NNCR. See Sections IV.

1. Phase 1 Implementation

During Phase 1, EPA would require regulated entities to electronically send ''Phase 1 data'' (i.e., DMRs, information from general permit covered facilities for Federally-issued general permits, to EPA, unless the state, tribe, or territory has met the ''State Readiness Criteria'' (see below). This proposed electronic reporting requirement is in addition to any pre-existing paper-based reporting requirements. EPA would commit to holding monthly teleconferences and webinars with authorized programs during this transition period to assist with data migration and reconciliation.

However, EPA would exclude regulated entities from this CWA request if their authorized state, tribe, or territory meets all of the following ''State Readiness Criteria'':

(1) The authorized state, tribe, or territory has 90 percent acceptance rate by data group (*i.e.,* NPDES-regulated entities submit timely, accurate, complete, and nationally consistent NPDES data using approved state, tribe, territory or third-party electronic reporting tools; and

(2) The EPA, state, tribe, territory, or third-party electronic reporting tools used by the NPDES regulated entity meet all of the minimum Federal reporting requirements for 40 CFR part 3 (CROMERR) and 40 CFR part 127 (NPDES Electronic Reporting Rule); and

(3) EPA lists the state, tribe, or territory as the initial recipients for electronic NPDES information from NPDES-regulated entities in that state on EPA's Web site. Each authorized program will then designate the specific tools for these electronic submissions from their permittees. These designations are proposed to be made separately for each NPDES data group (see 40 CFR 127.2(c) and 127.27).

EPA encourages all authorized states, tribes, and territories to meet the ''State Readiness Criteria,'' and will provide support to these authorized programs. This approach will minimize the cases where regulated entities would need to report to their authorized state, tribe, or territory (as required by their NPDES permit) and also to EPA (as required by EPA's CWA request). EPA will also exclude regulated entities from this CWA request if the regulated entity's permit includes all the necessary language to ensure that any electronic reporting done by the permittee meets all of the minimum Federal electronic reporting requirements (40 CFR part 3, 122.22, and part 127). If one or more of the above State Readiness Criteria are not met or if the applicable permit does not include all of the minimum Federal electronic reporting requirements (40 CFR part 3, 122.22, and part 127), then the regulated entity should report to *both* the state, tribal, or territorial permitting authority (if hard-copy paper reporting is required in the permit) and EPA (electronic reporting compliant with 40 CFR part 3, 122.22, part 127) during this transition period.

EPA proposes to make its initial recipient decisions by each authorized state, tribal, and territorial NPDES program and for each data group. For example, if more than 90 percent of NPDES-regulated facilities that are required to submit DMRs in a particular state do so in accordance with the State Readiness Criteria, then all NPDES-regulated facilities in that particular state that are required to submit DMRs would not need to electronically report to EPA under the proposed rule. EPA notes that facilities that are exempt from electronic reporting through use of a temporary waiver would not be included in the 90 percent adoption rate percentage calculation. EPA solicits comment on the 90% threshold that it will use for each state, tribe, and territory by data group. EPA also solicits comment on the appropriate date after the effective date of the final rule when EPA should perform the 90 percent adoption rate percentage calculations prior to the start of the Phase 1 data collection (one year after effective date of final rule).

EPA will work closely with states, tribes, and territories to identify the authorized programs that have met State Readiness Criteria and permittees that have all of the minimum Federal electronic reporting requirements in their permits. EPA will create a search feature on its Web page to identify for each NPDES permittee the data group it does and does not need to report to EPA (*e.g.,* for example a POTW may be exempt from electronically reporting DMR data directly to EPA but may still be required to electronically report pretreatment, biosolids, and sewer overflow data to EPA and also continue their pre-existing hard-copy reporting requirements to their state permitting agency if required to do so by their permit).

As proposed in 40 CFR 127.27(c), EPA would publish on its Web site and in the **Federal Register** a listing of the initial recipients for electronic NPDES information from NPDES-regulated entities by state, tribe, and territory and by NPDES data group. Regulated entities that must report Phase 1 data should consult EPA's Web site and the **Federal Register** to determine whether EPA, the state, tribe, or territory is the initial recipient for the NPDES program data that they need to report. States, tribes, and territories will also update the language in new or re-issued NPDES permits to ensure that any electronic reporting done by the permittee meets all of the minimum Federal reporting requirements for 40 CFR part 3 (CROMERR, 40 CFR 122.22 (NPDES signature requirements), and 40 CFR part 127 (NPDES Electronic Reporting Rule).

Consequently, regulated entities that must report Phase 1 data should consult their permit to see if it requires electronic reporting in compliance with 40 CFR part 3, 122.22, and part 127. Regardless of whether a federal, state, tribal, territorial, or third-party electronic reporting tool is used by the regulated entity, or whether data is provided to EPA by the state (computer-to-computer transfer), NPDES program data from regulated entities would be included in ICIS–NPDES and be made available to the public through EPA's Web site. EPA has accounted for this increased burden related to the concurrent reporting when a state, tribe, or territory does not meet the State Readiness Criteria in the supporting economic analysis and the ICR. See Section VII for more detailed discussion on savings and costs associated with this proposal. Additionally, during Phase 1, EPA expects states, tribes, and territories with NPDES program authorization to comply with 40 CFR 123.62(e) by making appropriate and timely revisions to their programs by two years after the expected promulgation date of the final rule. That subsection of the regulations indicates that any approved State section 402 permit program which requires revision to conform to this part shall be so revised within one year of the date of promulgation of these regulations, unless a State must amend or enact a statute in order to make the required revision in which case such revision shall take place within 2 years.

As indicated above, existing regulations allow states one or two years (if statutory revisions are necessary) to make the required permit changes to their programs. In order to make these changes more efficiently, EPA is also proposing changes to 40 CFR 122.63 (''Minor modifications of permits'') that would allow states to use the minor modification procedure with the consent of the permittee to change reporting of NPDES program data from a paper process to an electronic process. This proposed change to the minor modification process would ease the burden on states to update existing NPDES permits to include the electronic reporting requirements for regulated entities. Section V also solicits comment on an alternative approach to minor modifications of the permit; in this alternative approach, the consent of the permittee would not be required to convert the permit to require electronic reporting.

Under this proposed rule, all NPDES-regulated entities will electronically report Phase 1 data to their state permitting authority or EPA in compliance with this rulemaking after one year of the effective date of the final rule. This proposed rule would also update the standard permit conditions to include a requirement for NPDES-regulated entities to ensure that their electronic submissions of DMR and other NPDES information (see 40 CFR 127.27) are sent to the appropriate initial recipient, as identified by EPA, and as defined in 40 CFR 127.2(b).

2. Phase 2 Implementation

During Phase 2, all data required to be reported (see Appendix A to 40 CFR 127) by NPDES-regulated entities under this proposed rule would be electronically reported to the authorized program or EPA. NPDES program data from regulated entities would be included in ICIS–NPDES and be made available to the public through EPA's Web site. It is expect that during Phase 2 all states, tribes, and territories with NPDES program authorization will have made appropriate and timely revisions to their programs. EPA is proposing to retain authority to require regulated entities to send their NPDES program data to EPA when the authorized state, tribe, or territory does not meet the State Readiness Criteria. This proposed electronic reporting requirement is in addition to any pre-existing paper-based reporting requirements specified in permits.

As proposed, during Phase 2, regulated entities should consult EPA's Web site and the **Federal Register** to determine whether they should directly report to EPA. In a similar procedure as Phase 1, EPA will work closely with states, tribes, and territories to identify the authorized programs that have met State Readiness Criteria and permittees that have all of the minimum Federal electronic reporting requirements in their permits. EPA will create a search feature on its Web page to identify for each NPDES permittee the data group it does and does not need to report to EPA. It is important to note that existing EPA regulations allow some NPDES-regulated facilities to obtain automatic coverage under a general permit without having to submit a NOI (see 40 CFR 122.28). This regulation does not change this option for permitting authorities to allow for automatic coverage under a general permit. This also means that there is no burden for these NPDES-regulated facilities associated with electronically submitting a NOI. States would also not necessarily need to provide information to EPA on these NPDES permittees that obtain automatic coverage under a general permit. States may need to provide inspection, compliance determination, and enforcement action data on these facilities.

Under this proposed rule, all NPDES-regulated entities will electronically report Phase 2 data to their authorized program or EPA after two years after the effective date of the final rule. NPDES-regulated entities shall identify the initial recipient for their electronic submissions of NPDES information (see 40 CFR 127.27).

Finally, under this proposed rule, all new permits issued or existing permits re-issued after two years after the expected promulgation date of the final rule would contain a permit condition requiring the electronic reporting requirements in 40 CFR part 3, 122.22, and part 127 [see 40 CFR 123.62(e)]. EPA has accounted for this increased burden related to the potential for concurrent reporting when a state, tribe, or territory does not meet the State Readiness Criteria in the supporting economic analysis and the ICR. See Section VII of the preamble for more detailed discussion on savings and costs associated with this proposal.

TABLE IV.3—PROPOSED IMPLEMENTATION SCHEDULE FOR RULE

Key milestones	Due dates
ICIS–NPDES batch functionality is completed and all states, tribes, and territories are migrated from PCS to ICIS–NPDES.	December 2012 (completed).
Phase 1	
Final NPDES Electronic Reporting Rule promulgated	TBD.
Collaborative forum between EPA and authorized states, tribes, and territories to develop data exchange protocols.	Final Rule Published in **Federal Register** (start).
EPA sponsored webinars, recorded training, and technical assistance to states, tribes, and territories to review and test data exchange protocols.	Final Rule Published in **Federal Register** (start).
NPDES authorized states, tribes, and territories identify for EPA the NPDES data groups for which they wish to be the initial recipient of electronic NPDES information from NPDES-regulated entities. These authorized programs will provide a description to EPA of how their data system will be compliant with 40 CFR part 3, 122.22, and part 127, and the date or dates when the state, tribe, or territory would be ready to accept NPDES information from NPDES-regulated entities in a manner compliant with 40 CFR part 3, 122.22, and part 127. These dates should not come after the start of the applicable implementation phase (*e.g.,* states cannot propose to be the initial recipient of DMR data after the start of Phase1, states cannot propose to be the initial recipient of NPDES program reports after the start of Phase 2).	120 days after the promulgation date for the final rule.
EPA will publish on its website and in the **Federal Register** a listing of the initial recipients for electronic NPDES information from NPDES-regulated entities by state, tribe, or territory and by NPDES data group. This listing will provide NPDES-regulated entities the initial recipient of their NPDES electronic data submissions and the due date for these NPDES electronic data submissions.	210 days after the promulgation date for the final rule.
States, tribes, and territories begin submitting all required data elements associated with their implementation activities (*e.g.,* permit issuance, inspections, violations, and enforcement actions. EPA will hold monthly teleconferences and webinars with authorized programs during this transition period to assist with data migration and reconciliation.	Eight to nine months after promulgation date for the final rule.
States, tribes, and territories make changes to their NPDES program to implement Federal electronic reporting requirements (40 CFR part 3, 122.22, part 127) without amending or enacting a statute [see 40 CFR 123.62(e)]. These authorized programs may elect to modify existing permits through the minor modification process (40 CFR 122.63) to include a requirement for electronic reporting that is compliant with 40 CFR part 3, 122.22, and part 127. All new permits issued or existing permits re-issued after the authorized state, tribe, or territory incorporates Federal electronic reporting requirements (40 CFR part 3, 122.22, part 127) into their authorized program shall contain a permit condition requiring the electronic reporting requirements in 40 CFR part 3, 122.22, and part 127. Regulated entities, which now have the Federal electronic reporting requirements (40 CFR part 3, 122.22, part 127) in their permit, shall start (or continue) electronic reporting to initial recipient (as defined in 40 CFR 127.27) as of the effective date of their permit. Authorized NPDES programs must also update their NPDES data systems.	One year after promulgation date for the final rule.
EPA preparation before requiring direct reporting by NPDES permittees: —EPA updates website to allow permittees to determine if they do not need to report their data directly to EPA; —Improvements to ICIS–NPDES or existing tools; and —Registration (including any necessary subscriber agreements) of permittees for use of electronic reporting tools	One year after promulgation date for the final rule.
EPA requires NPDES-regulated entities to electronically send Phase 1 data (*i.e.,* DMRs, general permit reports for Federally-issued general permits, to EPA if the states, tribes, or territories are not ready to implement Federal electronic reporting requirements. All NPDES-regulated entities subject to this proposed rule should assume that they will electronically submit their Phase 1 data to EPA unless otherwise noted in the **Federal Register** or EPA's website. These electronic data submissions will be compliant with 40 CFR part 3, 122.22, and part 127	One year after effective date for the final rule.

TABLE IV.3—PROPOSED IMPLEMENTATION SCHEDULE FOR RULE—Continued

Key milestones	Due dates
The remaining states, tribes, and territories make changes to their NPDES program to implement Federal electronic reporting requirements (40 CFR part 3, 122.22, part 127) by amending or enacting a statute [see 40 CFR 123.62(e)]. These authorized programs may elect to modify existing permits through the minor modification process (40 CFR 122.63) to include a requirement for electronic reporting that is compliant with 40 CFR part 3, 122.22, and part 127. All new permits issued or existing permits re-issued after the authorized state, tribe, or territory incorporates Federal electronic reporting requirements (40 CFR part 3, 122.22, part 127) into their authorized program shall contain a permit condition requiring the electronic reporting requirements in 40 CFR part 3, 122.22, and part 127. Regulated entities, which now have the Federal electronic reporting requirements (40 CFR part 3, 122.22, part 127) in their permit, shall start (or continue) electronic reporting to initial recipient (as defined in 40 CFR 127.27) as of the effective date of their permit. Authorized NPDES programs must also update their NPDES data systems.	Two years after promulgation date for the final rule.
Phase 2	
EPA preparation before requiring direct reporting by NPDES permittees: —EPA updates website to allow permittees to determine if they do not need to report their data directly to EPA; —Improvements to ICIS–NPDES or existing tools; and —Registration (including any necessary subscriber agreements) of permittees for use of electronic reporting tools	Twenty months after effective date for the final rule.
All NPDES program data from regulated entities subject to the proposed rule electronically reported to their authorized state, tribe, or territory or EPA. NPDES program data from regulated entities would be included in ICIS–NPDES and be made available to the public through EPA's website. EPA would retain authority to require regulated entities to send their NPDES program data to EPA until the state, tribe, or territory meets the State Readiness Criteria. These electronic data submissions will be compliant with 40 CFR part 3, 122.22, and part 127.	Two years after effective date for the final rule.

EPA would also issue a **Federal Register** notice if it needs to delay or extend any aspect of implementation and make such determinations public in the initial recipient listing in the proposed 40 CFR 127.27(c).

EPA also notes that it will be providing technical assistance and support to help states, tribes, and territories with this transition to electronic reporting. EPA is also open to considering other options for phasing the collection of the information under this proposed rule. Specifically, EPA would like to hear from authorized NPDES programs that have experience in implementing electronic reporting, especially their experience in phasing the implementation so that it is successful. EPA seeks additional data on alternative options that might reduce implementation costs on authorized NPDES programs and permittees while also preserving the proposed implementation schedule and benefits of electronic reporting.

L. Procedure for Determining Initial Recipient of Electronic NPDES Information

In this proposal, EPA identified the procedure for identifying the initial recipient of information from NPDES-regulated entities. See 40 CFR 127.27. This procedure requires each authorized state, tribe, or territory to identify the specific NPDES data groups (*e.g.,* DMR information from facilities, information from general permit covered facilities, program reports) for which the state, tribe, or territory would be the initial recipient of electronic NPDES information from NPDES-regulated entities, a description of how their data system will be compliant with 40 CFR part 3, 122.22, and part 127, and the date or dates when the state, tribe, or territory would be ready for accepting NPDES information from NPDES-regulated entities electronically in a manner compliant with 40 CFR part 3, 122.22, and part 127.

The purpose of the initial recipient procedure is to ensure that the authorized state, tribe, or territory receiving NPDES program data from an NPDES regulated entity complies with the CROMERR signatory, certification, and security standards (40 CFR part 3) and the proposed NPDES Electronic Reporting Rule (40 CFR part 127). Built into the proposed procedure is an understanding that EPA will support any authorized state, tribe, or territory that wishes to be the initial recipient for electronically reported NPDES program data and will help the authorized state, tribe, or territory resolve any issues that temporarily prevent it from being the initial recipient of electronically reported NPDES program data.

EPA would review these submissions and publish on its Web site and in the **Federal Register** a listing of the initial recipients for electronic NPDES information from NPDES-regulated entities by state, tribe, and territory and by NPDES data group. This listing would provide NPDES-regulated entities the initial recipient of their NPDES electronic data submissions and the due date for these NPDES electronic data submissions. EPA would update this listing on its Web site and in the **Federal Register** if a state, tribe, or territory is approved by EPA to be the initial recipient of NPDES electronic data submissions.

A state, tribe, or territory that is designated by EPA as an initial recipient of electronic NPDES information from NPDES-regulated entities, as defined in 40 CFR 127.2, must maintain this data and share all the required NPDES information with EPA through timely automated data transfers, as identified in 40 CFR 127.21(a)(1)-(5) and in Appendix A to this part, in accordance with all requirements of 40 CFR 3 and 127. Timely means that the authorized state, tribe, or territory submit these automated data transfers (see the data elements in Appendix A to 40 CFR part 127) to EPA within 30 days of the completed activity. For example, the data regarding a state inspection of a NPDES-regulated entity that is completed on October 15th shall be submitted automatically to EPA no later than November 14th of that same year (*e.g.,* 30 days after October 15th).

EPA would be the initial recipient of electronic NPDES information from NPDES-regulated entities if the state, tribe, or territory fails to collect data and consistently maintain timely automated data transfers in compliance with 40 CFR part 3 and part 127. The regulatory text in 40 CFR 127.27 lays out the procedure for identifying and correcting problems preventing states, tribes, and territories from being the initial recipient of NPDES data. EPA would continue to work with the Director of the authorized NPDES program to remediate all issues identified by EPA

that prevent the authorized NPDES program from being the initial recipient. When all issues identified by EPA are resolved, EPA would update the initial recipient listing in 40 CFR 127.27(c) and publish this listing on its Web site and in the **Federal Register**.

V. Matters for Which Comments Are Sought

The following sections identify specific issues on which EPA invites comment. In Section V.A, EPA discusses comment questions regarding the proposed rule. In section V.B EPA commits to publish a supplemental notice after the close of the comment period for this proposal should it receive substantial number of comments that significantly change the direction of this proposed rule. This will allow stakeholders to see how EPA addressed their comments and to provide further input on those sections generating significant number of comments. In Section V.C, EPA summarizes the various approaches identified in Section IV and for which EPA invites comment. In the remaining sections of Section V, EPA identifies other approaches for which EPA invites comment.

A. Response to Early Public Comments

Through the Clean Water Act Action Plan Discussion Forum and consultation with states, tribes, and stakeholders, EPA solicited ideas and comments on electronic reporting. EPA identified several misconceptions about the proposed rule. This section of the preamble identifies some of these misconceptions and provides clarification based upon the proposed rule, as currently drafted and subject to public comment.

• *The proposed rule would focus on existing collection and reporting requirements:* The proposed rule is *not* an EPA effort to impose the collection of additional information beyond that which the permittee is already required to report and the state, tribe, or territory is already required to collect. The proposed rule changes the means by which the information is provided to EPA or to the authorized program, requiring electronic reporting rather than existing hard-copy reporting from the NPDES-regulated facilities.

• *The proposed rule would not require states, tribes, and territories to develop their own electronic tools for use by NPDES-regulated facilities or require states, tribes, and territories to develop their own electronic databases:* In support of ICIS–NPDES and this proposed rule, EPA plans to develop national tools to allow NPDES-regulated facilities to provide NPDES information electronically to EPA, states, tribes, and territories. EPA plans to make those EPA-developed tools available for use within each state, tribe, and territory. Alternatively, a state (or tribe or territory) may choose to develop its own state-specific electronic tools or state data systems rather than utilizing what EPA makes available, or the electronic reporting tools could be developed by third parties. However, the proposed rule would require these new electronic reporting tools to provide the same basic nationally-consistent set of NPDES information required by EPA under this rule. Additionally, the new state, tribe, territory, or third-party electronic reporting tools would need to meet the requirements of EPA's Cross-Media Electronic Reporting Regulation (CROMERR) (*see* 40 CFR part 3).

• *The proposed rule would not stop utilization of existing electronic reporting tools by states, tribes, and territories:* The proposed rule would not require states, tribes, and territories to stop utilizing tools that they have developed to enable NPDES-regulated facilities to report electronically. However, EPA does seek to ensure that each electronic reporting tool utilized in the state, tribe, or territory would provide the same nationally-consistent set of NPDES information required by EPA, regardless of whether this was an existing or newly-developed tool. EPA also seeks assurance that such electronic reporting tools would meet the requirements of CROMERR. Therefore, states, tribes, and territories with existing electronic tools may need to modify them as appropriate to ensure that the tools obtain all required NPDES information and meet the necessary requirements.

• *The proposed rule does not specify particular electronic reporting tools:* The proposed rule does not specify any details of what electronic tools would be developed or should be used to ensure that the required NPDES data would be provided in a timely, accurate, complete, and nationally consistent manner by permittees, states, tribes, and territories to EPA. The proposed rule focuses on establishing requirements for what types of NPDES data the NPDES-regulated facilities would be required to report to EPA, states, tribes, and territories electronically; what facility-specific information states would be required to provide to EPA regarding their implementation activities; and how these requirements would be implemented in a NPDES-authorized program.

• *The proposed rule does not mandate direct entry of NPDES data into ICIS–NPDES as the only means of compliance:* The proposed rule establishes what data the permittees, states, tribes, and territories would be required to provide to EPA on a nationally consistent, timely, accurate and complete basis. Although EPA wants to ensure that the data is provided in a manner which is fully compatible with ICIS–NPDES, the proposed rule does not presume that direct data entry into ICIS–NPDES is the only approach that would meet the proposed requirements.

• *The proposed rule will provide significant benefits to states, tribes, and territories:* Based upon results of the economic analysis, as summarized in Section VII, the proposed rule would provide long-term savings to the states, tribes, and territories, providing states, tribes, and territories the opportunity to reallocate or redistribute existing resources more efficiently. The near-term costs are small in comparison to these savings, and the proposed rule would not impose significant costs upon the states, tribes, and territories in the long term. EPA would also be providing technical assistance and support to help states, tribes, and territories transition to this new cheaper and more accurate approach.

• *The proposed rule does not increase the reporting burden on state NPDES programs:* As described in more detail in Sections IV and VII of the preamble, most of the data required for the NPDES program under the proposed rule (see Appendix A to 40 CFR part 127) would be electronically provided by NPDES regulated entities. States, tribes, and territories would not need to key punch these data supplied by NPDES regulated entities into ICIS–NPDES. Also, many of the required data are required only for particular NPDES subprograms (*e.g.,* CAFOs, pretreatment, etc.) and it is highly unlikely that any NPDES regulated entity would be covered by each and every one of these subprograms. Furthermore, over 60 percent of these required data are required to be entered only once every five years or less frequently (particularly facility and permit information obtained from electronic notices of intent to discharge or individually-issued NPDES permits, but also where obtained from certain inspections). In addition, some of the data would rarely be used because they are conditional in nature, with their data entry contingent upon certain other unique conditions being present (*e.g.,* removal credits in approved local pretreatment programs). Therefore, any calculation of the data entry resource burden on states, tribes, and territories which contains an assumption that every data element is required for every

facility is incorrect. These concepts are explained in much more detail in the context of data entry considerations in Section IV.D.

B. Supplemental Notice

This proposed rule as currently drafted, subject to public comment, requires a conversion to electronic reporting of information from the majority of the NPDES regulated universe and from states, tribes, and territories authorized to implement the NPDES program. As such, this proposed rule will affect hundreds of thousands of NPDES-regulated entities and all states, tribes, and territories. The proposed rule will also impact the public, making more complete NPDES information available nationally for the first time.

Given the large scope of this proposal, EPA commits to offer an additional opportunity for transparency and engagement should we receive public comments that require significant changes to the rule. If that occurs, EPA will issue a supplemental notice with its response to any public comments that prompted a change in direction, so that states, tribes, territories, permittees, and other stakeholders can review and comment on how EPA revised the parts of the proposed rule that generated significant amount of comment. EPA plans to publish the supplemental notice within 180 days after the public comment period for this proposed rule has closed.

Although EPA is requesting comment on all aspects of the proposed rule, there are three specific areas for which EPA is particularly interested in getting comment from states, tribes, territories, permittees, and other stakeholders. The three areas include: governance of the data; phasing the implementation proposed under this rule; and the specific information the rule proposes to collect.

1. Governance of the Data

It is important that the governance processes surrounding the management and public release of data be clearly defined. The proposed rule relies on data that is currently required under existing regulations for the NPDES program. It also respects and does not change the role of authorized state, territorial, and tribal agencies as the primary implementors of the NPDES program or as data stewards for NPDES data within their jurisdiction. EPA invites comments from states, tribes, territories, permittees, and other stakeholders on the governance and management of data to be electronically reported to states and EPA under this proposed rule, including data stewardship and use of the information.

2. Phasing the Data Collection

Currently the proposed rule has two phases that will be implemented for collecting this information (see Section IV of the preamble for a detailed discussion on the phasing of the implementation of the rule). EPA will be providing technical assistance and support to help states, tribes, and territories with this transition to electronic reporting. EPA is also open to considering other options for phasing the collection of the information under this proposed rule. Specifically, EPA would like to hear from authorized NPDES programs that have experience in implementing electronic reporting, especially their experience in phasing the implementation so that it is successful. EPA seeks additional data on alternative options that might reduce implementation costs on authorized NPDES programs and permittees while also preserving the proposed implementation schedule and benefits of electronic reporting.

3. Specific Information the Rule Proposes To Collect

The proposed rule lists each data element proposed for electronic reporting. This information can be found in Appendix A of 40 CFR part 127 of the proposed regulation text. The proposed rule explains throughout the preamble why the information is proposed to be submitted electronically. In particular, there is a detailed discussion for each data family by program area that can be found in Section IV of the preamble. Additionally, this proposed rule does not require the generation of new data that is not already required in the existing regulations for the NPDES program.

EPA would like to hear from states, tribes, territories, permittees, and other stakeholders any comments for adding, changing, or deleting data elements from this proposed list.

C. Summary of Items for Comment Identified in Section IV of This Preamble

In Section IV, EPA identified several specific approaches on which comments are invited. These include:

- Taking into account the limitations of broadband availability and technological capabilities, EPA is considering providing a temporary waiver to the electronic reporting requirements for facilities lacking broadband capability or high-speed internet access and invites comments on such an exception.
- EPA invites comment on how to best address the variability in general permits issued by EPA, states, tribes, and territories.
- EPA is considering the elimination of reporting ''time'' from the annual report for CAFOs [see 40 CFR 122.42(e)(4)(vi)]. EPA estimates that the reporting of ''date'' of discharges is sufficient for permitting and compliance determinations. EPA invites comment on this considered change.
- EPA is not considering requiring the electronic submission of LTCPs as these reports are unique to each POTW. EPA invites comment on this approach.
- EPA invites comment on whether electronic sewer overflow event reports should be limited to sewer overflow events above a de minimis volume.
- EPA invites comment on whether the list of minimum federal data for sewer overflow and bypass events (Appendix A to 40 CFR part 127) provides sufficient distinction between the different types of sewer overflow and bypass events.
- For the pretreatment reports not identified in this proposed rule, as currently drafted, for electronic submission, EPA invites comment on which other pretreatment reports (if any) EPA should require for electronic submission as electronic documents (*e.g.,* searchable PDFs).
- For the pretreatment reports, EPA is first focusing its efforts on collecting electronically annual reports from control authorities, acknowledging that these reports include summary data from IU reports, and collecting compliance reports from IUs in cities without pretreatment programs. EPA invites comment on whether EPA should re-examine this decision for the final rule.
- EPA invites comment on the phasing out of reports currently required by 40 CFR 123.45 and 40 CFR 501.21, the new provisions for the NNCR, and the retention of existing thresholds in Appendix A to 40 CFR 123.45.
- EPA's VGP currently contains the monitoring, reporting, inspection, operation and maintenance requirements. EPA is not considering using this proposed rule, as currently drafted, to make any changes to NPDES regulations that would be specific to the vessels program. EPA invites public comment on this approach.
- EPA is not considering using this proposed rule, as currently drafted, to make any changes to NPDES regulations that would be specific to the pesticide

applicators program. EPA invites public comment on this approach.

• EPA invites comment on whether it should expand electronic noncompliance reporting to other forms of noncompliance [see 40 CFR 122.41(l)(6) and (7)], besides sewer overflow incidents and bypasses.

• EPA notes that the list of minimum federal data (Appendix A to 40 CFR part 127) from states, tribes, and territories only includes construction stormwater inspection data when the authorized program identifies violations and completes a formal enforcement action (*i.e.,* authorized state, tribe, and territory programs are not required to report construction stormwater inspection data to EPA for inspections that do not identify violations). EPA made this distinction based on the large number of facilities in this segment of the NPDES universe (approximately new 222,000 facilities each year). EPA invites comment on this approach.

• EPA invites comment on whether CAFO NOIs and NOTs should be included in Phase I of the rule implementation, as currently being considered, or in Phase II.

• EPA is seeking comment on how it should evaluate, update, and revise the lists of pollutants in Appendix A to 40 CFR 123.45. These lists are used to determine Category I (most serious) and Category II noncompliance. EPA's preamble for the final rule for 40 CFR part 123, NPDES Noncompliance and Program Reporting (FR, Vol. 50, No. 165, Monday, August 26, 1985) describes the conventional and nonconventional/toxic pollutants as lists of general types. It was expected that new parameters may be added from time to time. EPA has never revised these lists in part due to the complexity of re-opening the regulation to make such changes. This has resulted in a situation where, the most frequent cause of water impairment, pathogens, (which is directly related to pollutants such as fecal coliform and eColi) are not listed as pollutants that cause a Category I listing in the regulations. This means that a violation of a pathogen effluent limit alone (no matter how severe) is not required to be reported to EPA under 40 CFR 123.45 and, therefore, will not automatically trigger evaluation of the violation for ''significant noncompliance (SNC)'' status. EPA also seeks comment on eliminating the need for pollutant specific lists such as the current one in Appendix A and instead requiring that all effluent limitations in NPDES permits be considered noteworthy when involving exceedances greater than a certain, specified amount and basing the threshold amounts on whether or not the limit is a water-quality based effluent limit or a technology-based limit.

• In addition, when the 40 CFR 123.45 noncompliance reporting requirement were originally developed, EPA believed that violations of monthly average permit effluents limits were indicative of more serious long term noncompliance problems. However, EPA's thinking has evolved on this point and, in consultation with Regions and States, EPA revised its management tool (i.e., EPA's NPDES Significant Noncompliance Policy) in 1995 to also identify egregious NPDES violations of non-monthly permit effluent limits that meet EPA's criteria. EPA is specifically seeking comment on whether noncompliance reporting of permit effluent limits in 40 CFR 123.45 should be limited to monthly average permit limit violations and those violations that are of a specific magnitude and frequency.

EPA invites comment on the 90 percent threshold, currently considered in the proposed rule, that it will use as one of the State Readiness Criteria for each state, tribe, and territory by data group. EPA also invites comment on the appropriate date when EPA should perform the percent adoption rate percentage calculations prior to the start of the Phase 1 data collection.

D. Possible Adjustments to the Universe of Facilities for Which Electronic Reporting Is Required

1. Construction Sites With Potential Stormwater Issues

Based upon preliminary EPA estimates, the number of facilities covered by NPDES permits to control stormwater discharges related to construction (approximately 200,000 such facilities in any particular year) constitutes a very large percentage of the total universe of NPDES-permitted facilities in any given year. This universe of facilities changes as construction is completed. Based upon existing regulatory requirements,[50] few of the construction stormwater permits require the submission of DMRs from these facilities; therefore, much of the available information regarding the compliance status of such facilities is based upon inspections rather than on self-reported effluent monitoring data.

For these construction sites, NPDES permit coverage is provided through the construction site operator's submission of a notice of intent (NOI) to be covered under a general permit issued by EPA or by the authorized state, tribe, or territory. The NOI information from the prospective NPDES-regulated facilities includes basic information regarding the facility and its discharges, and provides some basis for possible inspections and enforcement by authorized agencies.

In the development of this proposed rule, as currently drafted, EPA has considered whether facility-specific data should be required only for those sites that had been inspected (rather than for the entire universe of such facilities) due to the transient nature of these sites. Based on the 2007 version of EPA's Compliance Monitoring Strategy (CMS), EPA recommended annual EPA-state goals to inspect at least 10percent of NPDES-permitted construction sites greater than five acres in size (Phase I), and at least 5percent of construction sites which are 1–5 acres in size (Phase II). Adjusting data reporting requirements to only require information on the facilities inspected would provide facility data for a much smaller set of facilities.

In discussions with states about reporting for potential wet-weather facilities such as construction sites, EPA has also considered requiring reporting on an even smaller subset of these construction sites, namely those sites that have been subject to a formal enforcement action, an administrative penalty order, or another informal enforcement action if that informal action addressed significant noncompliance. Closer tracking of these particular facilities would help ensure timely compliance and could help EPA to identify noncompliance patterns by particular companies across watershed or state, tribe, or territory boundaries, or nationally in scope. It is difficult to determine an accurate percentage of such facilities that may be subject to these future actions; however, as a preliminary estimate, EPA expects that only 1percent of such facilities would be the recipients of such enforcement actions in a given year.

In this proposed rule, as currently drafted, every construction site seeking coverage under a NPDES general permit would be required to electronically submit a NOI form. Therefore, this rule would establish the initial universe for which construction site inspections would most likely be performed. There is no way of pre-determining which sites would receive such inspections or which sites will be subject to enforcement actions, so it makes more

[50] In a separate rulemaking effort, EPA is drafting proposed regulatory language that may change reporting requirements associated with construction sites. At this time, it would be premature for EPA to speculate on what that proposed or final rule would contain.

sense to include the entire universe of such facilities in the requirement to electronically submit an NOI. The states, tribes, and territories would then be required to provide EPA with inspection information, violation determination information, and enforcement action information only for those sites where such actions are taken by the states, tribes, or territories. For facilities that qualify for and receive low erosivity waivers (LEWs), this proposed rule, as currently drafted, requires the electronic submission of the date such waiver was approved by the authorized state, tribe, territory, or EPA. Comments are invited on viable alternatives to this approach that would provide sufficient facility-specific information regarding construction sites.

2. Municipal Satellite Sanitary Sewer Systems (MSSSs)

Some municipalities that do not have NPDES permits to discharge nonetheless have sanitary sewer systems (SSSs) which discharge their sewage to the collection system of a POTW that has a NPDES permit to discharge. This sewage system discharging to another NPDES collection system or POTW is referred to as a municipal satellite sanitary sewer system. Based upon preliminary EPA estimates, there are over 4,800 such municipal satellite SSSs in the nation. This figure represents approximately 24 percent of the total number of SSSs in the entire nation.

Not all of these satellite systems have applied for and received NPDES permits. Some amount of NPDES information is tracked by states, tribes, territories, and EPA for POTWs which have NPDES permits, particularly for those POTWs which were designated as major permittees. However, information regarding the non-permitted municipal satellite SSSs and their possible impacts is far less complete.

Under CWA section 308, EPA could seek facility-specific information for each municipal satellite SSS facility as a point source; such information would include basic facility information, identification of the receiving NPDES-permitted POTW, incident report information, inspection information, and if applicable, violation information, enforcement information, and limits and monitoring data for each of these municipal satellite facilities. Detailed information regarding overflows from municipal satellite systems is critical to reducing water quality impairments attributable to overflows.

In this proposed rule, as currently drafted, EPA is not considering new reporting requirements on permitting authorities regarding such municipal satellite SSSs. EPA is considering whether EPA's needs may be served by receipt of information for municipal satellite systems which have been subject to a formal enforcement action, an administrative penalty order, or another informal enforcement action if that informal action addressed significant noncompliance, because closer tracking of these particular facilities, whether NPDES-permitted or a necessary party to ensuring compliance under an enforcement action, would help ensure timely compliance and more complete solutions to possible SSO violations. However, more complete information regarding the entire universe of municipal satellite systems may be very useful in evaluating the national compliance status of these facilities and in targeting. EPA invites comment on whether more specific information regarding municipal satellite systems, all or some defined subset, would prove useful and should be required by EPA from the states, tribes, and territories.

3. Industrial Users

As described in Section IV.E.1.e, in the absence of approved local pretreatment programs, EPA, the authorized state, tribe, or territory function as the control authority with the direct responsibility to oversee these industrial users. EPA estimates that there are approximately 1,400 industrial users located in cities without approved local pretreatment programs.

Section IV.E.1.e describes the types of reports which categorical industrial users and other significant industrial users are required to provide to the control authority. EPA is considering industrial users located in cities without approved local pretreatment programs be required to send the industrial user reports required under 403.12(e) and 403.12(h) electronically to EPA or pretreatment-authorized states, tribes, and territories. These self-monitoring reports will provide information similar to the information contained in DMRs from direct dischargers. Essentially, this would increase the universe for which self-monitoring results are required to be submitted electronically. Electronic submittal of these reports will give states, tribes, territories, and EPA better access to information concerning the pretreatment processes and compliance status of industrial users located in cities without approved local pretreatment programs. Comments are invited on this requirement and on whether to expand the requirement for electronic reporting of these reports to all industrial users.

4. Facility Universe for Which Biosolids Annual Reports Are Required

EPA's biosolids regulations (40 CFR part 503) establish the same recordkeeping requirements for all POTWs and Treatment Works Treating Domestic Sewage (TWTDSs). However, EPA's biosolids regulations only require annual reporting from POTWs with a design flow rate equal to or greater than one million gallons per day, POTWs that serve 10,000 people or more, and Class I sewage sludge management facilities (*e.g.,* POTWs with design flow rates less than one million gallons per day that also have approved pretreatment programs) to the appropriate authorized state, tribe, territory or EPA region. These biosolids reporting requirements are described in Section IV.E.1.f. There are no existing reporting requirements for smaller POTWs (*e.g.,* design flow rate less than one million gallons per day and serving less than 10,000 people) without pretreatment programs or for TWTDSs that are not identified by EPA or the authorized state, tribe, or territory as Class I sewage sludge management facilities. This proposed rule, as currently drafted, is not considering changing the applicability of EPA's biosolids reporting requirements.

EPA invites comment on expanding the biosolids reporting requirements (see 40 CFR 503.18, 503.28, 503.48) to all POTWs and TWTDSs. The increased availability of such biosolids information regarding all POTWs and TWTDSs would provide significant information regarding the effectiveness of the national, state, tribe, and territory biosolids programs, as well as key information regarding the effectiveness and compliance status of the regulated facilities. In particular, EPA notes that the existing reporting requirements apply to only a minority of POTWs and TWTDSs, although they have the vast majority of the flow volume compared to the smaller POTWs and TWTDSs. According to EPA's 2008 Clean Watersheds Needs Survey, there are approximately 3,200 POTWs that have a design flow rate above one million gallons per day and 11,500 POTWs have a design flow rate below one million gallons per day. Consequently, there are many more facilities for which EPA, states, tribes, and territories have little information on hand to determine compliance with EPA's biosolids regulations and no comprehensive way of conveying the biosolids management performance of these facilities to the public. As indicated in the proposed rule as currently drafted, expanding the reporting requirements to all POTWs

and TWTDSs will aid in producing a national consistent assessment of biosolids management, which is not available with the current reporting requirements (see DCN 0034). The efficiencies in electronic reporting will reduce the burden on POTWs, TWTDSs, states, tribes, territories, and EPA in reporting, receiving, reviewing, and maintaining these data.

Finally, EPA notes that some POTWs use lagoons or impoundments for their wastewater treatment. These POTWs may not be discharging biosolids each year as these lagoons or impoundments are not necessarily annually dredged. Some lagoons or impoundments may be dredged on a frequency of once every five, ten, or more years. EPA invites comment whether to expand the biosolids reporting requirements to POTWs that use lagoons or impoundments and do not perform annual dredging.

E. Quality Assurance and Quality Control Requirements

This proposed rule, as currently drafted and subject to public comment, establishes quality assurance requirements to better ensure that the required NPDES data will be provided in a timely, accurate, and complete manner by each NPDES permittee and by each NPDES-authorized state, tribe, and territory.

EPA has suggested establishing timeliness criteria of 30 days for permitting authorities to transmit NPDES data electronically to EPA. Suggested criteria for states, tribes, and territories regarding accuracy (at least 95 percent of the data elements should be identical to data reported) and completeness (at least 95 percent of the expected data elements should be provided for each facility) are based on quality assurance targets identified in existing EPA guidance.

In August 1992, EPA issued the ''Permit Compliance System (PCS) Quality Assurance Guidance Manual'' as guidance for EPA regional offices and states toward the development of similar quality assurance procedures for PCS data entry. This guidance document described quality assurance and quality control (QA/QC) targets for the data entry of the Water Enforcement National Data Base (WENDB) data, the data identified (through the PCS Policy Statement, as amended) from EPA regional offices, states, tribes, and territories for PCS, and described how permitting authorities should develop and implement their own quality assurance plans to ensure that the data provided in PCS was timely, accurate, and complete. Although these criteria were developed as quality assurance guidelines for PCS, the NPDES national data system at that time, these long-established quality assurance requirements would still be valid as criteria for timeliness, accuracy, and completeness of NPDES data that would be required through this proposed rule, as currently drafted, to be provided electronically in a manner fully compatible with EPA's PCS replacement system, ICIS–NPDES. EPA is inviting comment on whether these quality assurance and quality control targets identified in the August 1992 guidance cited above should serve as the basis for similar regulatory requirements in this proposed rule, as currently drafted.

Specifically, the 1992 EPA guidance sets timeliness targets (in numbers of working days since a specific trigger event) for the availability of NPDES data from states, tribes, and territories for specific data families, such as basic facility data, pipe schedule data, limits data, monitoring data, violation data, inspection data, program reports data, enforcement action data, compliance schedule data, etc. As an alternative approach to timeliness criteria identified in this proposed rule, as currently drafted, EPA could instead propose that these timeliness targets in the 1992 EPA guidance be instituted as timeliness deadlines. This approach would better ensure that the NPDES data required under this proposed rule, as currently drafted, would be provided by each NPDES permittee and by each authorized state, tribe, and territory to EPA in a nationally-consistent, timely, accurate, and complete manner fully compatible with EPA's NPDES data system. A few examples of such timeliness deadlines are identified below:

- For basic facility data, this information would be required from the permitting authority within five working days of receipt of an application for an individual NPDES permit;
- For basic permit information, this information would be required from the permitting authority within five working days of the issuance of an individual permit; and
- For enforcement action data, this information would be required from the permitting authority within five working days of the issuance of the enforcement action.

Although electronic submission of NPDES information could certainly occur much more expeditiously for NOI data, DMR data, or program report data, if that data is sent electronically by the NPDES permittee to a permitting authority's electronic reporting system for subsequent submission to EPA, the timeliness requirement for the permitting authority could be that:

- The eNOI data would be available from the state, tribe, or territory to EPA within 5 working days of receipt of the eNOI;
- The DMR data would be available from the state, tribe, or territory to EPA within 10 working days of receipt of the DMR; and
- The program report data would be available from the state, tribe, or territory to EPA within 30 working days of receipt.

EPA invites comment on whether to include QA/QC criteria for timeliness, accuracy, and completeness in the final rule. In addition, EPA invites comment on the alternative timeframes described here.

F. Possible Use of Minor Modifications of Permits To Require Electronic Reporting, Without Requiring Consent of the Permittees

In 40 CFR 122.63, federal regulations indicate the conditions under which minor modifications to existing NPDES permits could be made upon consent of the permittee. The existing regulations indicate that minor modifications to NPDES permits may be done to correct typographical errors, require more frequent monitoring or reporting, change interim compliance dates, indicate ownership or operational control changes, change new source construction dates, or incorporate conditions of an approved pretreatment program.

EPA is very interested in facilitating the move toward electronic reporting by states, tribes, territories, and regulated entities and has examined the possibility of modifying the existing federal regulations regarding minor modifications to require electronic reporting by NPDES-regulated facilities. By including the incorporation of electronic reporting requirements as a minor modification, states, tribes, and territories could more easily change existing NPDES permits to require electronic reporting, while reducing the paperwork and process time that would normally be associated with modifying a permit. Therefore, in this proposed rule, as currently drafted, EPA has suggested adding, as a minor modification, the incorporation of electronic reporting requirements into existing permits.

EPA invites comment specifically on whether such incorporation of electronic reporting requirements should be identified as a minor modification of a NPDES permit even absent the consent of the permittee. This

possible change, which would reduce paperwork, facilitate electronic reporting and improve reporting efficiency, may either be added to 40 CFR 122.63 or could be identified in another part of regulation.

VI. Outreach

A. Past Efforts

As described previously in Sections II.E and III, EPA has recognized for many years the need to better track facility-specific NPDES information nationally, particularly to include nonmajor facilities which have merited increased attention (*e.g.,* stormwater, CSOs, SSOs, CAFOs, biosolids and pretreatment) due to their potential impact on public health and the environment. In addition, computer technology has advanced significantly since the Permit Compliance System (PCS) was implemented in the 1980s as the NPDES national database of record.

EPA has had extensive interactions with states in the design of the ICIS–NPDES system, in the identification of possible ICIS–NPDES required data, and in efforts to develop a draft ICIS–NPDES Policy Statement.

1. PCS Modernization

Since FY 2000, EPA has worked with the states in designing a modernized data system for the NPDES program, including the identification of critical data elements. In FY 2002, EPA and 36 subject matter experts from the states developed recommendations identifying specific data needed to successfully implement and manage the NPDES program; these recommendations were distributed to the states and EPA Regions for review.

Since then, EPA has worked closely with its state, tribe, and territory partners in an effort to modernize PCS as a NPDES component of ICIS, ensuring that the system could accommodate the NPDES program data needs identified by EPA and the state subject matter experts in FY 2002. In March 2004, an EPA-state workgroup developed a framework for the content and scope of an ICIS–NPDES policy statement. In addition, the PCS Steering Committee, comprised of EPA and state participants, served as the primary contact in the development of ICIS–NPDES and worked toward the development of the associated draft policy statement.

EPA and authorized states began using ICIS–NPDES in 2006. Currently, all authorized states are either direct users of the ICIS–NPDES system or do some data entry directly and supply some data electronically from their own state databases into ICIS–NPDES. All EPA Regional offices use ICIS–NPDES for direct data entry of information related to their NPDES implementation activities; also, in their capacity as NPDES permitting authorities, they currently provide NPDES information from four states, two tribes, and nine territories or other jurisdictions. EPA has provided extensive training courses to states, tribes, territories, and EPA Regions to ensure a degree of national proficiency and familiarity with ICIS–NPDES. EPA also provides user support, national conference calls and meetings, and a national newsletter to personnel in states, tribes, territories, EPA Regions, and EPA Headquarters.

2. ICIS–NPDES Draft Policy Statement

At the request of the Environmental Council of States (ECOS), the PCS Steering Committee was expanded in late 2005 from 10 to 18 states to include representatives of ECOS and ACWA. In 2006, three face-to-face multi-day meetings were held to discuss the development of a draft ICIS–NPDES Policy Statement, which would specify required data to be entered or otherwise made available by the states to EPA, and the timing considerations for such data entry requirements.

In conjunction with those meetings, issue papers were developed by EPA and by the states, addressing EPA's needs for the data and states' proposals regarding alternative data availability. In an effort to better identify which data were being collected by states (whether or not those data were required to be entered into PCS), ACWA conducted a survey of states regarding each of the proposed required data. The specific states providing each response were not identified to EPA, preserving some anonymity in the responses but also inadvertently making it difficult for EPA to interpret the survey data and determine reasons for the responses. For example, it was not clear whether the fact that a particular state was not collecting biosolids information was because that state did not have the authority to implement and enforce the NPDES biosolids program.

EPA also consulted with in-house subject matter experts and re-assessed and reduced the number of proposed required ICIS–NPDES data, making several of the data elements required to be entered only by EPA Regional offices. Within an EPA-state workgroup organized to examine data entry resources, EPA developed a fairly detailed Excel-based data entry estimate model to determine data entry estimates nationally, for roughly a dozen individual states, for specific NPDES subprograms, and for specific data families or data groupings. Another EPA-state workgroup focused on issues related to possible sequencing of data from specific program areas.

These outreach efforts culminated in the development of a draft ICIS–NPDES Policy Statement issued by EPA for review and comment on April 30, 2007. State comments on that draft did not focus on specifics of the policy statement, or on the merits of particular approaches or data, but rather they raised general concerns regarding resource burden (beyond data entry) and federalism issues (*e.g.,* possible increased EPA oversight). In response to the comments from some states, and in an effort to ensure broader participation by other interested parties (including environmental groups), EPA decided that it would be more appropriate to proceed with rulemaking instead of a final ICIS–NPDES Policy Statement. This intention was conveyed to ECOS in a letter in September 2007.

3. Addendum to the PCS Policy Statement

In December 2007, EPA issued an addendum to the PCS Policy Statement. This addendum identified those ICIS–NPDES data which were considered to be comparable to the required WENDB (Water Enforcement National Data Base) data in PCS, as well as data which are system-required in ICIS–NPDES (the entry of those data is required before the system will save the record). This addendum stated that these ICIS–NPDES data constituted the list of data which EPA expected to be entered by ICIS–NPDES users during the period until a federal regulation on such reporting was promulgated by EPA.

4. Other Interactions—NetDMR, Alternatives Analysis

EPA also worked with states on two efforts that were independent of the initial rulemaking, but impact possible implementation of this proposed rule. EPA has implemented the NetDMR tool which can be used to electronically transmit Discharge Monitoring Report (DMR) from regulated facilities directly into ICIS–NPDES. This tool has significant impacts on implementation of the NPDES Electronic Reporting Rule, because approximately 90% of the estimated data entry burden associated with this proposed rule is linked specifically to the data entry of DMR information by the states, tribes, and territories.

During a similar timeframe, EPA and authorized programs also implemented the recommendations of an alternatives analysis which assessed the best means

for providing state data electronically (*i.e.,* those which will send NPDES information electronically from their own state data systems to ICIS–NPDES, without the necessity for direct data entry into ICIS–NPDES) to ensure that state data is available in ICIS–NPDES.

5. Rule Development Process

a. Early Interactions

During the rulemaking process, EPA hosted a listening session with states and interested stakeholders in Washington, DC, on October 14, 2008. This session was announced in the **Federal Register** by a notice on September 17, 2008. In this meeting, which was complemented by a concurrent conference call and web access to materials that EPA presented, EPA provided states, tribes, territories, and stakeholders an opportunity to hear EPA's rulemaking plans and an opportunity to provide comments on those plans. This effort included over 30 participants, including representatives of several states.

Later in the rulemaking process, EPA conducted a meeting in Washington, DC on March 9, 2009 with representatives from four states. A similar meeting was conducted by EPA in San Francisco on March 13, 2009 with an additional four states. The goal of these meetings was to seek individual state comment on a variety of options under consideration in the rulemaking to effectively reduce potential data entry burden. EPA then conducted two conference calls (on March 18, 2009 and April 8, 2009) with seven additional states to seek comment on those same options under consideration. This series of outreach events provided valuable input from a total of fifteen states from nine EPA regions regarding the feasibility of the implementation options under consideration for this proposed rule.

b. Interactions Focused on Electronic Reporting—Directional Change

Beginning in summer 2010, EPA conducted several outreach efforts focused primarily on electronic reporting. These efforts are described below.

i. Meetings and Webinars

On July 13, 2010, EPA conducted a meeting [51] in Washington, DC with over 100 attendees to announce the electronic reporting approach to this proposed rule. Representatives from states, local and tribal governments, and industry and environmental associations participated in person and by web access. EPA provided attendees the opportunity to learn of EPA's rulemaking plans for the NPDES Electronic Reporting Rule and to provide comments about those plans.

Subsequent to this meeting, EPA hosted a series of 20 web sessions conducted from July 2010 through July 2012. The goal of these meetings was to provide further opportunity for comment on the merits of the proposed rule. This effort included over 1,000 participants with representation from many states and industry. As a result, EPA obtained valuable input.

During this rulemaking, EPA also conducted additional meetings and consultations in order to comply with various statutes and executive orders that direct federal agencies, including EPA, to coordinate with organizations representing elected officials of states, counties, and municipalities, and consult, as required, with tribes and small businesses and small governmental jurisdictions.

The first of these meetings was held on September 15, 2010, and was attended by 11 state and local government organizations. The focus of this meeting was to comply with Executive Order 13132 (''Federalism'') which requires Federal agencies to consult with elected state and local government officials, or their representative national organizations, when developing regulations or policies that might impose substantial compliance or implementation costs on state and local governments. EPA received substantive feedback on the feasibility of the implementation options under consideration for this rulemaking.

Additionally, EPA met with tribal entities to describe the rulemaking effort and to provide an opportunity for discussion in two separate meetings on November 9, 2010 with the National Tribal Caucus, and on November 10, 2010, with the National Tribal Water Council. The National Tribal Caucus meeting was attended by 19 tribal representatives elected on a regional basis, who correspond with tribes in each of EPA's ten regions. The Tribal Water Council consists of 19 tribal water professionals who represent a national tribal perspective. In addition, after mailing information to 563 nationally-recognized tribal entities, EPA conducted follow-up conference calls on December 14 and December 16, 2010.

The focus of these meetings was to provide an additional opportunity for consultation and thus comply with Executive Order 13175, which states that EPA may not issue a regulation that has tribal implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the federal government provides the funds necessary to pay the direct compliance costs incurred by tribal governments, or EPA consults with tribal officials early in the process of developing the proposed regulation and develops a tribal summary impact statement. These calls did not raise any key issues from the participants, and, in particular, the likely availability of electronic reporting was not an issue from the participants.

ii. Web Site

In concert with these meetings and the series of web sessions, EPA also implemented a Web site in support of the NPDES Electronic Rule. The purpose of the Web site was to provide background information on the rule, status of rule development, announcements of upcoming stakeholder meetings, and a discussion forum with questions and topics.

iii. State Working Group

EPA has also engaged in a dialogue with a State Working Group to help explore the implementation issues related to this proposed rule. This technical working group's focus was to help to identify issues, identify roadblocks to implementing various aspects of the proposed rule, and share information concerning how these issues could be best addressed in this context. EPA worked with ACWA and ECOS to identify a group of 11 states.

From this group's efforts, EPA was able to glean a sense of the concerns of individual states with this proposed rule. The individual states represented in this group supported the concept of electronic reporting and understood why many states would benefit from a rule, but some states expressed concern about the implementation requirements, funding, and available resources. As indicated in previous outreach opportunities, some states in the group requested that EPA explicitly identify the data that will be required and have a strong need for each item to be collected. In addition, some states in the group indicated that they wanted EPA to be cognizant, as EPA drafted the proposed rule, of the varying degrees of state readiness for electronic reporting. EPA has addressed these concerns by some states in the identification of required data (Section IV.B and Appendix A to Part 127), and in the implementation plan (Section IV.I).

6. Plans for Future Outreach Efforts

Upon proposal of this rule, EPA will provide a comment period and will

[51] EPA published a notice of this meeting in the **Federal Register** on July 1, 2010

likely conduct additional stakeholders meetings to further discuss and refine particular aspects of the rule prior to promulgation. Outreach to stakeholders will continue to be supported through the NPDES Electronic Reporting Rule Web site; however, the Web site may be expanded to include more robust rule schedules as the rule nears promulgation, as well as additional rule documentation that may or may not be included as part of the formal docket library. Additionally, social media tools such as Twitter, Facebook and YouTube [52] will continue to be utilized to engage stakeholders.

EPA would provide technical assistance and support to states, tribes, and territories during the transition to electronic reporting. Outreach from EPA to the states, tribes, and territories may be very useful in the identification of specific needs and the development of such assistance, support, and funding.

EPA anticipates that the State Working Group may elect to continue its efforts through implementation of the rule in another possible phase of work. This proposed rule, as currently drafted and subject to public comment, includes a phase-in period for the implementation of the rulemaking; as such, the State Working Group may continue to explore implementation issues on a variety of selected topics.

VII. Non-Monetary Benefits and Economic Analysis

A. Non-Monetary Benefits From Electronic Reporting

1. Overview

A Presidential memorandum on regulatory compliance, issued on January 18, 2011, made the following observations:

> Greater disclosure of regulatory compliance information fosters fair and consistent enforcement of important regulatory obligations. Such disclosure is a critical step in encouraging the public to hold the Government and regulated entities accountable. Sound regulatory enforcement promotes the welfare of Americans in many ways, by increasing public safety, improving working conditions, and protecting the air we breathe and the water we drink. Consistent regulatory enforcement also levels the playing field among regulated entities, ensuring that those that fail to comply with the law do not have an unfair advantage over their law-abiding competitors. Greater agency disclosure of compliance and enforcement data will provide Americans with information they need to make informed decisions. Such disclosure can lead the Government to hold itself more accountable, encouraging agencies to identify and address enforcement gaps.[53]

In September 2011, the Office of Information and Regulatory Analysis (OIRA) issued guidance encouraging agencies to provide individual consumers of goods and services with direct access to relevant information and data sets. The memo focused on ''smart disclosure,'' defined as the timely release of complex data in standardized formats. The OIRA memo dovetails Executive Order 13563, signed by President Obama earlier in 2011, which encourages agencies to consider alternative regulatory approaches including the ''provision of information to the public in a form that is clear and intelligible.''

In this vein, the OIRA memo states: ''To the extent permitted by law, and where appropriate in light of government-wide policies . . . agencies should give careful consideration to whether and how best to promote smart disclosure.''

Regulatory approaches harnessing the power of public disclosure to improve performance through public accountability can increase government effectiveness and efficiency and generate a variety of important benefits. Electronic reporting is one such approach. This proposed rule justifies itself on the cost/benefit analysis alone, but many qualitative benefits will also be realized. EPA anticipates that this proposed rule will save money for regulators and the regulated community and will contribute to increased compliance, improved water quality, and a fairer and more level playing field for regulated entities. These benefits are made possible through greater use of 21st century technologies, of which electronic data submission is a cornerstone.

This section describes EPA's expectations, experience, and a variety of publicly accessible studies supporting the conclusion that electronic reporting—alone or as a component of broader monitoring and reporting programs—can improve compliance, reduce pollution, allow for better government and public decision making, and reduce paperwork-related costs for regulators and the regulated community alike. Even where it is difficult or impossible to isolate or apportion a specific share of overall program benefits to an electronic reporting component alone, the available literature, supporting evidence, and program experience all suggest that electronic reporting is often a significant contributor to the overall compliance and efficiency benefits these programs provide. This section also describes benefits from several additional approaches to public reporting of information. Although some of the cases described below do not involve electronic reporting, they all share the key characteristic of providing regulators and the public with performance information more efficiently or directly than was previously possible.

Research and experience suggests that the benefits of making timely and accurate compliance and performance data available—whether through electronic reporting or other approaches—occur through at least two pathways. The first pathway is that, within each regulated entity, it brings information about compliance or discharge performance to the attention of personnel with the authority to address them. If the information indicates problems, those personnel can act promptly to minimize the impact. The associated ability to use performance monitoring and benchmarking information systematically as a regulatory tool has been described as a watershed event enabling and compelling facilities to monitor, compare, and improve their environmental performance.[54]

The second pathway is that by ensuring timely government and public access to compliance and performance information, regulated entities can be provided with powerful incentives to avoid the negative effects of government and public awareness of pollution. An example of this effect appears in the Bennear & Olmstead Safe Drinking Water Act (SDWA) study.[55] In this study, the researchers found that when larger utilities were required to mail annual Consumer Confidence Reports on water supplier compliance pursuant to the 1998 Safe Drinking Water Act amendments, total violations were reduced by 30–44% and more severe health violations by 40–57%. Examples in areas other than environmental enforcement include the documented effects of red-light camera enforcement on fatal crashes.[56] This and previous

[52] **Note:** References to specific products are for informational purposes only. EPA and the federal government do not endorse any specific product, service, or enterprise.

[53] See DCN 0051.

[54] Karkkainen, B. (2001). ''Information as Environmental Regulation: TRI and Performance Benchmarking, Precursor to a New Paradigm?'' Georgetown Law Journal 89: 257, DCN 0052.

[55] Bennear & Olmstead, *The Impacts of the ''Right to Know'' Information Disclosure and the Violation of Drinking Water Standards,* JEEM Vol. 50, Iss. 2; pp. 117–130 (2008), DCN 0053.

[56] Hu, W., et. al.; *Effects of Red-Light Camera Enforcement on Fatal Crashes in Large U.S. Cities* (Insurance Institute for Highway Safety; February 2011), DCN 0054.

research establish that ''Red light camera enforcement programs reduce the citywide rate of fatal red light running crashes and, to a lesser but still significant extent, the rate of all fatal crashes at signalized intersections.'' The relevance of this approach to electronic reporting is that, like electronic reporting, it relies on technology and disclosure to positively influence compliance behavior.

Electronic reporting can help identify problems that are now hidden in extensive paper reports. In the case of EPA's NPDES program, some states, tribes, and territories are overwhelmed with the volume of data they receive, and are sometimes unable to process all of the reports in a timely manner. Electronic reporting by permittees substantially reduces the need for costly and time-consuming data entry by the states, tribes, and territories. Instead, permittee data will be received in a form that can be applied directly to the information systems, bringing that data into the open in a timely manner. As a result, electronic reporting will allow the states, tribes, territories, and EPA to quickly highlight important information and it will allow government and the public to identify, pursue, and address pollution problems. More accurate and timely data can help facilities and governments identify issues earlier and more accurately, which should save money and improve performance. Electronic reporting has also resulted in better private sector performance in unrelated areas, such as when the financial services sector revises its products and services based on data from industries they service.

Electronic reporting of information facilitates the rapid and automated compilation and analysis of data to identify the most important, serious, chronic violators quickly and efficiently. This helps focus limited government and community resources on the most important compliance problems by targeting enforcement where it is most needed.

Electronic reporting—and the timely and more accurate information it provides—can help provide the public with access to information on the performance of both regulated facilities and governments, and help them make government accountable for results. Electronic reporting also levels the playing field by giving the public, including other regulated entities, information they need in order to determine whether comparable violations are being treated similarly.

Electronic reporting promotes facility-to-facility and government-to-government learning by enabling cross-facility and government benchmarking, comparison of results, and the identification of the most effective compliance and performance strategies, thereby promoting the creation and transfer of innovation. It can help prevent minor self-reported violations from escalating into more serious problems by enabling immediate feedback on those violations.

Electronic reporting also creates a potential for private sector development of reporting tools, as evidenced by the development and commercial success of products such as Tax-Cut and Turbo-Tax.[57] Having access to more timely and accurate information could also help promote pathways for private sector links and two-way communication to obtain compliance assistance for reported violations, as well as pursue opportunities to improve environmental performance and save money through innovations, such as improved wastewater treatment methods or energy efficiency.

Electronic reporting can allow the comparison of electronic data with other information to better target government efforts. For example, it could facilitate comparing DMR data with ambient water pollution data to more readily identify the individuals or groups of sources contributing the most pollution in watersheds with impaired water quality. Electronic data can also be compared more readily with other information as a check on data accuracy. For example, the IRS can compare directly-reported taxpayer information with equivalent third-party information from employers or banks. Individuals and corporations know the IRS can make such comparisons, and, as a result, they tend to report more accurately. In a similar vein, EPA could explore potential new electronic reporting-supported options such as cross-checking DMR data with TRI data and data in public complaints.

Electronic reporting has the potential to save cost and effort in simpler and more direct ways, too. One example would be by obviating the need for time-consuming manual data entry, photocopying, and mailing of reports. Also, time and money that might otherwise have been spent correcting errors by facilities and states due to illegible entries and transcription issues could be saved. Immediate electronic feedback alerting or requiring facilities to check and correct decimal point placement and internally inconsistent entries could further save facilities and regulators time and costs. The secondary business costs of having to explain these types of errors to third persons such as financial institutions or the public could also be eliminated.

Finally, governments could avoid wasting their time and money spent addressing apparent ''violations'' that were actually mistakes, such as someone writing down the wrong number on a form, or entering data incorrectly. Electronic reporting systems can be designed to identify many of these errors for correction during data entry.

2. Supporting Cases

As discussed above, the available studies and experiences all suggest that electronic reporting can help promote an array of tangible and significant compliance and efficiency benefits. The remainder of this section describes specific publicly available literature and studies documenting how electronic reporting can enhance the ability of regulators, firms, markets, and the public to access and use compliance or other data to:

- Promote public confidence in regulatory programs;
- Promote accurate and complete discharge data;
- Improve compliance and reducing violations;
- Reduce pollution;
- Compel facilities to monitor, compare, and improve their environmental performance through benchmarking;
- Enhance transparency and accountability to external parties;
- Induce firms to become environmentally cleaner;
- Decrease the time required to compile, verify, and analyze data;
- Reduce the time between when regulators receive data and are able to make it publicly available;
- Facilitate agency auditing and detection of erroneous data without costly site investigations or complex measurement;
- Produce significant efficiency savings (time and resources) while increasing data quality;
- Reduce paperwork-related costs for regulators and regulated community;
- Enable regulators to shift staff resources away from data entry tasks;
- Simplify regulators' ability to cross-reference e-reported data against other data sources to allow errors to be caught and corrected more efficiently; and,

Enable governments, regulated communities, interest groups, and the public to be better informed for decision-making.

[57] **Note:** References to specific products are for informational purposes only. EPA and the federal government do not endorse any specific product, service, or enterprise.

a. Acid Rain Program

Standardized electronic reporting is one component of EPA's Acid Rain Program and contributed to the ''largest quantified human health benefits of any federal regulatory program implemented in the last 10 [years], with annual benefits exceeding costs by >40 to 1.'' It did so by promoting ''public confidence in the programs, highly accurate and complete emissions data, and a high compliance rate (>99% overall).'' [58]

b. Toxics Release Inventory (TRI)

Under the Toxic Release Inventory (TRI), the systematic use of performance monitoring and benchmarking as a regulatory tool has been cited as a watershed event enabling and compelling facilities to monitor, compare, and improve their environmental performance. At the same time, it enhances transparency and accountability to external parties.[59]

Several studies have linked the public availability of TRI data to improved compliance and reduced pollution. For example, using a micro-level data set linking TRI releases to plant level Census data, one researcher found that the local and state governmental use of TRI disclosures helps induce firms to become cleaner.[60]

By decreasing the time required for EPA to compile, verify, and analyze data, e-reporting can reduce the lag times from when EPA receives data to when the Agency is able to make it publicly available. TRI electronic reporting, for example, achieves this by reducing costly and cumbersome paperwork for reporters while speeding EPA's ability to make it publicly available.[61] Electronic reporting reduces the error rates typically found in manually transcribed data and facilitates agency auditing and detection of erroneous data without costly site investigations or complex measurement.[62]

c. Enhanced Disclosure and Environmental Compliance Under the SDWA

A prominent study of enhanced disclosure regulations and environmental compliance in the Safe Drinking Water Act (SDWA) context linked enhanced disclosure to statistically significant compliance improvements. In that case, the disclosures were made by industry directly to consumers by mail (rather than to the government electronically), but, as is intended in this proposed electronic reporting rule, a key effect was to facilitate the delivery of compliance information to the public so as to motivate and better behavior from the regulated parties responsible who submitted the information. Bennear & Olmstead found that when larger utilities were required to mail annual Consumer Confidence Reports on water supplier compliance pursuant to the 1998 Safe Drinking Water Act amendments reduced total violations by 30%–44%. More severe health violations were reduced by 40–57%.[63]

d. Ohio EPA's eDMR System

As discussed in Section III.B.1.a, Ohio EPA launched its electronic discharge monitoring report (eDMR) system and, as of 2011, has achieved a 99% electronic reporting adoption rate by its permit holders. E–DMR systems allow stakeholders to report their discharge measurements online. According to Ohio EPA, based on interviews and data collection, their work demonstrates how electronic reporting in this instance produced significant efficiency savings (time and resources) while increasing data quality. In the opinion of Ohio EPA, this has led to more effective human health and environmental protection through improving its ability to monitor and enforce CWA compliance. (Case Study: Ohio Environmental Protection Agency's Electronic Discharge Monitoring Report (eDMR) System Reaches 99% Adoption. *http://eitlc.ross-assoc.net/images/4/4c/Ohio_eDMRs_Case_Study_04_30_10_FINAL.doc*). In the Ohio EPA Case Study, the authors found that the automated compliance tools within its eDMR system informed permit holders if their discharge amounts exceeded authorized permit limits or were otherwise entered erroneously, and reduced errors from 50,000 to 5,000 per month. Permit holders were often able to quickly to correct their data, leaving the Ohio EPA with more accurate and robust data. Simultaneously, as the need for data entry and error checking diminished, Ohio EPA was able to move almost five full-time personnel away from those tasks and into other productive types of work. Id.

e. Internal Revenue Service E-file

The United States Internal Revenue Service's E-file program was also mentioned in Section III.B.1.a.i. According to United States Internal Revenue Service (IRS) officials, electronic reporting of digital data has simplified the Service's ability to cross-reference the e-reported data against other data sources, allowing errors to be caught and corrected more efficiently.[64] The IRS notes that the error rate for electronically filed returns is less than 1 percent, compared to an error rate for paper returns of about 20 percent.[65] One explanation for the low error rate is that software for electronic reporting allows for automated calculations and can check for obvious transcription errors, such as unusually large numbers. Electronic filing has also expedited processing of tax payment and refunds. One study examined the empirical implications of electronic filing with regard to the earned income tax credit (EITC), which was substantially under-utilized by qualifying households in the early 2000s. The authors found that access to electronic filing had a significant and positive effect on EITC claims.[66] Given all of the above, benefits, the IRS has established an 80%-of-taxpayers E-file goal.[67]

f. ECOS Exchange Network Return on Investment (ROI) and Business Process Analysis Project

The Exchange Network Return on Investment (ROI) and Business Process Analysis Project, funded by the Environmental Council of the States (ECOS), was conducted to better understand the effects Exchange Network technologies have on the quality and efficiency of environmental data exchanges for states, tribes, territories, and local agencies.[68]

The analysis included an in-depth review of the four participating states' specific business processes for up to five different data flows: Air Quality System (AQS); Resource Conservation and Recovery Act (RCRA); Safe Drinking Water Information System (SDWIS);

[58] Schakenbach, et al.; *Fundamentals of Successful Monitoring, Reporting, and Verification under a Cap-and-Trade Program,* J. Air & Waste Manage. Assoc., 56:1576–1583 2006), DCN 0055.

[59] DCN 0052.

[60] Bui, *L.; Public Disclosure of Private Information as a Tool for Regulating Environmental Emissions: Firm-Level Responses by Petroleum Refineries to the Toxics Release Inventory;* Brandeis Univ. Working Paper Series (June 2005), DCN 0057.

[61] Karkanian, *supra* at 289, 336–37.

[62] *Id.* at f.n. 149.

[63] See DCN 0053, pp. 117–130.

[64] See DCN 0041.

[65] ''IRS E-File: It's Fast, It's Easy, It's Time'' at *http://www.irs.gov/newsroom/article/0,,id=218319,00.html.*

[66] Kopczuk, W., and C. Pop-Eleches (2007). ''Electronic Filing, Tax Preparers, and Participation in the Earned Income Tax Credit.'' Journal of Public Economics 91: 1351–1367, DCN 0003.

[67] IRS; Advancing *E-file* Study Phase 1 Report—Achieving the 80% *E-file* Goal Requires Partnering with Stakeholders on New Approaches to Motivate Paper Filers (Sept. 30, 2008), DCN 0002.

[68] Environmental Information Exchange Network: Exchange Network—Return On Investment And Business Process Analysis Final Report (Sept. 5, 2006), DCN 0061.

Toxics Release Inventory (TRI); and Electronic Discharge Monitoring Report (eDMR). The review compared the business processes for each data flow before and after the implementation of Exchange Network technologies in order to estimate the total cost savings as a result of the implementation. A return on investment model was then applied to all of the data flows.

Overall, the results show a positive return for most of the data flows analyzed. Indeed, all participating states experienced a positive return on their investment in Exchange Network technologies to flow data. The coupling of electronic reporting systems with Exchange Network technologies produced particularly impressive savings.

g. Michigan DEQ eDMR System

Electronic reporting of environmental data is being increasingly adopted by states because of the positive environmental and financial benefits it provides. One example is Michigan Department of Environmental Quality's (DEQ's) eDMR system for wastewater facilities. As Michigan DEQ reports on its Web page, the benefits of the state's electronic reporting system include: (1) Saving compliance costs for wastewater discharge facilities through a streamlined reporting method and readily available computer tools; (2) saving program costs by reducing resources required for managing paper-based DMR reports; (3) improving the accuracy of compliance data by eliminating potential errors that might otherwise be introduced through non-electronic data entry in the database; and (4) improving the DEQ wastewater program's overall effectiveness with faster responses to data analyses, compliance assessment, and decision-making.[69] Other states are increasingly adopting similar systems for the same reasons.[70]

h. DMR Electronic Reporting in 24 States

Twenty-four states currently have electronic reporting of DMR data, six of which began in 2010 and one of which is still in the testing stage. Of these, 13 states transfer their DMR data for major and nonmajor entities to EPA. Most of these states offer electronic reporting as an option, but have not made it mandatory. Ohio is one exception to the norm. Ohio requires electronic reporting unless there is a verifiable reason why the permittee cannot do it, in which case they can continue to submit paper reports.

States tend to have one of four types of electronically available systems in place: the e2 system (AL, FL, MI, OH, OK, PA, VA); Net DMR (AR, CT, HI, LA, TN, TX, UT); eDMR (IL, IN, MS, NC, WV, WY); or EFIS (ME, SC). Of these four systems, e2 is the oldest, having been implemented in Florida in 2001 and Michigan in 2002. In addition to these four systems, California and Washington have each developed their own unique eDMR systems. The voluntary movement of a large number of states to electronic reporting of DMR data suggests the existence of potential net benefits.

i. U.S. Security and Exchange Commission (SEC) Quarterly Financial Data

The U.S. Security and Exchange Commission's online system, EDGAR (the Electronic Data Gathering, Analysis, and Retrieval system), performs automated collection, validation, indexing, acceptance, and submittal of forms filed electronically with the SEC. Researchers evaluated the effect of making quarterly financial data available to all market participants at the same time versus the prior hard-copy filing (*i.e.,* submittal) method that required an individual interested in the financial health of a company to request the data from the SEC or the firm itself. Using a random sample of firms, the researchers compared an electronic filing via EDGAR to a previous year's filing via the traditional paper method. They did not find a market response to firm financial data when it was filed via the traditional method, but they did detect a discernible market response when the data were filed electronically via EDGAR. The authors found further that quarterly financial data are filed more quickly through EDGAR than was the case with the earlier method.[71]

B. Summary of the Economic Analysis

1. Regulatory Requirements Addressed by the Economic Analysis

Executive Order (E.O.) 12866 requires federal agencies to perform an economic analysis (EA) to give decision makers information to determine that:

There is adequate information indicating the need for and consequences of the proposed action; The potential benefits to society justify the potential costs, recognizing that not all benefits and costs can be described in monetary or even in quantitative terms, unless a statute requires another regulatory approach; The proposed action will maximize net benefits to society (including potential economic, environmental, public health and safety, and other advantages; distributional impacts; and equity), unless a statute requires another regulatory approach; Where a statute requires a specific regulatory approach, the proposed action will be the most cost-effective, including reliance on performance objectives to the extent feasible; Agency decisions are based on the best reasonably obtainable scientific, technical, economic, and other information.'' [72]

E.O. 12866 defines the threshold for ''significant'' rules as one that is expected to:

Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities.'' [73]

The EA must address the following requirements:

The EA that the agency prepares should also satisfy the requirements of the ''Unfunded Mandates Reform Act of 1995'' (Pub. L. 104–4). Title II of this statute (Section 201) directs agencies ''unless otherwise prohibited by law [to] assess the effects of Federal regulatory actions on State, local, and tribal governments, and the private sector . . .'' Section 202(a) directs agencies to provide a qualitative and quantitative assessment of the anticipated costs and benefits of a Federal mandate resulting in annual expenditures of $100 million or more, including the costs and benefits to State, local, and tribal governments or the private sector. Section 205(a) requires that for those regulations for which an agency prepares a statement under Section 202, ''the agency shall [1] identify and consider a reasonable number of regulatory alternatives and [2] from those alternatives select the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the proposed rule.'' If the agency does not select ''the least costly, most cost-effective, or least burdensome option, and if the requirements of Section 205(a) are not ''inconsistent with law,'' Section 205(b) requires that the agency head publish ''with the final rule an explanation of why the least costly, most cost-effective, or least burdensome method was not adopted.''

The ''Regulatory Flexibility Act'' (Pub. L. 96–354) requires Federal agencies to give special consideration to the impact of regulation on small businesses. The Act specifies that a regulatory flexibility analysis must be prepared if a screening analysis indicates that a regulation will have a significant impact on a substantial number of small entities. The EA that the agency

[69] See DCN 0062

[70] *See, e.g.,* FL DEP's identical list of eDMR benefits at DCN 0063.

[71] ''The Effect of EDGAR on the Market Reaction to 10–K Filings.'' Journal of Accounting and Public Policy 20: 349–372, DCN 0036.

[72] Economic Analysis of Federal Regulations Under Executive Order 12866, Office of Management and Budget, January 11, 1996, DCN 0064.

[73] Id.

prepares should incorporate the regulatory flexibility analysis, as appropriate.

The Regulatory Flexibility Act (RFA) of 1980 (5 U.S.C. 601 *et. seq.*) requires Federal agencies to review their proposed rules and regulations to determine if they will have ''a significant economic impact on a substantial number'' of small entities. But the RFA does not define ''significant economic impact'' or ''substantial number.'' In its regulatory flexibility analysis EPA adopted the Small Business Administration's (SBA) definition of small entities, and used a threshold of 1% of revenue to determine economic significance. Using the SBA definition, EPA estimated that 108,000 small entities would incur costs under the proposed rule. EPA estimates implementation costs for the regulated facilities to be no more than $258 per facility, most of which will occur within two years of the effective date of the rule. EPA also estimates that those small entities required to report electronically to EPA in 2014 and 2015 will each incur as much as $105 in additional annual costs. None of these costs is thought to exceed the threshold of 1% of annual revenue for any of the affected entities. For that reason EPA has determined that the proposed rule does not have a significant economic impact on any small entity.

2. EPA's EA Guidance

EPA has issued internal guidance implementing each of the EO and statutory requirements applicable to the EA. EPA's EA guidance instructs EPA personnel how to proceed, and what factors to take into account. Among other things, that guidance requires an EA of a rule with a multi-year impact to apply discount factors of three percent and seven percent as a way to gauge the sensitivity of the projections and the effects of inflation. The EA for this proposed rule has been conducted following the most recently issued EPA EA guidance. To simplify this summary of the EA, unless otherwise indicated, this document will use only data from the three percent discount version of the analysis. Tables at the end of this section provide summaries of both the three percent and seven percent discount versions.

3. Economic Significance of This Rule

According to the threshold set out in EO 12866, this proposed rule is not economically significant. The threshold for a finding of economic significance is an economic impact, either costs or savings, of $100 million annually. The EA for this proposed rule estimates the largest annual economic impacts to be $25.2 million in net costs in one year after promulgation of the rule, and $30.1 million in net savings in three years after promulgation of the final rule (estimated based on a 3% discount rate). Because these economic impacts are less than $100 million, this rule is below the economic threshold of a significant federal mandate under the Unfunded Mandates Reform Act of 1995.

Although this proposed rule does not meet the economic significance threshold, it does include most of the elements that would be required if the threshold were passed—a statement of the need for the rule, an examination of alternatives, and the costs and benefits. For the purpose, the statement of the need is located in Section III, and a description of the alternative approaches that were considered is located at Section IV. The non-monetary benefits were discussed in the first portion of Section VII. The balance of this section summarizes the estimated savings and costs of the selected approach.

4. Overall Savings and Costs

The EA for this proposed rule estimates savings and costs over a ten-year period, beginning on the date when the rule would become final. Three years after final rule, applying a 3% discount rate, and using 2012 dollars, the largest annual net savings are $30.1 million in three years after final rule. Those savings continue indefinitely, but at a steadily declining dollar value as a result of discounting. During the ten-year period, the highest annual costs are $25.2 million in one year after the final rule. Annual costs are significantly less in all other years.

Cumulative savings for the ten-year period are $290.2 million while cumulative costs are $69.9 million. As a result the overall economic effect of this rule is a net cumulative savings of $220.3 million over the ten years of the projection.

5. Changes in Data Volume and Universe Coverage

The proposed rule would reduce the data entry burden on the states, tribes, and territories while increasing the percentage of the NPDES universe for which data is available. Compared to the current reporting guidance, known as WENDB, the proposed rule would reduce the data entry burden on states, tribes, and territories by 25 percent, increase the number of NPDES-regulated facilities for which NPDES data is available to EPA by several hundred percent, and expand the scope of the available data for all NPDES-regulated facilities covered by this proposed rule.

In contrast, a previously considered approach would have expanded the data set and the number of covered permittees, but, still relied on the states, tribes, and territories to supply all of the data. This approach would have expanded the state, tribe, and territory data entry burden by 500 percent.

6. Major Factors Used in the EA

The main elements of this EA are the reporting universe, reporting frequencies, required data, changes in who reports the data, systems and infrastructure changes to make the reporting possible, and the schedule for implementation.

a. Estimated Universe of Potentially Affected Permittees

This proposed rule would change the universe of permit types for which EPA will receive data. As described in Section II, the current reporting guidance instructs the states to provide EPA with data on the major dischargers (6,700 permittees) and nonmajor dischargers with individual permits (38,900 permittees). Some states provide data on a larger section of the permittee universe.

Under this proposed rule, EPA would receive data on virtually the entire permittee universe (over 440,000 permittees, not including pesticides applicators and vessels), as represented in Table VII.1. Due to the large number of stormwater permittees, the EA pays this part of the NPDES program particular attention by modeling the expected number of wet-weather incidents for each state, tribe, and territory.

TABLE VII.1—UNIVERSE OF NPDES PERMITS

Subprogram	Number of permits
Major Individual Permits	6,700
Non-subprogram nonmajor Individual Permits	38,900
Non-subprogram nonmajors covered by general permits	31,800
Stormwater MS4s	6,600
Stormwater Industrial	100,000
Stormwater Construction (annual)	222,000
POTWs Submitting Biosolids Reports	4,900
POTWs with Approved Pretreatment Programs	1,500
POTWs with Separate Sanitary Sewers and SSOs	15,600
POTWs with Combined Sanitary Sewers and CSOs	830
CAFOs	14,400

It should be noted that Table VII–1 shows the types and estimated numbers of permits in each of the applicable categories. Note, however, that some facilities are subject to more than one type of permit or subprogram, in which case they are counted in each applicable group because that is the basis for regulation and reporting. For example, a POTW might have an individual permit as a major facility, a separate stormwater system, a pretreatment program, and be a biosolids generator. Also note that SIUs do not have an NPDES permit but are included in the EA.

Changes in the reportable universe affect virtually every aspect of the EA, including data entry costs, training costs, the need for electronic signatures and training, savings in paper and postage, the impact of dual reporting, and notification to permittees.

b. Data Elements and Data Systems

Section IV describes how and why the inventory of reportable data is changed by this proposed rule. For the EA, the biggest impacts of the change in reportable data are the costs of enhancing the database structures to store the additional data and the costs of data entry.

Estimating the cost of modifying the databases involves several factors, chiefly the number of additional data elements, the number of categories those data elements fall into (e.g., CAFO, biosolids, DMRs, etc.), the number of data entry screens that will be needed, and the completeness of various state, tribe, territory, and EPA data systems prior to the final rule.

Based on the number of data elements and their planned structure, EPA developed a detailed estimate of its own costs to modify ICIS to accommodate the additional data elements. Because EPA does not have independent estimates of the comparable system costs for each state, tribe, and territory, EPA's estimate of system costs for those NPDES-authorized programs is based on EPA's costs to modify ICIS.

Data entry costs are one of the major aspects of the EA, and involve several additional factors, such as who generates the data, changes in the need for the states, tribes, and territories to enter permittee-created data into an information system, the number of permittees to which each data element applies, the frequency with which each type of data element is reported, the time required to enter each type of data element, and the labor costs associated with data entry.

c. Responsibility for Creating Data

''Responsibility for creating data'' refers to the act of initially determining the value of any particular required data element and writing it on paper or entering it into an electronic storage system. Each data element required by this proposed rule has exactly one creator, although the identity of the creator can be affected by the nature of the permit. For example, DMR data is always created by a permittee, and enforcement data is always created by the permitting authority, but basic facility data might be created by either the permitting authority or the permittee, depending on the type of permit that will be used.

The EA uses a detailed understanding of responsibility for data creation to estimate and assign data entry costs and savings for permittees, states, tribes, and territories.

d. Changes in the Need for State, Tribes, and Territories To Enter Permittee-Created Data

Under the current system of operations, states, tribes, and territories are responsible for collecting data from their permittees and providing the WENDB data to EPA, and paper submissions are the primary means by which permittees submit data to the states, tribes, and territories. As described in Section II, this means the states, tribes, and territories are required enter large amounts of data created by permittees into the permitting authority's information systems, or into ICIS–NPDES. Several types of reports are affected by this rule, but DMRs comprise a substantial majority of the permittee-created data that the states, tribes, and territories enter into data systems. As a result, a significant portion of the data collected is essentially being entered twice. The first is when permittees commit it to a paper form. The second is when the states enter the permittee-created data into an information system.

One of the chief contributions of this proposed rule is that it virtually eliminates the need for such double entry of data in this sense: When DMRs and other reports are submitted electronically by permittees, these reports can be received electronically by the states, tribes, and territories, inserted directly into the applicable information systems, and shared with EPA through the NEIEN.

The EA sees no difference between the time required for a permittee to fill out a paper form and the time required for them to enter the same data on an electronic form. Therefore, permittee data creation costs and savings are not affected by the move to electronic reporting. The permittees are required to supply the same data, regardless of the media in which is it reported. However, during the transition period, some permittees will incur some additional costs until electronic reporting is required without concurrent hard-copy reporting to the permitting authority. Those costs are estimated to range from zero to $104.64 per report submitted.

The impact on the states, tribes, and territories is very different. Every data element a state, tribe, or territory does not have to enter into a data system is a saving compared to the current mode of operation. This does not mean, however, that every state, tribe, and territory will see the same savings from the rule. Some permitting authorities have already begun shifting to electronic reporting. Thirty-four states have either implemented an eDMR system or are at some point in the process of doing so. Some permitting authorities have also begun moving to e-reporting in other areas, such as NOI. However, participation in most of the state, tribe, or territory e-reporting systems is voluntary, so participation rates are highly variable. Ohio is thought to be the only state with a mandatory eDMR system and they have achieved participation of over 99%. Other states have indicated much lower participation rates, which mean they are bearing the costs of operating both paper-based and electronic reporting systems. The EA includes the best available information on all of these factors.

e. Permittees Reporting Various Data Elements

As described in Section II, the current reporting guidelines require states, tribes, and territories to provide EPA with data for only a portion of the permittee universe. This proposed rule expands the universe of permittees for which required reporting must be shared with EPA, primarily by requiring data on the so-called NPDES subprograms. This is a significant development because subprogram data elements are specific to the permittees in each of the subprogram universes. For example, the data elements applicable to CAFOs apply only to CAFO permittees, biosolids data elements apply only to biosolids permittees and so on. As a result of this and the electronic reporting of data directly from the NPDES-regulated facilities, under this proposed rule the total volume of data does not increase in direct proportion to the larger portion of the permittee universe covered or the

expanded required data set. EPA's best understanding of all of these factors is included in the EA.

f. Frequency of Data Element Reporting

Another factor that affects the overall volume of data being submitted, and therefore the data entry costs and savings, is the variety of reporting frequencies. Reporting frequencies are dictated by the types of reports containing the data elements and the compliance monitoring strategy. DMR data elements are submitted on DMR forms, which are generally submitted monthly, thus explaining why they comprise the largest portion of total data volume, and why eliminating the need for the states, tribes, and territories to enter the data from DMRs produces most of the savings from the proposed rule.

Facility data is submitted on initial permit applications or on NOIs, and might be reviewed and updated every five years when the permit is reviewed for reissuance. A large part of the facility data is never changed. Portions that are subject to change are generally addressed during the permit's reviews.

Permit data, such as limits and limit sets, are established when the permit is issued, and reviewed and possibly revised on a five-year cycle. Permit conditions are seldom revised except during the regular five-year reviews, or as a result of enforcement actions.

Enforcement and compliance data are contained in specialized documents which are created on an as-needed basis. It is possible that some permittees will never have any enforcement actions against them, and therefore very little enforcement data associated with them.

Subprogram data elements can be found on any of the major submissions, but are primarily contained in the applicable annual reports.

Each of the data types and possible submissions has been evaluated and the frequencies assigned for proper mapping into the EA.

g. Time Required to Enter Data Elements

Understanding how long it takes to enter data elements is a critical piece of the EA. Nine states were surveyed to develop this information. Each respondent was asked to estimate the time it took them to enter various types of data elements. The respondents were grouped according to whether they were in a direct entry, batch entry or hybrid state, and average data entry times were computed for each data element within each group of states.

The EA uses the data entry times from the survey to estimate how much data entry time states, tribes, and territories will spend entering different types of data elements.

h. Labor Costs of Data Entry

Labor rates for the rulemaking are taken from work produced by the Bureau of Labor Statistics. Several hourly rates are used, depending on the type of work and whether the worker is a government or private sector worker.

i. System Development Costs

As described in Section IV, EPA intends to develop electronic reporting tools for each of the reports covered by this rule—DMRs, NOIs, and program reports. Those EPA-developed tools will be offered to all of the states, tribes, territories, and permittees for their use. The cost of developing those reporting tools by EPA and the infrastructure to accommodate them were calculated and documented in a series of technical reports, and comprise the majority of the EPA HQ implementation costs as reported by the EA. EPA also intends to encourage third-party development of electronic reporting tools. Ultimately each authorized state, tribe, and territory will decide whether to use, and allow their permittees to use, the EPA-provided electronic reporting tools or other tools. Each state, tribe, and territory has the option of adopting one or more of the EPA tools and rejecting the others. However, because EPA is building, and making available, a comprehensive set of tools, the EA does not include any estimate for state, tribe, and territory costs to develop comparable independent tools.

The costs of modifying ICIS and the state, tribe, and territory NPDES data systems are somewhat different. Each of the authorized states, tribes, or territories either has its own data system, or uses ICIS–NPDES. All of these data systems are thought to need some degree of modification to accept the additional data elements, and in the case of state, tribe, and territory data systems, to share that data with EPA. EPA developed an estimate of its costs to modify ICIS. The EA includes those EPA costs, and uses those costs to estimate the cost of database changes in the states, tribes, and territories. The EA uses this approach because EPA does not have detailed information about the data structures in the states, tribes, and territories. The EA does take the available information about state, tribe, and territory data systems into consideration.

All of these expenditures are included in the implementation costs of the rule, most of which are expended by EPA prior to rule promulgation and by the states, tribes, territories, and permittees one year after the effective date of the rule under the implementation schedule described in Section IV.

The EA also estimates marginal operation and maintenance (O&M) costs for EPA and the states, tribes, and territories. Marginal O&M costs are the annual O&M costs, over and above current costs, to support the tools required by the rule.

j. Permittee Notifications

As described in Section IV, the entire permittee universe is assumed to receive initial notification of the rule by reading the **Federal Register**, from EPA's Web site, or from reading about the rule in one or more trade publications. Accordingly, there are no unique costs for that notification in the EA. However, as work proceeds, EPA may determine that additional outreach is necessary.

As described in Section IV, EPA will engage the states, tribes, and territories in a variety of forums to determine which permittees will be required to report directly to EPA under the rule, to notify those permittees of the requirement via the **Federal Register** and EPA's Web site, and as appropriate to tell them when to stop reporting directly to EPA. Those costs are included in the EA. The EA assumes the majority of those notices will be delivered via EPA's Web site.

k. State, Tribe, Territory, and EPA Coordination

Throughout the implementation process, EPA and the states, tribes, and territories should coordinate closely to minimize inconvenience to the states, tribes, territories, and permittees, and to ensure that concurrent electronic and hard-copy reporting of the same data by the same facility is minimized during the transition period. Those coordination efforts are described in Section IV. The EA assumes most of that coordination will be accomplished electronically—telephone, email, and webinars—with little or no travel by EPA HQ or the states, tribes, and territories.

l. Permit Revisions

In most states, tribes, and territories, permittees must follow the reporting requirements specified in their NPDES permits. And in most states, tribes, and territories, the permits cannot be changed unilaterally—*i.e.,* there must be some form of notice and comment before amending a permit. For these reasons, EPA's Office of Water has generally implemented permit changes in conjunction with the five-year permit review cycle. Using that approach, the permit changes are applied to each

permit as it comes up for review and there would be no separately identifiable costs associated with individual permit changes.

However, if that approach were used, the rule would not be fully implemented until roughly 2020. Given current technology, it would be unreasonable to delay nearly a decade to achieve the benefits and savings available through electronic reporting. For that reason, the proposed rule uses a preferred two-year implementation strategy, as described in Section IV.I, and does impose some identifiable but modest near-term costs on the states, tribes, territories, and permittees, estimated in the EA.

Permitting authority costs for permit changes are based on the assumption that some states, tribes, and territories will implement those changes with individual ''minor modification,'' which require separate notifications to, and possible dialog with, each permittee. The EA assumes some states, tribes, and territories will adopt other approaches, such as ''mass minor modifications,'' which involve the use of a form letter, or changes to statutes. Permittee costs for the permit change are estimated as the time required for them to read and respond to the permit change notification, regardless of its form.

m. Changes in State Reporting Requirements

When the rule is fully implemented, EPA would essentially have complete data on almost the entire NPDES universe of permittees. As a result, EPA HQ will have all of the data necessary to prepare the Annual Notice of Non-Compliance, the Quarterly Non-Compliance Report, and the Semi-Annual Statistical Summary Report, all currently required from NPDES-authorized states, tribes, and territories by 40 CFR 123.45. For that reason, the rule proposes to replace all of those reports with a single report generated by EPA HQ using the data in the data systems after implementation of the rule. The EA estimates the reduced burden on the states, tribes, and territories as a result of this reporting change.

n. Paper and Postage Savings

As described in Section II, the majority of permittee submittals are being sent to the states, tribes, and territories on paper. Each of those submittals therefore requires paper, an envelope, and postage. EPA estimates that there are more than 1 million permittee submittals sent by mail each year.

Converting to electronic reporting under this rule will eliminate paper submittals of the covered reports for the vast majority of permittees. The EA estimates the percentage of permittees that will be required to use e-reporting, the number and mix of reports they submit annually, as well as the number of pages in each report, and the required postage.

o. Electronic Signatures, Service Agreements and Training

Instituting electronic reporting will entail some effort from the permittees. The EA assumes that every permittee will have to take certain steps in order to begin reporting electronically, whether they report directly to EPA or to their respective state, tribe, or territory. Permittees that are already reporting electronically will most likely not incur any additional costs at this time, but EPA does not have information as to which permittees are reporting electronically, and therefore has made the simplifying assumption that all permittees are affected.

There are some differences in the costs to different permittees, based on the activities they are engaged in, and these differences have been included in the EA. All permittees will need to register with CDX. All permittees reporting anything other than NOIs will also need to have a CROMERR service agreement. Permittees that are required to submit DMRs will need DMR training. The EA assumes the training will be conducted by webinar. The EA estimates implementation costs for individual permittees of $258 or less.

p. Reporting During the Transition Period

As described in Section IV, each state, tribe, and territory, for each report or NPDES data group, will be evaluated against several criteria to determine whether its permittees will be required to electronically submit their reports to the authorized program or to EPA directly. If permittees are required to begin reporting directly to EPA, the EA assumes that they will also be required to continue hard-copy reporting to the state, tribe, or territory as stipulated in their NPDES permit. For that reason, the EA estimates the additional effort required by the affected permittees to create the second submittal at $105 or less per type of submittal. The EA uses the implementation schedule to estimate when the states, tribes, and territories will complete their own conversion to electronic reporting and the permittees will be released from reporting directly to EPA.

q. State, Tribe, and Territory Costs for Statutory or Regulatory Revisions

The EA does not attempt to estimate the costs the states, tribes, and territories will incur to revise their statutes or regulations to implement the changes required by this proposed rule.

C. Summary of Costs and Savings

The following tables summarize the EA cost and savings findings using the 3% (Table VII–2) and 7% (Table VII–3) discount rates as required by EPA's EA guidance. The entire EA uses 2012 dollars.

Each table is followed by a graph showing the annual costs and savings in bar form, and the cumulative costs and savings in line form. The point at which the two lines cross, sometimes referred to as the breakeven, is the point at which cumulative savings exceed cumulative costs.

There are both qualitative and quantitative benefits associated with this proposed rule. EPA has estimated some of the benefits of this proposed rule by performing calculations based on: The reporting universe; reporting frequencies and required data; changes in who reports the data; systems and infrastructure changes to make the reporting possible; and the schedule for implementation. Using a 3% discount rate, and 2012 dollars, the annual total net benefits associated with reduced paperwork and management of information are approximately $29 million, with 97% of those savings going to the states, tribes, and territories, due to approximately a 25% decrease in the amount of information they will be required to enter into data systems.

In this section of the preamble, EPA described the qualitative benefits such as improved compliance, reduced pollution, allowing for better government and public decision making but was unable to monetize these benefits,

The cost of implementing the proposed rule in the first three years after the effective date is approximately $51.0 million. The cost is estimated to drop to $2.9 million per year after that time period, when all regulated facilities will be converted to electronic reporting. However, two years after rule promulgation, annual savings greatly outweigh annual costs, by approximately $29 million per year.

Also, the threshold for a finding of economic significance is an economic impact, either costs or savings, of $100 million or more annually. The economic analysis for this rule estimates the largest annual net cost to be $25.2 million one year after the effective date

of the rule, and $30.1 million in net savings three years after the effective date of the rule; therefore, this proposed rule is not considered economically significant per Executive Order 12866.

Table VII-2. Ten-Year Projected Costs and Savings - 3% Discount Rate

Costs				
Year	EPA Headquarters	EPA Regions	States	Permittee
0	$4,440,000	$0	$0	$0
1	$920,000	$240,000	$20,330,000	$17,580,000
2	$880,000	$330,000	$2,790,000	$120,000
3	$850,000	$290,000	$1,890,000	$400,000
4	$820,000	$280,000	$1,830,000	$0
5	$800,000	$270,000	$1,780,000	$0
6	$780,000	$260,000	$1,730,000	$0
7	$750,000	$260,000	$1,680,000	$0
8	$730,000	$250,000	$1,630,000	$0
9	$710,000	$240,000	$1,580,000	$0
10	$690,000	$230,000	$1,530,000	$0

Cost Savings				
Year	EPA Headquarters	EPA Regions	States	Permittee
0	$ -	$ -	$ -	$ -
1	$ -	$ (740,000)	$ (12,830,000)	$ (320,000)
2	$ -	$ (800,000)	$ (31,660,000)	$ (1,290,000)
3	$ -	$ (810,000)	$ (31,490,000)	$ (1,250,000)
4	$ -	$ (780,000)	$ (30,570,000)	$ (1,210,000)
5	$ -	$ (760,000)	$ (29,680,000)	$ (1,180,000)
6	$ -	$ (740,000)	$ (28,820,000)	$ (1,140,000)
7	$ -	$ (720,000)	$ (27,980,000)	$ (1,110,000)
8	$ -	$ (700,000)	$ (27,170,000)	$ (1,080,000)
9	$ -	$ (680,000)	$ (26,370,000)	$ (1,050,000)
10	$ -	$ (660,000)	$ (25,610,000)	$ (1,020,000)

Graph VII-1. – Cost and Savings with Cumulative Breakeven - 3% Discount Rate

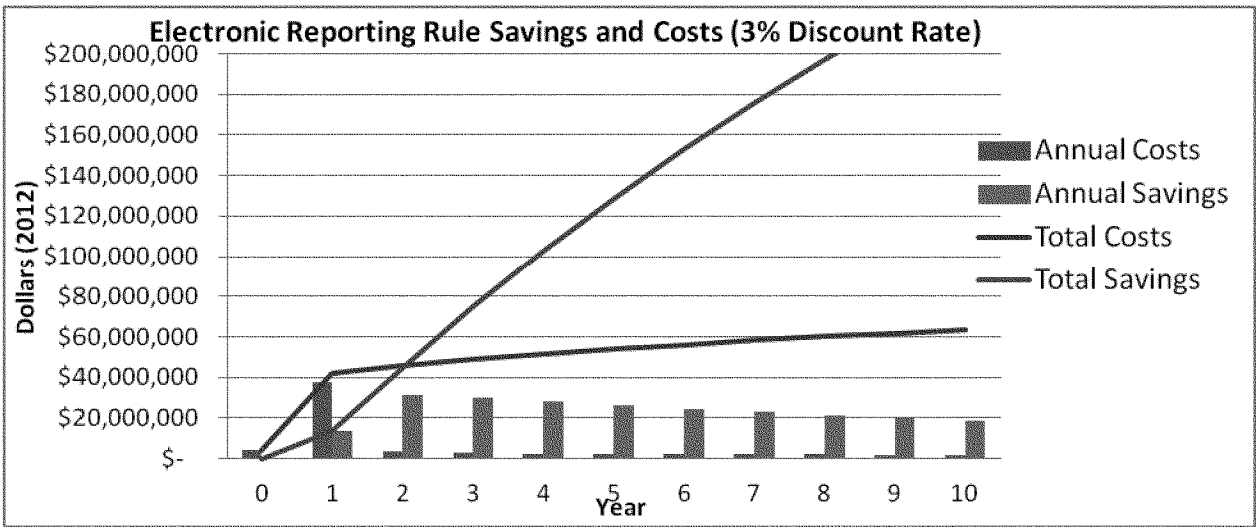
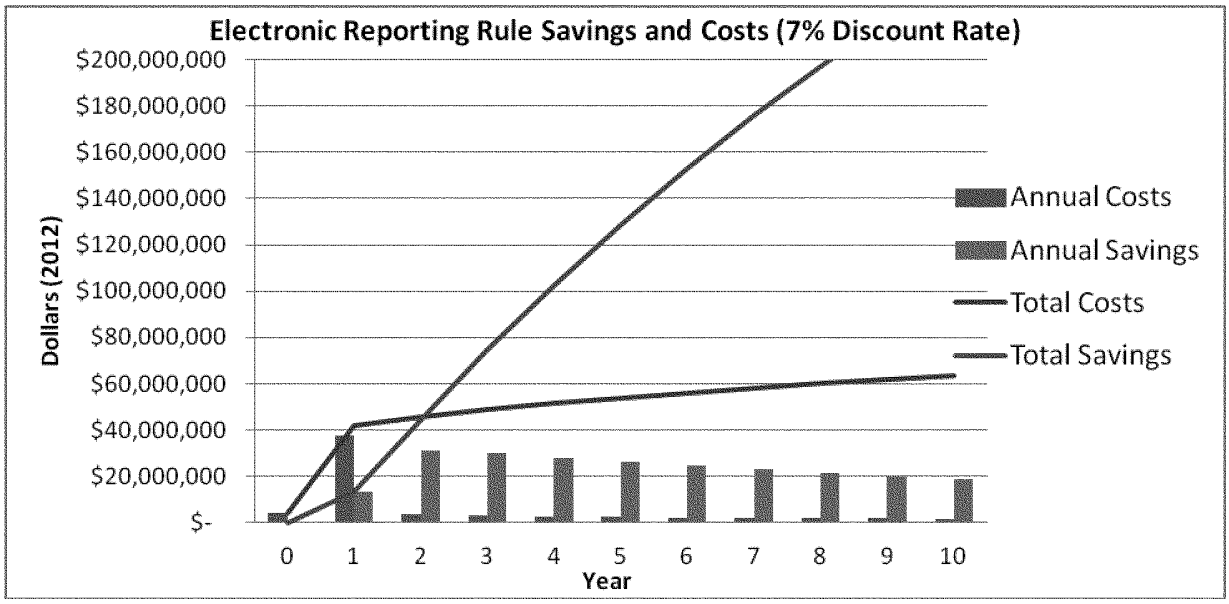


Table VII-3. Ten-Year Projected Costs and Savings - 7% Discount Rate

Costs				
Year	EPA Headquarters	EPA Regions	States	Permittee
0	$4,440,000	$0	$0	$0
1	$890,000	$240,000	$19,570,000	$16,920,000
2	$820,000	$300,000	$2,590,000	$110,000
3	$760,000	$260,000	$1,680,000	$400,000
4	$710,000	$240,000	$1,570,000	$0
5	$660,000	$220,000	$1,470,000	$0
6	$620,000	$210,000	$1,370,000	$0
7	$580,000	$200,000	$1,280,000	$0
8	$540,000	$180,000	$1,200,000	$0
9	$500,000	$170,000	$1,120,000	$0
10	$470,000	$160,000	$1,050,000	$0

Cost Savings				
Year	EPA Headquarters	EPA Regions	States	Permittee
0	$ -	$ -	$ -	$ -
1	$ -	$ (710,000)	$ (12,350,000)	$ (310,000)
2	$ -	$ (740,000)	$ (29,340,000)	$ (1,190,000)
3	$ -	$ (720,000)	$ (28,090,000)	$ (1,110,000)
4	$ -	$ (670,000)	$ (26,250,000)	$ (1,040,000)
5	$ -	$ (630,000)	$ (24,540,000)	$ (970,000)
6	$ -	$ (590,000)	$ (22,930,000)	$ (910,000)
7	$ -	$ (550,000)	$ (21,430,000)	$ (850,000)
8	$ -	$ (510,000)	$ (20,030,000)	$ (790,000)
9	$ -	$ (480,000)	$ (18,720,000)	$ (740,000)
10	$ -	$ (450,000)	$ (17,490,000)	$ (690,000)

Graph VII-2. – Cost and Savings with Cumulative Breakeven - 7% Discount Rate



VIII. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

Under Executive Order (EO) 12866 (58 FR 51735, October 4, 1993), this action is a ''significant regulatory action,'' due to novel legal or policy issues. Accordingly, EPA submitted this action to the Office of Management and Budget (OMB) for review under Executive Order 12866 and 13563 (76 FR 3821, January 21, 2011) and any changes made in response to OMB's recommendations are documented in the docket for this action.

In addition, EPA prepared a detailed analysis of the potential costs, savings, and benefits of this action. That analysis, the ''Economic Analysis of the NPDES Electronic Reporting Proposed Rule,'' can be found in the EPA docket, and is summarized in Section VII.

B. Paperwork Reduction Act

The information collection requirements in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB) under the *Paperwork Reduction Act,* 44 U.S.C. 3501 *et seq.* The Information Collection Request (ICR) document prepared by EPA has been assigned EPA ICR number 2468.01.

EPA is proposing this regulation to better utilize current technology to ensure that facility-specific information under the Clean Water Act's (CWA) National Pollutant Discharge Elimination System (NPDES) program is submitted to EPA, states, tribes, and territories on a nationally timely, consistent, accurate, and complete basis for national program management, oversight, and transparency. This regulation would require that most of this NPDES information be submitted electronically by the regulated facilities; this information will be supplemented by required information regarding NPDES implementation activities by EPA, states, tribes, and territories authorized to implement the NPDES program.

The projected burden and cost of the regulation are summarized in Table VIII.1. Note that, consistent with the Information Collection Request (ICR), these estimates reflect the net burden and cost to regulated facilities and states, tribes, and territories over the first three years following promulgation of the rule. Although the proposed rule will result in long-term net burden reduction and savings, the burden [defined at 5 CFR 1320.3(b)] and cost associated with initial investment for electronic reporting to EPA for regulated facilities, training, one-time provision of facility information to EPA, data reconciliation, and data entry for states, tribes, and territories will initially outweigh burden reduction and cost savings in the first three years. Burden is defined at 5 CFR 1320.3(b).

TABLE VIII.1—PROJECTED BURDEN AND COST OVER THE FIRST THREE YEARS OF THE PROPOSED RULE

Unit of analysis	Affected entity	
	Regulated facilities	States, tribes, and territories
Average Annual Number of Respondents (# of affected entities) [1]	233,166	47
Average Annual Number of Responses (# of Permits for which entity must submit information × annual frequency of response)	187,114	1,069,905
Frequency of Response (range)	1–36	1–36
Total Burden (hours)	108,201	−298,493
Total Cost	$6,249,803	−$17,758,888
Average Annual Burden per Respondent	0.46 hrs	−6,351 hrs
Average Annual Burden per Response	0.58 hrs	−0.28 hrs
Average Annual Cost per Respondent	$26.80	−$377,848
Average Annual Cost per Response	$33.40	−$16.60

[1] The average annual number of regulated facility respondents is based on the following: In the first year regulated facilities must check the EPA website, and some may incur savings associated with paper mailings. In the second year, some regulated facilities must dual report to EPA and some may incur savings associated with paper mailings. In the third year, fewer regulated facilities must dual report to EPA and a greater number incur savings associated with paper mailings.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9.

To comment on the Agency's need for this information, the accuracy of the provided burden estimates and any suggested methods for minimizing respondent burden, EPA has established a public docket for this rule, which includes this ICR, under Docket ID number EPA–HQ–OECA–2009–0274. Submit any comments related to the ICR to EPA and OMB. See **ADDRESSES** section at the beginning of this notice for where to submit comments to EPA. Send comments to OMB at the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, Attention: Desk Office for EPA. Since OMB is required to make a decision concerning the ICR between 30 and 60 days after July 30, 2013, a comment to OMB is best assured of having its full effect if OMB receives it by August 29, 2013. The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's rule on small entities, a small entity is defined as: (1) A small business as defined by the Small Business Administration's (SBA's) regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is the government of a city, county, town, school districts, or special districts with a population of less than 50,000 people; or (3) a small organization that is any ''not-for-profit enterprise which is

independently owned and operated and is not dominant in its field.'' Note that under the RFA definition, states and tribal governments are not considered small governmental jurisdictions. For the detailed analysis of small entity impacts see Chapter 5 of the following document in the rulemaking docket, ''Economic Analysis of the National Pollutant Discharge Elimination System (NPDES) Electronic Reporting Proposed Rule,'' (see DCN 0040).

After considering the economic impacts of today's proposed rule on small entities, I certify that this action would not have a significant economic impact on a substantial number of small entities. The small entities directly regulated by this proposed rule are small businesses (e.g., industrial sectors, electricity generating facilities, and agricultural sectors) and small governmental jurisdictions (e.g., POTWs operated by municipalities). We have determined that 108,036 small entities (100 percent of the small entities considered in this analysis) will experience an impact of less than 1 percent of revenues.

Note that fewer facilities are considered in the small entity analysis than were estimated as the affected universe for the proposed rule (see Chapter Two of the Economic Analysis). Due to the magnitude and diversity of facilities and sectors affected by this rule, it was not possible to conduct a detailed analysis of parent entity-specific impacts. Because small entity status is based on industrial sector, the small entity analysis required data sources where industry sector (NAICS codes) of each facility could be identified. Although not a complete inventory of all potentially affected facilities, the universe of facilities currently in ICIS–NPDES and PCS was used. The assumption is made that facilities affected by the proposed rule but not currently in ICIS–NPDES and PCS would experience small entity impacts similar to the facilities currently in ICIS–NPDES and PCS.

Although this proposed rule, as currently drafted and subject to public comment, will not have a significant economic impact on a substantial number of small entities, EPA nonetheless has tried to reduce the impact of this rule on small entities. In fact, this rule creates annual savings for small entity analyses through elimination of mailing and postage costs.

We continue to be interested in the potential impacts of the proposed rule on small entities and welcome comments on issues related to such impacts.

D. Unfunded Mandates Reform Act

This proposed rule does not contain a Federal mandate that may result in expenditures of $100 million or more for state, local, and tribal governments, in the aggregate, or the private sector in any one year. In order to determine the burden on states, tribes, and territories, the workgroup conducted an economic analysis of what the cost may be. The analysis examined implementation using various options including the potential burden to state, tribal, and territorial governments. Preliminary indications suggest that the rule would not only cost states, tribes, territories, and local governments well below the threshold of $100 million, it will actually result in cost savings over time. Thus, this proposed rule is not subject to the requirements of Sections 202 or 205 of UMRA.

This proposed rule is also not subject to the requirements Section 203 of UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments. Although this proposed rule will impose electronic reporting requirements on small governments such as municipalities as well as tribes, EPA does not expect these impacts to be substantial or sufficiently unique to meet the UMRA standards. According to EPA's Interim Small Government Agency Plan, actions have a significant impact if the cost is above $100 million. As stated above, EPA does not expect this proposed rule to exceed that threshold. EPA guidance states that an action could uniquely affect small governments if it disproportionately affects small governments, requires the hiring of experts, requires sophisticated or expensive equipment, or requires offsite training. Preliminary small entity screening analysis for this proposed rule indicates that the cost to any of these entities, and additional requirements, will not exceed 1 percent of total costs. Additionally, although some computer access would be needed to comply with this rule unless a waiver is obtained, this proposed rule will not require purchase of sophisticated or expensive equipment. Furthermore, the proposed rule will not require significant offsite training; training associated with the proposed rule will be offered on-line by EPA rather than offsite.

E. Executive Order 13132: Federalism

Under section 6(b) of Executive Order 13132, EPA may not issue an action that has federalism implications, that impose substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by state and local governments, or EPA consults with state and local officials early in the process of developing the proposed action. In addition, under section 6(c) of Executive Order 13132, EPA may not issue an action that has federalism implications and that preempts state law, unless the Agency consults with state and local officials early in the process of developing the proposed action.

EPA has concluded that this action may have federalism implications because it will impose electronic reporting requirements on states to provide certain NPDES information to EPA. However, because the largest annual impact on states is $12.0 million (occurring within the first year after the effective date), this action will not exceed the threshold of $25 million per year annually, nor will it preempt state law. Thus, the requirements of Sections 6(b) and 6(c) of Executive Order 13132 do not apply to this action.

Consistent with EPA policy, EPA nonetheless consulted with state and local officials [74] and representatives of state and local governments [75] early in the process of developing the proposed action to permit them to have meaningful and timely input into its development. As described in Section VI, EPA provided significant opportunities for such consultation in public meetings, a series of webinars, a state working group, and in a meeting on September 15, 2010 specifically linked to notifications and consultations required under this Executive Order. This meeting was attended by 11 state and local government officials and organizations. EPA received useful feedback in these meetings, with support for the concept of electronic reporting, comments on the feasibility of

[74] **Note:** ''State and local officials'' are defined narrowly under E.O. 13132 as ''elected officials of State and local governments or their representative national organizations.'' For purposes of E.O. 13132, OMB defines representative national organizations as: National Governors Association, National Conference of State Legislatures, U.S. Conference of Mayors, National League of Cities, Council of State Governments, International City/County Management Association, National Association of Counties, County Executives of America, and National Association of Towns and Townships. As a policy matter, EPA also includes the Environmental Council of the States in this list. As noted in the Agency Guidance, for actions that have federalism implications, but do not impose substantial direct compliance costs or preempt State or local law, at a minimum you should consult with each of these organizations.

[75] Representatives of State and local governments'' include non-elected officials of State and local governments and any representative national organizations not listed in the previous footnote.

various implementation options, and interest in developing details of how the rule would be implemented.

In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and state and local governments, EPA specifically solicits comment on this proposed rule from state and local officials. EPA will continue to consult with state and local officials throughout the process of developing the proposed and final action to permit them to have meaningful and timely input into its development. In addition to stakeholder outreach, EPA will contact elected representatives as well as appropriate organizations to ensure compliance with Executive Order 13132.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Subject to Executive Order 13175 (65 FR 67249, November 9, 2000), EPA may not impose requirements not required by statute unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by tribal governments, or EPA consults with tribal officials early in the process of developing the proposed regulation and develops a Tribal Summary Impact Statement (TSIS).

EPA has concluded that this action may have tribal implications. However, it will neither impose substantial direct compliance costs on tribal governments nor will it preempt tribal law. Although no tribes have yet received approval from EPA to implement an authorized NPDES program, this proposed rule will impose electronic reporting requirements on tribal facilities and on facilities operating on tribal lands.

EPA consulted with tribal representatives in developing this rule via conference calls and webinars with the National Tribal Caucus and National Tribal Water Counsel in November 2010. For additional information, see Section VI. No concerns were raised during those consultations.

In addition, EPA mailed information to 563 tribes regarding an opportunity to participate in two additional tribal outreach efforts in December 2010. Again, during these conference calls, no concerns were raised by participants during those consultations.

EPA specifically solicits additional comment on this proposed action from tribal officials.

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

EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under Section 5–501 of the executive order has the potential to influence the regulation. This action is not subject to Executive Order 13045 because it does not establish an environmental standard intended to mitigate health or safety risks.

H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

This action is not a ''significant energy action'' as defined in Executive Order 13211 (66 FR 28355, May 22, 2001) because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy, and it is not a significant energy action.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (''NTTAA''), Public Law 104–113, 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.,* materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This proposed rulemaking involves environmental monitoring or measurement. Consistent with the Agency's Performance Based Measurement System (''PBMS''), EPA proposes not to require the use of specific, prescribed analytic methods. Rather, the Agency plans to allow the use of any method that meets the prescribed performance criteria. The PBMS approach is intended to be more flexible and cost-effective for the regulated community; it is also intended to encourage innovation in analytical technology and improved data quality. EPA is not precluding the use of any method, whether it constitutes a voluntary consensus standard or not, as long as it meets the performance criteria specified.

The following are data standards that EPA recommends for use in this regulation: *Enforcement and Compliance Data Standard, Standard No.: EX000026.2, July 30, 2008.* This data standard should be used in this regulation because it identifies and defines the major areas of enforcement and compliance information that could be used for the exchange of data among environmental agencies and other entities. The purpose of the standard is to provide a common lexicon, so that information about functionally similar activities and/or instruments can be stored and to provide and receive data in a clearly defined and uniform way.

EPA proposes to use the following data standards which were developed by the Exchange Network Leadership Council (ENLC), which governs the National Environmental Information Exchange Network (NEIEN). The ENLC identifies, prioritizes, and pursues the creation of data standards for those areas where information exchange standards will provide the most value in achieving environmental results. The ENLC involves tribes and tribal nations, state, and federal agencies in the development of the standards. More information about ENLC is available at *www.exchangenetwork.net.*

Permitting Information Data Standard, Standard No.: EX000021.2, January 6, 2006. This data standard should be used in this regulation because it specifies the key data groupings necessary for the consistent identification of information pertaining to permits of interest to environmental information exchange partners. This data standard provides a minimum set of data, which need to be reported for permitting information such as permit name, number, type, organization or facility name, and affiliation type.

Facility Site Identification Data Standard, Standard No.: EX000020.2, January 6, 2006. The purpose of this data standard is to identify a facility of environmental interest. This data standard should be used in this regulation because it provides for the unique identification of facilities regulated or monitored by EPA, states, tribes, and territories. Each facility is assigned a unique factory identification number, which identifies information for the facility specified. This standard provides and describes data groupings that are used to exchange facility site identification data and information. This standard helps EPA, states, tribes, and territories integrate and share facility information across multiple information systems, programs, and governments.

Contact Information Data Standard, Standard No.: EX000019.2, January 6, 2006. This data standard should be used in this regulation because it provides information regarding the source of contact. This standard offers data groupings that are used to describe a point of contact, address, and communication information. For example, the data grouping ''Point of Contact'' subdivides to lower levels such as individual, affiliation, and organization. These intermediate data groupings are further defined at the elemental levels with Name, Title, Code, and Prefix.

Representation of Date and Time Data Standard, Standard No.: EX000013.1, January 6, 2006. This data standard should be used in this regulation because it provides and describes data groupings that are used for exchange of Date and Time data and information. The standard provides information on the high level, intermediate, and elemental representation of date and time data groupings.

Latitude/Longitude Data Standard, Standard No.: EX000017.2, January 6, 2006. This data standard should be used in this regulation because it establishes the requirements for documenting latitude and longitude coordinates and related method, accuracy, and description data for all places used in the data exchange transaction. Places include facilities, sites, monitoring stations, observations points, and other regulated or tracked features. This standard describes data and data groupings that are used to exchange latitude and longitude data and information. The purpose of the standard is to provide a common set of data to use for recording horizontal and vertical coordinates and associated metadata that define a point on the earth.

SIC/NAICS Data Standard, Standard No.: EX000022.2, January 6, 2006. This data standard should be used in this regulation because it provides a common set of data groupings to specify a way to classify business activities, including industry classifications, product classifications, and product codes. This data standard provides information on business activity according to the Standard Industrial Classification (SIC) and North American Industrial Classification System (NAICS).

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order (EO) 12898 [59 FR 7629 (Feb. 16, 1994)] establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

EPA has determined that this proposed rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not affect the level of protection provided to human health or the environment. This proposed rule offers substantial environmental justice benefits. As described in the context of non-monetary benefits, discussed in Section VII.A and described below, the proposed rule would significantly increase transparency and access to crucial information that is relevant to the protection of the health and environment of minority, low income, and tribal populations.

Pollution sources addressed by the NPDES electronic reporting rule may release disease-causing pathogens, nutrients, or other contaminants that threaten public health, leading to public advisories against fishing and swimming. Disadvantaged and underserved communities are likely to suffer a wide range of environmental burdens based on their differential proximity and exposure to environmental hazards from these pollution sources. Analyzing cumulative effects on a community from multiple stressors allows a more realistic evaluation of a community's risk to pollutants. For example, medical professionals can improve their capacity to identify the cause of acute and chronic disease symptoms through awareness of environmental exposures, thereby improving diagnosis, treatment and prevention. Improved access to NDPES data on releases, both permitted and unpermitted, would thus help to improve the health of minority, low-income, and tribal populations.

The proposed rule will also support meaningful participation by potentially impacted community members in regulatory proceedings, including permitting and compliance, designed to improve the ability of EPA, states, tribes, and territories to protect and preserve water quality. Regarding permitting, electronic notice of intent (eNOI) will provide minority, low-income and tribal populations with information in a timely manner to assess the need for and mechanisms to seek public hearings and submit comments on NPDES permits proposed in their community. It will also facilitate their understanding of multiple NPDES discharges into the same water body which may affect permit limits. Regarding compliance, electronic discharge monitoring reports (eDMRs) will enable minority, low-income and tribal populations to determine whether permit limits have been violated and the length of time of such violations. In turn, this information can help these populations pursue appropriate recourse with regulatory agencies.

Ultimately, increasing the availability and transparency of information resulting from this rule will enable overburdened communities faced with these water pollution issues to be better informed to engage in decision-making associated with the regulation of sources, and to take action to reduce risk.

Although computer access to such information may be problematic in some situations, the rule will ensure that the information will be publicly available on-line and more accessible than it was in the past, when the information was only submitted in hard-copy form; this information would also be available through Freedom of Information Act (FOIA) requests.

List of Subjects

40 CFR Part 122

Administrative practice and procedure, Confidential business information, Hazardous substances, Reporting and recordkeeping requirements, Water pollution control.

40 CFR Part 123

Administrative practice and procedure, Confidential business information, Hazardous substances, Indians-lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control.

40 CFR Part 127

Administrative practice and procedure, Electronic reporting requirements, Water pollution control.

40 CFR Part 403

Administrative practice and procedure, Compliance monitoring, Enforcement program and activities, Reporting and recordkeeping requirements, Water pollution control.

40 CFR Part 501

Administrative practice and procedure, Indians-lands, Intergovernmental relations, Penalties,

Reporting and recordkeeping requirements, Sewage disposal.

40 CFR Part 503

Reporting and recordkeeping requirements, Sewage disposal.

Dated: July 15, 2013.

Bob Perciasepe,

Acting Administrator.

For the reasons cited in the preamble, title 40, chapter I is proposed to be amended as follows:

PART 122—EPA ADMINISTERED PERMIT PROGRAMS: THE NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM

■ 1. The authority citation for part 122 continues to read as follows:

Authority: The Clean Water Act, 33 U.S.C. 1251 *et seq.*

■ 2. Amend § 122.22 by adding paragraph (e) to read as follows:

§ 122.22 Signatories to permit applications and reports (applicable to State programs, see § 123.25).

* * * * *

(e) *Electronic reporting.* If documents described in paragraph (a) or (b) of this section are submitted electronically by or on behalf of the NPDES-regulated facility, any person providing the electronic signature for such documents shall meet all relevant requirements of this section, and shall ensure that all of the relevant requirements of 40 CFR part 3 (Cross-Media Electronic Reporting) and 40 CFR part 127 (Electronic Reporting Requirements for the NPDES Program) are met for that submission.

■ 3. Amend § 122.26 by:

■ a. Revising paragraph (b)(15)(i)(A);

■ b. Adding paragraph (b)(15)(i)(C); and

■ c. Revising paragraph (g)(1)(iii).

The revised text reads as follows:

§ 122.26 Storm water discharges (applicable to State NPDES programs, see § 123.25).

* * * * *

(b) * * *

(15) * * *

(i) * * *

(A) The value of the rainfall erosivity factor (''R'' in the Revised Universal Soil Loss Equation) is less than five during the period of construction activity. The rainfall erosivity factor is determined in accordance with Chapter 2 of *Agriculture Handbook Number 703, Predicting Soil Erosion by Water: A Guide to Conservation Planning With the Revised Universal Soil Loss Equation (RUSLE),* pages 21–64, dated January 1997. (This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be inspected at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.* A copy may also be inspected at EPA's Water Docket, 1200 Pennsylvania Ave. NW. Washington, DC 20460). An operator shall certify to the Director that the construction activity will take place during a period when the value of the rainfall erosivity factor is less than five; or

* * * * *

(C) For all certifications submitted in compliance with paragraphs (b)(15)(i)(A) and (b)(15)(i)(B) of this section after [TWO YEARS AFTER THE EFFECTIVE DATE OF 40 CFR PART 127], or if required by the applicable POTW permit on or before [TWO YEARS AFTER THE EFFECTIVE DATE OF 40 CFR PART 127], all certifications submitted in compliance with this section shall be submitted electronically by the owner, operator, or their designated representative, in compliance with 40 CFR part 3, § 122.22, and 40 CFR part 127, as well as with any additional requirements imposed by the Director.

* * * * *

(g) * * *

(1) * * *

(iii) Submit the signed certification to the NPDES permitting authority once every five years. For all certifications submitted after [TWO YEARS AFTER THE EFFECTIVE DATE OF 40 CFR PART 127], or if required by the applicable POTW permit on or before [TWO YEARS AFTER THE EFFECTIVE DATE OF 40 CFR part 127], all new and renewed certifications submitted in compliance with this section shall be submitted electronically by the owner, operator, or their designated representative, in compliance with 40 CFR part 3, § 122.22, and 40 CFR part 127, as well as with any additional requirements imposed by the Director.

* * * * *

4. Amend § 122.28 by revising paragraphs (b)(2)(i) and (ii) to read as follows:

§ 122.28 General permits (applicable to State NPDES programs, see § 123.25).

* * * * *

(b) * * *

(2) * * *

(i) Except as provided in paragraphs (b)(2)(v) and (b)(2)(vi) of this section, dischargers (or treatment works treating domestic sewage) seeking coverage under a general permit shall submit to the Director either a written or electronic notice of intent to be covered by the general permit. For all notices of intent submitted to the Director of an EPA-administered NPDES program after [one year after the effective date of 40 CFR Part 127], or if required by the applicable general permit on or before [one year after the effective date of 40 CFR Part 127], all new and renewed notices of intent submitted in compliance with this section shall be submitted electronically by the owner, operator, or their designated representative, in compliance with 40 CFR Part 3, § 122.22, and 40 CFR Part 127, as well as with any additional requirements imposed by the Director. For all notices of intent submitted to the Director of an NPDES-authorized program (excluding EPA-administered NPDES programs) after [TWO YEARS AFTER THE EFFECTIVE DATE OF 40 CFR PART 127], or if required by the applicable general permit on or before [TWO YEARS AFTER THE EFFECTIVE DATE OF 40 CFR PART 127], all new and renewed notices of intent submitted in compliance with this section shall be submitted electronically by the owner, operator, or their designated representative, in compliance with 40 CFR Part 3, § 122.22, and 40 CFR Part 127, as well as with any additional requirements imposed by the Director.

(ii) The contents of the notice of intent shall be specified in the general permit and shall require the submission of information necessary for adequate program implementation, including at a minimum, the legal name and address of the owner or operator, the facility name and address, type of facility or discharges, and the receiving stream(s). General permits for stormwater discharges associated with industrial activity from inactive mining, inactive oil and gas operations, or inactive landfills occurring on Federal lands where an operator cannot be identified may contain alternative notice of intent requirements. All notices of intent shall be signed in accordance with § 122.22. Notices of intent for coverage under a general permit for concentrated animal feeding operations must include the information specified in § 122.21(i)(1) and the applicable information in Appendix A to 40 CFR Part 127, including a topographic map.

* * * * *

■ 5. Amend § 122.34 by revising paragraph (g)(3) introductory text to read as follows:

§ 122.34 As an operator of a regulated small MS4, what will my NPDES MS4 storm water permit require?

* * * * *

(g) * * *

* * * * *

(3) *Reporting.* Unless you are relying on another entity to satisfy your NPDES permit obligations under § 122.35(a), you must submit annual reports to the NPDES permitting authority for your first permit term. For subsequent permit terms, you must submit reports in year two and four unless the NPDES permitting authority requires more frequent reports. For all annual reports submitted after [TWO YEARS AFTER THE EFFECTIVE DATE OF 40 CFR PART 127], or if required by the applicable permit on or before [TWO YEARS AFTER THE EFFECTIVE DATE OF 40 CFR PART 127], all annual reports submitted in compliance with this section shall be submitted electronically by the owner, operator, or their designated representative, in compliance with 40 CFR Part 3, § 122.22, and 40 CFR Part 127, as well as with any additional requirements imposed by the Director. Your report must include:

* * * * *

■ 6. Amend § 122.41 by:

■ a. Revising paragraphs (l)(4)(i), (l)(6)(i), and (l)(7);

■ b. Adding paragraph (l)(9); and

■ c. Revising paragraph (m)(3).

The revisions and additions read as follows:

§ 122.41 Conditions applicable to all permits (applicable to State programs, see § 123.25).

* * * * *

(l) * * *

(4) * * *

(i) Monitoring results must be reported on a Discharge Monitoring Report (DMR) or forms provided or specified by the Director for reporting results of monitoring of sludge use or disposal practices. For all monitoring results submitted after [one year after the effective date of 40 CFR Part 127], or if required by the applicable permit on or before [one year after the effective date of 40 CFR Part 127], all monitoring results shall be submitted electronically by the owner, operator, or their designated representative, in compliance with 40 CFR Part 3, § 122.22, and 40 CFR Part 127, as well as with any additional requirements imposed by the Director.

* * * * *

(6) * * *

(i) The permittee shall report any noncompliance which may endanger health or the environment. Any information shall be provided orally within 24 hours from the time the permittee becomes aware of the circumstances. A written or electronic submission shall also be provided within 5 days of the time the permittee becomes aware of the circumstances. The written or electronic submission shall contain a description of the noncompliance (including, for discharge violations, the type, volume, and latitude and longitude of the discharge, and name of the waterbody most likely to receive the discharge) and its cause; the period of noncompliance, including exact dates and times (including the date and time of discovery, and the duration of the noncompliance event), and if the noncompliance has not been corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance. For noncompliance events related to combined sewer overflows, sanitary sewer overflows, or bypass events, these submissions shall identify the data described above (with the exception of time of discovery) as well as the type of event (combined sewer overflows, sanitary sewer overflows, or bypass events), discharge volumes untreated by the POTW's treatment works, and whether the noncompliance was related to dry or wet weather. All noncompliance events related to combined sewer overflows, sanitary sewer overflows, or bypass events occurring after [TWO YEARS AFTER THE EFFECTIVE DATE OF 40 CFR PART 127], or if required by the applicable permit on or before [TWO YEARS AFTER THE EFFECTIVE DATE OF 40 CFR PART 127], shall be reported electronically by the owner, operator, or their designated representative, in compliance with 40 CFR Part 3, § 122.22, and 40 CFR Part 127, and any additional requirements imposed by the Director.

* * * * *

(7) *Other noncompliance.* The permittee shall report all instances of noncompliance not reported under paragraphs (l)(4), (5), and (6) of this section, at the time monitoring reports are submitted. The reports shall contain the information listed in paragraph (l)(6) of this section. For noncompliance events related to combined sewer overflows, sanitary sewer overflows, or bypass events, these submissions shall contain the information described in paragraph (l)(6) of this section and the applicable required data in Appendix A to 40 CFR Part 127. All noncompliance events related to combined sewer overflows, sanitary sewer overflows, or bypass events occurring after [TWO YEARS AFTER THE EFFECTIVE DATE OF 40 CFR PART 127], or if required by the applicable permit on or before [TWO YEARS AFTER THE EFFECTIVE DATE OF 40 CFR PART 127], shall be reported electronically by the owner, operator, or their designated representative, in compliance with 40 CFR Part 3, § 122.22, and 40 CFR Part 127 and any additional requirements imposed by the Director.

* * * * *

(9) *Identification of the Initial Recipient for NPDES Electronic Reporting Data.* For an NPDES-regulated facility, the owner, operator, or their designated representative is required to electronically submit the required NPDES information (as specified in Appendix A to 40 CFR Part 127) to the appropriate initial recipient, as determined by EPA, and as defined in § 127.2(b). EPA shall identify and publish the initial recipient, as defined in § 127.2(b), and as designated in compliance with § 127.27(c), on an EPA Web site and in the **Federal Register**, by state and by NPDES data group [see § 127.2(c)]. EPA shall update this listing on its Web site and in the **Federal Register** when a state, tribe, or territory newly gains authorization status to implement an NPDES program and is also approved by EPA to be the initial recipient of NPDES electronic data submissions for that program.

* * * * *

(m) * * *

* * * * *

(3) *Notice*—(i) Anticipated bypass. If the permittee knows in advance of the need for a bypass, it shall submit prior notice, if possible at least ten days before the date of the bypass. All POTW anticipated bypass events occurring after [TWO YEARS AFTER THE EFFECTIVE DATE OF 40 CFR PART 127], or if required by the applicable permit on or before [TWO YEARS AFTER THE EFFECTIVE DATE OF 40 CFR PART 127], shall be reported electronically by the owner, operator, or their designated representative, in compliance with 40 CFR Part 3, § 122.22, and 40 CFR Part 127 and any additional requirements imposed by the Director.

(ii) *Unanticipated bypass.* The permittee shall submit notice of an unanticipated bypass as required in paragraph (l)(6) of this section (24-hour notice). All POTW unanticipated bypass events occurring after [TWO YEARS AFTER THE EFFECTIVE DATE OF 40 CFR PART 127], or if required by the applicable permit on or before [TWO YEARS AFTER THE EFFECTIVE DATE

OF 40 CFR PART 127], shall be reported electronically by the owner, operator, or their designated representative, in compliance with 40 CFR Part 3, § 122.22, and 40 CFR Part 127 and any additional requirements imposed by the Director.

* * * * *

■ 7. Amend § 122.42 by revising paragraphs (c) introductory text, (e)(4) introductory text, and (e)(4)(vi) to read as follows:

§ 122.42 Additional conditions applicable to specified categories of NPDES permits (applicable to State NPDES programs, see § 123.25).

* * * * *

(c) *Municipal separate storm sewer systems.* The operator of a large or medium municipal separate storm sewer system or a municipal separate storm sewer that has been designated by the Director under 40 CFR 122.26(a)(1)(v) of this part must submit an annual report by the anniversary of the date of the issuance of the permit for such system. All annual reports submitted after [TWO YEARS AFTER THE EFFECTIVE DATE OF 40 CFR PART 127], or if required by the applicable permit on or before [TWO YEARS AFTER THE EFFECTIVE DATE OF 40 CFR PART 127], shall be submitted electronically by the owner, operator, or their designated representative, in compliance with 40 CFR Part 3, § 122.22, and 40 CFR Part 127 and any additional requirements imposed by the Director. The report shall include:

* * * * *

(e) * * *

* * * * *

(4) *Annual reporting requirements for CAFOs.* The permittee must submit an annual report to the Director. All annual reports submitted after [TWO YEARS AFTER THE EFFECTIVE DATE OF 40 CFR PART 127], or if required by the applicable permit on or before [TWO YEARS AFTER THE EFFECTIVE DATE OF 40 CFR PART 127], shall be submitted electronically by the owner, operator, or their designated representative, in compliance with 40 CFR Part 3, § 122.22, and 40 CFR Part 127 and any additional requirements imposed by the Director. The annual report must include:

* * * * *

(vi) Summary of all manure, litter and process wastewater discharges from the production area that have occurred in the previous 12 months, including, for each discharge, the date of discovery, duration of discharge, and approximate volume; and

* * * * *

■ 8. Amend § 122.43 by revising paragraph (a) to read as follows:

§ 122.43 Establishing permit conditions (applicable to State programs, see § 123.25).

(a) In addition to conditions required in all permits (§§ 122.41 and 122.42), the Director shall establish conditions, as required on a case-by-case basis, to provide for and ensure compliance with all applicable requirements of CWA and regulations. These shall include conditions under §§ 122.46 (duration of permits), 122.47(a) (schedules of compliance), 122.48 (monitoring), electronic requirements of 40 CFR Part 3 (Cross-Media Electronic Reporting Regulation) and 40 CFR Part 127 (Electronic Reporting Requirements for the NPDES Program), and, for EPA permits only, 40 CFR 122.47(b) (alternates schedule of compliance) and § 122.49 (considerations under Federal law).

* * * * *

■ 9. Amend § 122.44 by revising paragraph (i)(2) to read as follows:

§ 122.44 Establishing limitations, standards, and other permit conditions (applicable to State NPDES programs, see § 123.25).

* * * * *

(i) * * *

(2) Except as provided in paragraphs (i)(4) and (i)(5) of this section, requirements to report monitoring results shall be established on a case-by-case basis with a frequency dependent on the nature and effect of the discharge, but in no case less than once a year. For sewage sludge use or disposal practices, requirements to monitor and report results shall be established on a case-by-case basis with a frequency dependent on the nature and effect of the sewage sludge use or disposal practice; minimally this shall be as specified in 40 CFR Part 503 (where applicable), but in no case less than once a year. All monitoring results submitted after [ONE YEAR AFTER THE EFFECTIVE DATE OF 40 CFR PART 127], or if required by the applicable permit on or before [ONE YEAR AFTER THE EFFECTIVE DATE OF 40 CFR PART 127], shall be submitted electronically by the owner, operator, or their designated representative, in compliance with 40 CFR Part 3, § 122.22, and 40 CFR Part 127 and any additional requirements imposed by the Director.

* * * * *

■ 10. Amend § 122.48 by revising paragraph (c) to read as follows:

§ 122.48 Requirements for recording and reporting of monitoring results (applicable to State programs, see § 123.25).

* * * * *

(c) Applicable reporting requirements based upon the impact of the regulated activity and as specified in 40 CFR Part 3 (Cross-Media Electronic Reporting Regulation), § 122.44, and 40 CFR Part 127 (Electronic Reporting Requirements for the NPDES Program). Reporting shall be no less frequent than specified in § 122.44.

■ 11. Amend § 122.63 by adding paragraph (f) to read as follows:

§ 122.63 Minor modifications of permits.

* * * * *

(f) Allow the incorporation of electronic reporting requirements (to replace paper reporting requirements) including those specified in 40 CFR Part 3 (Cross-Media Electronic Reporting Regulation) and 40 CFR Part 127 (Electronic Reporting Requirements for the NPDES Program).

* * * * *

■ 12. Amend § 122.64 by adding paragraph (c) to read as follows:

§ 122.64 Termination of permits (applicable to State programs, see § 123.25).

* * * * *

(c) Permittees that wish to terminate their permit shall submit a Notice of Termination (NOT) to their permitting authority. All NOTs submitted to the Director of an EPA-administered NPDES program after [ONE YEAR AFTER THE EFFECTIVE DATE OF 40 CFR PART 127], or if required by the applicable permit on or before [ONE YEAR AFTER THE EFFECTIVE DATE OF 40 CFR PART 127], shall be submitted electronically by the owner, operator, or their designated representative, in compliance with 40 CFR Part 3, § 122.22, and 40 CFR Part 127 and any additional requirements imposed by the Director. All NOTs submitted to the Director of an NPDES-authorized program (excluding EPA-administered NPDES programs) after [TWO YEARS AFTER THE EFFECTIVE DATE OF 40 CFR PART 127], or if required by the applicable permit on or before [TWO YEARS AFTER THE EFFECTIVE DATE OF 40 CFR PART 127], shall be submitted electronically by the owner, operator, or their designated representative, in compliance with 40 CFR Part 3, § 122.22, and 40 CFR Part 127 and any additional requirements imposed by the Director.

PART 123—STATE PROGRAM REQUIREMENTS

■ 13. The authority citation for part 123 continues to read as follows:

Authority: The Clean Water Act, 33 U.S.C. 1251 *et seq.*

■ 14. Amend § 123.22 by adding paragraph (g) to read as follows:

§ 123.22 Program description.

* * * * *

(g) A state, tribe, or territory that newly seeks to implement an NPDES program after [90 DAYS AFTER THE EFFECTIVE DATE FOR 40 CFR PART 127] shall identify in its application whether the state, tribe, or territory is requesting to be the initial recipient of electronic NPDES information from NPDES-regulated facilities for specific NPDES data groups (see 40 CFR 127.2(c) and 127.27). In this application, the state, tribe, or territory shall identify the specific NPDES data groups for which the state, tribe, or territory will be the initial recipient of electronic NPDES information from NPDES-regulated facilities and how the electronic data system of the state, tribe, or territory will be compliant with 40 CFR Part 3, § 123.26, and 40 CFR Part 127.

* * * * *

■ 15. Amend § 123.24 by revising paragraph (b)(3) to read as follows:

§ 123.24 Memorandum of Agreement with the Regional Administrator.

* * * * *

(b) * * *

* * * * *

(3) Provisions specifying the frequency and content of reports, documents and other information which the State is required to submit to EPA. The State shall allow EPA to routinely review State records, reports, and files relevant to the administration and enforcement of the approved program. State reports may be combined with grant reports where appropriate. These procedures shall also implement the requirements of §§ 123.41(a) and 123.43 and 40 CFR Part 127 (including the required data elements in Appendix A to 40 CFR Part 127).

* * * * *

■ 16. Amend § 123.25 by revising paragraph (a)(46) to read as follows:

§ 123.25 Requirements for permitting.

(a) * * *

* * * * *

(46) 40 CFR part 3 (Cross-Media Electronic Reporting Regulation) and 40 CFR part 127 (Electronic Reporting Requirements for the NPDES Program).

* * * * *

■ 17. Amend § 123.26 by:

■ a. Revising paragraphs (b) introductory text, (b)(1), (b)(2)(ii), (b)(2)(iii) and adding paragraph (b)(2)(iv);

■ b. Revising paragraph (e)(1);

■ c. Removing and reserving paragraph (e)(4); and

■ d. Adding paragraph (f).

The revised and added text reads as follows:

§ 123.26 Requirements for compliance evaluation programs.

* * * * *

(b) State programs shall have inspection and surveillance procedures to determine, independent of information supplied by regulated persons, compliance or noncompliance with applicable program requirements. The State shall implement and maintain:

(1) An automated, computerized system which is capable of identifying and tracking all facilities and activities subject to the State Director's authority and any instances of noncompliance with permit or other program requirements (e.g., identifying noncompliance with an automated, computerized program to compare permit limits to reported measurements). State programs shall maintain a management information system which supports the compliance evaluation activities of this part (e.g., source inventories; compliance determinations based upon discharge monitoring reports, other submitted reports, and determinations of noncompliance made from inspection or document reviews; and subsequent violation notices, enforcement actions, and penalties) and is compliant with 40 CFR part 3 (Cross-Media Electronic Reporting Regulation) and 40 CFR part 127 (Electronic Reporting Requirements for the NPDES program). State programs may use EPA's NPDES national data system for their automated, computerized system;

(2) * * *

* * * * *

(ii) Verify the accuracy of information submitted by permittees and other regulated persons in reporting forms and other forms supplying monitoring data;

(iii) Verify the adequacy of sampling, monitoring, and other methods used by permittees and other regulated persons to develop that information; and

(iv) Protect surface waters and public health.

* * * * *

(e) * * *

(1) Maintaining a comprehensive electronic inventory of all sources covered by NPDES permits and an electronic schedule of reports required to be submitted by permittees to the State agency;

* * * * *

(f) A state, tribe, or territory that is designated by EPA as an initial recipient of electronic NPDES information, as defined in § 127.2, from NPDES-regulated entities shall maintain this data and share all the required NPDES information with EPA through timely data transfers in compliance with all requirements of 40 CFR parts 3 and 127 (including the required data elements in Appendix A to 40 CFR part 127). Timely means that the authorized state, tribe, or territory submits these data transfers (see the data elements in Appendix A to 40 CFR part 127) to EPA within 30 days of when the state, tribe, or territory completed the activity or received a report submitted by a regulated entity. For example, the data regarding a state inspection of an NPDES-regulated entity that is completed on October 15th shall be submitted automatically to EPA no later than November 14th of that same year (e.g., 30 days after October 15th). EPA shall become the initial recipient of electronic NPDES information from NPDES-regulated entities if the state, tribe, or territory does not consistently maintain these timely data transfers or does not comply with 40 CFR parts 3 and 127. See 40 CFR 127.2(b) and 127.27 regarding the initial recipient.

■ 18. Amend § 123.41 by revising paragraph (a) to read as follows:

§ 123.41 Sharing of information.

(a) Any information obtained or used in the administration of a State program shall be available to EPA upon request without restriction. This includes the timely data transfers in compliance with all requirements of 40 CFR parts 3 and 127 (including the required data elements in Appendix A to 40 CFR part 127). If the information has been submitted to the State under a claim of confidentiality, the State must submit that claim to EPA when providing information under this section. Any information obtained from a State and subject to a claim of confidentiality will be treated in accordance with the regulations in 40 CFR part 2. If EPA obtains information from an authorized state NPDES program, which is not claimed to be confidential, EPA may make that information available to the public without further notice. Timely means that the authorized state, tribe, or territory submits these data transfers (see the data elements in Appendix A to 40 CFR part 127) to EPA within 30 days of when the state, tribe, or territory completed the activity or received a report submitted by a regulated entity. For example, the data regarding a state inspection of an NPDES-regulated entity that is completed on October 15th shall be submitted automatically to EPA no

later than November 14th of that same year (e.g., 30 days after October 15th). EPA shall become the initial recipient of electronic NPDES information from NPDES-regulated entities if the state, tribe, or territory does not consistently maintain these timely data transfers or does not comply with 40 CFR parts 3 and 127. See 40 CFR 127.2(b) and 127.27 regarding the initial recipient.

* * * * *

■ 19. Amend § 123.43 by revising paragraph (d) to read as follows:

§ 123.43 Transmission of information to EPA.

* * * * *

(d) Any State permit program shall keep such records and submit to the Administrator such information as the Administrator may reasonably require to ascertain whether the State program complies with the requirements of CWA or of this part. This includes the timely data transfers in compliance with all requirements of 40 CFR part 127 (including the required data elements in Appendix A to 40 CFR part 127).

* * * * *

■ 20. Revise § 123.45 to read as follows:

§ 123.45 Noncompliance and program reporting by the Director.

EPA shall prepare public (quarterly and annual) reports as set forth here from information that is required to be submitted by NPDES-regulated facilities and the State Director.

(a) *NPDES Non-Compliance Reports (NNCR)—Quarterly.* EPA shall produce an online report on a quarterly basis with the minimum content specified here. The Director shall electronically submit timely, accurate, and complete data to EPA that allows EPA to prepare these quarterly NNCRs.

(1) *Content.* The NNCR shall include the following information:

(i) A stratified list of NPDES-regulated entities in violation, including non-POTWs, POTWs, Federal permittees, major facilities, and nonmajor facilities, as well as a list of CWA point sources that did not obtain NPDES permits authorizing discharges of pollutants to waters of the United States.

(ii) For each identified NPDES point source in violation and with discharges of pollutants to waters of the United States:

(A) The name, location, and permit number or other identification number, if a permit does not exist.

(B) Information describing identified violation(s) that occurred in that quarter, including the date(s) on which violation(s) started and ended (if applicable). Where applicable, the information shall indicate the pipe, parameter, and the effluent limit(s) violated. Violations shall be classified as Category I and II as described in § 123.45(a)(2).

(C) The date(s) and type of formal enforcement and written informal enforcement action(s) taken by the Director to respond to violation(s), including any penalties assessed.

(D) The status of the violation(s) (e.g., corrected or continuing, and the date that the violation(s) was resolved), which can be reported by linking violations to specific enforcement actions, or tracking noncompliance end dates.

(E) Any optional details that may help explain the instance(s) of noncompliance as provided by the Director or EPA.

(F) All violations shall be reported in successive quarterly reports until the violation(s) is documented as being corrected (i.e., the regulated entity is no longer in violation). After a violation is reported as corrected in the NNCR, that particular violation will not continue to appear in subsequent quarterly reports, although it will appear in the relevant annual report.

(G) If the permittee or discharger is in compliance with an enforcement order, but has not yet achieved full compliance with permit conditions and/or regulations and has no new, additional violation(s), the compliance status shall be reported as ''resolved pending'' in the NNCR. The permittee/discharger will continue to be listed on the NNCR until the violation(s) is documented as being corrected.

(2) *Violation Classifications.* A violation shall be classified as ''Category I Noncompliance'' if one or more of the criteria set forth below are met. All other types of noncompliance that do not meet the criteria for Category I Noncompliance shall be classified as ''Category II Noncompliance.''

(i) *Reporting Violations.* These include failure to submit a complete, required report (e.g., final compliance schedule progress report, discharge monitoring report, annual report) within 30 days after the date established in a permit, administrative or judicial order, or regulation. In addition, these also include any failure to comply with the reporting requirements at 40 CFR 122.41(l)(6).

(ii) *Compliance Construction Violations.* These include failure to start construction, complete construction, or achieve final compliance within 90 days after the date established in a permit, administrative or judicial order, or regulation.

(iii) *Effluent Limits.* These include violations of interim or final effluent limits established in a permit, administrative or judicial enforcement order, or regulation that exceed the ''Criteria for Noncompliance Reporting in the NPDES Program'' in Appendix A to § 123.45.

(iv) *Compliance Schedule Violations.* These include violations of any requirement or condition in permits, or administrative or judicial enforcement orders, excluding reporting violations, compliance construction milestones and effluent limits.

(v) *Non-Numeric Effluent Limit Violations.* These include violations of non-numeric effluent limits (e.g., violations of narrative permit requirements or requirements to implement best management practices) that caused or could cause serious impacts on water quality. Examples of such serious impacts on water quality include, but are not limited to, discharges that may have caused or contributed to exceedances in water quality standards, fish kills, oil sheens, beach closings, fishing bans, restrictions on designated uses, and pass through or interference with the operations of a POTW (see § 403.3 of this chapter).

(vi) *Other Violations.* These include any violation or group of violations, which in the discretion of the Director or EPA, are considered to be of concern. These violations include repeat violations by a specific point source, geographic clusters of violations, corporations with violations at multiple facilities, or industrial sectors with identified patterns of violation that have a cumulative impact on water quality, but otherwise would not meet Category I criteria. EPA shall determine whether to issue policy or guidance to provide more specificity on identifying these types of violations and how to report them.

(3) EPA shall provide an easy-to-use interface to facilitate public access, use, and understanding of the NNCR, including the ability to sort violations by duration, severity, frequency, detection method (e.g., self-reported effluent, monitoring, inspection), flow and pollutant loadings, type of discharger, waterbody receiving the discharge, proximity to impaired waters, and category of violation (I or II). EPA shall exclude from public release any confidential business information or enforcement-sensitive information associated with the NNCR.

(b) *NPDES Noncompliance Reports—Annual Summary (Annual).* EPA shall prepare annual public reports that provide a summary of compliance monitoring and enforcement activities within each state, tribe, and territory, as well as summary information on

violations identified in the four quarterly NNCRs for that federal fiscal year. EPA shall provide these annual reports by no later than March 1st of the following year.

(1) *Facility Types Covered by Reports.* EPA shall produce, at a minimum, Annual Summary Reports for the following universes: individually-permitted NPDES-regulated entities; all other NPDES-regulated entities that are not individually permitted; Clean Water Act point sources that had unauthorized discharge(s) of pollutants to waters of the US; and a combined report that includes totals across all three reports above. Individually-permitted facilities are defined in this subsection as those permits that are unique to the permittee, that include permitted effluent limits, and require the submission of discharge monitoring reports.

(2) *Content of Reports.* Reports shall include applicable data for NPDES-regulated entities:

(i) The number of NPDES permittees;

(ii) The number inspected by on-site inspections;

(iii) The number reviewed in which permitted limits were compared to measured data to determine violations;

(iv) The number evaluated by other, off-site compliance monitoring activities;

(v) The number with any violations;

(vi) The number with Category I violations;

(vii) The number receiving paper or electronic written informal enforcement actions;

(viii) The total number receiving formal enforcement actions with a compliance schedule;

(ix) The total number receiving a penalty assessment;

(x) The total amount of penalties assessed; and

(xi) The number of permit modifications extending compliance deadlines more than one year.

(c) *Effective Dates.* The quarterly and annual reports, noncompliance definitions, and other requirements of this subpart shall be effective starting [THREE YEARS AFTER THE EFFECTIVE DATE OF 40 CFR PART 127].

(d) *Schedule for Producing NNCR Quarterly Information.* (1) The Director has until 45 days from the end of the calendar quarter to update or correct NPDES data submissions in EPA's data system for events that occurred within that calendar quarter covered by the NNCR.

(2) EPA shall publish the NNCR in electronic form within two months after the end date of the calendar quarter:

EPA SCHEDULE FOR QUARTERLY NNCR

Calendar quarter	EPA NNCR Publication date for calendar quarter
January, February, March	May 31.
April, May, June	August 31.
July, August, September	November 30.
October, November, and December.	February 28.

■ 21. Amend Subpart C by adding Appendix A to read as follows:

Appendix A to Subpart C—Criteria for Category I Noncompliance Reporting in the NPDES Program

This appendix describes the criteria for reporting Category I violations of NPDES permit effluent limits in the NPDES noncompliance report (NNCR) as specified under 40 CFR 123.45(a)(2)(C). Any violation of an NPDES permit is a violation of the Clean Water Act (CWA) for which the permittee is liable. As specified in 40 CFR 123.45(a)(2), there are two categories of noncompliance, and the table below indicates the thresholds for violations in Category I. An agency's decision as to what enforcement action, if any, should be taken in such cases, shall be based on an analysis of facts, legal requirements, policy, and guidance.

Violations of Permit Effluent Limits

The categorization of permit effluent limits depends upon the magnitude and/or frequency of the violation. Effluent violations shall be evaluated on a parameter-by-parameter and outfall-by-outfall basis. The criteria for reporting effluent violations are as follows:

a. Reporting Criteria for Category I Violations of Monthly Average Permit Limits—Magnitude and Frequency

Violations of monthly average effluent limits which exceed or equal the product of the Technical Review Criteria (TRC) times the effluent limit, and occur two months in a six-month period must be reported. TRCs are for two groups of pollutants.

Group I Pollutants—TRC = 1.4
Group II Pollutants—TRC = 1.2

b. Reporting Criteria for Chronic Violations of Monthly Average Limits

Chronic violations must be reported in the QNCR if the monthly average permit limits are exceeded any four months in a six-month period. These criteria apply to all Group I and Group II pollutants.

Group I Pollutants—TRC = 1.4

Oxygen Demand
- Biochemical Oxygen Demand
- Chemical Oxygen Demand
- Total Oxygen Demands
- Total Organic Carbon
- Other

Solids
- Total Suspended Solids (Residues)
- Total Dissolved Solids (Residues)
- Other

Nutrients
- Inorganic Phosphorus Compounds
- Inorganic Nitrogen Compounds
- Other

Detergents and Oils
- MBAS
- NTA
- Oil and Grease
- Other detergents or algicides

Minerals
- Calcium
- Chloride
- Fluoride
- Magnesium
- Sodium
- Potassium
- Sulfur
- Sulfate
- Total Alkalinity
- Total Hardness
- Other Minerals

Metals
- Aluminum
- Cobalt
- Iron
- Vanadium

Group II Pollutants—TRC = 1.2

Metals (all forms)
- Other metals not specifically listed under Group I

Inorganic
- Cyanide
- Total Residual Chlorine

Organics
- All organics are Group II except those specifically listed under Group I.

■ 22. Add a new part 127 to Title 40 to read as follows:

PART 127—NPDES PROGRAM ELECTRONIC REPORTING REQUIREMENTS

Subpart A—General

Sec.
127.1 Purpose and scope.
127.2 Definitions.

Subpart B—Electronic Reporting of NPDES Information From NPDES-regulated Facilities

127.11 Types of data to be reported electronically by NPDES permittees, facilities seeking coverage under NPDES general permits or submitting stormwater certifications or waivers, and industrial users located in cities without approved local pretreatment programs.
127.12 Signature and certification standards for electronic reporting.
127.13 Requirements regarding quality assurance and quality control.
127.14 Requirements regarding timeliness, accuracy, completeness, and national consistency.
127.15 Temporary exemptions from electronic reporting.
127.16 Time extensions for electronic reporting due to catastrophic unforeseen circumstances.
127.17 Implementation plan and effective date.

Subpart C—Responsibilities of EPA and States, Tribes, and Territories Authorized To Implement the NPDES Program

127.21 Types of data to be reported electronically to EPA by states, tribes, and territories.
127.22 Requirements regarding quality assurance and quality control.
127.23 Requirements regarding timeliness, accuracy, completeness, and national consistency.
127.24 Responsibilities regarding review of temporary exemption requests and one-time extension requests from NPDES-regulated facilities.
127.25 Time for states, tribes, and territories to revise existing programs.
127.26 Implementation plan and effective date.
127.27 Procedure for determining initial recipient of electronic NPDES information.

Authority: The Clean Water Act, 33 U.S.C. 1251 *et seq.*

Subpart A—General

§ 127.1 Purpose and scope.

(a) This part, in conjunction with the NPDES reporting requirements specified in 40 CFR parts 122, 123, 403, and 503, specifies the requirements for electronic reporting of information by NPDES permittees, facilities seeking coverage under NPDES general permits or submitting stormwater certifications or waivers, and industrial users located in cities without approved local pretreatment programs, to EPA or the states, tribes, or territories that have received authorization from EPA to implement the NPDES program. This part, in conjunction with 40 CFR parts 123 and 501, also specifies the requirements for electronic reporting of NPDES information to EPA by the states, tribes, or territories that have received authorization from EPA to implement the NPDES program.

(b) These regulations are not intended to preclude states, tribes, or territories from developing and using their own NPDES data systems. However, the states, tribes, and territories shall ensure that the required NPDES information regarding their permitting, compliance monitoring, and enforcement activities and required NPDES information electronically submitted by NPDES permittees, facilities seeking coverage under NPDES general permits or submitting stormwater certifications or waivers, and industrial users located in cities without approved local pretreatment programs is then shared electronically with EPA in a timely, accurate, complete, and nationally-consistent manner fully compatible with EPA's national NPDES data system.

(c) Under 10 U.S.C. 130e, the Secretary of Defense may exempt Department of Defense ''critical infrastructure security information'' from disclosure under FOIA. NPDES program data designated as critical infrastructure security information in response to a FOIA request will be withheld from the public. In the instance where an NPDES program data element for a particular facility is designated as critical infrastructure security information in response to a FOIA request, a separate filtered set of data without the redacted information will be shared with the public; however, all NPDES program data will continue to be provided to EPA and the authorized state, tribe, or territorial NPDES program.

§ 127.2 Definitions.

(a) The definitions in 40 CFR parts 122, 403, 501 and 503 apply to all subparts of this part.

(b) *Initial recipient of electronic NPDES information from NPDES-regulated facilities (initial recipient)* means the entity (EPA or the state, tribe, or territory authorized by EPA to implement the NPDES program) that is the designated entity for receiving electronic NPDES data. Section 127.27 outlines the process for designating the initial recipient of electronic NPDES information from NPDES-regulated facilities. EPA shall become the initial recipient of electronic NPDES information from NPDES-regulated facilities if the state, tribe, or territory does not collect the data required in Appendix A to this part and does not consistently maintain timely, accurate, complete, and consistent data transfers in compliance with 40 CFR parts 3 and 127. Timely means that the authorized state, tribe, or territory submits these data transfers (see the data elements in Appendix A to this part) to EPA within 30 days of when the authorized program completed the activity or received a report submitted by a regulated entity. For example, the data regarding a state inspection of an NPDES-regulated entity that is completed on October 15th shall be submitted automatically to EPA no later than November 14th of that same year (e.g., 30 days after October 15th).

(c) *NPDES data group* means the group of related data elements identified in Table 1 in Appendix A to this part. These NPDES data groups have similar regulatory reporting requirements and have similar data sources.

(d) *Regulatory authority* means EPA or the state, tribe, or territory that EPA has authorized to administer all or part of the NPDES program; identifying the relevant regulatory authority must be done for each NPDES subprogram (e.g., NPDES core program, federal facilities, general permits, pretreatment, and biosolids).

Subpart B—Electronic Reporting of NPDES Information From NPDES-Regulated Facilities

§ 127.11 Types of data to be reported electronically by NPDES permittees, facilities seeking coverage under NPDES general permits or submitting stormwater certifications or waivers, and industrial users located in cities without approved local pretreatment programs.

(a) NPDES-regulated facilities shall electronically submit information for these NPDES reports (if such reporting requirements are applicable):

(1) Discharge Monitoring Report [40 CFR 122.41(l)(4)];

(2) Biosolids Annual Program Report [40 CFR part 503];

(3) Concentrated Animal Feeding Operation (CAFO) Annual Program Report [40 CFR 122.42(e)(4)];

(4) Municipal Separate Storm Sewer System (MS4) Program Report [40 CFR 122.34(g)(3) and 122.42(c)];

(5) Pretreatment Program Annual Report [40 CFR 403.12(i)]; and

(6) Sewer Overflow and Bypass Incident Event Report [40 CFR 122.41(l)(6) and (7)].

(b) Facilities seeking coverage under an NPDES general permit, or indicating that such general permit coverage is not needed under existing regulations, shall electronically submit information for these NPDES notices, certifications, and waivers (if such reporting requirements are applicable):

(1) Notice of intent (NOI) to discharge by facilities seeking coverage under a general NPDES permit (rather than an individually-issued NPDES permit), as described in 40 CFR 122.28(b)(2);

(2) Notice of termination (NOT), as described in 40 CFR 122.64;

(3) No exposure certification (NEC), as described in 40 CFR 122.26(g)(1)(iii); and

(4) Low erosivity waiver (LEW) as described in Exhibit 1 to 40 CFR 122.26(b)(15).

(c) Industrial users located in cities without approved local pretreatment programs shall electronically submit this information (if such reporting requirements are applicable):

(1) Self-monitoring pretreatment-related information, as described in 40 CFR 403.12(e) and 403.12(h).

(2) [Reserved]

(d) Specific data elements that are required to be submitted electronically by NPDES-regulated facilities are identified in Appendix A to this part.

§ 127.12 Signature and certification standards for electronic reporting.

The signatory and certification requirements identified in 40 CFR part 3 and 40 CFR 122.22 and 403.12(l) shall also apply to the electronic submission of NPDES information by NPDES permittees, facilities seeking coverage under NPDES general permits or submitting stormwater certifications or waivers, and industrial users located in cities without approved local pretreatment programs, as required in accordance with this part and Appendix A of this part.

§ 127.13 Requirements regarding quality assurance and quality control.

(a) Primary responsibility for the quality of the information provided electronically in accordance with this part by the NPDES permittees, facilities seeking coverage under NPDES general permits or submitting stormwater certifications or waivers, and industrial users located in cities without approved local pretreatment programs rests with the owners and operators of those facilities. Facilities shall use quality assurance and quality control procedures to ensure the quality of the NPDES information submitted in accordance with this part.

(b) NPDES information required under this part from the NPDES permittees, facilities seeking coverage under NPDES general permits or submitting stormwater certifications or waivers, and industrial users located in cities without approved local pretreatment programs shall be submitted in accordance with the data quality requirements specified in § 127.14.

§ 127.14 Requirements regarding timeliness, accuracy, completeness, and national consistency.

After [THE EFFECTIVE DATE OF 40 CFR PART 127], each NPDES permittee, facility seeking coverage under NPDES general permits or submitting stormwater certifications or waivers, and industrial user located in a city without an approved local pretreatment program, if required to submit the types of information specified in § 127.11, shall comply with all requirements in this part and electronically submit all applicable NPDES information identified in Appendix A to this part in the following nationally-consistent manner:

(a) Timely, in the electronic submission to the appropriate initial recipient, as defined in § 127.2(b), of NPDES information described in § 127.11 and in Appendix A to this part, including but not limited to this information:

(1) *Measurement data (including information from discharge monitoring reports, self-monitoring data from industrial users located outside of approved local pretreatment programs, and similar self-monitoring data).* The electronic submission of this data is due when that monitoring information is required to be reported in accordance with statutes, regulations, the NPDES permit, another control mechanism, or an enforcement action.

(2) *Program Report Data.* The electronic submission of this data is due when that program report data is required to be reported in accordance with statutes, regulations, the NPDES permit, another control mechanism, or an enforcement action.

(b) Accurate, means identical to the actual measurements taken;

(c) Complete, means all required data elements (see Appendix A to this part) are electronically submitted to the data system of the initial recipient, as defined in § 127.2(b); and

(d) Consistent, means all required data elements (see Appendix A to this part) are electronically submitted in compliance with EPA data standards and in a form (and measurement units) that is fully compatible with EPA's national NPDES data system.

§ 127.15 Temporary waivers from electronic reporting.

(a) Temporary waivers from electronic reporting may be granted by the regulatory authority (EPA, or states, territories, and tribes that have received authorization to implement the NPDES program), in accordance with this section and § 127.24, to NPDES permittees, facilities seeking coverage under NPDES general permits or submitting stormwater certifications or waivers, and industrial users located in cities without approved local pretreatment programs.

(1) Each temporary waiver shall not extend beyond one year. However, the reporting facility may re-apply for a temporary waiver. Temporary waivers from electronic reporting may be granted if the reporting facility is physically located in a geographic area (i.e., zip code or census tract) that is identified as under-served for broadband internet access in the most recent National Broadband Map from the Federal Communications Commission (FCC).

(2) To apply for such a temporary waiver, the appropriate facility representative, as identified in accordance with 40 CFR 122.22, for the NPDES permittee, facility seeking coverage under NPDES general permits or submitting stormwater certifications or waivers, or industrial user located in a city without an approved local pretreatment program, shall submit the following information to the regulatory authority:

(i) Facility name;

(ii) NPDES permit number (if applicable);

(iii) Facility address;

(iv) Name, address and contact information for the designated facility representative;

(v) Brief written statement regarding the basis for claiming such a temporary waiver; and

(vi) Copy of the relevant FCC information, from the most recent FCC report addressing such issues, identifying the zip code or census tract where that facility is located as being under-served for broadband internet access.

(3) If the regulatory authority determines that a temporary waiver is merited under the condition identified in paragraph (1) of this section, the regulatory authority shall provide such notification to the appropriate EPA regional office and the affected NPDES permittee, facility seeking coverage under NPDES general permits or submitting stormwater certifications or waivers, or industrial user located in a city without an approved local pretreatment programs, in accordance with the requirements of § 127.24(a)(2).

(4) These temporary waivers are only waivers from electronic reporting; the NPDES-regulated facilities receiving temporary waivers from electronic reporting are required to provide the required applicable information (identified in Appendix A to this part) in hard-copy format to the regulatory authority.

(5) The temporary waiver may remain in effect until the situation meriting such a temporary waiver is resolved, but for no more than one year. At that time, if the situation meriting such temporary waiver is still not resolved and if the NPDES-regulated facility does not re-apply for a temporary waiver, the NPDES permittee, facility seeking coverage under NPDES general permits or submitting stormwater certifications or waivers, or industrial user located in a city without an approved local pretreatment program, shall report the applicable required NPDES information, as identified in this part and in Appendix A to this part, electronically to the initial recipient through a third-party contractor or other available internet connections (e.g., public libraries).

(b) [Reserved]

§ 127.16 Time extensions for electronic reporting due to catastrophic circumstances.

(a) One-time extensions to due dates for electronic reporting may be granted by regulatory authorities to NPDES permittees, facilities seeking coverage under NPDES general permits or submitting stormwater certifications or waivers, and industrial users located in cities without approved local pretreatment programs, for situations involving catastrophic circumstances beyond the control of the facilities, such as forces of nature (e.g., hurricanes, floods, earthquakes). This one-time extension for electronic reporting would allow written, rather than electronic, submission of information, if warranted by the incident.

(1) To apply for this one-time extension, the appropriate facility representative, as identified in accordance with 40 CFR 122.22, for the NPDES permittee, facility seeking coverage under NPDES general permits or submitting stormwater certifications or waivers, or industrial user located in a city without an approved local pretreatment program shall submit the following information toregulatory authority:

(i) Facility name;

(ii) NPDES permit number;

(iii) Facility address;

(iv) Name, address and contact information for the designated facility representative;

(v) Brief written statement regarding the basis for claiming such a one-time extension; and

(vi) Indication when the required written information will be provided to the regulatory authority.

(2) If the regulatory authority determines that a one-time extension is merited in accordance with this section, the regulatory authority shall provide notification to the appropriate EPA regional office and to the affected NPDES permittee, facility seeking coverage under NPDES general permits or submitting stormwater certifications or waivers, or industrial user located in a city without an approved local pretreatment program, in accordance with the requirements of § 127.24(a)(3).

(3) The one-time extension may remain in effect until the situation meriting such a one-time extension is resolved (i.e., effects of the incident meriting the one-time extension no longer exist), but for no more than one year after the situation that merited the one-time extension arose. At that time, if the situation has not been resolved, the NPDES permittee, facility seeking coverage under NPDES general permits or submitting stormwater certifications or waivers, or industrial user located in a city without an approved local pretreatment program shall report the applicable required NPDES information, as identified in this part and in Appendix A to this part, electronically to theinitial recipient, through a third-party contractor or other available electronic connections (e.g., internet connection in public libraries).

(b) [Reserved]

§ 127.17 Implementation plan and effective date.

(a) The effective date for this section shall be [60 DAYS AFTER THE PROMULGATION DATE FOR 40 CFR PART 127].

(b) NPDES-regulated facilities, with the exception of those covered by any temporary waiver under § 127.15 or any one-time extension under § 127.16, must electronically submit to the designated initial recipient all information covered by this part in accordance with 40 CFR parts 3 and 122, and all requirements of this part, after the following dates:

(1) Discharge monitoring report information (if required), as required in 40 CFR 122.41(l)(4), shall be provided electronically to the initial recipient, as identified in § 127.27, and as defined in § 127.2(b), after [ONE YEAR AFTER THE EFFECTIVE DATE OF 40 CFR PART 127].

(2) Notices of intent (if required), as described in 40 CFR 122.28(b)(2), for coverage under EPA-issued general permits, notices of termination, no exposure certifications, and low erosivity waivers shall be provided electronically to the initial recipient, as identified in § 127.27, and as defined in § 127.2(b), after [ONE YEAR AFTER THE EFFECTIVE DATE OF 40 CFR PART 127].

(3) Notices of intent (if required), as described in 40 CFR 122.28(b)(2), for concentrated animal feeding operations for coverage under general permits shall be provided electronically to the initial recipient, as identified in § 127.27, and as defined in § 127.2(b), after [TWO YEARS AFTER THE EFFECTIVE DATE OF 40 CFR PART 127].

(4) Biosolids annual reports (as described in 40 CFR part 503), concentrated animal feeding operation annual reports (as described in 40 CFR 122.42(e)(4)), municipal separate storm sewer system (MS4) program reports (as described in 40 CFR 122.34(g)(3) and 122.42(c)), pretreatment-related self-monitoring reports (if required) from industrial users located in cities without approved local pretreatment programs (as required in 40 CFR 403.12(e) and 403.12(h)), pretreatment program annual reports (as described in 40 CFR 403.12(i)), and sewer overflow and bypass incident event reports (as described in 40 CFR 122.41(l)(6) and (7)) shall be provided electronically to the initial recipient, as identified in § 127.27, and as defined in § 127.2(b), after [TWO YEARS AFTER THE EFFECTIVE DATE OF 40 CFR PART 127].

(5) Notices of intent (if required), as described in 40 CFR 122.28(b)(2), for coverage under general permits not described in paragraphs (b)(2) and (3) of this section shall be provided electronically to the initial recipient, as identified in § 127.27, and as defined in § 127.2(b), after [TWO YEARS AFTER THE EFFECTIVE DATE OF 40 CFR PART 127].

(c) If the applicable NPDES permit requires electronic reporting of the reports identified in paragraph (b) of this section sooner than the dates specified in paragraph (b) of this section, then the NPDES-regulated facility is required to provide that information electronically to the regulatory authority in accordance with the due date(s) in the permit.

(d) If the regulatory authority has granted a facility or group of facilities temporary waivers or one-time extensions from electronic reporting under §§ 127.15 or 127.16, the facility or facilities shall submit in hard-copy format, by the applicable due dates, to the regulatory authority, all of the required information applicable to that facility as identified in § 127.11 and in Appendix A to this part, in accordance with all requirements of this part, including the requirements of §§ 127.22 and 127.23. Upon the expiration date of a temporary waiver, unless the NPDES-regulated facility re-applies for and is approved for another temporary waiver, the NPDES-regulated facility shall be required to submit the applicable required information (as identified in § 127.11 and in Appendix A to this part) electronically to the initial recipient, as defined in § 127.2(b), for that information.

Subpart C—Responsibilities of EPA and States, Tribes, and Territories Authorized To Implement the NPDES Program

§ 127.21 Types of data to be reported electronically to EPA by states, tribes, and territories.

(a) States, tribes, and territories that have received authorization from EPA to implement the NPDES program shall report the following NPDES information (as specified in Appendix A to this part) to EPA electronically:

(1) facility and permit information for NPDES individual permits;

(2) permit information associated with NPDES general permits (including information specific to subprograms [if applicable] or to thermal variances [if applicable], and information regarding cooling water intakes for discharges of 2 million gallons per day or more [if applicable]);

(3) compliance monitoring and inspection activities;

(4) compliance determination information;

(5) enforcement action information; and

(6) information provided electronically or otherwise (e.g., from facilities granted temporary waivers from electronic reporting) by the NPDES-regulated facility to the authorized NPDES program rather than to EPA.

(b) If the authorized state, tribe, or territory NPDES program is the initial recipient of electronic NPDES information from NPDES-regulated facilities (see § 127.2(b)), the authorized NPDES program shall transfer these NPDES program data to EPA within 30 days of the completed activity or within 30 days of the receipt of a report from a regulated entity. Specific data elements that are required to be submitted electronically to EPA by the states, tribes, or territories that have received authorization from EPA to implement the NPDES program are identified in Appendix A to this part.

§ 127.22 Requirements regarding quality assurance and quality control.

(a) Primary responsibility for the quality of the information provided electronically to EPA in accordance with this part by the regulatory authorities rests with those government entities. Therefore, the regulatory authorities shall utilize quality assurance and quality control procedures to ensure the quality of the NPDES information submitted to EPA in accordance with this part.

(b) [Reserved]

§ 127.23 Requirements regarding timeliness, accuracy, completeness, and national consistency.

(a) After [THE EFFECTIVE DATE OF 40 CFR PART 127], the Director of each state, tribe, and territory that has been authorized by EPA to implement the NPDES program shall ensure that EPA is electronically provided with the NPDES information identified in Appendix A to this part, in a nationally consistent manner which is:

(1) Timely, in that the authorized state, tribe, or territory electronically provides the required data (as specified in Appendix A to this part) to EPA within 30 days of the completed activity or within 30 days of receipt of a report from a regulated entity. For example, the data regarding a state inspection of an NPDES-regulated entity that is completed on October 15th shall be submitted automatically to EPA no later than November 14th of that same year (e.g., 30 days after October 15th).

(2) Accurate, in that 95% or more of the required data available in EPA's data system for NPDES information are identical to that reported on the permit or other source document for that information;

(3) Complete, in that 95% or more of submissions required for each NPDES data group are available in EPA's data system for NPDES information; and

(4) Consistent, in that data electronically submitted by states, tribes, and territories to EPA, by direct entry of information, data transfers from one data system to another, or some combination thereof, into EPA's designated NPDES national data system is in compliance with EPA's data standards and in a form and measurement units which are fully compatible with such data system.

(b) An authorized program shall consistently maintain the requirements identified in paragraph (a) of this section in order to be the initial recipient, as defined in § 127.2(b). If the authorized program does not maintain these requirements, EPA shall become the initial recipient.

§ 127.24 Responsibilities regarding review of temporary waiver requests and one-time extension requests from NPDES-regulated facilities.

(a) Under § 127.15, NPDES permittees, facilities seeking coverage under NPDES general permits or submitting stormwater certifications or waivers, and industrial users located in cities without approved local pretreatment programs, may submit requests for temporary waivers or one-time extensions from electronic reporting. The responsibilities regarding the review and approval of these requests are:

(1) For temporary waivers due to the lack of broadband access in certain remote areas, the regulatory authority shall ensure that the temporary waiver request meets the requirements of § 127.15 and shall notify the requestor and the appropriate EPA regional office within 15 business days of the request as to whether the temporary waiver will be granted.

(2) For one-time extensions associated with catastrophic circumstances, the regulatory authority shall ensure that the waiver request meets the requirements of § 127.15, and shall notify the requestor and the appropriate EPA regional office within 15 business days of the request as to whether the temporary waiver will be granted.

(b) The regulatory authority may choose not to allow any temporary waivers or one-time extensions from electronic reporting. This would preclude the need to develop and implement standard procedures to review requests for temporary waivers or one-time extensions.

(c) EPA shall have the authority to review and disapprove decisions by the regulatory authority regarding the granting of temporary waivers from electronic reporting and one-time extensions of electronic reporting, ensuring that approvals of these requests are in compliance with §§ 127.15, 127.16, and this section.

§ 127.25 Time for states, tribes, and territories to revise existing programs.

A state, tribe, or territory that has received authorization from EPA to implement the NPDES program is required to make program revisions in accordance with 40 CFR 123.62(e). No additional time extensions shall be available from EPA for state, tribe, or territory program revisions to achieve compliance with this rule.

§ 127.26 Implementation plan and effective date.

(a) The effective date for this section shall be [90 DAYS AFTER THE PROMULGATION DATE FOR 40 CFR PART 127].

(b) Authorized state, tribe, and territory NPDES programs shall follow the procedure in § 127.27 for determining the initial recipient of electronic NPDES information from NPDES-regulated facilities (see § 127.2(b)).

(c) States, tribes, and territories shall electronically submit all applicable required data elements associated with their permitting, compliance monitoring, compliance determinations, and enforcement activities (see Appendix A to this part) to EPA by [9 MONTHS AFTER THE EFFECTIVE DATE OF 40 CFR PART 127] and maintain updates thereafter. These state, tribe, and territory data transmissions to EPA shall be done in accordance with all requirements of this part, including the requirements of §§ 127.22 and 127.23.

(d) For the required NPDES information, as identified in § 127.11 and in Appendix A to this part, that an NPDES authorized state, tribe, or

territory receives from an NPDES-regulated facility, this information shall be electronically provided to EPA within 30 days after receipt from the NPDES-regulated facility.

(e) Authorized states, tribes, or territories that can implement 40 CFR part 3, 40 CFR 122.22, and this part without amending or enacting a statute shall do so by [12 MONTHS AFTER THE EFFECTIVE DATE OF 40 CFR PART 127]. NPDES-authorized states, tribes, and territories that must amend or enact a statute in order to change their NPDES programs to implement 40 CFR part 3 (CROMERR) and this part shall do so by [24 MONTHS AFTER THE EFFECTIVE DATE OF 40 CFR PART 127]. See 40 CFR 123.62(e). This includes updates to state NPDES data systems. All new permits issued or existing permits re-issued after the authorized state, territory, or tribe incorporates federal electronic reporting requirements (40 CFR part 3, 40 CFR 122.22, and this part) into its authorized program shall contain a permit condition requiring compliance with the electronic reporting requirements in 40 CFR part 3, 40 CFR 122.22, and this part. NPDES-regulated facilities which have the federal electronic reporting requirements (40 CFR part 3, 40 CFR 122.22, and this part) in their permits shall start (or continue) electronic reporting to the initial recipient (as defined in § 127.27).

§ 127.27 Procedure for Determining Initial Recipient of Electronic NPDES Information.

(a) A state, tribe, or territory that has received authorization from EPA to implement the NPDES program before the effective date of this rule may request to be the initial recipient of electronic NPDES information from NPDES-regulated facilities for specific NPDES data groups by submitting a request to EPA. For states, tribes, and territories with NPDES authorization prior to the effective date of the rule, the Director shall submit this request prior to [120 DAYS AFTER THE EFFECTIVE DATE FOR 40 CFR PART 127]. This request shall identify the specific NPDES data groups for which the state, tribe, or territory will be the initial recipient of electronic NPDES information from NPDES-regulated entities, a description of how its data system will be compliant with 40 CFR parts 3 and 127, and the date or dates when the state, tribe, or territory will be ready to accept NPDES information from NPDES-regulated facilities in a manner compliant with 40 CFR parts 3 and 127.

(b) A state, tribe, or territory that seeks authorization to implement an NPDES program after [THE EFFECTIVE DATE OF 40 CFR PART 127] shall identify in its NPDES program application if it is requesting to be the initial recipient of electronic NPDES information from NPDES-regulated facilities for specific NPDES data groups. See 40 CFR 123.22(g) and Appendix A to this part.

(c) By [210 DAYS AFTER THE EFFECTIVE DATE FOR 40 CFR PART 127], EPA shall publish on its Web site and in the **Federal Register** a listing of the initial recipients for electronic NPDES information from NPDES-regulated facilities by state, tribe, and territory and by NPDES data group. This listing shall identify for NPDES-regulated facilities the initial recipient of their NPDES electronic data submissions and the due date for these NPDES electronic data submissions. EPA shall update this listing on its Web site and in the **Federal Register** if a state, tribe, or territory gains authorization status to implement an NPDES program and is also approved by EPA to be the initial recipient of NPDES electronic data submissions for that program.

(d) Failure to maintain all the requirements in 40 CFR parts 3 and 127 to be an initial recipient of electronic NPDES information from NPDES-regulated facilities shall prohibit the state, territory, or tribe from being the initial recipient of electronic NPDES information from NPDES-regulated entities. The following is the process for these determinations:

(1) EPA shall make a preliminary determination identifying if an authorized state, tribe, or territory is not complying with the requirements in 40 CFR parts 3 and 127 to be an initial recipient of electronic NPDES information from NPDES-regulated facilities. EPA shall provide to the Director of the authorized NPDES program the rationale for any such preliminary determination and options for correcting these deficiencies. Within 60 days of EPA's preliminary determination, the authorized state, tribe, or territory shall fully correct all deficiencies identified by EPA and notify EPA that such corrections have been completed. No response from the Director of the authorized NPDES program shall indicate that the state, territory, or tribe agrees to be removed as the initial recipient for that NPDES data group of electronic NPDES information. Within 90 days of the EPA's preliminary determination, EPA shall provide to the Director of the authorized NPDES program a final determination whether the state, tribe, or territory is not complying with the requirements in 40 CFR parts 3 and 127 to be an initial recipient of electronic NPDES information from NPDES-regulated facilities.

(2) EPA shall become the initial recipient of electronic NPDES information from NPDES-regulated facilities if the state, tribe, or territory does not consistently maintain data transfers in compliance with 40 CFR parts 3 and 127.

(3) EPA shall update the initial recipient listing described in § 127.27(c) and publish this listing on its Web site and in the **Federal Register** when it provides a final determination described in paragraph (d)(1) of this section to the Director of the authorized NPDES program.

(4) Following any determination of noncompliance made in accordance with paragraph (d)(1) of this section, EPA will work with the Director of the authorized NPDES program to remediate all issues identified by EPA that prevent the authorized NPDES program from being the initial recipient. When all issues identified by EPA are resolved and the authorized state, tribe, or territory is again the initial recipient, EPA shall update the initial recipient listing in § 127.27(c) and publish this listing on its Web site and in the **Federal Register.**

Appendix A to Part 127

The following two tables identify the minimum set of data that states, tribes, territories, and NPDES-regulated entities must electronically report to the NPDES authorized program or EPA [see § 127.2(b)]. Use of these two tables ensures that there is consistent and complete reporting nationwide, and to expedite the collection and processing of the data, thereby making it more accurate and timely. Taken together, these data standardizations and the corresponding electronic reporting requirements in 40 CFR parts 3, 122, 123, 127, 403, and 503 are designed to save the NPDES authorized programs considerable resources, make reporting easier for NPDES-regulated entities, streamline permit renewals (as permit writers typically review previous noncompliance events during permit renewal), ensure full exchange of NPDES general permit data between states and EPA to the public, improve better environmental decision-making, and to protect human health and the environment.

Instructions: Table 1 provides the list of data sources and minimum submission frequencies for the nine different NPDES Data Groups. Table 2 provides the data that must be electronically reported for each of these NPDES Data Groups. The use of each data element is determined by identifying the number(s) in the column labeled ''NPDES Data Group Number'' in Table 2 and finding the corresponding ''NPDES Data Group Number'' in Table 1. For example, a value of ''1'' in Table 2 means that this data element is required in the transmission of data from

the NPDES program to EPA (Core NPDES Permitting, Compliance, and Enforcement Data). Likewise, a value of ''1 through 9'' means that this data element is required in all nine NPDES data groups.

TABLE 1—DATA SOURCES AND REGULATORY CITATIONS

NPDES Data group No. †	NPDES Data group	Program area	Data provider	Minimum frequency ††
1	Core NPDES Permitting, Compliance, and Enforcement Data [40 CFR parts 122, 123, 403, 503].	All NPDES Program Sectors.	Authorized NPDES Program.	Quarterly (four times annually) updates to EPA (although the frequency associated with any particular permittee may be considerably less [e.g., once every five years for most permit information].
2	General Permit Reports [Notice of Intent to discharge (NOI); Notice of Termination (NOT); No Exposure Certifications (NECs); Low Erosivity Waivers (LEWs)] [40 CFR 122.28 and 124.5].	All NPDES Program Sectors.	NPDES Permittee	Prior to Initial Permit Coverage, Consideration for Permit Exclusion, and Permit Coverage Termination.
3	Discharge Monitoring Report [40 CFR 122.41(l)(4)].	All NPDES Program Sectors.	NPDES Permittee	At least annual, although a more frequent submission required in the permit would apply.
4	Biosolids Annual Program Report [40 CFR part 503].	Biosolids	NPDES Regulated Biosolids Generator and Handler.	Annual.
5	Concentrated Animal Feeding Operation (CAFO) Annual Program Reports [40 CFR 122.42(e)(4)].	CAFO	CAFO	Annual.
6	Municipal Separate Storm Sewer System (MS4) Program Report [40 CFR 122.34(g)(3) and 122.42(c)].	MS4	NPDES Permittee	Year two and year four of permit coverage (Small MS4), Annual (Medium and Large MS4).
7	Pretreatment Program Annual Report [40 CFR 403.12(i)].	Pretreatment	Pretreatment Control Authority.	Annual.
8	Significant Industrial User Compliance Reports in Municipalities Without Approved Pretreatment Programs [40 CFR 403.12(e) and (h)].	Pretreatment	Significant Industrial User.	Bi-Annual.
9	Sewer Overflow Event Reports [40 CFR 122.41(l)(6) and (7)].	Sewer Overflows	NPDES Permittee	Within 5 days of the time the permittee becomes aware of the sewer overflow event (health or environment endangerment), Monitoring report frequency specific in permit (all other sewer overflow events).

† Note: Use the ''NPDES Data Group Number'' in this table and the ''NPDESData Group Number'' column in Table 2 to identify the required data elements for each NPDES Data Group.

†† Note: The applicable reporting frequency is specified in the NPDES permit or control mechanism, which may be more frequent than the minimum frequency specified in Table 1.

TABLE 2—REQUIRED NPDES DATA

Data name	Data description	CWA, Regulatory, or policy citation (40 CFR)	NPDES Data group No. (*see* table 1)
Basic Facility Information			
Facility Type of Ownership	The code/description identifying the type of facility (e.g., state government, municipal or water district, Federal facility, tribal facility). This data element is used by the EPA data system to populate the Permit Facility Type data element (i.e., POTW, Private, Non-POTW, and Federal).	122.21	1 through 9.
Facility Site Name	The name of the facility	122.21/CWA 301(d), 304(b), and 304(m)	1 through 9.
Facility Site Address	The address of the physical facility location	122.21/CWA 301(d), 304(b), and 304(m)	1 through 9.
Facility Site City	The name of the city, town, village, or other locality, when identifiable, within whose boundaries (the majority of) the facility site is located. This is not always the same as the city used for USPS mail delivery.	122.21/CWA 301(d), 304(b), and 304(m)	1 through 9.
Facility Site State	The U.S. Postal Service (USPS) abbreviation that represents the state or state equivalent for the U.S. where the facility is located.	122.21/CWA 301(d), 304(b), and 304(m)	1 through 9.

TABLE 2—REQUIRED NPDES DATA—Continued

Data name	Data description	CWA, Regulatory, or policy citation (40 CFR)	NPDES Data group No. (*see* table 1)
Facility Site Zip Code	The combination of the 5-digit Zone Improvement Plan (ZIP) code and the 4-digit extension code (if available) that represents the geographic segment that is a sub unit of the ZIP Code assigned by the U.S. Postal Service to a geographic location where the facility is located.	122.21/CWA 301(d), 304(b), and 304(m)	1 through 9.
Facility Site Tribal Land Indicator.	The Bureau of Indian Affairs code for every unit of land trust allotment (''tribal land'') within Indian Country. This code will identify whether the facility is on tribal land and the name of the American Indian tribe or Alaskan Native entity (if applicable).	122.21	1 through 9.
Facility Site Longitude	The measure of the angular distance on a meridian east or west of the prime meridian for the facility. Entered in either Decimal Degrees or in Degrees Minutes Seconds; stored in decimal degrees and in accordance with Environmental Data Standards Council, Latitude/Longitude Data Standard, Standard No.: EX000017.2, January 6, 2006.	122.21/CWA 301(d), 304(b), and 304(m)	1 through 9.
Facility Site Latitude	The measure of the angular distance on a meridian north or south of the equator for the facility. Entered in either Decimal Degrees or in Degrees Minutes Seconds; stored in decimal degrees and in accordance with Environmental Data Standards Council, Latitude/Longitude Data Standard, Standard No.: EX000017.2, January 6, 2006.	122.21/CWA 301(d), 304(b), and 304(m)	1 through 9.
Facility Site Source Map Scale Number.	The number that represents the proportional distance on the ground for one unit of measure on the map or photo for the facility. These data are provided in accordance with Environmental Data Standards Council, Latitude/Longitude Data Standard, Standard No.: EX000017.2, January 6, 2006.	EPA National Geospatial Data Policy—CIO Policy Transmittal 05–002.	1 through 9.
Facility Site Horizontal Accuracy Measure.	The measure of the accuracy (in meters) of the facility's latitude and longitude coordinates. These data are provided in accordance with Environmental Data Standards Council, Latitude/Longitude Data Standard, Standard No.: EX000017.2, January 6, 2006.	EPA National Geospatial Data Policy—CIO Policy Transmittal 05–002/CWA 301(d), 304(b), and 304(m).	1 through 9.
Facility Site Horizontal Collection Method.	The text that describes the method used to determine the latitude and longitude coordinates for the facility. These data are provided in accordance with Environmental Data Standards Council, Latitude/Longitude Data Standard, Standard No.: EX000017.2, January 6, 2006.	EPA National Geospatial Data Policy—CIO Policy Transmittal 05–002.	1 through 9.
Facility Site Horizontal Reference Datum.	The code/description that represents the reference datum used in determining latitude and longitude coordinates for the facility. These data are provided in accordance with Environmental Data Standards Council, Latitude/Longitude Data Standard, Standard No.: EX000017.2, January 6, 2006.	EPA National Geospatial Data Policy—CIO Policy Transmittal 05–002.	1 through 9.
Facility Site Reference Point	The code/description for the place for which geographic coordinates were established. These data are provided in accordance with Environmental Data Standards Council, Latitude/Longitude Data Standard, Standard No.: EX000017.2, January 6, 2006.	EPA National Geospatial Data Policy—CIO Policy Transmittal 05–002.	1 through 9.
Facility Individual Affiliation Type Code.	The way that the contact or address is affiliated with the facility (e.g., ''Owner,'' ''Operator,'' or ''Main Contact''). This is a unique code that identifies the nature of the individual's affiliation to the facility.	122.21	1 through 9.
Facility Individual First Name.	The given name of an individual affiliated with this facility.	122.21/CWA 301(d), 304(b), and 304(m)	1 through 9.
Facility Individual Last Name.	The surname of an individual affiliated with this facility.	122.21/CWA 301(d), 304(b), and 304(m)	1 through 9.
Facility Individual Title	The title held by an individual in an organization affiliated with this facility.	122.21	1 through 9.
Facility Individual Organization.	The legal, formal name of an organization that is affiliated with the individual affiliated with this facility.	122.21	1 through 9.
Facility Individual Street Address.	The physical address of the individual affiliated with this facility.	122.21	1 through 9.
Facility Individual City	The name of the city, town, village, or other locality for the individual affiliated with this facility.	122.21	1 through 9.

TABLE 2—REQUIRED NPDES DATA—Continued

Data name	Data description	CWA, Regulatory, or policy citation (40 CFR)	NPDES Data group No. (*see* table 1)
Facility Individual State	The U.S. Postal Service (USPS) abbreviation that represents the state or state equivalent for the U.S. for the individual affiliated with this facility.	122.21	1 through 9.
Facility Individual Zip Code	The combination of the 5-digit Zone Improvement Plan (ZIP) code and the 4-digit extension code (if available) that represents the geographic segment that is a sub unit of the ZIP Code assigned by the U.S. Postal Service to a geographic location for the individual affiliated with this facility.	122.21	1 through 9.
Facility Individual E-Mail Address.	The e-mail address of the designated individual affiliated with this facility.	122.21	1 through 9.
Facility Organization Formal Name.	The legal, formal name of an organization that is affiliated with the facility.	122.21	1 through 9.
Facility Organization Street Address.	The physical address of the organization affiliated with the facility.	122.21	1 through 9.
Facility Organization City	The name of the city of the organization that is affiliated with the facility.	122.21	1 through 9.
Facility Organization State	The U.S. Postal Service abbreviation that represents the state or state equivalent for the organization affiliated with the facility.	122.21	1 through 9.
Facility Organization Zip Code.	The combination of the 5-digit Zone Improvement Plan (ZIP) code and the 4-digit extension code (if available) that represents the geographic segment that is a sub unit of the ZIP Code assigned by the U.S. Postal Service to a geographic location for the organization affiliated with the facility.	122.21	1 through 9.
Basic Permit Information			
NPDES ID	This is the unique NPDES permit number	CWA 301(d), 304(b), and 304(m)	1 through 9.
Master General Permit Number.	The unique identifier of the master general permit, which is linked to a General Permit Covered Facility.	CWA 301(d), 304(b), and 304(m)	1 through 9.
Permit Type	The unique code/description identifying the type of permit.	122.2	1 through 9.
Permit Issue Date	This is the date the permit was issued. The date data must be provided in CCYY–MM–DD format where CC is the century, YY is the year, MM is the month and DD is the day.	122.46/CWA 301(d), 304(b), and 304(m)	1 through 9.
Permit Effective Date	This is the date on which the permit is effective. The date data must be provided in CCYY–MM–DD format where CC is the century, YY is the year, MM is the month and DD is the day.	122.46	1.
Permit Modification/Amendment Date.	This is the date on which the permit was modified or amended. The date data must be provided in CCYY–MM–DD format where CC is the century, YY is the year, MM is the month and DD is the day.	122.62, 122.63	1,2.
Permit Expiration Date	This is the date the permit will expire. The date data must be provided in CCYY–MM–DD format where CC is the century, YY is the year, MM is the month and DD is the day.	122.46/CWA 301(d), 304(b), and 304(m)	1.
Permit Termination Date	This is the date the permit was terminated. The date data must be provided in CCYY–MM–DD format where CC is the century, YY is the year, MM is the month and DD is the day.	122.64	1.
Permit Major/Minor Status Indicator.	The flag to indicate if the permit is a major or minor. Initially system generated (defaults to Minor) and updatable only by EPA OECA Headquarters.	122.2/CWA 301(d), 304(b), and 304(m)	1.
Permit Major/Minor Status Start Date.	The date that the Permit became its current Major/Minor status. Initially system-generated to match effective date and updatable only by EPA OECA Headquarters. The date data must be provided in CCYY–MM–DD format where CC is the century, YY is the year, MM is the month and DD is the day.	122.2	1.
Permit Application Total Design Flow.	This is the flow that a permitted facility was designed to accommodate, in millions of gallons per day (MGD), as stated on its NPDES application.	122.21/CWA 301(d), 304(b), and 304(m)	1 through 9.
Permit Application Total Actual Average Flow.	This is the actual average flow that a permitted facility will likely accommodate, in MGD, as stated on its NPDES application.	122.21,122.41	1 through 9.

TABLE 2—REQUIRED NPDES DATA—Continued

Data name	Data description	CWA, Regulatory, or policy citation (40 CFR)	NPDES Data group No. (*see* table 1)
Complete Permit Application/NOI Received Date.	This is the date on which the complete application for a NPDES permit was received or a complete Notice of Intent (NOI) for coverage under a master general permit was received. The date data must be provided in CCYY–MM–DD format where CC is the century, YY is the year, MM is the month and DD is the day.	122.21	1.
Permit Application/NOI Received Date.	This is the date on which the application for a NPDES permit was received or a Notice of Intent (NOI) for coverage under a master general permit was received. The date data must be provided in CCYY–MM–DD format where CC is the century, YY is the year, MM is the month and DD is the day.	122.21	1 through 9.
Permit Status	This is a code/description that indicates whether the permit is Effective, Expired, Administratively Continued, Pending, Not Needed, Retired, or Terminated.	122.64, 122.46	1.
Master General Permit Industrial Category.	This code/description identifies the industrial category covered by the master general permit. This field is system-required for master general permits only.	CWA 301(d), 304(b), and 304(m)	1.
Permit Issuing Organization Type.	This is the type of organization issuing or granting a permit.	122.46	1.
DMR Non-Receipt	Turns non-receipt tracking for discharge monitoring reports (DMRs) ''on'' or ''off'' for non-major permits (a.k.a. ''minors''). This field is always ''on'' for major permits. This field is initially set to ''on''.	123.45	1.
Reportable Noncompliance Tracking.	Turns Reportable Noncompliance (RNC) tracking ''on'' or ''off'' for non-major permits (a.k.a. ''minors''). This field is always ''on'' for major permits. This field is initially set to ''on''.	123.45	1.
Applicable Effluent Limitations Guidelines.	The applicable effluent limitations guidelines (e.g., BPT, BCT, BAT) and new source performance standards (NSPS) for the NPDES permit.	122.44/CWA 301(d), 304(b), and 304(m)	1.
Permit Compliance Tracking Status.	This is a code/description that indicates whether the permit is currently ''on'' or ''off'' for compliance tracking purposes. Initially system-generated to match effective date.	123.45	1.
Permit Compliance Tracking Status Start Date.	This is the date on which the permit's ''on'' or ''off'' period for compliance tracking status began. Initially system-generated to match effective date. The date data must be provided in CCYY–MM–DD format where CC is the century, YY is the year, MM is the month and DD is the day.	123.45	1.
RNC Status Quarter	The quarter of the permit RNC status	123.45	1.
RNC Status Year	The year of the permit RNC status	123.45	1.
RNC Status (Manual)	The status of reportable noncompliance as it was entered by the user before the official Quarterly Noncompliance Report (QNCR) or NPDES Noncompliance Report (NNCR) for the RNC quarter for the permit.	123.45	1.
Associated NPDES ID Numbers.	If applicable, the unique identifier for a NPDES Permit that is related to another NPDES Permit or other NPDES ID number. For example, this data element could be used to identify the receiving POTW's permit number for an industrial user, the recipient POTW's permit number for a satellite collection system, municipalities covered under the same MS4 permit, etc.	CWA 301(d), 304(b), and 304(m)	1 through 9.
SIC Codes	The four-digit Standard Industrial Classification (SIC) code/description that represents the economic activity of the permitted facility.	122.21/CWA 301(d), 304(b), and 304(m)	1 through 9.
NAICS Codes	The six-digit North American Industry Classification System (NAICS) code/description that represents the economic activity of the permitted facility.	Agency Data Standard to replace SIC Codes/CWA 301(d), 304(b), and 304(m).	1 through 9.
Permittee Street Address	The address that describes the physical location of the permit holder.	122.21	1 through 9.
Permittee Organization Formal Name.	The legal, formal name of the organization that holds the permit.	122.21	1 through 9.

TABLE 2—REQUIRED NPDES DATA—Continued

Data name	Data description	CWA, Regulatory, or policy citation (40 CFR)	NPDES Data group No. (*see* table 1)
Permittee Zip Code	The combination of the 5-digit Zone Improvement Plan (ZIP) code and the 4-digit extension code (if available) that represents the geographic segment that is a sub unit of the ZIP Code assigned by the U.S. Postal Service to a geographic location for the permit holder.	122.21	1 through 9.
Permittee City	The name of the city, town, or village where the mail is delivered for the permit holder.	122.21	1 through 9.
Permittee State	The U.S. Postal Service abbreviation that represents the state or state equivalent for the U.S. for the permit holder.	122.21	1 through 9.
Narrative Condition and Permit Schedules			
Description	The unique code/description that identifies the type of narrative condition.	122.47	1 through 9.
Narrative Condition Number	This identifies a narrative condition and its elements uniquely for a permit.	122.47	1 through 9.
Schedule Date	The date on which a schedule event is due to be completed and against which compliance will be measured. The date data must be provided in CCYY–MM–DD format where CC is the century, YY is the year, MM is the month and DD is the day.	122.47	1 through 9.
Actual Date	The date on which the permittee achieved the schedule event. The date data must be provided in CCYY–MM–DD format where CC is the century, YY is the year, MM is the month and DD is the day.	122.47	1 through 9.
Report Received Date	The date on which the regulatory authority receives a report (generally a letter) from the permittee indicating that a Schedule Event was completed (e.g., Start Construction) or the required report was enclosed. The date data must be provided in CCYY–MM–DD format where CC is the century, YY is the year, MM is the month and DD is the day.	122.47	1 through 9.
Event	The code/description indicating the particular event with which the permittee is scheduled to comply.	122.47	1 through 9.
Permitted Feature			
Application Design Flow (MGD).	The flow that a permitted feature was designed to accommodate, in MGD.	122.21/CWA 301(d), 304(b), and 304(m)	1.
Application Actual Average Flow (MGD).	The flow that a permitted feature actually had at the time of application, in MGD.	122.21/CWA 301(d), 304(b), and 304(m)	1.
Permitted Feature ID	The identifier assigned for each location at which conditions are being applied.	122.21/CWA 301(d), 304(b), and 304(m)	1.
Type	The code/description indicating the type of permitted feature (e.g. External Outfall, Sum, Intake Structure).	122.21/CWA 301(d), 304(b), 304(m), 316(b).	1.
Receiving Waterbody Name for Permitted Feature.	The name of the waterbody that is or will likely receive the discharge from each permitted feature.	122.21	1.
Permitted Feature Longitude	The measure of the angular distance on a meridian east or west of the prime meridian for the permitted feature. Entered in either Decimal Degrees or in Degrees Minutes Seconds; stored in decimal degrees and in accordance with Environmental Data Standards Council, Latitude/Longitude Data Standard, Standard No.: EX000017.2, January 6, 2006.	122.21/CWA 301(d), 304(b), and 304(m)	1.
Permitted Feature Latitude	The measure of the angular distance on a meridian north or south of the equator for the permitted feature. Entered in either Decimal Degrees or in Degrees Minutes Seconds; stored in decimal degrees and in accordance with Environmental Data Standards Council, Latitude/Longitude Data Standard, Standard No.: EX000017.2, January 6, 2006.	122.21/CWA 301(d), 304(b), and 304(m)	1.
Permitted Feature Source Map Scale Number.	The number that represents the proportional distance on the ground for one unit of measure on the map or photo for the permitted feature. These data are provided in accordance with Environmental Data Standards Council, Latitude/Longitude Data Standard, Standard No.: EX000017.2, January 6, 2006.	EPA National Geospatial Data Policy—CIO Policy Transmittal 05–002.	1.

TABLE 2—REQUIRED NPDES DATA—Continued

Data name	Data description	CWA, Regulatory, or policy citation (40 CFR)	NPDES Data group No. (*see* table 1)
Permitted Feature Horizontal Accuracy Measure.	The measure of the accuracy (in meters) of the permitted feature's latitude and longitude coordinates. These data are provided in accordance with Environmental Data Standards Council, Latitude/Longitude Data Standard, Standard No.: EX000017.2, January 6, 2006.	EPA National Geospatial Data Policy—CIO Policy Transmittal 05–002/CWA 301(d), 304(b), and 304(m).	1.
Permitted Feature Horizontal Collection Method.	The text that describes the method used to determine the latitude and longitude coordinates for the permitted feature. These data are provided in accordance with Environmental Data Standards Council, Latitude/Longitude Data Standard, Standard No.: EX000017.2, January 6, 2006.	EPA National Geospatial Data Policy—CIO Policy Transmittal 05–002.	1.
Permitted Feature Horizontal Reference Datum.	The code/description that represents the reference datum used in determining latitude and longitude coordinates for the permitted feature. These data are provided in accordance with Environmental Data Standards Council, Latitude/Longitude Data Standard, Standard No.: EX000017.2, January 6, 2006.	EPA National Geospatial Data Policy—CIO Policy Transmittal 05–002.	1.
Permitted Feature Reference Point.	The code/description for the place for which geographic coordinates were established. These data are provided in accordance with Environmental Data Standards Council, Latitude/Longitude Data Standard, Standard No.: EX000017.2, January 6, 2006.	EPA National Geospatial Data Policy—CIO Policy Transmittal 05–002.	1.
Limit Set			
Limit Set Designator	The alphanumeric field that is used to designate a particular grouping of parameters within a limit set.	122.45/CWA 301(d), 304(b), and 304(m)	1.
Type	The unique code/description identifying the type of limit set (i.e. Scheduled, Unscheduled).	122.45	1.
Default Months Limit Set Applies.	The default months that the limit set applies. Defaults to all 12 months.	122.45	1.
Initial Monitoring Date	The date on which monitoring starts for the first monitoring period for the limit set; this date will be blank for Unscheduled Limit Sets. The date data must be provided in CCYY–MM–DD format where CC is the century, YY is the year, MM is the month and DD is the day.	122.45	1.
Initial DMR Due Date	The date that the first DMR for the limit set is due to the regulatory authority; this date will be blank for Unscheduled Limit Sets. The date data must be provided in CCYY–MM–DD format where CC is the century, YY is the year, MM is the month and DD is the day.	122.45	1.
Number of Report Units	The number of months covered in each DMR monitoring period (e.g., monthly = 1, semi-annually = 6, quarterly = 3). For example, if the permittee was required to provide reports for each month, the number of report units would be one.	122.45/CWA 301(d), 304(b), and 304(m)	1.
Number of Submission Units.	The number of months between DMR submissions (e.g., monthly = 1, semi-annually = 6, quarterly = 3); this data element will be blank for Unscheduled Limit Sets. For example, if the permittee was required to submit monthly reports every quarter, the number of report units would be one (=monthly) and the number of submission units would be three (=three months of information in each submission).	122.45	1.
Status	The status of the Limit Set (i.e., Active or Inactive); Limit Sets will not have violations generated when a Limit Set is Inactive unless an Enforcement Action Limit is present.	122 Subpart C	1.
Limit Set Status Start Date	The date that the Limit Set Status started. The date data must be provided in CCYY–MM–DD format where CC is the century, YY is the year, MM is the month and DD is the day.	123.45	1.
Limit			
Monitoring Location	The code/description of the monitoring location at which sampling should occur for a limit parameter.	122.45/CWA 301(d), 304(b), and 304(m)	1.

TABLE 2—REQUIRED NPDES DATA—Continued

Data name	Data description	CWA, Regulatory, or policy citation (40 CFR)	NPDES Data group No. (*see* table 1)
Season Number	Indicates the season of a limit and is used to enter different seasonal limits for the same parameter within a single limit start and end date.	122.45/CWA 301(d), 304(b), and 304(m)	1.
Start Date	The date on which a limit starts being in effect for a particular parameter in a limit set. The date data must be provided in CCYY–MM–DD format where CC is the century, YY is the year, MM is the month and DD is the day.	122.45/CWA 301(d), 304(b), and 304(m)	1.
End Date	The date on which a limit stops being in effect for a particular parameter in a limit set. The date data must be provided in CCYY–MM–DD format where CC is the century, YY is the year, MM is the month and DD is the day.	122.45/CWA 301(d), 304(b), and 304(m)	1.
Change of Limit Status Indicator.	The code/description that describes circumstances affecting limits, such as formal enforcement actions or permit modifications.	122 Subpart C	1.
Stay Type	The unique identifier of the type of stay applied to a limit (e.g., X, Y, Z), which indicates whether the limits do not appear on the DMR at all, are treated as monitor only, or have a stay value in effect during the period of the stay.	122.45/CWA 301(d), 304(b), and 304(m)	1.
Stay Start Date	The date on which a limit stay begins. The date data must be provided in CCYY–MM–DD format where CC is the century, YY is the year, MM is the month and DD is the day.	124.19	1.
Stay End Date	The date on which a limit stay is lifted. The date data must be provided in CCYY–MM–DD format where CC is the century, YY is the year, MM is the month and DD is the day.	124.19	1.
Reason for Stay	The text that represents the reason a stay was applied to a permit.	124.19	1.
Stay Limit Value	The numeric limit value imposed during the period of the stay for the limit; if entered, during the stay period, the system will use this limit value for calculating compliance, rather than the actual limit value that was stayed.	124.19	1.
Limit Type	The code that indicates whether a limit is an enforceable, or alert limit (e.g., action level, benchmark) that does not receive effluent violations.	122.45	1.
Enforcement Action ID	The unique identifier for the Enforcement Action that imposed the Enforcement Action limit; this data element helps tie the limit record to the Final Order record in the database.	122.45	1.
Final Order ID	The unique identifier for the Final Order that imposed the Enforcement Action limit; this data element ties the limit record to the Final Order record in the database.	122.45	1.
Modification Effective Date	The effective date of the permit modification that created this limit. The date data must be provided in CCYY–MM–DD format where CC is the century, YY is the year, MM is the month and DD is the day.	122.62	1.
Modification Type	The type of permit modification that created this limit (e.g. major, minor, permit authorized change).	122.62	1.
Parameter	The unique code/description identifying the parameter being limited and/or monitored.	122.41(j)/CWA 301(d), 304(b), and 304(m).	1.
Months	The months that the limit applies. Defaults to limit set months.	122.46/CWA 301(d), 304(b), and 304(m)	1.
Value Type	The indication of the limit value type (e.g., Quantity 1, Concentration 2).	122.45(f)/CWA 301(d), 304(b), and 304(m).	1.
Quantity Units/Concentration Units.	The code/description representing the unit of measure applicable to quantity or concentration limits as entered by the user.	122.45(f)/CWA 301(d), 304(b), and 304(m).	1.
Statistical Base Code	The code/description representing the unit of measure applicable to the limit and DMR values entered by the user (e.g., 30-day average, daily maximum) CHECK DATA STANDARD.	122.45(d), CWA 301(d), 304(b), and 304(m).	1.
Optional Monitoring Flag	The flag allowing users to indicate that monitoring is optional but not required (i.e., effluent violation generation will be suppressed for optional monitoring).	122.45	1.

TABLE 2—REQUIRED NPDES DATA—Continued

Data name	Data description	CWA, Regulatory, or policy citation (40 CFR)	NPDES Data group No. (*see* table 1)
Qualifier	The unique code identifying the limit value operator (e.g., <, =, >).	122.45	1.
Value	The actual limit value number from the Permit or Enforcement Action Final Order.	122.45, CWA 301(d), 304(b), and 304(m).	1.
Biosolids Information on NPDES Permit Application or Notice of Intent			
Average Annual Dry Biosolids Production.	The average annual amount of biosolids (in dry metric tons) produced by the permitted facility.	122.21(q)	1,2.
Average Annual Amount of Exceptional Quality (EQ) Product Distributed and Marketed.	The average annual amount (in dry metric tons) of Exceptional Quality (EQ) biosolids product distributed and marketed. This refers to biosolids that meet the ceiling concentrations in Table 1 of 40 CFR 503.13 and the pollutant concentrations in Table 3 of § 503.13; the Class A pathogen requirements in § 503.32(a); and one of the vector attraction reduction requirements in § 503.33(b)(1) through (b)(8).	122.21(q)(8)(v)	1,2.
Average Annual Amount of Land Applied Biosolids.	The average annual amount (in dry metric tons) of biosolids land applied.	122.21(q)	1,2.
Average Annual Amount of Incinerated Biosolids.	The average annual amount (in dry metric tons) of biosolids incinerated.	122.21(q)	1,2.
Average Annual Amount of Biosolids Co-Disposed in MSW.	The average annual amount (in dry metric tons) of biosolids co-disposed in a municipal solids waste (MSW) landfill.	122.21(q)	1,2.
Average Annual Amount of Biosolids Surface Disposal.	The average annual amount (in dry metric tons) of biosolids used for surface disposal.	122.21(q)	1,2.
Average Annual Amount of Biosolids Otherwise Managed.	The average annual amount (in dry metric tons) of biosolids managed using methods not otherwise described. For example, if a POTW sends its biosolids to a regional composter or heat dryer, that tonnage would included in this data element.	122.21(q)	1,2.
Biosolids Management Facility Type.	The unique code indicating whether the facility was issued a permit as a biosolids generator, processor, or end user disposal site.	122.21(q)	1,2.
Animal Feeding Operation Information on NPDES Permit Application or Notice of Intent			
Facility CAFO Flag	A binary "yes/no" flag to indicate whether the facility is a Concentrated Animal Feeding Operation (CAFO).	122.23	1,2.
Facility Animal Types	The unique code/description that identifies the animal sector(s) at the facility.	122.23	1,2.
Facility Annual Average Total Number.	The annual average total number of each type of livestock at the facility.	122.23	1,2.
Facility Annual Average Total Number (Unhoused Confinement).	The annual average total number of each type of livestock at the facility in unhoused confinement. This is the number of animals, by type, in open confinement that are held at the facility for a total of 45 days or more on an annual basis.	122.23	1,2.
Permit/NOI CAFO Waste Type.	The type of CAFO waste described (i.e., manure, litter, process wastewater).	122.23	1,2.
Permit/NOI Status of the CAFO Waste.	The status of the CAFO waste described (i.e., generated, or generated and transferred).	122.23	1,2.
Permit/NOI 12-Month Amount of CAFO Waste.	The total amount of each CAFO waste (i.e., manure, litter, or process wastewater) (in tons) with that status (i.e., generated, or generated and transferred) from this facility in the previous 12 months.	122.23	1,2.
Total Number of Acres for Land Application Covered by the Nutrient Management Plan.	Total number of acres (to the nearest quarter acre) for land application covered by the nutrient management plan in the previous 12 months.	122.23	1,2.
Facility Manure Containment or Storage Containment Type Code.	The unique code/description for the type(s) of manure containment and storage used by the operation.	122.23	1,2.
Facility Manure Annual Average Total Capacity.	The annual average total capacity (in gallons) of manure containment and storage structure(s).	122.23	1,2.

TABLE 2—REQUIRED NPDES DATA—Continued

Data name	Data description	CWA, Regulatory, or policy citation (40 CFR)	NPDES Data group No. (*see* table 1)
Construction and Industrial Stormwater Information (from the permitting authority derived from the NPDES Permit Application, Notice of Intent, or Waiver)			
Permit Required by Residual Designation.	The permit writer may designate additional stormwater discharges as requiring NPDES permits when the stormwater discharge, or category of stormwater discharges within a geographic area, contributes to a violation of a water quality standard. This data element identifies whether the permit writer is using this authority, commonly referred to as the ''Residual Designation'' authority, to regulate stormwater discharges through a NPDES permit.	CWA Section 402(p)(2)(E) and (6), 122.26 (a)(9)(i)(D).	1.
Residual Designation Determination Date.	The date when the permit writer made the designation that stormwater discharges, or category of discharges within a geographic area, contributes to a violation of a water quality standard. The date data must be provided in CCYY–MM–DD format where CC is the century, YY is the year, MM is the month and DD is the day.	CWA Section 402(p)(2)(E) and (6), 122.26 (a)(9)(i)(D).	1.
No Exposure Certification Approval Date.	This is the date on which the No Exposure Certification (NEC) was authorized by the NPDES permitting authority. Submission of a No Exposure Certification means that the facility does not require NPDES permit authorization for its stormwater discharges due to the existence of a condition of ''no exposure.'' A condition of no exposure exists at an industrial facility when all industrial materials and activities are protected by a storm resistant shelter to prevent exposure to rain, snow, snowmelt, and/or runoff. This date would be provided by the permitting authority. The date data must be provided in CCYY–MM–DD format where CC is the century, YY is the year, MM is the month and DD is the day.	122.26(g)	1.
Low Erosivity Waiver Approval Date.	The NPDES Stormwater Phase II Rule allows NPDES permitting authorities to accept ''low erosivity waivers'' (LEWs) for small construction sites. The waiver process exempts small construction sites (disturbing under five acres) from NPDES permitting requirements when the construction activity takes place during a relatively short time in arid or semi-arid areas. There is a similar waiver process for stormwater discharges associated with industrial activity [see 122.26(c)(1)(ii)]. This is the date when the permitting authority granted such waivers, based on information from the waiver submitter; this date would be provided by the permitting authority. The date data must be provided in CCYY–MM–DD format where CC is the century, YY is the year, MM is the month and DD is the day.	122.26(b)(15), 122.26(c)(1)(ii).	1.
Construction and Industrial Stormwater Information on NPDES Permit Application, Notice of Intent, or Waiver Request			
Total Area of the Site	This is the total area (to the nearest quarter acre) of the facility site.	122.26	1,2.
Total Activity Area	Total area (to the nearest quarter acre) of the facility that contains industrial activities and processes and construction activities. These activities and processes may include (but is not limited to) using, storing or cleaning industrial machinery or equipment, and areas where residuals from using, storing or cleaning industrial machinery or equipment remain and are exposed to stormwater; materials or products stored outdoors; materials contained in open, deteriorated or leaking storage drums, barrels, tanks, and similar containers; and materials or products from past industrial activity. Construction activities include excavation of lands.	122.26	1,2.
Current Total Imperious Area.	The current total impervious area (to the nearest quarter acre) of the facility or site.	122.26(b)(15), 122.26(c)(1)(i)(B), 122.26(c)(1)(ii)(E).	1,2.

TABLE 2—REQUIRED NPDES DATA—Continued

Data name	Data description	CWA, Regulatory, or policy citation (40 CFR)	NPDES Data group No. (*see* table 1)
Post-Construction Total Impervious Area.	Total impervious area (to the nearest quarter acre) of the permitted facility impervious area after the construction addressed in the permit application is completed.	122.26(b)(15), 122.26(c)(1)(i)(B), 122.26(c)(1)(ii)(E).	1,2.
Proposed Best Management Practices for Industrial Activities and Stormwater.	This is a text field that describes the proposed measures, including best management practices, to control pollutants in storm water discharges during construction, including a brief description of applicable State and local erosion and sediment control requirements.	122.26(b)(15), 122.26(c)(1)(i)(B), 122.26(c)(1)(ii)(C).	1,2.
Post-Construction Best Management Practices for Industrial Activities and Stormwater Discharges.	This is a text field that describes the proposed measures to control pollutants in storm water discharges that will occur after construction operations have been completed, including a brief description of applicable State or local erosion and sediment control requirements. This field also describes the nature of fill material and existing data describing soils.	122.26(b)(15), 122.26(c)(1)(i)(B), 122.26(c)(1)(ii)(D).	1,2.
Soil and Fill Material Description.	This field describes the nature of fill material and existing data describing soils.	122.26(b)(15), 122.26(c)(1)(i)(B), 122.26(c)(1)(ii)(E).	1,2.
Runoff Coefficient of the Site.	This is an estimate of the runoff coefficient of the site after the construction addressed in the permit application is completed.	122.26(b)(15), 122.26(c)(1)(ii)(E)	1,2.
Estimated Construction Project Start Date.	The estimated start date for the construction project covered by the NPDES permit. The date data must be provided in CCYY–MM–DD format where CC is the century, YY is the year, MM is the month and DD is the day.	122.26	1,2.
Estimated Construction Project End Date.	The estimated end date for the construction project covered by the NPDES permit. The date data must be provided in CCYY–MM–DD format where CC is the century, YY is the year, MM is the month and DD is the day.	122.26	1,2.
Municipal Separate Storm Sewer System (MS4) Information on NPDES Permit Application or Notice of Intent			
MS4 Permit Class	This is the code/description that identifies the size of the MS4 permit holder (small/medium/large).	122.26	1,2.
MS4 Public Education Program.	The unique code/description that identifies the public education programs the permittee intends to use to distribute educational materials to the community.	122.34(b)(1), 122.34(d)(1)(i)	1,2.
MS4 Measurable Goals Associated With Public Education Program.	The unique code/description that identifies the types of measurable goals associated with the public education programs.	122.34(d)(1)(ii)	1,2.
MS4 Public Involvement and Participation Program.	The unique code/description that identifies the public involvement and participation programs the permittee intend to use to distribute educational materials to the community.	122.34(b)(2), 122.34(d)(1)(i)	1,2.
MS4 Measurable Goals for the Public Involvement and Participation Program.	The unique code/description that identifies the types of measurable goals associated with the public involvement and participation programs.	122.34(d)(1)(ii)	1,2.
MS4 System Map	A data flag indicating whether the permittee has developed a storm sewer system map showing the location of all outfalls and names and locations of all waters of the U.S. that receive discharges from those outfalls.	122.34(b)(3)(ii)(A), 122.34(d)(1)(i)	1,2.
MS4 Prohibition Enforcement.	The unique code/description that identifies the procedures and actions the permittee will take to enforce the prohibition on non-stormwater discharges to the MS4.	122.34(b)(3)(ii)(B), 122.34(d)(1)(i)	1,2.
MS4 Detecting Non-Stormwater Discharges.	The unique code/description that identifies the procedures and actions the permittee will take to detect and address non-stormwater discharges, including illegal dumping, to permittee's system.	122.34(b)(3)(ii)(C), 122.34(d)(1)(i)	1,2.
MS4 Public Education: Illegal Discharges.	The unique code/description that identifies the procedures and actions the permittee will take to inform public employees, businesses and the general public of hazards associated with illegal discharges and improper disposal of waste.	122.34(b)(3)(ii)(D), 122.34(d)(1)(i)	1,2.

TABLE 2—REQUIRED NPDES DATA—Continued

Data name	Data description	CWA, Regulatory, or policy citation (40 CFR)	NPDES Data group No. (*see* table 1)
MS4 Construction Runoff Ordinance.	The unique code/description that identifies the permittee's ordinance or other regulatory mechanism, including sanctions to ensure compliance, to require erosion and sediment controls.	122.34(b)(4)(ii)(A), 122.34(d)(1)(i)	1,2.
MS4 Erosion and Sediment Controls.	The unique code/description that identifies the permittee's requirements for construction site operators to implement appropriate erosion and sediment control BMPs.	122.34(b)(4)(ii)(B), 122.34(d)(1)(i)	1,2.
MS4 Construction Site Waste.	The unique code/description that identifies the permittee's requirements for construction site operators to control waste such as discarded building materials, concrete truck washout, chemicals, litter, and sanitary waste at the construction site that may cause adverse impacts to water quality.	122.34(b)(4)(ii)(C), 122.34(d)(1)(i)	1,2.
MS4 Construction Site Review.	The unique code/description that identifies the permittee's procedures for site plan review which incorporate consideration of potential water quality impacts.	122.34(b)(4)(ii)(D), 122.34(d)(1)(i)	1,2.
MS4 Public Information	The unique code/description that identifies the permittee's procedures for receipt and consideration of information submitted by the public.	122.34(b)(4)(ii)(E), 122.34(d)(1)(i)	1,2.
MS4 Site Inspections And Enforcement.	The unique code/description that identifies the permittee's procedures for site inspection and enforcement of control measures.	122.34(b)(4)(ii)(F), 122.34(d)(1)(i)	1,2.
MS4 Controls For Stormwater From New Development And Redevelopment.	The unique code/description that identifies the combination of structural and/or non-structural best management practices (BMPs), which the permittee is using to address stormwater runoff from new development and redevelopment projects that disturb greater than or equal to one acre.	122.34(b)(5)(ii)(A), 122.34(d)(1)(i)	1,2.
MS4 Stormwater Ordinance For New Development And Redevelopment.	The unique code/description that identifies the permittee's ordinance or other regulatory mechanism to address post-construction runoff from new development and redevelopment projects.	122.34(b)(5)(ii)(B), 122.34(d)(1)(i)	1,2.
MS4 Maintenance Of BMPs	The unique code/description that identifies the permittee's program to ensure adequate long-term operation and maintenance of BMPs used for controlling runoff from new development and development projects.	122.34(b)(5)(ii)(C), 122.34(d)(1)(i)	1,2.
MS4 Runoff From Municipal Operations.	The unique code/description that identifies the permittee's operation and maintenance program that includes a training component and has the ultimate goal of preventing or reducing pollutant runoff from municipal operations.	122.34(b)(6)(i), 122.34(d)(1)(i).	1,2.
MS4 Additional Measures	The unique code/description that identifies the any other additional measures in the permittee's stormwater management program that is required by the permit.	122.34(b), 122.34(d)	1,2.
MS4 Measurable Goals for Additional Measures.	The unique code/description that identifies the measurable goal for each of the programs or BMPs to address stormwater including, as appropriate, the months and years in which the permittee will undertake required actions, including interim milestones and the frequency of the action.	122.34(b)(1), 122.34(d)	1,2.
Collection System Information on NPDES Permit Application or Notice of Intent			
Name of Collection System	This is the name of each collection system (by municipality or area) providing flow to the permittee. This includes unincorporated connector districts.	122.1(b) and 122.21(j)(1)(iv)	1,2.
Owner Name of Collection System.	This is the owner name of each collection system (by municipality or area) providing flow to the permittee. This includes unincorporated connector districts.	122.1(b) and 122.21(j)(1)(iv)	1,2.
Owner Type of Collection System.	This is the ownership type of each collection system (including municipality owned, privately owned). This includes unincorporated connector districts.	122.1(b) and 122.21(j)(1)(iv)	1,2.
Permit Number for Collection System.	This is the NPDES permit number (if applicable) of each collection system (by municipality or area) providing flow to the permittee. This includes unincorporated connector districts.	122.1(b) and 122.21(j)(1)(iv)	1,2.

TABLE 2—REQUIRED NPDES DATA—Continued

Data name	Data description	CWA, Regulatory, or policy citation (40 CFR)	NPDES Data group No. (*see* table 1)
Population of Collection System.	This is the population served for each collection system (by municipality or area) that provides flow to the permittee. This includes unincorporated connector districts.	122.1(b) and 122.21(j)(1)(iv)	1,2.
Percentage of Collection System That Is a Combined Sewer System.	This is the percentage of the collection system, for each collection system (by municipality or area), that is a combined sewer system. This includes unincorporated connector districts.	122.1(b) and 122.21(j)(1)(iv) and (vii)	1,2.
Combined Sewer System Information on NPDES Permit Application or Notice of Intent			
Complete and Implement a Long-Term CSO Control Plan.	All Phase II and post-Phase II combined sewer system NPDES permittees are required to complete and implement a long-term CSO control plan as described in EPA's Combined Sewer Overflow (CSO) Control Policy (19 April 1994; 59 FEDERAL REGISTER 18688–18698). This data element identifies whether the permit requires the permit holder to complete and implement a long-term CSO control plan and whether the permit holder is in compliance with this permit language.	CWA 402(q)(1)	1,2.
Nine Minimum CSO Controls Developed.	All combined sewer system NPDES permittees are required to implement the nine minimum controls outlined in EPA's Combined Sewer Overflow (CSO) Control Policy (19 April 1994; 59 FEDERAL REGISTER 18688–18698). This data element identifies whether the permit holder developed the nine minimum controls in compliance with permit language.	CWA 402(q)(1)	1,2.
Nine Minimum CSO Controls Implemented.	All combined sewer system NPDES permittees are required to implement the nine minimum controls outlined in EPA's Combined Sewer Overflow (CSO) Control Policy (19 April 1994; 59 FEDERAL REGISTER 18688–18698). This data element identifies whether the permit holder implemented the nine minimum controls in compliance with permit language.	CWA 402(q)(1)	1,2.
Enforcement Mechanism for the LTCP.	All Phase II and post-Phase II combined sewer system NPDES permittees are required to complete and implement a long-term CSO control plan as described in EPA's Combined Sewer Overflow (CSO) Control Policy (19 April 1994; 59 FEDERAL REGISTER 18688–18698). This data element identifies the type of enforcement mechanism used to require the development and implementation of a LTCP.	CWA 402(q)(1)	1,2.
LTCP Submitted	All Phase II and post-Phase II combined sewer system NPDES permittees are required to complete and implement a long-term CSO control plan as described in EPA's Combined Sewer Overflow (CSO) Control Policy (19 April 1994; 59 FEDERAL REGISTER 18688–18698). This data element identifies whether the permit holder submitted the LTCP for approval by the permitting authority.	CWA 402(q)(1)	1,2.
LTCP Approved	All Phase II and post-Phase II combined sewer system NPDES permittees are required to complete and implement a long-term CSO control plan as described in EPA's Combined Sewer Overflow (CSO) Control Policy (19 April 1994; 59 FEDERAL REGISTER 18688–18698). This data element identifies whether the LTCP submitted by the permit holder was approved by the permitting authority.	CWA 402(q)(1)	1,2.
LTCP Approval Date	All Phase II and post-Phase II combined sewer system NPDES permittees are required to complete and implement a long-term CSO control plan as described in EPA's Combined Sewer Overflow (CSO) Control Policy (19 April 1994; 59 FEDERAL REGISTER 18688–18698). This data element identifies the date when the permitting authority approved the LTCP. The date data must be provided in CCYY–MM–DD format where CC is the century, YY is the year, MM is the month and DD is the day.	CWA 402(q)(1)	1,2.

TABLE 2—REQUIRED NPDES DATA—Continued

Data name	Data description	CWA, Regulatory, or policy citation (40 CFR)	NPDES Data group No. (*see* table 1)
Actual Date Completed LTCP and CSO Controls.	All Phase II and post-Phase II combined sewer system NPDES permittees are required to complete and implement a long-term CSO control plan as described in EPA's Combined Sewer Overflow (CSO) Control Policy (19 April 1994; 59 FEDERAL REGISTER 18688–18698). This data element identifies the date by which the permit holder completed all required LTCP and CSO controls. The date data must be provided in CCYY–MM–DD format where CC is the century, YY is the year, MM is the month and DD is the day.	CWA 402(q)(1)	1,2.
Enforceable Schedule to Complete LTCP and CSO Controls.	All Phase II and post-Phase II combined sewer system NPDES permittees are required to complete and implement a long-term CSO control plan as described in EPA's Combined Sewer Overflow (CSO) Control Policy (19 April 1994; 59 FEDERAL REGISTER 18688–18698). This data element identifies whether the permit holder is on an enforceable schedule to complete all required LTCP and CSO controls.	CWA 402(q)(1)	1,2.
Other CSO Control Measures with Compliance Schedule.	This data element identifies whether the permit holder has other CSO control measures specified in a compliance schedule, beyond those identified in the nine minimum controls, LTCP, or a plan for sewer system separation.	CWA 402(q)(1)	1,2.
Approved Post-Construction Compliance Monitoring Program.	This data element indicates whether the permit holder is currently operating under an approved post-construction compliance monitoring program.	CWA 402(q)(1)	1,2.
Pretreatment Information on NPDES Permit Application, Notice of Intent, (or Pretreatment Compliance Audit or Inspection) (this includes permit application data required for all new and existing POTWs (40 CFR 122.21(j)(6))			
Pretreatment Program Required Indicator.	The code/description indicating if the permitted municipality is required to develop a pretreatment program.	122.21(j)(6), 122.44(j)	1,2.
Pretreatment Program Approved Date.	The date the pretreatment program was approved. The date data must be provided in CCYY–MM–DD format where CC is the century, YY is the year, MM is the month and DD is the day.	122.44(j), 403.8(a)	1,2.
Approval Authority Name	The name of the agency that is the designated approval authority.	122.44(j), 403.8(a)	1,2.
Program Modification Date for Required Pretreatment Streamlining Changes.	EPA's Pretreatment Streamlining Rule (14 October 2005; 70 FEDERAL REGISTER 60134–60198) revised several provisions of the General Pretreatment Regulations (40 CFR part 403). In particular, the Pretreatment Streamlining Rule made 13 more stringent changes to the General Pretreatment provisions (40 CFR part 403). The rule requires that EPA and state NPDES permitting authorities revise NPDES permits and approved pretreatment program authorizations to require implementation of these 13 more stringent changes. This is the date when the Control Authority adopted the required 13 changes from the Pretreatment Streamlining Rule. The date data must be provided in CCYY–MM–DD format where CC is the century, YY is the year, MM is the month and DD is the day.	403.7(h); 403.8(f)(1)(iii)(B)(6); 403.8(f)(2)(vi); 403.8(f)(2)(viii)(A–C); 403.12(b), (e), (h); 403.8(f)(1)(iii)(B)(3); 403.12(o); 403.12(g)(2); 403.12(g)(3), (4), (6); 403.12(g)(3); 403.12(j); 403.12(m).	1,2.
Program Modification Date for Optional Pretreatment Streamlining Changes.	EPA's Pretreatment Streamlining Rule (14 October 2005; 70 FEDERAL REGISTER 60134–60198) revised several provisions of the General Pretreatment Regulations (40 CFR part 403). In particular, the Pretreatment Streamlining Rule made 7 changes to the General Pretreatment provisions (40 CFR part 403) that provide more flexibility. The rule give EPA and state NPDES permitting authorities the option to revise NPDES permits and approved pretreatment program authorizations for these 7 changes. This is the date when the Control Authority adopted the optional 7 changes from the Pretreatment Streamlining Rule. The date data must be provided in CCYY–MM–DD format where CC is the century, YY is the year, MM is the month and DD is the day.	403.8(f)(2)(v) and 403.12(e)(2); 403.8(f)(1)(iii)(A); 403.3(e), 403.5(c)(4), 403.8(f), 403.12(b), (e), and (h); 40 CFR 403.3(v)(2), 403.8(f)(2)(v)(B), 403.8(f)(6), 403.12(e)(1), 403.12(g), (i), and (q); 40 CFR 403.8(f)(2)(v)(C), 403.12(e)(3), and 403.12(i); 403.6(c)(6); 403.6(c)(5).	1,2.

TABLE 2—REQUIRED NPDES DATA—Continued

Data name	Data description	CWA, Regulatory, or policy citation (40 CFR)	NPDES Data group No. (*see* table 1)
Program Modification Type for Optional Pretreatment Streamlining Changes.	EPA's Pretreatment Streamlining Rule (14 October 2005; 70 FEDERAL REGISTER 60134–60198) revised several provisions of the General Pretreatment Regulations (40 CFR part 403). In particular, the Pretreatment Streamlining Rule made 7 changes to the General Pretreatment provisions (40 CFR part 403) that provide more flexibility. This data element identifies which of the 7 optional provisions from the Pretreatment Streamlining Rule were adopted by the Control Authority.	Same as preceding data element.	1,2.
Significant Industrial User Name.	The name of each Significant Industrial User (SIU) that is discharging (including truck transportation) to this POTW.	122.21(j)(6), 122.44(j)	1,2.
Significant Industrial User Address.	The mailing address of each Significant Industrial User (SIU) that is discharging (including truck transportation) to this POTW.	122.21(j)(6), 122.44(j)	1,2.
Significant Industrial User City.	The name of the city, town, village, or other locality, when identifiable, within whose boundaries (the majority of) for each Significant Industrial User (SIU) that is discharging (including truck transportation) to this POTW.	122.21(j)(6), 122.44(j)	1,2.
Significant Industrial User State.	The U.S. Postal Service (USPS) abbreviation that represents the state or state equivalent for the U.S. for each Significant Industrial User (SIU) that is discharging (including truck transportation) to this POTW.	122.21(j)(6), 122.44(j)	1,2.
Significant Industrial User Zip Code.	The combination of the 5-digit Zone Improvement Plan (ZIP) code and the 4-digit extension code (if available) that represents the geographic segment that is a sub unit of the ZIP Code assigned by the U.S. Postal Service to a geographic location for each Significant Industrial User (SIU) that is discharging (including truck transportation) to this POTW.	122.21(j)(6), 122.44(j)	1,2.
Significant Industrial User Subject to Local Limits.	This data element will identify for each Significant Industrial User (SIU) that is discharging (including truck transportation) to this POTW whether the SIU is subject to local limits.	122.21(j)(6), 122.44(j)	1,2.
Significant Industrial User Subject to Local Limits More Stringent Than Categorical Standards.	This data element will identify for each Significant Industrial User (SIU) that is discharging (including truck transportation) to this POTW whether the SIU is subject to local limits that are more stringent than the applicable categorical standards.	122.21(j)(6), 122.44(j)	1,2.
Industrial User Subject to Categorical Standards.	This data element will identify for each Significant Industrial User (SIU) that is discharging (including truck transportation) to this POTW whether the SIU is subject to categorical standards.	122.21(j)(6), 122.44(j)	1,2.
Applicable Categorical Standards.	This data element will identify for each Significant Industrial User (SIU) that is discharging (including truck transportation) to this POTW the applicable categorical standards.	122.21(j)(6), 122.44(j)	1,2.
Significant Industrial User Process Wastewater Flow Rate.	This data element will identify for each Significant Industrial User (SIU) that is discharging (including truck transportation) to this POTW the process wastewater flow rate (in gallons per day).	122.21(j)(6), 122.44(j)	1,2.
Type of Significant Industrial User Process Wastewater Flow.	This data element will identify for each Significant Industrial User (SIU) that is discharging (including truck transportation) to this POTW the type of process wastewater flow (continuous or intermittent).	122.21(j)(6), 122.44(j)	1,2.
Significant Industrial User Non-Process Wastewater Flow Rate.	This data element will identify for each Significant Industrial User (SIU) that is discharging (including truck transportation) to this POTW the non-process wastewater flow rate (in gallons per day).	122.21(j)(6), 122.44(j)	1,2.
Type of Significant Industrial User Non-Process Wastewater Flow.	This data element will identify for each Significant Industrial User (SIU) that is discharging (including truck transportation) to this POTW the type of non-process wastewater flow (continuous or intermittent).	122.21(j)(6), 122.44(j)	1,2.

TABLE 2—REQUIRED NPDES DATA—Continued

Data name	Data description	CWA, Regulatory, or policy citation (40 CFR)	NPDES Data group No. (*see* table 1)
Industrial User Causing Problems at POTW.	This data element will identify for each Significant Industrial User (SIU) whether it caused or contributed to any problems (including upset, bypass, interference, pass-through) at this POTW within the past four and one-half years. EPA regulations require the Control Authority to develop and enforce local limits when the discharge from an IU causes or contributes to any problems (including upset, interference, bypass) at the receiving POTW's effluent discharge or biosolids.	122.21(j)(6), 122.44(j)(2)(ii), 403.5(c)	1,2.
Receiving RCRA Waste	This data element will identify whether the POTW has received RCRA hazardous waste by truck, rail, or dedicated pipe within the last three years.	122.21(j)(7), 122.44(j)	1,2.
Receiving Remediation Waste.	This data element will identify whether the POTW has received RCRA or CERLCA waste from off-site remedial activities within the last three years.	122.21(j)(7), 122.44(j)	1,2.
Control Authority Name	The name of the Control Authority for the Significant Industrial User discharging to this POTW. This will be the name of the State or EPA Region when they are the Control Authority. This field may also come from the pretreatment compliance audit or inspection.	122.44(j)	1,2.
Control Authority NPDES Permit Number.	The NPDES permit number of the Control Authority for the Significant Industrial User discharging to this POTW. This field may also come from the pretreatment compliance audit or inspection.	122.44(j)	1,2.
Cooling Water Intake Information on NPDES Permit Application or Notice of Intent			
Type of Facility	The unique code/description that identifies the type of facility based on regulations, 1 = New Facility under 40 CFR part 125, Subpart I, 2 = New Offshore Oil & gas Facility under 40 CFR part 125, Subpart N, 3 = Existing Facility under 40 CFR part 125, Subpart J, 4 = BPJ Facility over 2 MGD under 40 CFR 125.90(b), 401.14.	CWA 316(b), 122.21(r), 125 Subpart I, J, and N, 401.14.	1,2.
Number of Cooling Water Intake Structures (CWISs).	The number of cooling water intake structures (CWISs) at the facility.	CWA 316(b), 122.21(r), 125.86, 125.90(b), 125.136, 401.14.	1,2.
Design Intake Flow for Cooling Water Intake Structure.	The design intake flow (DIF), in units of MGD, is the total designed amount of flow for each permitted cooling water intake structure. This value is based on maximum design flow capacities.	CWA 316(b), 122.21(r),125.80, 125.86, 125.90(b), 125.131, 125.136, 401.14.	1,2.
Actual Intake Flow for Cooling Water Intake Structure.	This actual flow value, in units of MGD, is intended to represent on-the-ground intake flow capacities in the preceding year, as opposed to the DIF, which is based on maximum design flow capacities.	CWA 316(b), 122.21(r), 125.86, 125.90(b), 125.136, 401.14.	1,2.
Average Reported Intake Flow for Cooling Water Intake Structure.	This average flow value, in units of MGD, is intended to represent on-the-ground intake flow capacities in the preceding year, as opposed to the DIF, which is based on maximum design flow capacities.	CWA 316(b), 122.21(r), 125.86, 125.90(b), 125.136, 401.14.	1,2.
Percentage of Intake for Cooling Purposes.	This is the percentage of water intake that is used for cooling purposes for each permitted cooling water intake structure.	CWA 316(b), 122.21(r), 125.81, 125.90(b), 125.131, 401.14.	1,2.
Location Type for Cooling Water Intake Structure.	The unique code/description that identifies the location and description for each intake. These values are 1=shoreline intake description (flushed, recessed), 2=intake canal, 3=embayment, bank, or cove, 4=submerged offshore intake, 5=near-shore submerged intake, 6=shoreline submerged intake.	CWA 316(b), 122.21(r), 125.86, 125.90(b), 125.136, 401.14.	1,2.
Distance Offshore for Submerged Cooling Water Intake Structure.	The distance (in feet) from shore for each CWIS	CWA 316(b), 122.21(r), 125.86, 125.90(b), 125.136, 401.14.	1,2.
Maximum Through-Screen Velocity.	This is the maximum velocity (in feet/second) of the water intake through the screen for each permitted cooling water intake structure.	CWA 316(b), 122.21(r), 125.86, 125.90(b), 125.136, 401.14.	1,2.
Average Through-Screen Velocity.	This is the average through-screen velocity (in feet/second) of the water intake through the screen for each permitted cooling water intake structure.	CWA 316(b), 122.21(r), 125.86, 125.90(b), 125.136, 401.14.	1,2.

TABLE 2—REQUIRED NPDES DATA—Continued

Data name	Data description	CWA, Regulatory, or policy citation (40 CFR)	NPDES Data group No. (*see* table 1)
Percentage of Mean Annual Flow Withdrawn—Fresh Water Facilities.	The percentage of the source water annual mean flow withdrawn as compared to the total design intake flow from all cooling water intake structures located in a freshwater river or stream at the permitted facility.	CWA 316(b), 125.84, 125.90(b), 401.14	1,2.
Percentage of Design Intake Flow over Tidal Cycle—Tidal River or Estuary Facilities.	The percentage of the volume of the water column within the area centered about the opening of the intake in a tidal river or estuary with a diameter defined by the distance of one tidal excursion at the mean low water level as compared to the facility's total design intake flow over one tidal cycle of ebb and flow.	CWA 316(b), 125.84, 125.90(b), 401.14	1,2.
Waterbody Type	The unique code/description that describes the impingement control technologies for each CWIS. A value of 1 = Ocean, 2 = Estuary, 3 = Great Lake, 4 = Fresh River, 5 = Lake/Reservoir.	CWA 316(b), 122.21(r), 125.86, 125.90(b), 125.136, 401.14.	1,2.
Canal/Fish Return Length ...	This is the length for any fish return system at the permitted facility.	CWA 316(b), 122.21(r), 125.86, 125.90(b), 125.136, 401.14.	1,2.
Significant Navigation or Waterbody Use Type Near The Intake Entrance.	The unique code/description for the type of navigation or waterbody use near each CWIS. A value of 1 (one) indicates the intake is located where boat/barge navigation near the intake is a consideration when making any potential modifications to the intake. A value of 0 (zero) indicates navigation does not occur in the vicinity of the intake. Navigational considerations affect which impingement and entrainment technologies may be used by intakes located in embayments, banks, or coves.	CWA 316(b), 122.21(r), 125.86, 125.90(b), 125.136, 401.14.	1,2.
Mean Intake Water Depth ...	This is the mean depth (in feet) for each CWIS. This value is used for the estimation of total existing screen width.	CWA 316(b), 122.21(r), 125.80(a) and (b), 125.90(b), 125.131(c) and (d), 401.14.	1,2.
Intake Well Depth	The intake well depth (in feet) is the distance from the intake deck to the bottom of the screen well for each CWIS, and includes both water depth and distance from the water surface to the deck. The intake well depth is used to select the depth of the required screen.	CWA 316(b), 122.21(r), 125.86, 125.90(b), 125.136, 401.14.	1,2.
Debris Loading	The unique code/description that describes the amount of debris near each CWIS. A value of 1 (one) indicates high levels of debris and trash near the intake. A value of 0 (zero) indicates debris is low or negligible. A facility that uses a trash rack is likely to have a high debris loading.	CWA 316(b), 122.21(r), 125.80(a) and (b), 125.90(b), 125.131(c) and (d), 401.14.	1,2.
Impingement Control Technology In-Place.	The unique code/description that describes the impingement control technologies for each CWIS. A value of 1= Modified Traveling Screens, 2= Passive Intake (Velocity Cap, Coarse Wedgewire Screens, Porous Dam, Leaky Dike, etc.), 3= Barrier net, and 4 = Fish Diversion or Avoidance (Louvers, Acoustics, etc.), 5 = Other technology. A value of zero means no controls.	CWA 316(b), 122.21(r), 125.80(a) and (b), 125.90(b), 125.131(c) and (d), 401.14.	1,2.
Entrainment Control Technology in-Place.	The unique code/description that describes the entrainment control technologies for each CWIS. A value of 1 = Traveling Screens w/Fine Mesh, 2 = Far Offshore Intake, and 3 = Passive Screens w/Fine Mesh, 4 = Closed-Cycle Recirculating System, 5 = Other Technology. A value of zero means no controls.	CWA 316(b), 122.21(r), 125.80(a) and (b), 125.90(b), 125.131(c) and (d), 401.14.	1,2.
Track II Comprehensive Demonstration Study Submission Date.	The date of any submission of any Track II Comprehensive Demonstration Study. The date data must be provided in CCYY–MM–DD format where CC is the century, YY is the year, MM is the month and DD is the day.	CWA 316(b), 125.86(c)(2), 125.136(c)(2)	1,2.
Design and Construction Technology Plan Submission Date.	The submission date of any Design and Construction Technology Plan. The date data must be provided in CCYY–MM–DD format where CC is the century, YY is the year, MM is the month and DD is the day.	CWA 316(b), 125.80(a) and (b), 125.86(b)(4), 125.131(c) and (d).	1,2.

TABLE 2—REQUIRED NPDES DATA—Continued

Data name	Data description	CWA, Regulatory, or policy citation (40 CFR)	NPDES Data group No. (*see* table 1)
Source Water Biological Study Submission Date.	The submission date of any Source Water Biological Study. The date data must be provided in CCYY–MM–DD format where CC is the century, YY is the year, MM is the month and DD is the day.	CWA 316(b), 125.86(c), 125.136(c)	1,2.
Verification Monitoring Plan Submission Date.	The submission date of any Verification Monitoring Plan. The date data must be provided in CCYY–MM–DD format where CC is the century, YY is the year, MM is the month and DD is the day.	CWA 316(b), 125.86(c), 125.136(c)	1,2.
Source Water Physical Data Submission Date.	The submission date of any Source Water Physical Data. The date data must be provided in CCYY–MM–DD format where CC is the century, YY is the year, MM is the month and DD is the day.	CWA 316(b), 122.21(r), 125 Subpart I and N.	1,2.
Cooling Water Intake Structure Data Submission Date.	The submission date of any Cooling Water Intake Structure Data. The date data must be provided in CCYY–MM–DD format where CC is the century, YY is the year, MM is the month and DD is the day.	CWA 316(b), 122.21(r), 125 Subpart I and N.	1,2.
Source Water Baseline Biological Characterization Data Submission Date.	The submission date of any Source Water Baseline Biological Characterization Data. The date data must be provided in CCYY–MM–DD format where CC is the century, YY is the year, MM is the month and DD is the day.	CWA 316(b), 122.21(r), 125 Subpart I and N.	1,2.
New Facilities—Alternative Requirements Provision Request Approval Date.	The approval date of any request under the Alternative Requirements provision as defined under 40 CFR 125.85 or 40 CFR 125.135. The date data must be provided in CCYY–MM–DD format where CC is the century, YY is the year, MM is the month and DD is the day.	CWA 316(b), 125.85, 125.135	1,2.
CWA Section 316(a) Thermal Variance Information on NPDES Permit Application or Notice of Intent			
Thermal Variance Unit	This is the unit of measure (e.g., °F or °C of discharged effluent, °F or °C different between discharged effluent and receiving waterbody, °F or °C different between discharged effluent and inlet water source) associated with numeric value of the alternative effluent limitation granted.	CWA 316(a), 125 Subpart H	1,2.
Thermal Variance Granted	This is a flag indicating whether the permitting authority has granted the permittee a CWA 316(a) variance for the controlling NPDES permit.	CWA 316(a), 125 Subpart H	1,2.
Thermal Variance Value	This is the numeric value of the alternative effluent limitation granted.	CWA 316(a), 125 Subpart H	1,2.
Thermal Variance Date	This is the date when the permitting authority granted the permittee a CWA 316(a) variance for the controlling NPDES permit. The date data must be provided in CCYY–MM–DD format where CC is the century, YY is the year, MM is the month and DD is the day.	CWA 316(a), 125 Subpart H	1,2.
Thermal Variance Study Date.	This is the date when the facility submitted new studies/data based on actual operation experience to support the continuation of the variance. The date data must be provided in CCYY–MM–DD format where CC is the century, YY is the year, MM is the month and DD is the day.	CWA 316(a), 125 Subpart H	1,2.
Compliance Monitoring Activity			
Permitted Feature Identifier	The unique identifier for the permitted feature number entered by the user for the inspected permitted feature. This data element will provide a linkage to location data from the NPDES permit application.	123.26	1.
Compliance Monitoring Activity Actual End Date.	The actual date on which the compliance monitoring activity ended. The date data must be provided in CCYY–MM–DD format where CC is the century, YY is the year, MM is the month and DD is the day.	CWA 308	1.
Compliance Monitoring Activity Planned End Date.	The planned date for the compliance monitoring activity to end. The date data must be provided in CCYY–MM–DD format where CC is the century, YY is the year, MM is the month and DD is the day.	CWA 308	1.

TABLE 2—REQUIRED NPDES DATA—Continued

Data name	Data description	CWA, Regulatory, or policy citation (40 CFR)	NPDES Data group No. (*see* table 1)
Compliance Monitoring State.	The US Postal Service abbreviation that represents that state or state equivalent for the U.S. in which the compliance monitoring activity occurred.	none	1.
Compliance Activity	The unique code/description that identifies a type of compliance event or enforcement action. For example, there are codes for inspection, investigation, information request, and offsite records review.	CWA 308	1.
Compliance Monitoring Type.	The code/description indicating the type of compliance monitoring activity taken by a regulatory Agency. Each compliance monitoring activity has a variety of different types, such as audit, sampling, case development, follow-up, reconnaissance without sampling, etc.	CWA 308	1.
Biomonitoring Inspection Method.	The unique code that identifies the type of biomonitoring inspection method. This data element supplements the Compliance Monitoring Category and Compliance Monitoring Type Inspection Type recorded for all inspections.	CWA 308	1.
Compliance Monitoring Category.	The unique code/description identifying the compliance monitoring or inspection category code/description.	CWA 308	1.
Compliance Monitoring Action Reason.	The unique code that identifies the purpose of an activity.	CWA 308	1.
Was this a State, Federal or Joint (State/Federal) Inspection?.	The flag indicating if the inspection is a joint inspection by federal, state, tribal, or territorial personnel.	CWA 308	1.
Compliance Monitoring Agency Type.	An indicator whether the compliance monitoring activity was designated as an EPA or state activity/inspection.	CWA 308	1.
Law Sections Evaluated	The unique identifier for the section(s) of law evaluated in or pertinent to the activity.	CWA 308	1.
Compliance Monitoring Activity (Biosolids Inspections)			
Deficiencies Identified Through the Biosolids Inspection.	This field will identify the deficiency or deficiencies identified in that facility's biosolids implementation for each biosolids inspection. These deficiencies will allow users to distinguish between Category I and Category 2 violations for determining significant noncompliance (SNC).	CWA 308	1.
Compliance Monitoring Activity (AFO/CAFO Inspections)			
Animal Type	The unique code/description that identifies the operation's applicable animal sector(s) on the site.	122.23	1.
Total Number of Animals	The total number of each type of livestock at the facility.	122.23	1.
Total Number of Animals in Open Confinement.	The total number of each type of livestock at the facility in open confinement.	122.23	1.
Animal Maximum Capacity	The maximum number of each type of livestock at the facility.	122.23	1.
Containment Type	The unique code/description for each type of containment used by the operation.	122.23	1.
Containment Total Capacity	The total capacity, in gallons, of the containment structure.	122.23	1.
CAFO Designation Date	The date on which the facility is designated as a Concentrated Animal Feeding Operation (CAFO). The date data must be provided in CCYY–MM–DD format where CC is the century, YY is the year, MM is the month and DD is the day.	122.23	1.
Designation Reason	If the facility was designated, indicate the reason that the facility was designated, such as the amount of waste reaching waters, location, slope, rainfall, etc.	122.23	1.
Is the Animal Facility Type a CAFO?.	The flag to indicate if the facility is classified as a CAFO or not.	122.23	1.
Did Facility Make a No Discharge Certification?.	A code identifying whether the facility made a certification of no discharge to the EPA or State NPDES permitting authority.	122.23	1.
Is an NMP Being Implemented?.	A code identifying whether the facility is implementing a Nutrient Management Plan (NMP).	122.23	1.

TABLE 2—REQUIRED NPDES DATA—Continued

Data name	Data description	CWA, Regulatory, or policy citation (40 CFR)	NPDES Data group No. (*see* table 1)
Is an NMP Being Updated Annually?.	A code identifying whether the facility is annually updating its Nutrient Management Plan (NMP).	122.23	1.
Land Application BMP Type	The unique code/description for each type of best management practice used in conjunction with land application.	122.23	1.
Mortality Disposal Method	The unique code/description for each type of animal mortality disposal.	122.23	1.
Monitoring Well Data Availability.	A code identifying whether there is monitoring well data available for the facility.	122.23	1.
Storage Type	The unique code/description that describes the type of manure, litter, and process wastewater storage used by the operation.	122.23	1.
Storage Total Capacity	The total capacity, in tons, of the manure, litter, and process wastewater storage structure.	122.23	1.
Compliance Monitoring Activity (Sewer Overflows Inspections and Audits)			
Sewer Overflow Longitude	This data element is required for sewer overflow inspections without a permitted feature identifier. The measure of the angular distance on a meridian east or west of the prime meridian for the sewer overflow. Entered in either decimal degrees or in degrees minutes seconds; stored in decimal degrees. This data element will enable users to compare this inspection to a sewer overflow incident report. These data are provided in accordance with Environmental Data Standards Council, Latitude/Longitude Data Standard, Standard No.: EX000017.2, January 6, 2006.	123.26	1.
Sewer Overflow Latitude	This data element is required for sewer overflow inspections without a permitted feature identifier. The measure of the angular distance on a meridian north or south of the equator for the sewer overflow. Entered in either decimal degrees or in degrees minutes seconds; stored in decimal degrees. This data element will enable users to compare this inspection to a sewer overflow incident report. These data are provided in accordance with Environmental Data Standards Council, Latitude/Longitude Data Standard, Standard No.: EX000017.2, January 6, 2006.	123.26	1.
Type of Sewer Overflow	A code identifying the type of sewer overflow (including CSO, SSO, Bypass, Other Discharge from the Collection System or Treatment Works).	123.26	1.
Sewer Overflow Cause	The likely cause of the overflow event (e.g., broken pipe, fats/oil/grease, mechanical failure, pump station electrical failure, etc.).	123.26	1.
Duration of Sewer Overflow event (hours).	Duration of the sewer overflow event (in hours). If the discharge has not been corrected, the best professional judgment from the compliance inspector of the time the sewer overflow is expected to continue.	123.26	1.
Sewer Overflow Discharge Volume.	Best professional judgment from the compliance inspector on the estimated number of gallons of sewer overflow.	123.26	1.
Failure to Submit Sewer Overflow Incident Report.	This data element would indicate whether the POTW has failed to provide 24-hr. notification of sewer overflows or failed to submit sewer overflow incident follow-up reports within the required five days.	122.41(l)(6) and (7)	1.
Compliance Monitoring Activity (Pretreatment Inspections and Audits)			
Legal Authority Status and Deficiencies.	This data element would identify if legal authority to implement the pretreatment program was sufficient or if the pretreatment compliance audit or inspection identified particular deficiencies, identified in a drop-down list. This data element is consistent with the "FY 1990 Guidance for Reporting and Evaluating POTW Noncompliance with Pretreatment Implementation requirements", from EPA, 27 September 1989.	See Data Description.	1.

TABLE 2—REQUIRED NPDES DATA—Continued

Data name	Data description	CWA, Regulatory, or policy citation (40 CFR)	NPDES Data group No. (*see* table 1)
Failure of the Control Authority to Enforce Against Pass-Through or Interference.	This data element would be a simple ''yes/no'' indicator as to whether the pretreatment compliance audit or inspection identified a deficiency related to the control authority's failure to enforce against pass-through or interference. This data element is consistent with the ''FY 1990 Guidance for Reporting and Evaluating POTW Noncompliance with Pretreatment Implementation requirements'', from EPA, 27 September 1989.	See description.	1.
Failure of the Control Authority to Submit Required Reports Within 30 Days.	This data element would be a simple ''yes/no'' indicator as to whether the pretreatment compliance audit or inspection identified a deficiency related to the control authority's failure to submit required pretreatment reports within thirty days of the due date. This data element is consistent with the ''FY 1990 Guidance for Reporting and Evaluating POTW Noncompliance with Pretreatment Implementation requirements'', from EPA, 27 September 1989.	See description.	1.
Failure of the Control Authority To Meet Compliance Schedule Milestone Dates Within 90 Days.	This data element would be a simple ''yes/no'' indicator as to whether the pretreatment compliance audit or inspection identified a deficiency related to the control authority's failure to meet compliance schedule milestone dates within 90 days of the due date. This data element is consistent with the ''FY 1990 Guidance for Reporting and Evaluating POTW Noncompliance with Pretreatment Implementation requirements'', from EPA, 27 September 1989.	See description.	1.
Failure of the Control Authority to Issue or Reissue Control Mechanisms.	This data element would be a simple ''yes/no'' indicator as to whether the pretreatment compliance audit or inspection identified a deficiency related to the control authority's failure to issue or reissue control mechanisms. If at least 90% of the significant industrial users have valid control mechanisms in the past six-month period, then this would not be identified as a deficiency. This data element is consistent with the ''FY 1990 Guidance for Reporting and Evaluating POTW Noncompliance with Pretreatment Implementation requirements'', from EPA, 27 September 1989.	See description.	1.
Failure of the Control Authority To Inspect or Sample.	This data element would be a simple ''yes/no'' indicator as to whether the pretreatment compliance audit or inspection identified a deficiency related to the control authority's failure to inspect or sample. If at least 80% of the significant industrial users have been inspected or sampled in the past twelve months, then this would not be identified as a deficiency. This data element is consistent with the ''FY 1990 Guidance for Reporting and Evaluating POTW Noncompliance with Pretreatment Implementation requirements'', from EPA, 27 September 1989.	See description.	1.
Failure of the Control Authority to Enforce Pretreatment Standards and Reporting Requirements.	This data element would be a simple ''yes/no'' indicator as to whether the pretreatment compliance audit or inspection identified a deficiency related to the control authority's failure to inspect or sample. If less than 15% of the significant industrial users have been in significant noncompliance in the past twelve months, then this would not be identified as a deficiency. This data element is consistent with the ''FY 1990 Guidance for Reporting and Evaluating POTW Noncompliance with Pretreatment Implementation requirements'', from EPA, 27 September 1989.	See description.	1.
Compliance Monitoring Activity (Discharge Monitoring Report, and Pretreatment SIU Periodic Compliance Reports in Municipalities without an Approved Pretreatment Program)			
Permitted Feature	The identifier assigned for each location at which conditions are being applied.	CWA 301(d), 304(b), and 304(m)	1,2,3,6,8.
Limit Set	The unique identifier tying the DMR form to its Limit Set record.	CWA 301(d), 304(b), and 304(m)	1,2,3,6,8.

TABLE 2—REQUIRED NPDES DATA—Continued

Data name	Data description	CWA, Regulatory, or policy citation (40 CFR)	NPDES Data group No. (*see* table 1)
Parameter Code	The unique code/description identifying the parameter reported on the DMR.	CWA 301(d), 304(b), and 304(m)	1,2,3,6,8.
Monitoring Location	The code/description of the monitoring location at which the sampling occurred for a DMR parameter.	CWA 301(d), 304(b), and 304(m)	1,2,3,6,8.
Monitoring Period End Date	The date that the monitoring period for the values covered by this DMR form ends. The date data must be provided in CCYY–MM–DD format where CC is the century, YY is the year, MM is the month and DD is the day.	CWA 301(d), 304(b), and 304(m)	1,2,3,6,8.
NODI	The unique code/description that indicates the reason that ''No Discharge'' or ''No Data'' was reported in place of the DMR value.	CWA 301(d), 304(b), and 304(m)	1,2,3,6,8.
Value	The DMR value number reported on the DMR form	122.41(l)(4)(i)/CWA 301(d), 304(b), and 304(m).	1,2,3,6,8.
Concentration Units/Quantity Units.	The code/description representing the unit of measure applicable to quantity or concentration limits and measurements as entered by the user on the DMR form.	CWA 301(d), 304(b), and 304(m)	1,2,3,6,8.
Value Received Date	The date the DMR value was received by the regulatory authority. The date data must be provided in CCYY–MM–DD format where CC is the century, YY is the year, MM is the month and DD is the day.		1.
Value Type	The unique code/description identifying a DMR value type (i.e. Quantity 1, Quantity 2, Concentration 1, Concentration 2, Concentration 3).	CWA 301(d), 304(b), and 304(m)	1,2,3,6,8.
Qualifier	The unique code identifying the limit value operator (e.g., <, =, >).		1,2,3,6,8.
Compliance Monitoring Activity (Periodic Program Reports)			
Date Report Received	The date the report was received. The date data must be provided in CCYY–MM–DD format where CC is the century, YY is the year, MM is the month and DD is the day.	These are data elements that are common to reports required in Parts 122, 123, 403, and 503.	4 through 9.
Start Date of Reporting Period.	The start date of the reporting period. The date data must be provided in CCYY–MM–DD format where CC is the century, YY is the year, MM is the month and DD is the day.	These are data elements that are common to reports required in Parts 122, 123, 403, and 503.	4 through 9.
End Date of Reporting Period.	The end date of the reporting period. The date data must be provided in CCYY–MM–DD format where CC is the century, YY is the year, MM is the month and DD is the day.	These are data elements that are common to reports required in Parts 122, 123, 403, and 503.	4 through 9.
Federal Regulatory Section(s) Requiring the Program Report.	The Federal regulatory section(s) that are the underlying legal basis for requiring the program report to be submitted.	These are data elements that are common to reports required in Parts 122, 123, 403, and 503.	4 through 9.
Compliance Monitoring Activity (Data Elements Specific to Biosolids Annual Program Reports)			
Treatment Processes	This data element identifies the biosolids treatment processes at the facility. For example, this may indicate whether primary, secondary, and tertiary treatment is being used, and the type of the sewage sludge treatment process or processes used, including drying processes.	503.18, 503.28, 503.48	4.
Biosolids Class	This data element will identify the class or classes (e.g., Class A, Class A EQ, Class B) of biosolids generated by the facility.	503.18, 503.28, 503.48	4.
Management Practice	This data element will identify the type of biosolids management practice or practices (e.g., land application, surface disposal, incineration) for biosolids generated by the facility.	503.18, 503.28, 503.48	4.
Sampling and analytical methods.	Describe the representative sampling processes for compliance with 40 CFR part 503, 40 CFR part 136, or an issued NPDES permit including analytical methods used to analyze for enteric viruses, fecal coliforms, *helminth ova, Salmonella sp.,* and regulated metals, as well as the reporting limit.	503.18, 503.28, 503.48	4.

TABLE 2—REQUIRED NPDES DATA—Continued

Data name	Data description	CWA, Regulatory, or policy citation (40 CFR)	NPDES Data group No. (*see* table 1)
Biosolids Volume Amount	This is the amount (in dry metric tons) of biosolids. If there is more than one biosolids class, then the facility will separately report a biosolids volume amount for each biosolids class and management practice.	503.18, 503.28, 503.48	4.
Biosolids Receiving Site Name.	This is the name of the off-site facility receiving biosolids from this facility. If the biosolids generator sends biosolids to more than one receiving facility, then the biosolids generator will report each site name for each biosolids class code and management practice code.	503.18, 503.28, 503.48	4.
Biosolids Receiving Site Street Address.	This is the street address, if applicable, of the Biosolids Receiving Site.	503.18, 503.28, 503.48	4.
Biosolids Receiving Site City.	This is the city name of the Biosolids Receiving Site, if applicable.	503.18, 503.28, 503.48	4.
Biosolids Receiving Site State.	This is the state code of the Biosolids Receiving Site, if applicable.	503.18, 503.28, 503.48	4.
Biosolids Receiving Site Zip Code.	This is the zip code of the Biosolids Receiving Site, if applicable.	503.18, 503.28, 503.48	4.
Biosolids Receiving Site Latitude.	The measure of the angular distance on a meridian north or south of the equator for the Biosolids Receiving Site. If this is a field, the measurement should be made at the center of the field. Entered in either Decimal Degrees or in Degrees Minutes Seconds; stored in decimal degrees. These data are provided in accordance with Environmental Data Standards Council, Latitude/Longitude Data Standard, Standard No.: EX000017.2, January 6, 2006.	503.18, 503.28, 503.48	4.
Biosolids Receiving Site Longitude.	The measure of the angular distance on a meridian east or west of the prime meridian for the Biosolids Receiving Site. If this is a field, the measurement should be made at the center of the field. Entered in either Decimal Degrees or in Degrees Minutes Seconds; stored in decimal degrees. These data are provided in accordance with Environmental Data Standards Council, Latitude/Longitude Data Standard, Standard No.: EX000017.2, January 6, 2006.	503.18, 503.28, 503.48	4.
Biosolids Monitored Parameter.	This is the monitored parameter for each biosolids class code and each management practice. If the biosolids generator produces more than one biosolids class, then the biosolids generator will separately report each monitored parameter for each biosolids class and management practice.	503.18, 503.28, 503.48	4.
Biosolids Monitored Parameter Concentration.	This is the concentration value of the Biosolids Monitored Parameter.	503.18, 503.28, 503.48	4.
Biosolids Monitored Parameter Units.	This is the measurement unit (e.g., mg/l) associated with the Biosolids Monitored Parameter Concentration.	503.18, 503.28, 503.48	4.
Actual Measured Cumulative Pollutant Loading Rate.	This is the measured cumulative amount of a pollutant (on a dry weight basis) that has been applied to an area of land (Biosolids Receiving Site) as specified in the regulations at 40 CFR part 503. The list of pollutants to be measured is at 40 CFR 503.13, Table 2. This value is the total mass of a particular pollutant (on a dry weight basis) that has been applied to a unit area of land during the entire life of the application site. When the Actual Measured Cumulative Pollutant Loading Rate exceeds the Cumulative Pollutant Loading Rate (CPLR) limit for any pollutant, as identified at 40 CFR 503.13, Table 2, no additional bulk biosolids subject to CPLR limits may be applied to the site.	503.13	4.
Actual Measured Annual Application Rate.	This is the measured annual application rate (on a dry weight basis) that has been applied to an area of land (Biosolids Receiving Site). This value is compared against the Annual Pollutant Loading Rate (see 40 CFR 503.13, Table 4) to determine compliance for each Biosolids Receiving Site for each year.	503.13	4.

TABLE 2—REQUIRED NPDES DATA—Continued

Data name	Data description	CWA, Regulatory, or policy citation (40 CFR)	NPDES Data group No. (*see* table 1)
Disposition of Incinerator Ash.	This provides information regarding the method of disposal of incinerator ash (e.g., in surface disposal units, use in cement kilns, or other practice).		4.
Compliance Monitoring Activity (Data Elements Specific to CAFO Annual Program Reports)			
Animal Types	The unique code/description that identifies the permittee's applicable animal sector(s) in the previous 12 months. This includes (but not limited to) beef cattle, broilers, layers, swine weighing 55 pounds or more, swine weighing less than 55 pounds, mature dairy cows, dairy heifers, veal calves, sheep and lambs, horses, ducks, and turkeys.	122.42(e)(4)(i)	5.
Total Number	The total number of each type of livestock at the facility in the previous 12 months.	122.42(e)(4)(i)	5.
Total Number of Animals in Open Confinement.	The total number of each type of livestock at the facility in open confinement in the previous 12 months.	122.42(e)(4)(i)	5.
CAFO Waste Type	The type of CAFO waste described (i.e., manure, litter, process wastewater).	122.42(e)(4)(ii)	5.
Amount of CAFO Waste	The amount of CAFO waste described, in gallons, as a total for the previous 12 months.	122.42(e)(4)(ii)	5.
Status of the CAFO Waste	The status of the CAFO waste described (i.e., generated, generated and transferred, or applied onsite).	122.42(e)(4)(ii)	5.
Total Number of Acres for Land Application Covered by the Nutrient Management Plan.	Total number of acres (to the nearest quarter acre) for land application covered by the nutrient management plan in the previous 12 months.	122.42(e)(4)(iv)	5.
Total Number of Acres Used for Land Application.	The total number of acres (to the nearest quarter acre) under control of the CAFO used for land application in past 12 months.	122.42(e)(4)(v)	5.
Discharges During Year from Production Area.	The flag indicating if there is any discharge from the production area in the previous 12 months.	122.42(e)(4)(vi)	5.
Discovery Dates of Discharges from Production Area.	The date of each discharge from the permittee's production area in the previous 12 months. The date data must be provided in CCYY–MM–DD format where CC is the century, YY is the year, MM is the month and DD is the day.	122.42(e)(4)(vi)	5.
Duration of Discharge from Production Area.	The duration (in hours) of each discharge from the permittee's production area in the previous 12 months. If the discharge is continual, the best professional judgment from the permitted facility of the time the discharge from the permittee's production area is expected to continue.	122.42(e)(4)(vi)	5.
Approximate Volume of Discharges from Production Area.	Best professional judgment from the permittee on the estimated number of gallons for each discharge from the permittee's production area in the previous 12 months.	122.42(e)(4)(vi)	5.
Whether NMP Approved or Developed by Certified Planner.	A flag indicating whether the NMP was approved or developed by a certified nutrient management planner.	122.42(e)(4)(vii)	5.
Actual Crop(s) Planted for Each Field.	Actual crop(s) planted for each field	122.42(e)(4)(viii)	5.
Actual Crop Yield(s) for Each Field.	Actual crop yield(s) for each field (amount of production that was grown on each field, e.g., 300 bushels per acre).	122.42(e)(4)(viii)	5.
Concentration Units/Quantity Units.	The code/description representing the unit of measure applicable to quantity or concentration limits and measurements as entered by the permittee. The same units must be used across all sampling data for manure, litter, process wastewater, and fertilizer as well as the maximum calculation methods specified in the Linear Approach [40 CFR 122.42(e)(5)(i)] or the Narrative Rate Approach [40 CFR 122.42(e)(5)(ii)].	122.42(e)(4)(viii)	5.

TABLE 2—REQUIRED NPDES DATA—Continued

Data name	Data description	CWA, Regulatory, or policy citation (40 CFR)	NPDES Data group No. (*see* table 1)
Nitrogen Content of the CAFO Waste Type.	Results of sampling and analysis of a particular CAFO waste type (i.e., manure, litter, or process wastewater). The same form of nitrogen must be used across all sampling data for manure, litter, process wastewater, and fertilizer as well as the maximum calculation methods specified in the Linear Approach [40 CFR 122.42(e)(5)(i)] or the Narrative Rate Approach [40 CFR 122.42(e)(5)(ii)].	122.42(e)(4)(viii)	5.
Phosphorus Content of the CAFO Waste Type.	Results of sampling and analysis of a particular CAFO waste type (i.e., manure, litter, or process wastewater). The same form of phosphorus must be used across all sampling data for manure, litter, process wastewater, and fertilizer as well as the maximum calculation methods specified in the Linear Approach [40 CFR 122.42(e)(5)(i)] or the Narrative Rate Approach [40 CFR 122.42(e)(5)(ii)].	122.42(e)(4)(viii)	5.
Method for Calculating Maximum Amounts of Manure, Litter, and Process Wastewater.	Flag identifying for each field whether the CAFO used the Linear Approach [40 CFR 122.42(e)(5)(i)] or the Narrative Rate Approach [40 CFR 122.42(e)(5)(ii)].	122.42(e)(4)(viii)	5.
Field Identification Number	A unique field number to which CAFO waste was or will be applied. This data element will be used whether the term ''for each field'' is used in the CAFO Annual Program Report.	122.42(e)(4)(viii)	5.
Calculated Maximum Amount of That CAFO Waste to Be Land Applied to that Field.	The maximum amount of manure, litter, or process wastewater (in gallons) that can be applied to each field in the previous 12 months in accordance with procedures in the Linear Approach [40 CFR 122.42(e)(5)(i)(B)] or the Narrative Rate Approach [40 CFR 122.42(e)(5)(ii)(D)].	122.42(e)(4)(viii)	5.
Actual Amount of That CAFO Waste Applied to that Field.	The actual amount of a particular CAFO waste (i.e., manure, litter, or process wastewater) applied to a particular filed in the previous 12 months.	122.42(e)(4)(viii)	5.
CAFO Waste Type Applied to That Field.	The type of CAFO waste (i.e., manure, litter, or process wastewater) applied to that particular field.	122.42(e)(4)(viii)	5.
Pollutant Parameter Measured in the Soil Test, under the Narrative Rate Approach.	The pollutant parameter (i.e., nitrogen or phosphorus) of the CAFO waste measured, in accordance with procedures in the Narrative Rate Approach [40 CFR 122.42(e)(5)(ii)(D)].	122.42(e)(4)(viii)	5.
Nitrogen Amount of Any Supplemental Fertilizer Applied.	For CAFOs using the Narrative Rate Approach [40 CFR 122.42(e)(5)(ii)] the nitrogen amount of supplemental fertilizer (in pounds or gallons) that was applied to each field in the previous 12 months.	122.42(e)(4)(viii)	5.
Phosphorus Amount of Any Supplemental Fertilizer Applied.	For CAFOs using the Narrative Rate Approach [40 CFR 122.42(e)(5)(ii)] the phosphorous amount of supplemental fertilizer (in pounds or gallons) that was applied to each field in the previous 12 months.	122.42(e)(4)(viii)	5.
Compliance Monitoring Activity (Data Elements Specific to Municipal Separate Storm Sewer System Program Reports)			
MS4 Reliance on Other Government Entities.	Names of all municipalities that are included in the permit coverage..	122.34(g)(v)	6.
Unique Number for Each Municipality Covered Under MS4 Permit.	Unique number for each municipality covered under MS4 permit. This will allow greater geographic resolution for the MS4 components being tracked and ensure consistency from year to year. The number would essentially be similar to an outfall number, for distinguishing compliance at various locations.	122.34(g)(3) and 122.42(c)	6.
Listing of MS4 Permit Components.	This code/description will identify for each municipality all of the permitted components that are included in the MS4 permit. The groupings of these MS4 components will include public education and outreach on stormwater impacts; public involvement/participation; illicit discharge detection and elimination; construction site stormwater runoff; post-construction stormwater management in new development and redevelopment; and pollution prevention/good housekeeping for municipal operations.	122.34(g)(3) and 122.42(c)	6.

TABLE 2—REQUIRED NPDES DATA—Continued

Data name	Data description	CWA, Regulatory, or policy citation (40 CFR)	NPDES Data group No. (*see* table 1)
Identified Measurable Goal for Each MS4 Permit Component.	Identified measurable goal for each MS4 permit component for each municipality.	122.34(g)(3) and 122.42(c)	6.
Status and Assessment of Implementing MS4 Components in Permit.	Status and assessment of each MS4 permit component for each municipality.	122.34(g)(3) and 122.42(c)	6.
Number of Notice of Violations.	For each municipality covered under the MS4 permit, identify the number notice of violations. The MS4 permittee will identify ''No Authority'' if the MS4 permittee does not have the authority to conduct this enforcement action.	122.34(g)(3) and 122.42(c)	6.
Number of Administrative Fines.	For each municipality covered under the MS4 permit, identify the number of administrative fines. The MS4 permittee will identify ''No Authority'' if the MS4 permittee does not have the authority to conduct this enforcement action.	122.34(g)(3) and 122.42(c)	6.
Number of Stop Work Orders.	For each municipality covered under the MS4 permit, identify the number of stop work orders. The MS4 permittee will identify ''No Authority'' if the MS4 permittee does not have the authority to conduct this enforcement action.	122.34(g)(3) and 122.42(c)	6.
Number of Civil Penalties	For each municipality covered under the MS4 permit, identify the number of civil penalties. The MS4 permittee will identify ''No Authority'' if the MS4 permittee does not have the authority to conduct this enforcement action.	122.34(g)(3) and 122.42(c)	6.
Number of Criminal Actions	For each municipality covered under the MS4 permit, identify the number of criminal actions. The MS4 permittee will identify ''No Authority'' if the MS4 permittee does not have the authority to conduct this enforcement action.	122.34(g)(3) and 122.42(c)	6.
Number of Administrative Orders.	For each municipality covered under the MS4 permit, identify the number of administrative orders. The MS4 permittee will identify ''No Authority'' if the MS4 permittee does not have the authority to conduct this enforcement action.	122.34(g)(3) and 122.42(c)	6.
Compliance Monitoring Activity (Data Elements Specific to Pretreatment Program Annual Reports and SIU Periodic Compliance Reports in Municipalities without an Approved Pretreatment Program)			
SNC Published in Newspaper Flag.	An indication as to which Significant Industrial Users (SIUs) and Non-Significant Categorical Industrial Users (NSCIUs) in SNC were published in the newspapers.	403.12(i)(2), 403.8(f)(2)(viii)	7.
SNC with Pretreatment Schedule Flag.	An indication as to which Significant Industrial Users (SIU) and Non-Significant Categorical Industrial Users (NSCIU) were in SNC with pretreatment schedules.	403.12(i)(2), 403.8(f)(2)(viii)	7.
Date of Most Recent Adoption of Technically Based Local Limits.	The date on which the Control Authority has technically evaluated the need for local limits. The date data must be provided in CCYY–MM–DD format where CC is the century, YY is the year, MM is the month and DD is the day.	403.5(c), 403.12(i)(4), 403.8(f)(4)	7.
Date of Most Recent Technical Evaluation & or Local Limits.	The date on which the Control Authority adopted local limits for pollutants. The date data must be provided in CCYY–MM–DD format where CC is the century, YY is the year, MM is the month and DD is the day.	403.5(c), 403.12(i)(4), 403.8(f)(4)	7.
Local Limits Pollutants	This is the list of the pollutants for which the Control Authority derived, which is calculated using data from the headworks of the POTW.	403.5(c), 403.12(i)(4)	7.
POTW Discharge Contamination Indicator (Program Report).	The flag indicating if there have been any problems (including upset, bypass, interference, pass-through) with the receiving POTW's effluent discharge within the previous 12 months.	403.8(f), 403.12(i)	7.
POTW Biosolids Contamination Indicator (Program Report).	The flag indicating if there have been any problems (including upset, bypass, interference, pass-through) with the receiving POTW's biosolids within the previous 12 months.	403.8(f), 403.12(i)	7.
Removal Credits Application Status.	The status of the POTW's application for administering removal credits.	403.12(i), 403.7	7.

TABLE 2—REQUIRED NPDES DATA—Continued

Data name	Data description	CWA, Regulatory, or policy citation (40 CFR)	NPDES Data group No. (*see* table 1)
Date of Most Recent Removal Credits Approval.	This is the date the POTW's application for removal credits was approved by the Approval Authority. The date data must be provided in CCYY–MM–DD format where CC is the century, YY is the year, MM is the month and DD is the day.	403.12(i)(4), 403.7	7.
Removal Credits Pollutants	This field contains a list of pollutants for which the Approval Authority granted the POTW authorization to administer removal credits.	403.12(i)(4)	7.
Industrial User Name (Program Report).	The name of each Significant Industrial User (SIU) and Non-Significant Categorical Industrial User (NSCIU) that is discharging (including truck transportation) to this POTW.	403.8(f), 403.12(i)	7, 8.
Industrial User Address (Program Report).	The mailing address of each Significant Industrial User (SIU) and Non-Significant Categorical Industrial User (NSCIU) that is discharging (including truck transportation) to this POTW.	403.8(f), 403.12(i)	7, 8.
Industrial User City (Program Report).	The name of the city, town, village, or other locality, when identifiable, within whose boundaries (the majority of) for each Significant Industrial User (SIU) and Non-Significant Categorical Industrial User (NSCIU) that is discharging (including truck transportation) to this POTW.	403.8(f), 403.12(i)	7, 8.
Industrial User State (Program Report).	The U.S. Postal Service (USPS) abbreviation that represents the state or state equivalent for the U.S. for each Significant Industrial User (SIU) and Non-Significant Categorical Industrial User (NSCIU) that is discharging (including truck transportation) to this POTW.	403.8(f), 403.12(i)	7, 8.
Industrial User Zip Code (Program Report).	The combination of the 5-digit Zone Improvement Plan (ZIP) code and the 4-digit extension code (if available) that represents the geographic segment that is a sub unit of the ZIP Code assigned by the U.S. Postal Service to a geographic location for each Significant Industrial User (SIU) and Non-Significant Categorical Industrial User (NSCIU) that is discharging (including truck transportation) to this POTW.	403.8(f), 403.12(i)	7, 8.
Industrial User SIU Flag	This code/description will identify whether the Industrial User is a Significant Industrial Users (SIU).	403.8(f), 403.12(i)	7.
Industrial User Control Mechanism Flag.	This code/description will identify whether the Industrial User has a Control Mechanism.	403.8(f), 403.12(i)	7.
Industrial User Control Mechanism Expiration Date.	The date when the Control Mechanism for the Industrial User will expire. The date data must be provided in CCYY–MM–DD format where CC is the century, YY is the year, MM is the month and DD is the day.	403.8(f), 403.12(i)	7.
Industrial User Subject to Categorical Standards and Type (Program Report).	This code/description will identify whether the Industrial User is a Categorical Industrial Users (CIU) and its type (including Standard CIU, Non-Significant Categorical Industrial User (NSCIU), and Middle Tier Categorical Industrial User).	403.8(f), 403.12(i)	7.
Applicable Categorical Standards (Program Report).	This data element will identify for each Categorical Industrial User (CIU) that is discharging (including truck transportation) to this POTW the applicable categorical pretreatment standards.	403.8(f), 403.12(i)	7.
Industrial User Subject to Local Limits (Program Report).	This data element will identify for each Significant Industrial User (SIU) and Non-Significant Categorical Industrial User (NSCIU) that is discharging (including truck transportation) to this POTW whether the IU is subject to local limits.	403.8(f), 403.12(i)	7.
Industrial User Subject to Local Limits More Stringent Than Categorical Standards (Program Report).	This data element will identify for each Significant Industrial User (SIU) and Non-Significant Categorical Industrial User (NSCIU) that is discharging (including truck transportation) to this POTW whether the IU is subject to local limits that are more stringent than the applicable categorical standards.	403.8(f), 403.12(i)	7.

TABLE 2—REQUIRED NPDES DATA—Continued

Data name	Data description	CWA, Regulatory, or policy citation (40 CFR)	NPDES Data group No. (*see* table 1)
SNC with Pretreatment Standards (Program Report).	This data element will identify for each Significant Industrial User (SIU) and Non-Significant Categorical Industrial User (NSCIU) that is discharging (including truck transportation) to this POTW whether the IU was in Significant Non-Compliance (SNC) with discharge requirements (including effluent limit violations) in the previous 12 months.	403.8(f), 403.12(i)	7.
SNC with Reporting Requirements (Program Report).	This data element will identify for each Significant Industrial User (SIU) and Non-Significant Categorical Industrial User (NSCIU) that is discharging (including truck transportation) to this POTW whether the IU was in Significant Non-Compliance (SNC) with reporting requirements (including baseline monitoring reports, notice of potential problems, periodic self monitoring reports, notice of change in Industrial User discharge, hazardous waste notification and BMP certification) in the previous 12 months.	403.8(f), 403.12(i)	7.
SNC with Other Control Mechanism Requirements (Program Report).	This data element will identify for each Significant Industrial User (SIU) and Non-Significant Categorical Industrial User (NSCIU) that is discharging (including truck transportation) to this POTW whether the IU was in Significant Non-Compliance (SNC) with any other control mechanism requirements in the previous 12 months.	403.8(f), 403.12(i)	7.
Number of Quarters in SNC	This data element will identify for each Significant Industrial User (SIU) and Non-Significant Categorical Industrial User (NSCIU) that is discharging (including truck transportation) to this POTW the number of yearly quarters the IU is in SNC in the previous 12 months.	403.8(f), 403.12(i)	7.
Number of Industrial User Inspections.	This data element will identify for each Significant Industrial User (SIU) and Non-Significant Categorical Industrial User (NSCIU) the number of inspections conducted by the Control Authority in the previous 12 months.	403.8(f), 403.12(i)	7.
Number of Industrial User Sampling Events.	This data element will identify for each Significant Industrial User (SIU) and Non-Significant Categorical Industrial User (NSCIU) the number of sampling events conducted by the Control Authority in the previous 12 months.	403.8(f), 403.12(i)	7.
Number of Industrial User Violation Notices.	This data element will identify for each Significant Industrial User (SIU) and Non-Significant Categorical Industrial User (NSCIU) the number of formal notices of violation or equivalent actions issued by the Control Authority in the previous 12 months.	403.8(f), 403.12(i)	7.
Administrative Orders Issued to IUs (Program Report).	This data element will identify for each Significant Industrial User (SIU) and Non-Significant Categorical Industrial User (NSCIU) the number of administrative orders issued by the Control Authority in the previous 12 months.	403.8(f), 403.12(i)	7.
Civil Suits Filed Against IUs (Program Report).	This data element will identify for each Significant Industrial User (SIU) and Non-Significant Categorical Industrial User (NSCIU) the number of civil suits filed by the Control Authority in the previous 12 months.	403.8(f), 403.12(i)	7.
Criminal Suits Filed Against IUs (Program Report).	This data element will identify for each Significant Industrial User (SIU) and Non-Significant Categorical Industrial User (NSCIU) the number of criminal suits filed by the Control Authority in the previous 12 months.	403.8(f), 403.12(i)	7.
Industrial User Cash Civil Penalty Amount Assessed.	For civil judicial Enforcement Actions, the dollar amount of the penalty assessed against each Significant Industrial User (SIU) and Non-Significant Categorical Industrial User (NSCIU) in the previous 12 months as specified in the final entered Consent Decree or Court Order. For Administrative Enforcement Actions, it is the dollar amount of the penalty assessed in the Consent/Final Order.	CWA Section 309	7.

TABLE 2—REQUIRED NPDES DATA—Continued

Data name	Data description	CWA, Regulatory, or policy citation (40 CFR)	NPDES Data group No. (*see* table 1)
Industrial User Cash Civil Penalty Amount Collected.	For civil judicial Enforcement Actions, the dollar amount of the penalty collected from each Significant Industrial User (SIU) and Non-Significant Categorical Industrial User (NSCIU) in the previous 12 months. For Administrative Enforcement Actions, it is the dollar amount collected of the penalty assessed in the Consent/Final Order.	CWA Section 309	7.
Industrial User POTW Discharge Contamination Indicator (Program Report).	This data element will identify for each Significant Industrial User (SIU) and Non-Significant Categorical Industrial User (NSCIU) whether the Industrial User caused or contributed to any problems with the receiving POTW's effluent discharge in the previous reporting period. EPA regulations require the Control Authority to develop and enforce local limits when the discharge from an IU causes or contributes to any problems (including upset, bypass, interference, pass-through) at the receiving POTW.	403.5(c), 403.8(f), 403.12(i)	7.
Industrial User Biosolids Contamination Indicator (Program Report).	This data element will identify for each Significant Industrial User (SIU) and Non-Significant Categorical Industrial User (NSCIU) whether the Industrial User caused or contributed to any problems with the receiving POTW's biosolids in the previous reporting period. EPA regulations require the Control Authority to develop and enforce local limits when the discharge from an IU causes or contributes to any problems (including upset, bypass, interference, pass-through) at the receiving POTW.	403.5(c), 403.8(f), 403.12(i)	7.
Industrial User Process Wastewater Flow Rate (Program Report).	This data element will identify for each Significant Industrial User (SIU) and Non-Significant Categorical Industrial User (NSCIU) that is discharging (including truck transportation) to this POTW the process wastewater flow rate (in gallons per day).	403.8(f), 403.12(i)	7, 8.
Type of Significant Industrial User Process Wastewater Flow (Program Report).	This data element will identify for each Significant Industrial User (SIU) and Non-Significant Categorical Industrial User (NSCIU) that is discharging (including truck transportation) to this POTW the type of process wastewater flow (continuous or intermittent).	403.8(f), 403.12(i)	7, 8.
Significant Industrial User Non-Process Wastewater Flow Rate (Program Report).	This data element will identify for each Significant Industrial User (SIU) and Non-Significant Categorical Industrial User (NSCIU) that is discharging (including truck transportation) to this POTW the non-process wastewater flow rate (in gallons per day).	403.8(f), 403.12(i)	7, 8.
Type of Significant Industrial User Non-Process Wastewater Flow (Program Report).	This data element will identify for each Significant Industrial User (SIU) and Non-Significant Categorical Industrial User (NSCIU) that is discharging (including truck transportation) to this POTW the type of non-process wastewater flow (continuous or intermittent).	403.8(f), 403.12(i)	7, 8.
Industrial User Removal Credits Flag.	This code/description will identify for each Significant Industrial User (SIU) and Non-Significant Categorical Industrial User (NSCIU) whether the POTW has granted the IU removal credits.	403.7, 403.12(i)	7.
Industrial User Removal Credits Pollutants.	This code/description will identify for each Significant Industrial User (SIU) and Non-Significant Categorical Industrial User (NSCIU) the list of pollutants for which POTW has granted the IU removal credits.	403.12(i)(4)	7.
Industrial User Reduced Reporting Flag.	This code/description will identify for each Significant Industrial User (SIU) and Non-Significant Categorical Industrial User (NSCIU) whether the Control Authority has granted reduced reporting requirements [403.12(e)(3)].	403.12(e)(3), 403.12(i)(2)	7.
Non-Significant Categorical Industrial User (NSCIU) Certification to Control Authority.	This code/description will identify for each Non-Significant Categorical Industrial User (NSCIU) whether it has given its annual compliance certification.	403.12(i)(2), 403.12(q)	7, 8.
Control Authority Budget Resources.	Annual pretreatment implementation budget	403.12(i)(4)	7.

TABLE 2—REQUIRED NPDES DATA—Continued

Data name	Data description	CWA, Regulatory, or policy citation (40 CFR)	NPDES Data group No. (*see* table 1)
Compliance Monitoring Activity (Data Elements Specific to Sewer Overflow Event Reports)			
Sewer Overflow Longitude (Sewer Overflow Event Report).	This data element is required for sewer overflows that do not have a permitted feature identifier, which is reported on the NPDES permit application or Notice of Intent for NPDES permit coverage. The measure of the angular distance on a meridian east or west of the prime meridian for the sewer overflow. Entered in either Decimal Degrees or in Degrees Minutes Seconds; stored in decimal degrees. These data are provided in accordance with Environmental Data Standards Council, Latitude/Longitude Data Standard, Standard No.: EX000017.2, January 6, 2006.	122.41(l)(6) and (7)	9.
Sewer Overflow Latitude (Sewer Overflow Event Report).	This data element is required for sewer overflows that do not have a permitted feature identifier, which is reported on the NPDES permit application or Notice of Intent for NPDES permit coverage. The measure of the angular distance on a meridian north or south of the equator for the sewer overflow. Entered in either Decimal Degrees or in Degrees Minutes Seconds; stored in decimal degrees. These data are provided in accordance with Environmental Data Standards Council, Latitude/Longitude Data Standard, Standard No.: EX000017.2, January 6, 2006.	122.41(l)(6) and (7)	9.
Type of Sewer Overflow (Sewer Overflow Event Report).	A code identifying the type of sewer overflow (including CSO, SSO, Bypass, Other Discharge from the Collection System or Treatment Works).	122.41(l)(6) and (7)	9.
Sewer Overflow Cause	The likely cause of the overflow event (e.g., broken pipe, fats/oil/grease, mechanical failure, pump station electrical failure, inadequate sewer system capacity, etc.).	122.41(l)(6) and (7)	9.
Date of Sewer Overflow Discovery (Sewer Overflow Event Report).	Date when the sewer overflow is discovered by EPA or the delegated NPDES program authority, the permitted facility, or when the sewer overflow is reported by the public to the permitted facility. The date data must be provided in CCYY–MM–DD format where CC is the century, YY is the year, MM is the month and DD is the day.	122.41(l)(6) and (7)	9.
Duration of Sewer Overflow event (hours) (Sewer Overflow Event Report).	Duration of the sewer overflow event (in hours). If the discharge has not been corrected, the best professional judgment from the permitted facility of the time the sewer overflow is expected to continue.	122.41(l)(6) and (7)	9.
Sewer Overflow Discharge Volume (Sewer Overflow Event Report).	Best professional judgment from the permitted facility on the estimated number of gallons of sewer overflow.	122.41(l)(6) and (7)	9.
Receiving Waterbody Name for Permitted Feature (Sewer Overflow Event Report).	This data element is required for sewer overflow inspections without a permitted feature identifier. Best professional judgment from the permitted facility of the name of the waterbody that is or will likely receive the discharge from each sewer overflow.	122.41(l)(6) and (7)	9.
Dry or Wet Weather Occurrence for Sewer Overflow.	Best professional judgment from the permitted facility on whether the sewer overflow event occurred during dry or wet weather.	122.41(l)(6) and (7)	9.
Corrective Actions Taken or Planned for Sewer Overflows (Sewer Overflow Event Report).	The unique code/description that describes the steps taken or planned to reduce, eliminate, and prevent reoccurrence of future sewer overflows.	122.41(l)(6) and (7)	9.
Type of Potential Impact of Sewer Overflow Event (Sewer Overflow Event Report).	This describes the type of potential human health or environmental impact(s) of the sewer overflow event (e.g., beach closure). Under 40 CFR 122.41(l)(6), "the permittee shall report any noncompliance which may endanger health or the environment." This data element would provide information regarding the nature of such potential endangerment.	122.41(l)(6) and (7)	9.

TABLE 2—REQUIRED NPDES DATA—Continued

Data name	Data description	CWA, Regulatory, or policy citation (40 CFR)	NPDES Data group No. (*see* table 1)
Violation			
Violation Code	The code/description identifying which type of Violation has occurred. The code may a single event violation (SEV) code; some violation codes can be automatically generated in ICIS–NPDES based upon DMRs, schedules, etc.	123.45	1.
Agency Identifying the Single Event Violation (SEV).	The code/description identifying the agency that identified the Single Event Violation (SEV).	123.45	1.
Single Event Start Date	If the single event violation (SEV) occurred over multiple days, the date the occurrence began. The date data must be provided in CCYY–MM–DD format where CC is the century, YY is the year, MM is the month and DD is the day.	123.45	1.
Single Event End Date	If the single event violation (SEV) occurred over multiple days, the date the occurrence ended. The date data must be provided in CCYY–MM–DD format where CC is the century, YY is the year, MM is the month and DD is the day.	123.45	1.
RNC Detection Code	The type of RNC detected. It can be entered automatically by the system or it can be entered manually.	123.45	1.
RNC Detection Date	The date that RNC was detected. It can be entered manually or automatically. In cases in which RNC is detected by ICIS–NPDES, the detection date entered will vary according to the type of violation detected. The date data must be provided in CCYY–MM–DD format where CC is the century, YY is the year, MM is the month and DD is the day.	123.45	1.
RNC Resolution Code	The RNC status (i.e., noncompliant, resolved pending, waiting resolution, resolved) of the violation. It can be entered manually or automatically by the system.	123.45	1.
RNC Resolution Date	The date RNC was marked to its current resolution status. It can be entered manually or automatically. The date data must be provided in CCYY–MM–DD format where CC is the century, YY is the year, MM is the month and DD is the day.	123.45	1.
Enforcement Action			
Enforcement Action Identifier.	The number of the Enforcement Action; for a judicial action, the number as referred to by the Court where the action was filed.	CWA Section 309	1.
Enforcement Action Name	The name associated with this enforcement action	CWA Section 309	1.
Enforcement Action Type	A code/description that uniquely identifies the type of formal or informal enforcement action. This code identifies, for example, whether the enforcement action is a civil judicial referral, a notice of violation, an administrative penalty order, administrative order, etc.	CWA Section 309	1.
Law Sections Violated	The primary law sections that were violated by the facility.	CWA Section 309	1.
Programs Violated	The code that identifies the program (e.g., pretreatment) associated with the enforcement activity.	CWA Section 309	1.
Violation Code	The code/description identifying which type of violation has occurred and is being addressed by this enforcement action.	CWA Section 309	1.
Violation Date	If there is a Single Event Violation, use Single Event Violation Date; if DMR reporting violation, use DMR Due Date; if DMR measurement violation, use Monitoring Period End Date; if Permit Schedule violation, use Permit Schedule Date; if a Compliance Schedule violation, use Compliance Schedule Date. The date data must be provided in CCYY–MM–DD format where CC is the century, YY is the year, MM is the month and DD is the day.	CWA Section 309	1.

TABLE 2—REQUIRED NPDES DATA—Continued

Data name	Data description	CWA, Regulatory, or policy citation (40 CFR)	NPDES Data group No. (*see* table 1)
Final Orders			
Final Order Type	A code/description that uniquely identifies the regulatory instrument used by the EPA to settle the Enforcement Action. This code identifies, for example, whether the final order is an administrative compliance order, an administrative penalty order, Federal Facility agreement, etc.	CWA Section 309	1.
Violation Code	The code/description identifying which type of Violation has occurred (e.g., D80 = Required Monitoring DMR Value Non-Receipt, E90 = Effluent Violation, C20 = Schedule Event Achieved Late).	CWA Section 309	1.
Violation Date	If there is a Single Event Violation, use Single Event Violation Date; if DMR reporting violation, use DMR Due Date; if DMR measurement violation, use Monitoring Period End Date; if Permit Schedule violation, use Permit Schedule Date; if a Compliance Schedule violation, use Compliance Schedule Date. The date data must be provided in CCYY–MM–DD format where CC is the century, YY is the year, MM is the month and DD is the day.	CWA Section 309	1.
Final Order Issued/Entered Date.	The civil case date the Final Order is signed by the presiding Judge and entered by the Clerk of the Court; it is the date the Clerk stamps on the document. For an Administrative Formal EA, this is the Final Order Issued Date; for a Judicial EA, this is the Final Order Entered Date. The date data must be provided in CCYY–MM–DD format where CC is the century, YY is the year, MM is the month and DD is the day.	CWA Section 309	1.
Penalty			
Civil Penalty Amount Assessed.	For civil judicial Enforcement Actions, the dollar amount of the penalty assessed against the defendant(s) as specified in the final entered Consent Decree or Court Order. For Administrative Enforcement Actions, it is the dollar amount of the penalty assessed in the Consent/Final Order.	CWA Section 309	1 through 9.
Civil Penalty Amount Collected.	For civil judicial Enforcement Actions, the dollar amount of the penalty collected from the defendant(s). For Administrative Enforcement Actions, it is the dollar amount collected of the penalty assessed in the Consent/Final Order.	CWA Section 309	1 through 9.
Compliance Schedule			
Compliance Schedule Number.	A two-digit number which in combination with the Schedule Type and NPDES ID uniquely identifies a Compliance Schedule.	CWA Section 309	1.
Schedule Descriptor	The code/description indicating the type of Narrative Condition applies for the schedule.	CWA Section 309	1.
Schedule (Start) Date	The date the event is scheduled to be completed (i.e., the due date). The date data must be provided in CCYY–MM–DD format where CC is the century, YY is the year, MM is the month and DD is the day.	CWA Section 309	1.
Actual Date	The actual date on which the Compliance Schedule event was completed/achieved. The date data must be provided in CCYY–MM–DD format where CC is the century, YY is the year, MM is the month and DD is the day.	CWA Section 309	1.
Report Received Date	The date the regulatory agency received the Compliance Schedule report. The date data must be provided in CCYY–MM–DD format where CC is the century, YY is the year, MM is the month and DD is the day.	CWA Section 309	1.
Schedule Event	The unique code/description that identifies the Compliance Schedule event.	CWA Section 309	1.
Milestones/Sub-activities	The unique code/description that identifies the milestones/sub-activities.	CWA Section 309	1.

TABLE 2—REQUIRED NPDES DATA—Continued

Data name	Data description	CWA, Regulatory, or policy citation (40 CFR)	NPDES Data group No. (*see* table 1)
Sub Activity Type	A code/description that uniquely identifies a type of sub activities and/or Enforcement Action milestones.	CWA Section 309	1.
Actual Date	The date on which the milestone was achieved/sub activity was conducted. The date data must be provided in CCYY–MM–DD format where CC is the century, YY is the year, MM is the month and DD is the day.	CWA Section 309	1.

PART 403—GENERAL PRETREATMENT REGULATIONS FOR EXISTING AND NEW SOURCES OF POLLUTION

■ 23. The authority citation for part 403 continues to read as follows:

Authority: 33 U.S.C. 1251 *et seq.*

■ 24. Amend § 403.10 by adding paragraph (f)(2)(viii) to read as follows:

§ 403.10 Development and submission of NPDES State pretreatment programs.

* * * * *

(f) * * *

(2) * * *

(viii) Regularly notify all Control Authorities of electronic submission requirements of 40 CFR part 3, 40 CFR 122.22, and 40 CFR part 127.

* * * * *

■ 25. Amend § 403.12 by revising paragraphs (e)(1), (h), and (i) introductory text to read as follows:

§ 403.12 Reporting requirements for POTW's and industrial users.

* * * * *

(e) * * *

(1) Any Industrial User subject to a categorical Pretreatment Standard (except a Non-Significant Categorical User as defined in § 403.3(v)(2)), after the compliance date of such Pretreatment Standard, or, in the case of a New Source, after commencement of the discharge into the POTW, shall submit to the Control Authority during the months of June and December, unless required more frequently in the Pretreatment Standard or by the Control Authority or the Approval Authority, a report indicating the nature and concentration of pollutants in the effluent which are limited by such categorical Pretreatment Standards. In addition, this report shall include a record of measured or estimated average and maximum daily flows for the reporting period for the Discharge reported in paragraph (b)(4) of this section except that the Control Authority may require more detailed reporting of flows. In cases where the Pretreatment Standard requires compliance with a Best Management Practice (or pollution prevention alternative), the User shall submit documentation required by the Control Authority or the Pretreatment Standard necessary to determine the compliance status of the User. At the discretion of the Control Authority and in consideration of such factors as local high or low flow rates, holidays, budget cycles, etc., the Control Authority may modify the months during which the above reports are to be submitted. For Industrial Users for which EPA or the authorized state, tribe, or territory is the Control Authority, all reports covered under this paragraph and submitted after [TWO YEARS AFTER THE EFFECTIVE DATE OF 40 CFR PART 127] shall be submitted electronically by the owner, operator, or their designated representative in compliance with 40 CFR parts 3 and 127 and § 403.12(l) and with any additional requirements imposed by the Control Authority.

* * * * *

(h) *Reporting requirements for Industrial Users not subject to categorical Pretreatment Standards.* The Control Authority must require appropriate reporting from those Industrial Users with Discharges that are not subject to categorical Pretreatment Standards. Significant Non-categorical Industrial Users must submit to the Control Authority at least once every six months (on dates specified by the Control Authority) a description of the nature, concentration, and flow of the pollutants required to be reported by the Control Authority. In cases where a local limit requires compliance with a Best Management Practice or pollution prevention alternative, the User must submit documentation required by the Control Authority to determine the compliance status of the User. These reports must be based on sampling and analysis performed in the period covered by the report, and in accordance with the techniques described in 40 CFR part 136 and amendments thereto. This sampling and analysis may be performed by the Control Authority in lieu of the significant non-categorical Industrial User. For Industrial Users for which EPA or the authorized state, tribe, or territory is the Control Authority, all reports submitted after [INSERT TWO YEARS AFTER THE EFFECTIVE DATE OF 40 CFR PART 127], shall be submitted electronically by the owner, operator, or their designated representative in compliance with 40 CFR parts 3 and 127 and § 403.12(l) and with any additional requirements imposed by the Control Authority.

(i) *Annual POTW reports.* POTWs with approved Pretreatment Programs shall provide the Approval Authority with a report that briefly describes the POTW's program activities, including activities of all participating agencies, if more than one jurisdiction is involved in the local program. The report required by this section shall be submitted no later than one year after approval of the POTW's Pretreatment Program, and at least annually thereafter, and shall include, at a minimum, the applicable required data in Appendix A to 40 CFR part 127. The report required by this section shall also include a summary of changes to the POTW's pretreatment program that have not been previously reported to the Approval Authority and any other relevant information requested by the Approval Authority. All annual reports submitted after [TWO YEARS AFTER THE EFFECTIVE DATE OF 40 CFR PART 127], or if required by the Approval Authority or the applicable permit on or before [TWO YEARS AFTER THE EFFECTIVE DATE OF 40 CFR PART 127], shall be submitted electronically by the owner, operator, or their designated representative, in compliance with 40 CFR parts 3 and 127 and § 403.12(l), and with any additional requirements imposed by the Approval Authority.

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PART 501—STATE SLUDGE MANAGEMENT PROGRAM REGULATIONS

■ 26. The authority citation for part 501 continues to read as follows:

Authority: 33 U.S.C. 1251 *et seq.*

■ 27. Revise § 501.21 to read as follows:

§ 501.21 Program reporting to EPA.

State sludge management programs shall comply with 40 CFR parts 3 and 127 (including the applicable required data elements in Appendix A to 40 CFR part 127).

PART 503—STANDARDS FOR THE USE OR DISPOSAL OF SEWAGE SLUDGE

■ 28. The authority citation for part 503 continues to read as follows:

Authority: Sections 405(d) and (e) of the Clean Water Act, as amended by Pub. L. 95–217, sec. 54(d), 91 Stat. 1591 (33 U.S.C. 1345(d) and (e)); and Pub. L. 100–4, title IV, sec. 406(a), (b), 101 Stat., 71, 72 (33 U.S.C. 1251 *et seq.*).

■ 29. Revise § 503.18 to read as follows:

§ 503.18 Reporting.

(a) Class I sludge management facilities, POTWs (as defined in § 501.2 of this chapter) with a design flow rate equal to or greater than one million gallons per day, and POTWs that serve 10,000 people or more shall submit a report on February 19 of each year. All annual reports submitted after [TWO YEARS AFTER THE EFFECTIVE DATE OF 40 CFR PART 127], or if required by the Director or applicable permit on or before [TWO YEARS AFTER THE EFFECTIVE DATE OF 40 CFR PART 127], shall be submitted electronically by the owner, operator, or their designated representative, in compliance with 40 CFR part 3, 40 CFR 122.22, and 40 CFR part 127 and with any additional requirements imposed by the Director.

(b) [Reserved]

(Approved by the Office of Management and Budget under control number 2040–0157)

■ 30. Revise § 503.28 to read as follows:

§ 503.28 Reporting.

Class I sludge management facilities, POTWs (as defined in § 501.2 of this chapter) with a design flow rate equal to or greater than one million gallons per day, and POTWs that serve 10,000 people or more shall submit a report on February 19 of each year. All annual reports submitted after [TWO YEARS AFTER THE EFFECTIVE DATE OF 40 CFR PART 127], or if required by the Director or applicable permit on or before [TWO YEARS AFTER THE EFFECTIVE DATE OF 40 CFR PART 127], shall be submitted electronically by the owner, operator, or their designated representative, in compliance with 40 CFR part 3, 40 CFR 122.22, and 40 CFR part 127 and any additional requirements imposed by the Director.

■ 31. Revise § 503.48 to read as follows:

§ 503.48 Reporting.

Class I sludge management facilities, POTWs (as defined in § 501.2 of this chapter) with a design flow rate equal to or greater than one million gallons per day, and POTWs that serve a population of 10,000 people or greater shall submit a report on February 19 of each year. All annual reports submitted after [TWO YEARS AFTER THE EFFECTIVE DATE OF 40 CFR PART 127], or if required by the Director or applicable permit on or before [TWO YEARS AFTER THE EFFECTIVE DATE OF 40 CFR PART 127], shall be submitted electronically by the owner, operator, or their designated representative, in compliance with 40 CFR part 3, 40 CFR 122.22, and 40 CFR part 127 and any additional requirements imposed by the Director.

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Part III

Department of Transportation

Federal Highway Administration

23 CFR Part 650

National Tunnel Inspection Standards; Proposed Rule

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Part 650

[Docket No. FHWA–2008–0038]

RIN 2125–AF24

National Tunnel Inspection Standards

AGENCY: Federal Highway Administration (FHWA), Department of Transportation (DOT).

ACTION: Supplemental Notice of Proposed Rulemaking (SNPRM).

SUMMARY: The FHWA is proposing the National Tunnel Inspection Standards (NTIS) for highway tunnels. The FHWA previously proposed the NTIS in a notice of proposed rulemaking (NPRM) published in the **Federal Register** on July 22, 2010. On July 6, 2012, the President signed the Moving Ahead for Progress in the 21st Century Act (MAP–21), which requires the Secretary to establish national standards for tunnel inspections. The MAP–21 requires that NTIS contain a number of provisions that were not included in the proposal set forth in the earlier NPRM. As a result, FHWA is issuing this SNPRM to request comment on a revised NTIS proposal that incorporates the provisions required by MAP–21. This SNPRM proposes requirements for tunnel owners, including the establishment of a program for the inspection of highway tunnels, maintenance of a tunnel inventory, reporting of the inspection findings to FHWA, and correction of any critical findings identified during these inspections.

DATES: Comments must be received on or before September 30, 2013. Late-filed comments will be considered to the extent practicable.

ADDRESSES: Mail or hand deliver comments to: Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE., Washington, DC 20590, or submit electronically at *http://www.regulations.gov,* or fax comments to (202) 493–2251. All comments should include the docket number that appears in the heading of this document. All comments received will be available for examination and copying at the above address from 9 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard or may print the acknowledgment page that appears after submitting comments electronically. Anyone is able to search the electronic form of all comments in any one of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, or labor union). You may review the U.S. Department of Transportation's (DOT) complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70, Pages 19477–78), or you may visit *http://DocketsInfo.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Mr. Jesus Rohena, Office of Bridge Technology, HIBT–10, (202) 366–4593; Mr. Joey Hartmann, Office of Bridge Technology, HIBT–10, (202) 366–4599; or Mr. Robert Black, Office of the Chief Counsel, HCC–30, (202) 366–1359, Federal Highway Administration, 1200 New Jersey Ave. SE., Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

Electronic Access and Filing

This document, the advance notice of proposed rulemaking (ANPRM), NPRM, and all comments received may be viewed online through the Federal eRulemaking portal at *http://www.regulations.gov.* The Web site is available 24 hours each day, 365 days each year. An electronic copy of this document may also be downloaded by accessing the Office of the Federal Register's home page at: *https://www.federalregister.gov.*

Executive Summary

I. Purpose of the Regulatory Action

This regulatory action seeks to establish national standards for tunnel inspections consistent with the provisions of MAP–21, which includes requirements for establishing a highway tunnel inspection program, maintaining a tunnel inventory, and reporting to FHWA of inspection results and, in particular, critical findings, meaning any structural or safety-related deficiencies that require immediate follow-up inspection or action. The NTIS proposed in this SNPRM apply to all structures defined as highway tunnels on all public roads, on and off Federal-aid highways, including tribally and federally owned tunnels.

Routine and thorough inspections of our Nation's tunnels are necessary to maintain safe tunnel operation and prevent structural, geotechnical, and functional failures. In addition, data on the condition and operation of our Nation's tunnels is necessary in order for tunnel owners to make informed investment decisions as part of an asset management program for maintenance and repair of their tunnels. Recognizing that the safety and security of our Nation's tunnels are of paramount importance, Congress declared in MAP–21 that it is in the vital interest of the United States to inventory, inspect, and improve the condition of the Nation's highway tunnels. As a result of this declaration and the authority established by MAP–21 in 23 U.S.C. 144, FHWA is proposing the NTIS.

II. Summary of the Major Provisions of the Regulatory Action in Question

The NTIS proposes the establishment of a national tunnel inventory; routine inspections of tunnels on all public roads, on and off Federal-aid highways, including tribally and federally owned tunnels; written reports to FHWA of critical findings, as defined in 23 CFR 650.305; training for tunnel inspectors; a national certification program for tunnel inspectors; and the timely correction of any deficiencies.

Section 650.503 describes the applicability of the proposed NTIS as authorized by MAP–21.

Section 650.507 describes the organizational requirements associated with successful implementation of the proposed NTIS. Tunnel inspection organizations would be required to develop and maintain inspection policies and procedures, ensure that inspections are conducted in accordance with the proposed standards, collect and maintain inspection data, and maintain a registry of nationally certified tunnel inspection staff.

Section 650.509 proposes certain minimum qualifications for tunnel inspection personnel. A Program Manager would, at a minimum, be a registered Professional Engineer (P.E.), have 10 years of tunnel or bridge inspection experience, and be a nationally certified tunnel inspector. The Team Leader would be a registered P.E. and a nationally certified tunnel inspector. This section also describes the proposed requirements for national certification of inspection staff.

Section 650.511 proposes a minimum inspection frequency of 24 months for routine tunnel inspections. An owner would be permitted to increase or decrease the frequency of inspection of particular components based on the age, condition, or complexity of those components.

Section 650.513 proposes the establishment of a statewide, Federal agencywide, or tribal governmentwide procedure to ensure that critical findings, as defined in 23 CFR 650.305, are addressed in a timely manner. Owners would be required to notify FHWA within 24 hours of identifying a

critical finding and the actions taken to resolve or monitor that finding. This section also discusses proposed inspection procedures for complex tunnels, load rating of tunnels, quality assurance/quality control procedures, and the inspection of functional systems.

Section 650.515 defines certain inventory data information to be collected and reported for all tunnels subject to the NTIS within 120 days of the effective date of this proposed rule. This data would be used to create a national inventory of tunnels that would result in a more accurate assessment and provide the public with a more transparent view of the number and condition of the Nation's tunnels.

III. Costs and Benefits

The FHWA only has limited data regarding the number of highway tunnels in the Nation, the frequencies at which those tunnels are inspected, and the costs associated with their inspection. The FHWA received some data from a 2003 informal survey FHWA conducted of tunnel owners.[1] Throughout this SNPRM, FHWA relies on the data received from that survey in order to develop estimates of the costs and benefits of this rulemaking. The FHWA expects that there may be some tunnels that could be covered by the expanded scope of this rulemaking that were not included in the survey's limited data set; however, we believe that those tunnels would only be a fraction of the total cost and that the 2003 survey data provide a sufficient basis for FHWA's analysis throughout this SNPRM. We seek specific comment on this issue.

The FHWA expects that the overall increase in tunnel inspection costs across the Nation will be modest, as the vast majority of tunnel owners already inspect at the 24-month interval required by the NTIS. The FHWA does not have any information regarding the cost of fixing critical findings that are uncovered as a result of provisions in this rulemaking. Based on current data, only two tunnel owners, that together own 15 tunnels (bores), would be required to increase their current inspection frequency as a result of the requirements proposed in this SNPRM. The FHWA is proposing this action because ensuring timely inspections of highway tunnels would not only enhance the safe passage of the traveling public, it would also protect investments in key infrastructure, as early detection of problems in tunnels will likely increase the longevity of these assets. The FHWA does not have sufficient information to quantify the benefits of this rulemaking, and as such is not able to determine if there are net benefits. We seek comments on benefits resulting from this rulemaking, the costs associated with fixing critical findings that are identified during inspections, as well as the costs of re-routing or closing traffic in order to conduct the inspections.

Background

I. Changes to the Proposed Rule Required by MAP–21

The FHWA previously proposed the NTIS in an NPRM published in the **Federal Register** on July 22, 2010, at 75 FR 42643. That proposal did not address the provisions for national standards for tunnel inspections detailed in the subsequently enacted MAP–21. As a result, FHWA is issuing this SNPRM to request comment on a revised NTIS proposal that incorporates the provisions required by MAP–21.

In Section 1111(a) of MAP–21, Congress declared that it is in the vital interest of the United States to inventory, inspect, and improve the condition of the highway tunnels of the United States.

Section 1111(b) broadens the authority of the NTIS previously proposed in the NPRM and extends that authority to tunnels owned or operated by tribal governments.

Section 1111(d) requires annual revisions be made to the inventory of tunnel data collected under MAP–21 authority and reporting on that inventory to Congress.

Section 1111(h) requires the Secretary to establish inspection standards to ensure uniformity of inspections and evaluations, to define a maximum time period between inspections, to detail the qualifications required for those charged with carrying out the inspections, to require that appropriate records are retained, and to create a procedure for national certification of highway tunnel inspectors. As a result, provisions are now proposed in this SNPRM for the certification of national tunnel inspectors.

Section 1111(h) also requires the establishment of procedures to conduct reviews of State compliance with NTIS, as well as for the reporting of critical findings, as defined in 23 CFR 650.305, and any monitoring or corrective actions taken in response to critical findings. As a result, provisions are now proposed in this SNPRM that describe how State compliance will be determined and when and how often reporting to the FHWA on critical findings, and any follow-up actions taken in response to those findings, are required.

Section 1111(i) requires that training programs be established for tunnel inspectors. In response, the SNPRM now includes provisions that require approved training for Program Managers, Team Leaders, and inspectors.

II. Need for Tunnel Inspection Standards

The majority of road tunnels in the United States were constructed during two distinct periods of highway system expansion. A significant number of these tunnels were constructed in the 1930s and 1940s as part of public works programs associated with recovery from the Great Depression. Another significant number were constructed for the developing Interstate Highway System in the 1950s and 1960s. As a result, most of these structures have exceeded their designed service lives and need to be routinely inspected in order to ensure continued safe and efficient operation.

The structural, geotechnical, and functional (electrical, mechanical, and other) components and systems that make up tunnels are subjected to deterioration and corrosion due to the harsh environment in which these structures are operated. As a result, routine and thorough inspection of these elements is necessary to collect the data needed to maintain safe tunnel operation and to prevent structural, geotechnical, and functional failures. As our Nation's tunnels continue to age, an accurate and thorough assessment of each tunnel's condition is critical to avoid a decline in service and maintain a safe, functional, and reliable highway system.

In addition to ensuring safety, it is also necessary to collect data on the condition and operation of our Nation's tunnels in order for owners to make informed investment decisions as part of a systematic integrated transportation asset management approach. Without such an approach, ensuring an accountable and sustainable practice of maintenance, preservation, rehabilitation, or replacement across an inventory of tunnels is a significant challenge. Data-driven asset management provides tunnel owners with a proven framework to demonstrate long-term accountability and accomplishment. To meet the needs of this management approach, the data collected needs to be robust enough to support these investment decisions within a State and consistent enough across the Nation to identify trends in performance and demonstrate the

[1] See section III.D. for more information.

linkages between Federal transportation expenditures and transportation agency programmatic results.

Timely and reliable tunnel inspection is vital to uncovering safety problems and preventing failures. When corrosion or leakage occurs, electrical or mechanical systems malfunction, or concrete cracking and spalling signs appear, they may be symptomatic of problems. The importance of tunnel inspection was demonstrated in the summer of 2007 in the I–70 Hanging Lake tunnel in Colorado when a ceiling and roof inspection uncovered a crack in the roof that was compromising the structural integrity of the tunnel. This discovery prompted the closure of the tunnel for several months for needed repairs. The repairs prevented a potential catastrophic tunnel failure and loss of life. That potential catastrophe could have resulted in the need for an even longer period of repairs, and also may have resulted in injuries and deaths.

Unfortunately, loss of life was not avoided in Oregon in 1999. In January of that year, a portion of the lining of the Sunset Tunnel located near Manning, west of Portland, collapsed, killing an Oregon Department of Transportation (ODOT) employee. At the time of the collapse, the lining was being inspected to ensure its safety after a heavy rain in response to a report by a concerned traveler on the highway that passes through the tunnel. The extent of deterioration in the lining had not been identified and regularly documented in previous inspections of the tunnel, which occurred variably. As a result, the lining had deteriorated to the point that the safety inspection after the rain event was sufficient to trigger the collapse. Following the accident, ODOT reviewed their tunnel inspection program and identified a need to define what a tunnel is, establish the criteria to be used to inspect a tunnel, define the professional qualifications needed for a tunnel inspector, and to create tunnel inspection procedures.

Inadequate tunnel inspection was again linked to a loss of life in Massachusetts in 2006. In July of that year, a portion of the suspended ceiling collapsed onto the roadway in the I–90 Central Artery Tunnel in Boston, killing a motorist. It also resulted in closure of this portion of the tunnel for 6 months while repairs were made, causing significant traffic delays and productivity losses. The National Transportation Safety Board (NTSB) stated in its accident investigation report that, ''had the Massachusetts Turnpike Authority, at regular intervals between November 2003 and July 2006, inspected the area above the suspended ceilings in the D Street portal tunnels, the anchor creep that led to this accident would likely have been detected, and action could have been taken that would have prevented this accident.'' [2] Among its recommendations, NTSB suggested that FHWA seek legislative authority to establish a mandatory tunnel inspection program similar to the National Bridge Inspection Standards (NBIS) that would identify critical inspection elements and specify an appropriate inspection frequency. Additionally, the DOT Inspector General (IG), in testimony before Congress in October 2007, highlighted the need for a tunnel inspection and reporting system to ensure the safety of the Nation's tunnels, stating that FHWA ''should develop and implement a system to ensure that States inspect and report on tunnel conditions.'' The IG went on to state that FHWA should establish rigorous inspection standards.[3]

More recently, inspection of ceiling panels in the westbound I–264 Downtown Tunnel in Portsmouth, Virginia, prevented a catastrophic failure. The Virginia Department of Transportation (VDOT) routinely performs an in-depth inspection of this tunnel at approximate intervals of 5 to 7 years. During an inspection in 2009, VDOT personnel found aggressive corrosion of embedded bolts used to support the ceiling panels over the roadway. Upon further evaluation, it was determined that the ceiling panels needed to be removed to ensure the safety of the traveling public. The tunnel was completely closed for six consecutive weekends in order to perform this maintenance activity. If there had not been a timely inspection, the corrosion would have worsened and there would likely have been a collapse that could have caused death, injuries, or property damage, and potentially complete closure of the tunnel for an extended period of time, resulting in significant productivity losses.

Most recently, on December 2, 2012, the suspended ceiling in Japan's Sasago Tunnel collapsed onto the roadway below crushing several cars, resulting in the deaths of nine motorists. Early reports in the media citing Japanese officials have indicated that the collapse is likely the result of the failure of the anchor bolts that connected the suspended ceiling to the tunnel roof. According to the Central Japan Expressway Company, which is responsible for the operation of the tunnel, those connections had not been thoroughly inspected due to issues with access.[4]

The FHWA estimates that tunnels represent nearly 100 miles—approximately 517,000 linear feet—of Interstates, State routes, and local routes. Tunnels such as the Central Artery Tunnel in Massachusetts, the Lincoln Tunnel in New York, and the Fort McHenry and the Baltimore Harbor Tunnels in Maryland are a vital part of the national transportation infrastructure. These tunnels accommodate huge volumes of daily traffic, contributing to the Nation's mobility. For example, according to the Port Authority of New York and New Jersey, the Lincoln Tunnel carries approximately 120,000 vehicles per day, making it the busiest vehicular tunnel in the world. The Fort McHenry Tunnel handles a daily traffic volume of more than 115,000 vehicles. Any disruption of traffic in these or other highly traveled tunnels would result in a significant loss of productivity and have severe financial impacts on a large region of the country.

On October 29, 2012, flooding caused by Hurricane Sandy led to the closure of many of the vehicular, transit, and rail tunnels in the New York City metropolitan area. Although it is still too early to quantify the economic impact of these tunnel closures, it is expected that the economic impact was substantial. Amtrak alone reported an operational loss of approximately $60 million due to the closures of four of its tunnels in the region.[5] These closings, although the result of an extreme event and not a structural or functional safety issue, demonstrate the value of the continued operation of tunnels. Because of their importance to local, regional, and national economies, and to our national defense, it is imperative that we properly inspect and maintain tunnels to ensure the continued safe passage of the traveling public and commercial goods and services.

Of particular concern is the possibility of a fire emergency in one of

[2] ''Ceiling Collapse in the Interstate 90 Connector Tunnel Boston, Massachusetts July 10, 2006,'' Highway Accident Report, NTSB/HAR–07/02, July 10, 2006. An electronic format version is available at: *http://www.ntsb.gov/doclib/reports/2007/HAR0702.pdf.*

[3] The U.S. Department of Transportation, Office of the Inspector General, ''Challenges Facing the U.S. Department of Transportation, Fiscal Year 2008,'' October 2007, CC–2008–007. An electronic format version is available at: *http://www.oig.dot.gov/sites/dot/files/pdfdocs/Statement6_DOTAcitivies101507_508version.pdf.*

[4] *http://abcnews.go.com/blogs/headlines/2012/12/japan-orders-immediate-inspections-after-deadly-tunnel-collapse/.*

[5] *http://www.amtrak.com/ccurl/920/456/Amtrak-Requests-.pdf.*

our Nation's tunnels. Numerous domestic and international incidents demonstrate that tunnel fires often result in a large number of fatalities. One of the domestic examples occurred in April 1982 when seven people lost their lives in the Caldecott tunnel which carries State Route 24 between Oakland and Orinda, California, when a truck carrying flammable liquid was involved in a crash and subsequent collision with other vehicles. In October 2001, 11 people were killed when a fire erupted in the Gotthard tunnel in Switzerland following a head-on collision. In 2000, 162 people were killed when a fire started in the Kaprun train tunnel in Austria. In 1999, 39 people died when a truck caught fire in the Mont Blanc tunnel on the France/Italy border. Tests of 26 tunnels in 13 European countries in 2010 by the European Tunnel Assessment Programme indicated a number of inadequacies related to fire safety, including missing hydrants, no barriers to close the tunnel, inadequate lighting, and insufficient escape route signs.[6] National inspection standards are needed in the United States to ensure that lights, signs, barriers, and tunnel walls are inspected and fire suppression systems are maintained in safe and operable condition. Such safety features are of critical importance in the event of a fire emergency.

Ensuring timely inspections of highway tunnels would not only enhance the safe passage of the traveling public, it could also contribute to the efficient movement of goods and people and to millions of dollars in fuel savings. For example, the Eisenhower/Johnson Memorial Tunnels, located west of Denver on I–70, facilitate the movement of people and goods from the eastern slope of the Rocky Mountains to the western slope. The Colorado Department of Transportation (CDOT) estimates that the public saves 9.1 miles by traveling through these tunnels instead of over U.S. Highway 6, Loveland Pass. In the year 2000, approximately 28,000 vehicles traveled through the tunnels per day, which is equal to 10.3 million vehicles for the year.[7] Accordingly, FHWA estimates that by traveling through the Eisenhower/Johnson Memorial Tunnels, the public saved approximately 90.7 million miles of travel and millions of dollars in associated fuel costs in the year 2000. These tunnels help to expedite the transport of goods and people, prevent congestion along alternative routes, and save users both dollars and fuel. If these tunnels were closed due to a collapse or other safety hazard, the economic effects would be considerable.

While the above examples do not constitute a comprehensive list of issues resulting from lack of inspections, these examples do demonstrate why routine and thorough tunnel inspection is vital to uncovering safety problems and preventing catastrophic failure of key tunnel components. Some of these tunnel operators have already taken adequate steps, such as increasing frequency of inspections, in order to address these problems. These are simply examples of why tunnel inspections are important. These examples of the costs of tunnel failures and closures are not necessarily benefits resulting from this rulemaking, because the operators have in some cases already taken steps absent this current rulemaking to improve inspection procedures.

III. Research Related to Tunnel Inspections

In addition to the focus Congress has given to tunnel inspection, the NTSB, State departments of transportation (State DOTs), the IG, the FHWA, and others have conducted extensive research related to tunnel design, construction, rehabilitation, and inspection. The following partial listing of those activities and projects related to tunnel safety all underscore the need to develop consistent and reliable inspection standards.

A. Underground Transportation Systems in Europe: Safety, Operations, and Emergency Response.[8] In 2005, FHWA, the American Association of State Highway and Transportation Officials (AASHTO), and the National Cooperative Highway Research Program (NCHRP) sponsored a study of equipment, systems, and procedures used in the operation and management of tunnels in nine European countries (Austria, Denmark, France, Germany, Italy, Norway, the Netherlands, Sweden, and Switzerland). One objective of this scan was to identify best practices, specialized technologies, and standards used in monitoring or inspecting the structural elements and operating equipment of roadway tunnels to ensure optimal performance and minimize downtime for maintenance or rehabilitation. As a result of their fact finding, the international scan team recommended that the United States implement a risk-management approach to tunnel inspection and maintenance. In regard to current practices, the report states that ''only limited national guidelines, standards, or specifications are available for tunnel design, construction, safety inspection, traffic and incident management, maintenance, security, and protection against natural or manmade disasters.'' The report also notes that only ''through knowledge of the systems and the structure gained from intelligent monitoring and analysis of the collected data, the owner can use a risk-based approach to schedule the time and frequency of inspections and establish priorities.''

B. NCHRP Project 20–07/Task 261, Best Practices for Implementing Quality Control and Quality Assurance for Tunnel Inspection.[9] In response to NTSB's preliminary safety recommendations resulting from the I–90 Central Artery Tunnel partial ceiling collapse investigation in Boston, FHWA and AASHTO initiated this NCHRP research project. The objective of this project was to develop guidelines for owners to use in implementing quality control and quality assurance practices for tunnel inspection, operational safety and emergency response systems testing, and inventory procedures to improve the safety of highway tunnels. During the course of the project, the researchers found that tunnel owners in the United States are inspecting their structures at variable intervals ranging from more than a week to up to 6 years. The report states that ''[s]ince there is currently no consistency in the tunnel inspection techniques used by the various tunnel owners, implementing NTIS and developing a tunnel inspector training program on applying those standards will be vital to ensuring a consistent tunnel inspection program for all tunnels across the nation.''

C. Best Practices for Roadway Tunnel Design, Construction, Maintenance, Inspection, and Operations.[10] This

[6] *http://www.independent.co.uk/news/world/europe/new-tunnel-rules-to-be-introduced-after-high-death-toll-7566220.html.*

[7] See *http://www.coloradodot.info/travel/eisenhower-tunnel/eisenhower-tunnel-interesting-facts.html.*

[8] Federal Highway Administration, ''Underground Transportation Systems in Europe: Safety, Operations, and Emergency Response,'' Office of International Programs, FHWA–PL–06–016, June 2006. An electronic format version is available at: *http://international.fhwa.dot.gov/uts/uts.pdf.*

[9] National Cooperative Highway Research Program, ''Best Practices for Implementing Quality Control and Quality Assurance for Tunnel Inspection,'' Prepared for the AASHTO Technical Committee for Tunnels (T–20), NCHRP Project 20–07, Task 261 Final Report, October 2009. An electronic format version is available at: *http://onlinepubs.trb.org/onlinepubs/nchrp/docs/NCHRP20-07(261)_FR.pdf.*

[10] National Cooperative Highway Research Program, ''Best Practices for Roadway Tunnel Design, Construction, Maintenance, Inspection, and Operations,'' Prepared for the AASHTO Technical Committee for Tunnels (T–20), NCHRP Project 20–

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domestic scanning tour was conducted during August and September of 2009, and is another activity that FHWA conducted in partnership with AASHTO and NCHRP to determine if a need existed for national tunnel inspection standards and a national tunnel inventory. The scan focused on the inventory criteria used by highway tunnel owners; highway tunnel design and construction standards used by State DOTs and other tunnel owners; maintenance and inspection practices; operations, including safety, as related to emergency response capability; and specialized tunnel technologies. The scan team found that the most effective tunnel inspection programs have been developed from similar bridge inspection programs. It was determined that tunnel owners often use bridge inspectors to inspect their tunnels because bridges and tunnels are transportation structures that are designed and constructed with similar materials and methods, exposed to similar environments, and can be reliably inspected with similar technologies. As a result, the scan team recommended that the development of a tunnel inspection program be as similar as possible to the current bridge inspection program to further capitalize on the success of the standards for bridge inspection established through the NBIS.

D. In 2003, FHWA conducted an informal survey to collect information about the tunnel inventory, maintenance practices, inspection practices, and tunnel management practices of each State. Of the 45 highway tunnel owners surveyed, 40 responses were received. The survey results suggest that there are approximately 350 highway tunnels (bores) in the Nation and that they are currently inspected by their owners at frequencies that range from daily to once every 10 years.[11] The average inspection interval for the 37 responses that included data on this measure was a little over 24 months (2.05 years).

E. *Highway and Rail Transit Tunnel Inspection Manual* (HRTTIM). Recognizing that tunnel owners are not required to inspect tunnels routinely and that inspection methods vary among entities that inspect tunnels, FHWA and the Federal Transit Administration developed the HRTTIM for the inspection of tunnels in 2003. These guidelines, which were updated in 2005,[12] outline recommended procedures and practices for the inspection, documentation, and priority classification of deficiencies for various elements that comprise a tunnel.

IV. Proposed NTIS

Recognizing that the safety and security of our Nation's tunnels are of paramount importance and as a result of the legislative mandate in MAP–21, FHWA has developed the NTIS proposed in this SNPRM. The FHWA has modeled the proposed NTIS after the existing NBIS, located at 23 CFR part 650, subpart C. The more than 40-year history of NBIS has enabled the States to identify and manage deterioration and the emergence of previously unknown problems in their bridge inventory, to evaluate those structures properly, and to make the repairs needed to forestall the escalating cost of repairing or replacing older bridges. Similar needs and concerns exist for the owners of aging highway tunnels. The NBIS provides a reasonable starting point for designing a national tunnel inspection program. The FHWA has therefore modeled the proposed NTIS after the NBIS, and will make appropriate changes in the NTIS as we gather further experience with tunnel inspections and tunnel safety problems. It is proposed that the NTIS will be added under subpart E of 23 CFR part 650—Bridges, Structures, and Hydraulics.

The proposed NTIS requires the proper safety inspection and evaluation of all tunnels. The NTIS are needed to ensure that all structural, mechanical, electrical, hydraulic and ventilation systems, and other major elements of our Nation's tunnels are inspected and tested on a regular basis. The NTIS would also enhance the safety of our Nation's highway tunnels, and will make tunnel inspections consistent across the Nation.

The proposed NTIS would create a national inventory of tunnels that would result in a more accurate assessment and provide the public with a more transparent view of the number and condition of the Nation's tunnels. Tunnel information would be made available to the public in the same way that bridge data contained in the National Bridge Inventory is made available. The tunnel inventory data would also be available in the annual report to Congress that is required by MAP–21. The tunnel inventory data would allow FHWA to track and identify any patterns of tunnel deficiencies and facilitate repairs by States to ensure the safety of the public. Tunnel owners would also be able to integrate tunnel inventory data into an asset management program for maintenance and repairs of their tunnels. The data collection requirements in the proposed NTIS are consistent with the performance-based approach in carrying out the Federal highway program established by Congress in MAP–21. These proposed requirements would fulfill the congressional directive to establish a data-driven, risk-based approach for the maintenance, replacement, and rehabilitation of highway tunnels. Such an approach would help to ensure the efficient and effective use of Federal resources.

The proposed NTIS will ensure that tunnels are inspected by qualified personnel by creating a certification program for tunnel inspectors and a comprehensive training course.

Regulatory History

The FHWA issued an ANPRM on November 18, 2008, (73 FR 68365) to solicit public comments regarding 14 categories of information related to tunnel inspections to help FHWA develop the NTIS. The FHWA reviewed and analyzed the comments received in response to the ANPRM and published an NPRM on July 22, 2010 (75 FR 42643). In the NPRM, FHWA proposed establishing the NTIS based in part on the comments received in response to the ANPRM. The FHWA received comments on the docket for the NPRM from 16 commenters, including: 1 Federal agency (NTSB); 7 State DOTs (California, Colorado, Indiana, Massachusetts, Pennsylvania, Virginia, and Washington); 1 engineering consulting firm (PB Americas); 4 organizations (American Society of Civil Engineers (ASCE), AASHTO, American Council of Engineering Companies (ACEC), and National Fire Protection Association (NFPA)); 1 local government agency (The Seattle Fire Department); 1 private corporation (Damascus Corp.) and 1 anonymous commenter. This SNPRM addresses the comments received on the NPRM and updates the proposed regulation for the provisions detailed in MAP–21.

68A Scan 09–05 Final Report, April 2011. An electronic format version is available at: *http://onlinepubs.trb.org/onlinepubs/nchrp/docs/NCHRP20-68A_09-05.pdf.*

[11] The definition of a highway tunnel used in the 2003 survey pertained to a single ''bore'' or constructed shape, but did not pertain to a given tunnel name (i.e. a tunnel such as the Holland tunnel in New York actually consists of two tunnels, one in each direction).

[12] The Federal Highway Administration/Federal Transit Administration ''Highway and Rail Transit Tunnel Inspection Manual,'' 2005 edition, is available in electronic format at: *http://www.fhwa.dot.gov/bridge/tunnel/management/.*

Section-by-Section Analysis

650.501 Purpose

The purpose for the NTIS was amended to be consistent with the requirements of MAP–21. The purpose of the NTIS is to ensure the proper safety inspection and evaluation of all tunnels.

The CDOT commented that it concurs with limiting the applicability to only Federal-aid built or renovated tunnels as was proposed in the NPRM. The CDOT also commented that the scope of the NTIS should be limited to those tunnels that were built or rehabilitated with title 23 funds and this limitation should continue until title 23 funds can be used to inspect off-system tunnels similar to the exception that exists for off-system bridges.

The FHWA Response: With the passage of MAP–21, FHWA is now proposing the inspection of all tunnels on public roads regardless of whether they were constructed or renovated using Federal funds. The MAP–21 also provides the flexibility to leverage funding for these inspections that CDOT requested.

650.503 Applicability

The applicability for the NTIS would be amended to be consistent with the requirements of MAP–21. The applicability of NTIS would be broadened to all tunnels regardless of their funding source.

The California Department of Transportation (Caltrans) indicated there might be insufficient data to determine which tunnels have been built or renovated with title 23 funds.

The FHWA Response: With the passage of MAP–21, FHWA is now proposing the inspection of all tunnels on public roads, and tunnels on and off the Federal-aid highway system regardless of whether they were constructed or renovated using Federal funds.

The AASHTO commented that these regulations will require State DOTs to provide oversight of inspection of Federal tunnels.

The FHWA Response: The SNPRM does not require States to provide oversight of inspection of federally owned tunnels. The Federal agency that owns a particular tunnel is responsible for providing oversight of the tunnel inspection.

The NTSB commented that FHWA should continue seeking the legislative authority to require that all publicly used highway tunnels are subject to the NTIS. The NTSB commented that their experience with accident investigations leads them to believe that only a mandatory NTIS that applies to all highway tunnels on public roads will adequately protect the public.

The FHWA Response: With the passage of MAP–21, FHWA now has a legislative mandate to require the inspection of all tunnels on public roads on and off Federal-aid highways, including tribally and federally owned tunnels.

650.505 Definitions

At-grade Roadway. A definition for *at-grade roadway* was added to the proposed rule in order to respond to a comment from AASHTO. See the section-by-section analysis discussion for § 650.513.

Complex Tunnel. Massachusetts Department of Transportation (MassDOT) and AASHTO suggested that the definition of *complex tunnel* take into account complex highway geometry, including the presence of on and off ramps in the middle of a tunnel such as those found in Boston's I–90 and I–93 tunnels.

The FHWA response: The FHWA would not object to an owner classifying a tunnel in its inventory with complex highway geometry as a complex tunnel. However, FHWA does not believe it is necessary to change the definition of complex tunnel in the proposed rule to accommodate this classification.

Comprehensive tunnel inspection training. A definition for comprehensive tunnel inspection training was added to the proposed rule in order to define the criteria for a nationally certified tunnel inspector.

Functional Systems. The Seattle Fire Department suggested dividing the definition of *functional systems* into two subcategories: (1) Fire and life safety systems, and (2) non-fire and life safety systems. The Seattle Fire Department commented that this division will clarify inspection standards and the need for inspection frequency detailed in § 650.511.

The FHWA response: The FHWA does not believe it is necessary to divide the definition of *functional system* into two subcategories in order to ensure appropriate inspection standards and frequencies are applied. The FHWA is aware of the complexity and extensive number of non-structural elements and systems that are necessary for fire and life safety and those for non-fire and life safety. However, because it is not possible to create an all-inclusive list of functional system elements, FHWA attempted to capture the most important systems as a general listing in the NPRM. The requirement to develop procedures, including determining the inspection frequency of all systems and elements installed in a tunnel, proposed in § 650.513 provides assurance that inspection standards and frequencies will be applied appropriately.

Highway and Rail Transit Tunnel Inspection Manual (HRTTIM). The definition for the HRTTIM was removed from this section because the document is no longer being incorporated by reference in the proposed rule.

In-Depth Inspection. The Washington State Department of Transportation (WSDOT) commented that the phrase ''structural element'' within this definition needs to include unlined tunnels, portal rock structures, and rock ceilings, and that the Team Leader inspecting these elements should be required to be a geotechnical engineer.

The FHWA response: It is the intent of FHWA that the term ''structural element'' includes the features of a tunnel that provide its structure. As such, the walls, ceilings, and portals of unlined tunnels would be included. The FHWA does not believe the Team Leader must be a geotechnical engineer, as § 650.513(f) provides that the Team Leader is required to construct a team with the necessary expertise to inspect geotechnical features and report the findings. It is not necessary for the Team Leader to have the capacity to effectively inspect geotechnical features, provided a member of the team is able to do so.

The Seattle Fire Department stated there is no definition of the term ''inspection'' in the rule and that this will lead to confusion by the tunnel owner/operator as to the intent and method of the inspection program.

The FHWA response: To eliminate potential for confusion regarding the term inspection, § 650.513(c) and (d) establish a clear division of inspection and testing responsibilities. Section 650.513(d) proposes to require each State DOT, Federal agency, or tribal government tunnel inspection organization to establish requirements for routine diagnostic testing of functional systems, which could be done by operation or maintenance personnel. Section 650.513(c) proposes to require that the procedures define how, when, and by whom these systems will be inspected and tested. It is expected that, as part of an inspection, the Team Leader will verify that this routine diagnostic testing had been accomplished and that the aforementioned procedures had been followed.

Initial Inspection. The VDOT proposed that for existing tunnels, any inspection that was performed in the last 5 years should qualify as the tunnel's *initial inspection.*

The FHWA response: The FHWA disagrees with the commenter. To allow States and tunnel owners greater flexibility in performing a tunnel's initial inspection, we have proposed to extend the initial inspection requirement to 24 months under § 650.511(a). Using inspection data that is 5 years old, in combination with an initial inspection requirement of 24 months for existing tunnels, could result in a tunnel not being inspected for a period of 7 years. Thus, FHWA is proposing that the initial inspection be conducted within 24 months of the effective date of this rule and that no inspection data previous to the publishing of this rule will be accepted to fulfill the requirements of this section.

Inspection Date. A definition for *inspection date* was added in order to make revisions to § 650.511 on inspection interval clearer.

Load Rating. The AASHTO, VDOT, and the Pennsylvania Department of Transportation (PennDOT) suggested revising the definition of *load rating* to include the determination of non-vehicular type capacities, such as hanger systems for suspended ceilings or other structural systems. The WSDOT commented that rating ''lid type tunnels'' might be confused with bridges and asked for clarification regarding how they will be distinguished and reported to the database.

The FHWA response: The current definition of *load rating* in 23 CFR part 650, subpart C—National Bridge Inspection Standards is the determination of the live load carrying capacity of a bridge using bridge plans and supplemented by information gathered from a field inspection. The current definition of *load rating* in the AASHTO Manual for Bridge Evaluation is ''the determination of the live-load carrying capacity of an existing bridge.'' As the proposed definition for *load rating* in this rule is consistent with 23 CFR 650.305 and the AASHTO Manual, FHWA declines the changes suggested by AASHTO, VDOT, and PennDOT. In addition, the commenters' suggested definition effectively incorporates structural evaluation, which is separate from load rating. This evaluation can be required by the owner at any time and should occur automatically if damage or deterioration with the potential to affect performance is detected through an inspection.

With regard to ''lid type tunnels,'' per the proposed definition of tunnel in this rule, owners would be required to classify a structure as either a tunnel or a bridge and that classification would determine the appropriate procedures by which to rate the structure. For example, if a tunnel roof serves as a roadway for traffic above the tunnel, that roof should be load rated as part of the tunnel and not as an independent bridge.

Procedures. A definition for *procedures* was added to the rule in order to clarify what FHWA means by this term which is used extensively throughout this rule.

Professional Engineer (P.E.). Language was added to the definition of *professional engineer* to clarify that engineers are bound by their ethics to practice only in those areas where they have the necessary experience, in response to a comment from VDOT on the qualifications of a *Team Leader.* See discussion on the definition of *Team Leader* in this section.

Routine Permit Load. The VDOT suggested revising the term *routine permit load* to simply *permit load.* The AASHTO suggested that permit loads that are not ''routine'' should also be defined.

The FHWA response: The FHWA believes the definition proposed in this rule is consistent with that used in the NBIS and is commonly accepted, understood, and used within the bridge and tunnel community. *Routine permit loads* need to be defined for the purposes of this proposed rule because they are used to conduct load ratings. For the purposes of this proposed rule, it is unnecessary to provide a definition of permit loads that are outside of routine because they are not used to conduct load rating per this rule.

Team Leader. The VDOT suggested revising the definition for *Team Leader* to read, ''The on-site individual in charge of an inspection team responsible for planning, preparing, performing, and reporting on tunnel inspections. The Team Leader shall be a registered P.E. in the technical discipline for which he/she is inspecting. For example, Team Leader for inspecting electric systems shall be a P.E. in Electrical Engineering.''

The FHWA response: The FHWA agrees that inspection teams need to be comprised of individuals qualified to inspect the elements that they are inspecting. As these inspections will leverage multiple disciplines, team members with diverse sets of expertise will be required. In the proposed regulation, only one of these members will be required to be the *Team Leader.* As a result, FHWA does not agree with altering the definition of *Team Leader* to include elements of qualification additional to those addressed in § 650.509. The *Team Leader* would be responsible for assembling a team of inspectors with appropriate expertise and experience to inspect the various elements, components, and systems that comprise the tunnel.

Tunnel. The NFPA recommended adopting its definitions for *road tunnel* and *length of tunnel* as defined by *NFPA 502: Standard for Road Tunnels, Bridges, and Other Limited Access Highways* (2008 Edition). The NFPA stated that the definition of tunnel does not need to contain a minimum length requirement; however, tunnels should be categorized by tunnel length. They suggest that the categories should be adopted from Section 7.2 and Table 7.2 of NFPA 502, which provides the minimum fire protection requirements for road tunnels based on tunnel length.

The ASCE recommended using the AASHTO Subcommittee on Bridges and Structures Technical Committee T–20, Tunnels definition of *tunnel.* The ASCE stated that adoption of the T–20 definition would result in regular attention to all parts of a tunnel, such as fire protection systems and auxiliary structures. The ASCE stated that this approach is important in order to ensure that all critical engineered systems in a tunnel are inspected.

Caltrans suggested that the NTIS classify as tunnels all structures requiring forced ventilation to limit carbon monoxide buildup, all structures with fire suppression systems, and all structures bored or mined through undisturbed material. Caltrans suggested that language addressing ventilation systems, fire protection systems, and type of construction be included in the definition for *tunnel.*

PB Americas proposed the following definition for *tunnel* based on roadway enclosure and length: ''Any combination of structures that creates a structure that is functionally a tunnel from the viewpoint of access—An enclosed roadway which is constructed within the earth or has buildings over it, limiting access to portals for vehicular travel, and is longer than 300 feet from portal to portal.''

The Seattle Fire Department suggested additional language for the definition of *tunnel* as follows: ''The owner shall ascertain the risks of the structure, traffic, hazardous material and related variables that may contribute to either structural damage or loss of life, to determine if it should be classified as a tunnel.'' The Seattle Fire Department also commented that for the purposes of this inspection program, any structure that includes components of the fire and life safety systems shall be considered part of the tunnel, including control facilities and ventilation buildings.

The AASHTO emphasized the need for clarity in the definition of *tunnel* to avoid confusion in reporting and inspection. They suggested the following definition: ''An enclosed roadway for motor vehicle traffic with vehicle access limited to portals regardless of type of structure or method of construction. Tunnels do not include bridges or culverts that an owner has elected to inspect under the NBIS (23 CFR 650 Subpart C—National Bridge Inspection Standards).''

The FHWA response: The FHWA believes the modified version of the AASHTO T–20 definition is adequate to capture the structures targeted with this proposed regulation without overly complicating the determination of what is or is not a *tunnel.* Consistent with the majority of the comments, this definition does not include a minimum length. The FHWA believes that including categories for tunnels, or additional detailed language on functional systems or type of construction, narrows what is intended to be a fairly broad definition. Also, the definition for *complex tunnel* addresses advanced or unique structural elements or functional systems. The current definition clearly states that a structure shall be inspected and reported only once under either the NBIS or the NTIS, but not both.

Tunnel inspection refresher training. A definition for tunnel inspector refresher training was added to the proposed rule to define the criteria for a nationally certified tunnel inspector.

Tunnel Operations, Maintenance, Inspection and Evaluation (TOMIE) Manual. A definition for the TOMIE manual was added as this document is now incorporated by reference into the proposed rule. The TOMIE Manual has replaced the HRTTIM as a reference for this proposed regulation because the recommendations and guidance in the TOMIE Manual are consistent with this proposed regulation and MAP–21. Also, the TOMIE Manual is based on an element level inspection approach. The TOMIE Manual is posted for public viewing in the rulemaking docket and on the FHWA Web site (*http://www.fhwa.dot.gov/bridge/tunnel/library.htm*). The FHWA specifically requests comments on the TOMIE Manual from tunnel owners and operators in consideration of this proposed regulation.

Tunnel Inspection Experience. The AASHTO suggests adding language to the definition of *tunnel inspection experience* to clarify how a year of experience will be defined.

The FHWA response: The FHWA added language to clarify the criteria to be used in evaluating years of experience under § 650.509(a), including the relevance of the individual's actual experience, exposure to problems or deficiencies common in the types of tunnels inspected by the individual, complexity of tunnels inspected relative to the individual's skills and knowledge, and the individual's understanding of data collection needs and requirements.

Tunnel-specific inspection procedures. A definition for *tunnel-specific inspection procedures* was added to this proposed rule in order to respond to a comment from AASHTO. See the section-by-section analysis discussion for § 650.513.

650.507 Tunnel Inspection Organization

This section of the proposed rule was amended to be consistent with the requirements of MAP–21. The proposed rule requirement that States and Federal agencies inspect or cause to be inspected all tunnels that are fully or partially within their responsibility or jurisdiction was extended to tribally owned tunnels. Also, tunnel inspection organizations would be required to maintain a registry of nationally certified tunnel inspectors that work in their jurisdiction.

The AASHTO, MassDOT, and VDOT expressed concern that this proposed rule places the responsibility for inspecting tunnels within a State's boundaries on the State DOT. This would be the case even though a number of major tunnels on Federal-aid highways are owned and operated by semi-autonomous authorities that were established by State legislators with statutory independence from State DOTs. The commenters worried that, as a result, these regulations will place State DOTs in the awkward position of being responsible for an oversight task that they have no legal authority to perform. The VDOT further commented that tunnels owned by legal authorities should be exempted from this rule.

The FHWA Response: Section 650.507(a) states that each State DOT must inspect, or cause to be inspected, all tunnels subject to the NTIS. Under title 23, the FHWA's primary relationship in a State is with the State Highway Agency. Therefore, the State Highway Agency would be legally responsible for fulfilling the requirements of these proposed regulations within its State's boundaries. If current legal authority is not present within a State to carry out this responsibility, the State Highway Agency should seek that authority. As a result of this proposed rule, State DOTs would be responsible for the implementation of the NTIS on all applicable tunnels within their States with the exception of tribally and federally owned tunnels as discussed in the section-by-section analysis for § 650.505.

The AASHTO and Indiana DOT requested clarification regarding whether § 650.507 and § 650.515 require a State to maintain a tunnel inspection organization, including policies and procedures, a designated Program Manager, and inventory and reporting system, as required by § 650.507 and § 650.515, if the State does not own or possess any qualifying tunnels. Indiana DOT also asked if annual reporting to FHWA would be required to confirm that no qualifying tunnels exist.

The FHWA Response: Section 650.503 and § 650.507(a) would establish which tunnels are subject to the requirements of this rule. Section 650.507(d) further clarifies that a State tunnel inspection organization is only required when ''one or more'' tunnels subject to these regulations exists within the State. As such, a State that does not contain any tunnels subject to this proposed regulation would not be required to have a tunnel inspection organization, established inspection policies and procedures, a designated Program Manager, an inventory and reporting system, and would not be subject to annual reporting requirements.

Caltrans noted that while it has an established system for the collection of bridge inspection data and report writing, the development of a similar system for tunnel inspection is a labor intensive effort that would take several years to complete.

The FHWA Response: The FHWA agrees that establishing a system for collecting and reporting of tunnel inspection and inventory data would be a significant effort for tunnel owners who have not instituted an inspection program on their own. In recognition of this, FHWA has extended the initial inspection requirement to 24 months from the effective date of this proposed rule.

The ACEC commented that risk management requirements should be addressed in the final rule. More specifically, ACEC commented that liability for inspecting engineers and those preparing reports should be addressed. The ACEC suggested that the NTIS state that reports be prepared in accordance with the care and skill ordinarily used by inspectors practicing under similar conditions at the same time and in the same locality. In addition, ACEC indicated that the NTIS should make clear that inspection

reports are prepared exclusively for the use of the client—the tunnel owner—and not for any other purpose. The ACEC noted that tunnel inspectors should be focused on achieving the goals of their clients and should not feel compelled to compromise or alter their work out of fear of potential liability.

The FHWA Response: The FHWA agrees that professional standards of care should be followed when developing and implementing tunnel-specific inspection plans and preparing inspection reports. However, these matters are sufficiently addressed by other means, including State professional engineer licensing boards, State and Federal acquisition regulations pertaining to acceptable quality levels, and consultant legal disclaimers regarding the use and limitations of prepared reports. The use of inspection reports in legal proceedings is governed by State law, over which FHWA has no control.

An anonymous commenter noted that the NTIS must address worker safety. The commenter recommended that gas detection equipment be required for each team entering a tunnel to prevent carbon dioxide and carbon monoxide exposure. The commenter further commented that head protection meeting current national consensus standards be required in instances where the structural integrity of the tunnel's roof is in question. In addition, the commenter suggested that high visibility clothing be required and that each member of the team's leadership should have requisite Occupational Safety and Health Administration (OSHA) training regarding workplace hazards present during tunnel inspections.

The FHWA Response: The FHWA agrees that safety is of paramount importance when accessing and inspecting tunnels and associated systems. Section 650.507(d)(1) states that the State, Federal agency, or tribal government with tunnel inspection jurisdiction is required to provide ''inspection policies and procedures'' which would include safety training, safe inspection procedures, and requisite inspection equipment satisfying appropriate OSHA requirements, including those applicable to confined spaces.

650.509 Qualifications of Personnel

This section was amended to be consistent with the requirements of MAP–21. Under this proposed rule, Program Managers and Team Leaders are required to be nationally certified tunnel inspectors. Also, the proposed requirements for a national certified tunnel inspector were added.

The ASCE and VDOT recommended that the Program Manager be required to be a registered P.E. and meet minimum education and experience requirements.

The VDOT and PennDOT recommended that the Program Manager be required to successfully complete an FHWA-approved comprehensive tunnel inspection training course.

The AASHTO recommended that the Program Manager be a registered P.E. or have 10 years of tunnel or bridge inspection experience and successfully complete an FHWA-approved comprehensive tunnel inspection training course.

The FHWA Response: The FHWA is proposing to modify the qualifications of the Program Manager in § 650.509(a) to require that individual be a registered P.E., have 10 years tunnel or bridge inspection experience, and be a nationally certified tunnel inspector which has mandatory training requirements. The FHWA agrees that bridge inspection experience is relevant experience for the Program Manager to possess because of the anticipated similarities between the two inspection programs. Additionally, FHWA agrees that comprehensive training in tunnel inspection should be required for Program Manager, Team Leader, and Inspector positions. The FHWA would develop or identify sources of comprehensive tunnel inspection training for Program Managers, Team Leaders, and Inspectors. Additional considerations for evaluating past experience have been included to assist States with identifying a qualified Program Manager.

The MassDOT and AASHTO recommended that the qualifications for both Program Manager and Team Leader be the same as those required under the NBIS. The MassDOT and AASHTO further recommended that if a P.E. is required, it should be required for both the Program Manager and the Team Leader, and that the Team Leader should be a P.E. registered in the discipline of the system that his or her team will be inspecting.

The ACEC recommended that both the Program Manager and the Team Leader be required to have a P.E.

The VDOT recommended that the Team Leader be a registered P.E. in the technical discipline of inspections, while WSDOT recommended that the Team Leader be licensed in the field of Geotechnical Engineering. Further, PennDOT recommended that the Team Leader be permitted to have 5 years of tunnel or bridge inspection experience as an alternative to be a registered P.E.

The FHWA response: Although the Program Manager and Team Leader requirements in this proposed rule are modeled after the NBIS, they differ from those of the NBIS because of the difference in the complexity of the structures that are being inspected under the NTIS.

The FHWA agrees that the Team Leader should be a registered P.E. due to the complex nature of these inspections. The Team Leader is responsible for assembling a team of inspectors with appropriate expertise and experience to inspect the various elements, components, and systems that comprise the tunnel. Accordingly, FHWA does not believe that the Team Leader needs to be licensed in each specific discipline related to the elements being inspected. The Team Leader could have a license in any related discipline. The FHWA proposes to modify the definition for Professional Engineer in § 650.505 of the rule to emphasize that they are required to practice within their area of expertise.

650.511 Inspection Interval

The title of this section has been changed to more directly reflect the content. This section has also been modified to reflect a change from the HRTTIM to the TOMIE Manual as the manual incorporated by reference and to establish a routine inspection date that will benchmark the commencement of future inspections.

The NFPA and the Seattle Fire Department recommended incorporating NFPA requirements for inspection frequencies of specific safety features into the regulation.

The FHWA Response: The interval between the inspection of specific safety features would be developed as part of the inspection procedures that are required under § 650.513 of the proposed rule. These procedures should include a listing of components and the associated inspection interval for each. The FHWA believes that it would be in the best interests of the tunnel owner to consult NFPA codes and standards and manufacturer recommendations in the development of the aforementioned inspection intervals.

The ASCE expressed a desire for a more flexible approach to scheduling inspections based on age and complexity, but recognized that the 24-month requirement matches the NBIS making them complementary.

The FHWA Response: The FHWA believes that flexibility is built into the regulation in that it establishes only a maximum inspection interval. An owner may increase the frequency of inspection of particular components of

a tunnel by performing in-depth or special inspections based on the age, condition, or complexity of those components. In response to comments received, however, FHWA is proposing additional flexibility by including language in § 650.511(b) supporting an extended inspection interval of up to 48 months for tunnels that meet certain criteria. The Program Manager would be permitted, under the proposed rule, to develop an extended inspection interval program and submit to FHWA for review and comment prior to use, the criteria used to determine frequency of inspection based on assessed lesser risk, considering at a minimum: tunnel age, time from last major rehabilitation, tunnel complexity, traffic characteristics, geotechnical conditions, functional systems, and known deficiencies.

The FHWA has also modified § 650.511 to allow the inspection to take place within a defined interval 2 months before or after an established inspection date. This would offer additional flexibility in scheduling inspections to accommodate scheduling adjustments for factors including weather, personnel, or equipment issues. An inspection date would be established and could only be modified by a Program Manager. Documentation supporting the modified date would need to be retained in the tunnel records for future reference.

PB Americas commented that a 2-year inspection frequency is adequate for most systems for a visual routine inspection. They recommended every third cycle be an in-depth hands-on sounding inspection including non-destructive and destructive testing. Additionally, they commented that following the Central Artery Tunnel collapse, they divided inspections into two categories: critical and non-critical. Critical areas were defined as areas that could cause loss of life or injury if they failed. They suggested that critical areas should be inspected annually, with non-critical areas being inspected every 2 years.

The ACEC supported a risk-based inspection process with a minimum frequency of 2 years. For the more frequent inspections identified in § 650.511(b)(2) and the damage, in-depth, and special inspections in § 650.511(c), they stated the regulation should clarify the need to specifically assess critical areas, such as structural elements or functional systems where failure would pose a life or safety issue.

The FHWA Response: The NPRM and this SNPRM propose a regular interval of 24 months between routine inspections. Section 650.513 of the proposed rule would require owners to establish inspection intervals in accordance with the complexity and specific characteristics of each tunnel to ensure that critical areas are inspected appropriately. The in-depth and special inspections are intended to cover situations where inspections need to be performed more frequently or a component requires a more thorough inspection. Guidance for this would be provided through reference manuals and be left to the discretion of the owner considering the age, complexity, and other factors, such as manufacturer recommendations.

The VDOT and AASHTO recommended revising the introductory language of § 650.511 to read: ''Each State transportation department or Federal agency tunnel inspection organization must conduct or cause the following to be conducted for each tunnel described in § 650.503'' in order to clarify whether State and local tunnels are included.

The FHWA Response: The FHWA agrees with this comment and has revised § 650.511 so that it is consistent with these comments and the provisions of MAP–21.

The VDOT recommended revising § 650.511(a) to require an initial inspection within 60 months of the effective date of the rule and to permit an inspection that occurred within the 60 months prior to the effective date of the rule to be accepted as the initial inspection.

The AASHTO commented that the current 12 months for initial inspection in the NPRM will be difficult to comply with if remaining tunnels within State borders have not received initial inspections in accordance with the NTIS. They note that if a tunnel was inspected prior to the effective date, the previous inspection should be sufficient. The AASHTO recommended changing the 12 month initial inspection requirement to 24 months, and permitting an inspection within 24 months of the effective date to serve as the initial inspection. The PennDOT similarly commented that the inspection of a tunnel conducted per the HRTTIM within 24 months of the effective date of the rules should be accepted as the initial inspection.

The MassDOT and AASHTO both inquired about the timeframe for performing an initial inspection for a new tunnel.

The FHWA Response: There would be two instances of initial inspection. The first instance would be for existing tunnels having their first inspection under the NTIS. The second instance would be for tunnels completed after the NTIS become regulation. With regard to existing tunnels, FHWA recognizes that several tunnel owners have been performing inspections prior to this rulemaking and that there is a desire to use an inspection performed within a reasonable timeframe prior to the effective date of the rule as meeting the initial inspection requirement. While we commend these owners for their efforts and recognize that several items of the NTIS may have been met during these inspections, the NTIS would also require items be recorded for the National Tunnel Inventory. Because of these items and a need to fulfill all of the other requirements of the NTIS, FHWA believes an initial inspection should be performed after this rulemaking becomes effective. To decrease the initial inspection burden on States, however, FHWA proposes to increase the timeframe for initial inspections from 12 to 24 months. Additionally, the second instance of tunnels completed after the NTIS become regulation should have an initial inspection performed prior to opening to traffic.

The VDOT expressed concern that States would have difficulty funding the proposed tunnel inspection frequency and recommended revising § 650.511(b)(1) to read: ''Provide an up-close or in-depth inspection of the civil/structural elements of the tunnels at regular intervals not to exceed 5 years. Provide an up-close or in-depth inspection of the operational systems at regular intervals of 24 months. It may be beneficial to consider a risk-based approach to provide enhanced safety to the program in an effective manner.''

The VDOT also recommended FHWA consider an incremental implementation of the program to give States an opportunity to plan for the program changes. Additionally, VDOT recommended revising § 650.511(b)(2) until more comprehensive guidelines are developed as follows: ''Inspect each tunnel at regular intervals not to exceed 60 months to ensure tunnel structural elements and functional systems are performing as designed, and document the inspection using procedures developed by the owner.''

The FHWA response: The FHWA disagrees with the recommendation to allow intervals of 60 months between inspections. The similarities between bridge and tunnel construction materials and associated deterioration mechanisms, design methodologies, and inspection technologies and protocols, along with the long-standing success of a 24-month inspection interval under the NBIS, all support the establishment of a 24-month inspection interval for

routine tunnel inspections. Additionally, the average inspection interval from the 40 responders to the 2003 FHWA survey was approximately 24 months. The majority of commenters, including AASHTO, support the 24-month inspection interval. Additionally, tunnel inspections at this interval will help to proactively identify and address maintenance needs in order to preserve the Federal investment in such key infrastructure. The FHWA believes that 60 months is too long of an interval between inspections to reliably identify and correct safety issues; however, § 650.511(b) has been revised to allow for routine inspection intervals of up to 48 months with FHWA approval. These inspections should be documented according to the procedures detailed in § 650.513. Additionally, MAP–21 requires inspection and inventory of all highway tunnels on public roads. Although no dedicated funding is provided for these inspections, it is an eligible use of funds under several programs established by MAP–21. Consequently, it is the responsibility of the owners to inspect or cause to be inspected all tunnels for which this rule applies.

650.513 Inspection Procedures

This section has been updated to reflect changes in the incorporated reference for the proposed rule, acceptable timeframes for the load rating and posting of a tunnel, the reporting of critical findings, as defined in 23 CFR 650.305, and how State compliance will be assessed.

A private individual and an anonymous commenter noted that the NTIS should specify the specialized equipment to be used while performing tunnel inspections in order to promote worker safety. The anonymous commenter also recommended the NTIS address worker safety.

The FHWA response: The FHWA believes that it is the responsibility of the tunnel Program Manager to determine what specialized equipment would be needed to carry out the tunnel inspection program. Special equipment needs should be documented in the procedures. Additionally, inspector safety procedures should be a part of any tunnel inspection program. Appropriate Federal, State, and local regulations, including OSHA regulations and standards, must be adhered to when conducting tunnel inspections.

Various commenters, including NFPA, PB Americas, and the Seattle Fire Department requested that various publications other than the HRTTIM be referenced in the NTIS. These include referencing the NFPA codes, the AASHTO T–20 Manual, the FHWA TOMIE Manual, and the FHWA 2009 Technical Manual for Design and Construction of Road Tunnels.

The FHWA Response: The TOMIE Manual is now proposed to be incorporated by reference in place of the HRTTIM. The FHWA will not be incorporating the FHWA Technical Manual for Design and Construction of Road Tunnels or the AASHTO T–20 Manual by reference; however, tunnel owners are encouraged to use these manuals and the NFPA 502 as part of their inspection programs and these manuals are mentioned as providing guidance for conducting tunnel inspections in § 650.517 of the proposed rule.

The AASHTO and VDOT further recommended that the language of § 650.513(a) be revised to read: ''Inspect tunnel structural elements and functional systems in accordance with the inspection guidance provided in the Highway and Rail Transit Tunnel Inspection Manual (incorporated by reference, see § 650.517) for in-depth inspections and in accordance with the procedures developed by the owner for routine, drainage and special inspections.''

The FHWA Response: The HRTTIM has been replaced by the TOMIE Manual as the manual to be incorporated by reference. The FHWA believes that the TOMIE Manual provides inspection guidance that can apply to all levels of inspection including in-depth, routine, and special.

The NFPA, the Seattle Fire Department, and AASHTO suggested that the NTIS recommend or list specific systems/elements that should be inspected. These commenters expressed a concern that inspection requirements relative to fire and life safety systems were not properly addressed in the NTIS. The commenters suggested that testing requirements of functional systems be included in the NTIS. The AASHTO further commented that functional system testing requirements should only apply to mechanical/electrical systems.

The FHWA Response: The FHWA believes that inspection of fire and life safety systems is a critical aspect of any tunnel inspection program. The inspection requirements for these components are adequately addressed in the TOMIE Manual. Under the proposed rule, the tunnel owner and Program Manager are responsible for developing more specialized inspection procedures that cover the inspection of components unique to a specific tunnel. The FHWA believes that the definition of functional systems as contained in § 650.505 is appropriate, as the components contained within the definition of functional systems for a complex tunnel go well beyond just electrical and mechanical systems and appropriately include ventilation and fire suppression and warning systems, as well as the additional components included in § 650.505.

The FHWA does not believe that the NTIS needs to be overly prescriptive in defining specific inspection requirements for various tunnel elements or components. The NTIS is meant to provide national requirements relative to tunnel inspection and reporting, and allows tunnel owners and inspection program managers the flexibility to develop inspection procedures that fit the needs and complexity of unique tunnels, including system and component testing. Tunnel owners would be encouraged to develop inspection and maintenance manuals for various functional systems as part of the original design, and incorporate those maintenance manuals into the overall tunnel inspection procedures.

The AASHTO commented that the requirement that tunnel-specific inspection procedures be developed for each tunnel inspected and inventoried should not apply to simple rural tunnels.

The FHWA Response: While the breadth of required procedures are not defined in the NTIS, FHWA still maintains that no matter how simple a rural tunnel might be, inspection procedures of some kind should be developed.

The ACEC recommended including a statement in the NTIS that inspection reports should be prepared with care and skill. The ACEC also commented that the NTIS should make clear that inspection reports are for the exclusive use of the tunnel owner.

The FHWA Response: The FHWA assumes that the inspection reports would be prepared with care and skill. Deficient reports would certainly be noticed and corrected by the Team Leader or Program Manager.

The FHWA understands that dissemination of the information might be a concern of tunnel owners; however, the rule requires that inspection and inventory information be submitted to FHWA to fulfill the proposed requirements of this regulation. Tunnel owner dissemination of reports beyond the required submission to FHWA is outside the scope of this rulemaking.

The AASHTO expressed concern relative to FHWA Division oversight of the NTIS requirements.

The FHWA Response: The FHWA is proposing to use a data-driven, risk-based oversight process similar to that associated with the NBIS.

The AASHTO requested that tunnels with at-grade internal roadways and with no overhead roadways should be exempted from the load rating requirement. The AASHTO and VDOT further suggested that § 650.513(g) be revised to read, ''Rate each tunnel, which carries live load above and within the influence area of the tunnel roof or lining or carries traffic within the tunnel on a structural system, as to its safe vehicular/non-vehicular load-carrying capacity in accordance with the AASHTO Manual for Bridge Evaluation. Post or restrict the highways in or over the tunnel in accordance with this same manual unless otherwise specified in State law, when the maximum unrestricted legal loads or State permit load exceed that allowed under the operating rating or equivalent rating factor.''

The FHWA Response: The FHWA has modified the proposed rule at § 650.513(g) to exempt at-grade roadways within tunnels from the NTIS load rating requirement in response to AASHTO's comment. The FHWA has also added a definition of *at-grade roadway* to § 650.505 of the NTIS. Further explanation is contained in the analysis for § 650.505—Definitions. The FHWA believes the addition of this definition will clarify what structural elements contained within a tunnel are intended to be load rated. Additionally, FHWA does not believe that dropping the word ''routine'' relative to load posting restrictions is required to clarify the intent of these regulations.

The AASHTO requested that Quality Control/Quality Assurance (QC/QA) requirements be developed in consultation with AASHTO. The VDOT proposed revising subsection (i) to read ''Conduct systematic quality assurance of tunnel inspections and ratings in accordance with the owner's quality assurance program. Include periodic field review of inspections and independent review of inspection reports and computations in the owner developed program.''

The FHWA Response: The FHWA agrees and will work with AASHTO to develop QC/QA guidelines. The FHWA disagrees with the proposed language from VDOT because it does not specifically address Quality Control.

The AASHTO and VDOT recommended that FHWA develop inventory reporting format guidelines for the NTIS similar to the NBIS Structural Inventory and Appraisal (SI&A) sheets. The AASHTO and VDOT further recommended that § 650.513(h) be revised so that written reports are maintained for in-depth, routine, and special tunnel inspections.

The FHWA Response: The FWHA agrees with AASHTO and VDOT concerning developing inventory reporting guidelines. The FHWA-approved reporting formats are included in the NTIS docket and available on the FHWA Web site at *www.fhwa.dot.gov/bridge/tunnel/library.htm.*

Section 650.513(h) of these regulations would require that written reports on the results of tunnel inspections, together with notations of any action taken to address the findings of such inspections, be maintained. It was intended that this language apply broadly to the types of inspections performed: initial, routine, in-depth, and special inspections.

The AASHTO and VDOT suggested annual reporting of critical findings and corrective actions taken to resolve or monitor the same. They further suggest that a critical finding be considered a system with a general condition rating of ''3'' or less.

The FWHA Response: The FHWA has revised the reporting requirement to ensure that critical findings, as defined in 23 CFR 650.305, are addressed in a timely manner. The regulation proposes that FHWA be notified within 24 hours of any critical finding and the activities taken, underway or planned to resolve or monitor the critical finding. Additionally, the regulation proposes an annual written report to FHWA with a summary of the current status of the resolutions for each critical finding identified within that year along with any critical findings that remain unresolved from a previous year.

The FHWA believes that the definition of a critical finding would be limited by adding the language proposed by the commenters. While it is generally accepted that a system, element, or component with a condition rating of ''3'' or less would be in poor condition, condition rating systems can change. Additionally, a system, element, or component with a condition rating of ''3'' or less might not warrant being classified as a ''critical finding.'' For example, a sidewalk may have deterioration that would warrant a condition rating of ''3'' or less, but could adequately be addressed or repaired by the tunnel owner without requiring reporting to FHWA. The intent of this portion of the proposed regulations is to provide a reporting mechanism to FHWA of the most extreme and critical structural, component, or system deteriorations or failures that could be a threat to the traveling public's safety and well-being. Further, this portion of the proposed rule seeks to ensure that severe conditions are addressed in a timely and appropriate manner through oversight and partnership with FHWA. The FHWA believes that the current wording of this proposed rule adequately fulfills this intent.

The AASHTO and VDOT suggested that FHWA revise § 650.513(f) to require initial, routine, and in-depth tunnel inspections be done with qualified staff not associated with operation or maintenance of the tunnel structure, but that this requirement should not apply to drainage inspections.

The FHWA Response: The FHWA agrees that these proposed regulations should not apply to drainage inspections not associated with an initial, routine, in-depth, or special inspection. However, FHWA declines to incorporate this suggested change to subsection (f), which addresses inspection broadly and states that the inspection must be performed by personnel separate and apart from the operation and maintenance of the tunnel. This requirement is intended to provide an outside perspective from an unbiased inspector, but it does not preclude operation and maintenance personnel from contributing to the inspection. Tunnel owners would be required by this rule to develop inspection procedures for all types of inspections that would be implemented by qualified staff.

The AASHTO commented that § 650.513(h) be revised so that the requirements to prepare inspection documentation using the HRTTIM should apply only to in-depth inspections.

The FHWA Response: The HRTTIM has been replaced by the TOMIE Manual as the manual incorporated by reference with guidance on inspection documentation. The FHWA believes that the guidance contained in the TOMIE Manual should apply to all levels of inspection and not be limited to just in-depth inspections. The TOMIE Manual provides guidance for documenting inspections that FHWA believes would add consistency and value to asset management efforts.

650.515 Inventory

This section has been amended to direct owners and responsible parties to FHWA-approved recording and coding guidance for the purpose of assembling tunnel inventory information.

The NFPA recommended that tunnel inspection records be kept for 10 years or four inspection cycles, whichever is longer. The NFPA further suggested that the rule should establish variable record

keeping requirements based on the different inspection cycles for different types or groups of tunnels.

The FHWA Response: For the benefit of knowing the history of previous rehabilitation and repair works, FHWA believes it is necessary to keep tunnel records for the life of the tunnel, which is consistent with the AASHTO Manual for Bridge Evaluation recommendation for bridge records. This information is typically of high value in preparing inspection plans and maintenance actions. Tunnel owners would be required to prepare inspection reports as specified in § 650.513(h). Inspection cycle is discussed in § 650.511, Inspection Interval.

The NFPA recommended a unique and meaningful tunnel ID system for each and every tunnel.

The FHWA Response: The FHWA agrees that each tunnel needs a unique ID and will provide guidance on how to generate these unique IDs similarly to how owners generate the unique IDs assigned to bridges under the NBIS.

The ASCE expressed support for the requirement that each Federal agency or State complete an inventory of tunnels in their jurisdictions within 30 days of the adoption of a final rule. The VDOT recommended that FHWA change the target for submission of the preliminary inventory from 30 days to within 90 days of the effective date of the rule. Caltrans indicated that it is unrealistic to expect that all tunnels will be inventoried and the results reported to FHWA within 30 days of the effective date of the rule.

The FHWA Response: The FHWA understands the concern with completing the preliminary tunnel inventory within 30 days of the effective date of this rule and has changed the reporting requirement from 30 days to 120 days in § 650.515(a).

The VDOT recommended that State DOTs should have the option of using data from their existing inspection procedures to rate the structural and functional conditions in their tunnels, converting the data from their existing condition rating system to the NTIS format, and submitting the data to FHWA within 120 days of the effective date of this rule instead of using the HRTTIM chart.

The FHWA Response: For the purpose of the preliminary data submission, FHWA agrees that existing data can be used if submitted in the proper format. However, to ensure a uniform approach and criteria are used to inspect all tunnels subject to this rule, FHWA is proposing not to allow previous inspection data to be used for the NTIS initial routine inspection.

The ASCE recommended including information on portals, geometric ground conditions, lane clearances, and other geodata, and a complete description of the mechanical systems in the inventory.

Caltrans also suggested FHWA develop a tunnel inventory system to be compatible with existing National Bridge Inspection (NBI) coding framework. The MassDOT strongly recommended that FHWA develop a standard reporting format with standard coding conventions and codes for reporting tunnel inventory data, in the same manner as the SI&A sheet functions for bridges, before requiring the submission of the preliminary inventory. The MassDOT noted that a tunnel may be divided into segments due to its length and many segments may not have a portal feature. The MassDOT recommended that FHWA take into account such a segmentation of tunnels for inventory, inspection, and maintenance purposes.

The FHWA Response: The FHWA would develop and provide guidance for a tunnel inventory system consistent with the NBI format which would permit segmenting of a tunnel at the discretion of the owner.

The Seattle Fire Department recommended collecting comprehensive data for fire and life safety systems at the time of installation or in the planned inspections in the first 12 months, and collecting a separate set of information regarding ''design assumptions'' or the basis of design. The Seattle Fire Department proposed adding a new paragraph under § 650.515(a) to address ''Fire and Life Safety Systems and Basis of Design.'' Information collected under this proposal would include component level inventory of fire and life safety systems, such as fire detection, notification, fire suppression, ventilation, exiting, and systems that are electronically controlled or monitored by the fire and life safety system. In addition, the Seattle Fire Department proposed collecting information about the assumptions made during initial design and subsequent modifications to fire and life safety systems, including the fire size, fire growth rate, smoke propagation, and evacuation time.

The FHWA Response: Section 650.513(c) would require that design assumptions are considered when establishing tunnel-specific inspection procedures. Therefore, as information on the design of the functional systems is needed to meet the requirements of this section, FHWA does not believe it is necessary to add ''Fire and Life Safety Systems and Basis for Design'' to § 650.515(a).

The AASHTO recommended that FHWA establish a data format in consultation with AASHTO. The AASHTO suggested this format should be similar to the national bridge SI&A geometric data so that the two inventories can be seamlessly integrated. The AASHTO also suggested that the tunnel owner rate the structural and functional system in its tunnels from 0 to 9 in accordance with the HRTTIM, or convert the data from their existing condition rating system to the NTIS format and submit the data to FHWA within 3 years of the effective date of this rule.

The FHWA Response: The FHWA understands AASHTO's concerns but proposes to require that all tunnels be inspected and rated according to the TOMIE Manual until other guidelines become available. The tunnel owners would need to submit a preliminary tunnel inventory within 120 days and perform an initial routine inspection of each tunnel within 24 months of the effective date of this rule or prior to the tunnel opening to traffic as specified in § 650.511(a)(1). To avoid any duplicated efforts, FHWA deleted § 650.515(b), Preliminary assessment of tunnel condition. The information must be reported to FHWA using approved forms included in the NTIS docket and available on the FHWA Web site at *www.fhwa.dot.gov/bridge/tunnel/library.htm.*

650.517 Incorporation by Reference

The VDOT and AASHTO recommended that the HRTTIM be updated and revised to be more reflective of the tunnel types, functional systems, and environments that are typically found in highway tunnels, if it is to serve the same function under these regulations as the Bridge Inspection Reference Manual does under the NBIS. The VDOT also recommended that FHWA revise the rule to remove any reference to specific editions.

Numerous commenters noted that the HRTTIM needs to be updated to better address inspection of electrical and mechanical components and should be revised to include an element level rating system. PB Americas commented that the current HRTTIM is inadequate and so should not be included. Instead, PB Americas suggested using the 2009 FHWA Technical Manual for Design and Construction of Road Tunnels—Civil Elements, (FHWA Tunnel Manual) and the AASHTO Technical Manual for Design and Construction of Road Tunnels—Civil Elements, First Edition (AASHTO Tunnel Manual). The NFPA recommended that the rule reference

NFPA 502: Standard for Road Tunnels, Bridges, and Other Limited Access Highways (2008 edition).

The FHWA response: The FHWA acknowledges that various commenters have suggested updating the HRTTIM. The FHWA agrees and is now proposing to incorporate by reference the TOMIE manual. The FHWA will not be incorporating the FHWA or AASHTO Tunnel Manuals by reference since the main focus of these manuals is design and construction of road tunnels; however, tunnel owners are encouraged to use these manuals, and the *NFPA 502: Standard for Road Tunnels, Bridges, and Other Limited Access Highways* (2008 edition) as part of their inspection programs. A new section, 650.519 Additional materials, has been created to reference these recommended documents and to differentiate them from the material incorporated by reference in the regulatory text.

Comments on Notice of New Information Collection

The FHWA issued a Notice and Request for Comments on June 14, 2010, (75 FR 33659) to solicit public comments regarding FHWA's request for the Office of Management and Budget's (OMB) approval of new information collection. The FHWA reviewed and analyzed the comments received in response to the Request for Comments. The FHWA received comments on the docket from 4 commenters, including: 3 State DOTs (New York DOT (NYSDOT), Ohio DOT (ODOT), and VDOT) and 1 organization (AASHTO).

I. *Estimate of Burden:*

The VDOT, ODOT, and AASHTO commented that the 8 hour burden estimate is low.

The ODOT and AASHTO commented that despite the fact that States are already inspecting their tunnels, the burden on States may still be high because States use different formats that may not be easily adapted to the national standard. The ODOT and AASHTO noted that the estimate of effort must also include: an initial effort of at least 1 year to set up systems to collect and store required data, time for training, and increased time for collecting data. They noted that only simple tunnels are likely to require only 8 hours.

The VDOT, ODOT, and AASHTO commented that the Request for Comment doesn't give details of the data items that will be required. They noted that without more detail, it is impossible to evaluate the time required for collection, management, and reporting.

The VDOT and AASHTO commented that they cannot adequately assess the level of effort because the Request for Comments did not provide details regarding data storage, data formatting, or data submittal.

The FHWA Response: The FHWA understands the ODOT, VDOT and AASHTO concerns about the burden to collect and report data. There are two data collection burdens in the proposed rule: preliminary inventory data and tunnel inspection data from either an initial or subsequent routine inspection. The Request for Comments published in 2010 only requested comments on the collection of the preliminary inventory data. The estimate has now been expanded to encompass reporting of subsequent inspection data as required by MAP–21. The FHWA specifically requests comments on the revised information collection included in this proposed rule.

Since many States are already inspecting their tunnels, they are likely to have much of the data needed to satisfy the preliminary inventory data collection burden. Likewise, since many States are already collecting and storing inspection data they are likely to already have much of the data needed to satisfy the inspection burden. As a result, FHWA expects that the additional burden on the States to report this data, possibly in an altered format, will be very minimal. However, to allow States more time to set up systems to collect and store data in the required format and to decrease the burden associated with the collection of initial inspection data, FHWA is increasing the timeframe for initial inspection from 12 to 24 months in the proposed rule and eliminating the requirement to provide preliminary condition data.

The Request for Comment (75 FR 33659) listed the preliminary inventory data that FHWA proposes to collect to establish the National Tunnel Inventory (NTI). The proposed tunnel inspection data is detailed in the Specifications for National Tunnel Inventory. Both the proposed preliminary inventory data form and the Specifications for the National Tunnel Inventory are available for review at: *www.fhwa.dot.gov/bridge/tunnel/library.htm.*

It is the intent of FHWA to provide guidance on data formatting and data submittal prior to the implementation of the proposed rule. States will have the individual discretion to decide on the data storage solutions that best fit their program.

Finally, FHWA specifically requests that tunnel owners provide estimates of time to collect and report the inventory and inspection data in their comments so that a more detailed analysis can be made of the burden on States.

The AASHTO commented that data on interior tunnel structural features is not commonly stored in a readily available format and will be especially difficult to collect for older tunnels.

The FHWA Response: The FHWA maintains that 120 days is a reasonable period of time for the collection and submission of preliminary tunnel inventory data including data on the interior tunnel structural features. However, for older tunnels where data on interior tunnel structural features is not readily available or difficult to collect, States are encouraged to begin identifying that data in order to ease the burden of responding to the preliminary inventory data submission requirement within the specified time frame.

II. *Technical comments:*

The VDOT, ODOT, and AASHTO commented that the NTIS should specify data flat file format and provide an ''edit/update'' computer application similar to the NBIS.

The VDOT, ODOT, and AASHTO noted that the FHWA should prepare the tools to store and submit data before implementing data collection.

The FHWA Response: The FHWA is developing a data file format to be used for NTI data submissions. Data quality checks similar to those conducted on NBI submittal data files will be developed to ensure data quality. It is the intent of FHWA to provide guidance on preliminary inventory data submittals prior to the implementation of the proposed rule. The FHWA will also provide guidance to the States on how to appropriately submit routine data before these submittals are due.

States will have the individual discretion to decide on the data storage solutions that best fit their program.

The VDOT recommends that FHWA develop a template using forms or spreadsheets that can be easily populated for responses in order to minimize the burden on States. The VDOT recommends that the template be created in an easy format for State-by-State review and comparison.

The FHWA Response: The FHWA plans to use the Preliminary Tunnel Inventory Data Form (included in the NTIS docket and available on FHWA Web site at *www.fhwa.dot.gov/bridge/tunnel/library.htm*) to collect the required preliminary inventory data. The Specifications for the National Tunnel Inventory provide more details about and guidelines for formatting, collecting and reporting inventory data to FHWA.

The FHWA is developing a data file format to be used for NTI data

submissions. Individual State data submissions could be used for State-by-State reviews and comparisons.

III. *Use of ''OneDOT'' for reporting:*

The ODOT and the AASHTO commented that ''OneDOT'' is not designed to record inventory style data. They suggest including the data in a comment field or, preferably, constructing a table within ''OneDOT.''

The FHWA Response: The proposed rule does not require tunnel owners to use any existing software or method to record inventory data. The FHWA is developing the Specifications for the National Tunnel Inventory (NTI) and the software tools needed to submit and store data as required by the proposed rule. It is the intent of FHWA to make those tools available prior to the implementation of the proposed rule.

IV. *Information to include in the inventory:*

The VDOT and NYSDOT proposed that the inventory include information on tunnel systems, such as tunnel ventilation and fire suppression.

The VDOT proposed that the inventory include information about emergency response, including fire response times, the responsible agency for providing fire response, and whether the tunnel facility is regulated or unregulated for hazardous materials.

The VDOT suggested that the inventory include a list of points of contact for State tunnel facilities in order to facilitate interaction among the States.

The FHWA Response: The Specifications for the National Tunnel Inventory detail the type of data to be collected on ventilation and fire suppression systems as well as whether a tunnel is regulated or unregulated for hazardous material. However, FHWA does not feel it is necessary to include data on emergency response, including fire response times, the responsible agency for providing fire response, and a list of points of contact for State tunnel facilities in the NTI. The FHWA believes that the suggested data is very important to the operation of the facility and should be readily accessible by the State from their records, but is not needed at the national level.

V. *Numbering System/''Portal Milepost'':*

The VDOT and AASHTO commented that the ''Portal Milepost'' is not a common locator for all agencies. The AASHTO suggested that FHWA allow States to substitute a Bridge Management System Number or other common locating system for the Portal Milepost.

The VDOT, ODOT, and AASHTO suggested the use of a national numbering system.

The FHWA Response: The FHWA appreciates the comment. The proposed rule no longer requires the reporting of ''Portal Milepost'' data as part of the basic tunnel information to be collected. The Specifications for the NTI will require that the linear referencing system (LRS) as defined by the State for the Highway Performance Monitoring System, be used to identify the location of each tunnel on their highway network.

The FHWA does believe that each tunnel will need a unique ID. However, in lieu of a national numbering system, FHWA will provide guidance on how to generate these unique IDs similarly to how owners generate the unique IDs assigned to bridges under the NBIS.

VI. *Definition of ''Tunnel'':*

The NYSDOT recommended that the rule provide a clear definition of ''tunnel'' and ''bore.'' The NYSDOT noted that cut-and-cover tunnels should be included in the inventory, but that use of the term ''bore'' could eliminate them.

The NYSDOT commented that many structures that could be inventoried as tunnels are already classified as bridges in the NBIS. The NYSDOT recommended that the NTIS should not supersede these NBIS bridges.

The NYSDOT commented that the rule needs to define the maximum distance between bores of the same tunnel. The NYSDOT recommended that bores with distance greater than the maximum be inventoried as separate tunnels.

The FHWA Response: The proposed rule defines a ''tunnel'' in section 650.505 as an enclosed roadway for motor vehicle traffic with vehicle access limited to portals, regardless of type of structure or method of construction. Cut-and-cover refers to a method of construction for a tunnel. Therefore, tunnels constructed with the cut-and-cover method that meet all the other criteria of the tunnel definition would be subject to the requirements of the proposed rule.

The proposed rule states that a structure shall be inspected and inventoried under either the NBIS or the NTIS, but not both. The proposed rule allows owners to determine if a structure in their inventory is a tunnel or a bridge based on the guidance included in the NBIS and the NTIS.

The term ''bore,'' which is generally associated with a type of tunnel construction, is also used to identify the individual roadway enclosures of a tunnel. The FHWA does not believe it is necessary to establish a maximum distance between bores of a tunnel for inventory purposes. Inventorying individual bores of a tunnel as separate tunnels is being left to the discretion of the owner.

VII. *Responsibility for inspection and reporting:*

The ODOT and AASHTO recommended that the rule provide clear guidelines on inspection responsibility, particularly for State DOTs and for tunnels owned by Federal agencies. The AASHTO questioned whether the inventory is limited to only highway tunnels, or whether it includes railroad and pedestrian walkway tunnels as well.

The NYSDOT commented that it doesn't own any tunnels in the State and will have to rely on tunnel owners for information to report to FHWA.

The FHWA Response: The proposed rule will apply to all structures defined as highway tunnels on all public roads, on and off Federal-aid highways, including tribally and federally owned tunnels. Under title 23, the FHWA's primary relationship in a State is with the State DOT. Therefore, the State DOT would be legally responsible for fulfilling the requirements of these proposed regulations within its State's boundaries. If current legal authority is not present within a State to carry out this responsibility, the State DOT should seek that authority. As a result of this proposed rule, State DOTs would be responsible for the implementation of the proposed rule on all applicable tunnels within their States with the exception of tribally and federally owned tunnels as discussed in the section-by-section analysis for § 650.505.

The proposed rule does not apply to tunnels exclusively used by railroads or pedestrians.

VIII. *Define ''Preliminary Condition Data'':*

The NYSDOT and AASHTO commented that the standards need to define ''preliminary condition data'' in order to correctly determine the level of effort needed to collect and submit the data.

The FHWA Response: The proposed rule no longer requires ''preliminary condition data'' be collected or submitted. The proposed rule would require that all tunnels be inspected according to the TOMIE Manual until other guidelines become available. The collection and submission of condition data is expected as a part of these inspections. Tunnel owners will still need to submit preliminary inventory data within 120 days of the effective date of this rule. To avoid any

duplicated efforts, FHWA deleted § 650.515(b) from the proposed rule which required the submission of data indicating a preliminary assessment of tunnel condition.

IX. *General Comments:*

The AASHTO recommended that FHWA not be too prescriptive on the information it wants and that it allow some flexibility.

The FHWA Response: The FHWA appreciates the comment. The proposed rule will require that all tunnels be inspected according to the TOMIE Manual and the Specifications for the National Tunnel Inventory. These guidelines will ensure that the data received from across the country is adequately consistent to identify national trends in performance and demonstrate the linkages between Federal transportation expenditures and transportation agency programmatic results.

The AASHTO commented that the NCHRP Report titled ''Best Practices for Implementing Quality Control and Quality Assurance for Tunnel Inspection'' would be helpful in the development of the national inspection program for tunnels.

The FHWA Response: The FHWA appreciates and agrees with the comment that the NCHRP Report titled ''Best Practices for Implementing Quality Control and Quality Assurance for Tunnel Inspection'' would be helpful in the development of the national inspection program for tunnels. This document was considered during the development of the proposed rule.

Executive Order 12866 (Regulatory Planning and Review), Executive Order 13563 (Improving Regulation and Regulatory Review), and DOT Regulatory Policies and Procedures

The FHWA has determined that this proposed rule constitutes a significant regulatory action within the meaning of Executive Order 12866 and is significant within the meaning of the DOT regulatory policies and procedures. This action complies with Executive Orders 12866 and 13563 to improve regulation. This action is considered significant because of widespread public interest in the safety of highway tunnels, although not economically significant within the meaning of Executive Order 12866.

Current Cost of Tunnel Inspections

Having received relatively few comments at the ANPRM stage regarding costs and mindful of the potential cost implications of the proposed rule, in the NPRM, FHWA renewed its specific request for information regarding estimated or actual costs associated with tunnel inspections, particularly the typical inspection costs per linear foot of tunnel. In addition, the FHWA requested comments regarding the anticipated increased costs the proposed NTIS would impose on tunnel owners. Only WSDOT commented on the cost of tunnel inspections in response to the NPRM. The WSDOT stated that the budget for the recently completed mechanical and electrical in-depth inspection of the MLK Lid and Mount Baker Ridge Tunnel was $409,500 for the consultants alone. The WSDOT was in the process of negotiating a scope of work and cost estimate for a similar inspection in the spring for the Mercer Island Tunnel and the Convention Center, which was expected to be of similar magnitude. While FHWA appreciates WSDOT providing such information, it is unclear from the information received what the scope of the work and inspection for this particular tunnel would be. Without further information on the length of the tunnel, the complexity of the design, and the number and type of functional systems, it is difficult to determine if the numbers provided by WSDOT fall within the anticipated cost range FHWA has outlined below. As a result of this lack of information and the broadened scope of the proposed rule, FHWA renews its request for estimated or actual costs associated with tunnel inspections, particularly the typical inspection costs per linear foot of tunnel. In addition, FHWA specifically requests information on the following: (1) The average number of critical findings that are identified during inspections, (2) the average cost of fixing critical findings that are identified during inspections, (3) cost savings associated with the repair of critical findings, (4) costs (administrative, economic, and any other) associated with closing tunnels, roads, etc. in order to conduct inspections according to the provisions in this rulemaking, and (5) any other data the public believes would be helpful in determining the costs and benefits associated with addressing critical findings.

The FHWA's 2003 tunnel inventory survey indicates that there are approximately 45 organizations that own, operate, and/or maintain approximately 350 vehicular (highway) tunnels (bores) in the United States. These tunnels represent nearly 100 miles—running the distance of approximately 517,000 linear feet—of Interstates, State routes, and local routes. Tunnel inspection costs can vary greatly from tunnel to tunnel. Comments to the ANPRM and NPRM suggested that current inspection costs range from $5 to $75 per linear foot per inspection depending on the complexity of the tunnel. If we assume that each highway tunnel includes four lanes, FHWA estimates that the total current inspection cost for all tunnel owners could range between $10,340,000 (4 lanes x 517,000 x $5) and $155,100,000 (4 lanes x 517,000 x $75). This results in a current estimated average cost range between $29,542 ($10,340,000/350) and $443,142 ($155,100,000/350) per tunnel bore, per inspection. These figures reflect current costs to inspect and do not include the additional costs anticipated to be associated with this rulemaking.

Costs Effects of the NTIS

Based on data from the 2003 survey, and subsequent communications the agency had with two tunnel owners, only 2 tunnel owners (the Metropolitan Transportation Authority in New York and the VDOT), that together own 15 tunnel bores, would be required to increase their current inspection frequency as a result of the interval for inspection required by this action.[13] These 2 tunnel owners have inspection intervals that are longer than the proposed 24 months, and based on FHWA's tunnel inspection cost estimate range would experience an increase in costs due to more frequent tunnel inspections. Using the estimated inspection cost range for a single tunnel bore arrived at above ($29,542 to $443,142), we can estimate the total aggregate cost increase for the two tunnel owners not currently inspecting at the required interval.

Owner A currently inspects at a 10-year interval and owns four tunnel bores. We estimate the current annual inspection costs for Owner A to be between $2,954.2 ($29,542/10) and $44,314.2 ($443,142/10) per tunnel bore. Under the proposed rule, we estimate the annual inspection costs for Owner A to be between $14,771 ($29,542/2) and $221,571 ($443,142/2) per tunnel bore. As a result, Owner A would see an estimated annual cost increase of between $11,817 ($14,771 − $2,954.2) and $177,257 ($221,571 − $44,314.2) per tunnel bore. For all four tunnel bores owned by Owner A, we estimate the current annual inspection costs to be

[13] In July 2012, VDOT entered into a 58-year concession with Elizabeth River Crossings for the Downtown and Midtown tunnels in southern Virginia. The concession agreement requires Elizabeth River Crossings to meet or exceed VDOT's standards for tunnel inspections, including tunnel inspections frequencies.

between $11,817 (4 x $2,954.2) and $177,257 (4 x $44,314.2). Under the proposed rule, we estimate the annual inspection costs for all four tunnel bores to be between $59,084 (4 x $14,771) and $886,284 (4 x $221,571). As a result, Owner A would see an estimated total cost increase of between $47,267 ($59,084 − $11,817) and $709,027 ($886,284 − $177,257).

Owner B currently inspects at a 7-year interval and owns 11 tunnel bores. We estimate the current annual inspection costs for Owner B to be between $4,220.3 ($29,542/7) and $63,306 ($443,142/7) per tunnel bore. Under the proposed rule, we estimate the annual inspection costs for Owner B to be between $14,771 ($29,542/2) and $221,571 ($443,142/2) per tunnel bore. As a result, Owner B would see an estimated annual cost increase of between $10,551 ($14,771 − $4,220) and $158,265 ($221,571 − $63,306) per tunnel bore. For all 11 tunnel bores owned by Owner B, we estimate the current annual inspection costs to be between $46,423 (11 x $4,220.3) and $696,366 (11 x $63,306). Under the proposed rule, we estimate the annual inspection costs for all 11 tunnel bores to be between $162,481 (11 x $14,771) and $2,437,281 (11 x $221,571). As a result, Owner B would see an estimated total cost increase of between $116,058 ($162,481 − $46,420) and $1,740,915 ($2,437,281 − $696,366).

Based on the above analysis, FHWA estimates the current aggregate annual cost of tunnel inspections for the two affected tunnel owners to be between $58,240 ($11,817 + $46,423) and $873,623 ($177,257 + $696,366). Under the inspection interval that would be required by the proposed rule, we estimate the aggregate annual cost to be between $221,565 (59,084 + $162,481) and $3,323,565 ($886,284 + $2,437,281). As a result, FHWA estimates the aggregate annual cost increase for the inspections for the two affected tunnel owners to range between $163,325 (low) ($221,565 − $58,240) and $2,449,942 (high) ($3,323,565 − $873,623). The FHWA notes that each tunnel owner must collect and submit inventory data information for all tunnels subject to this proposed rule within 120 days of the effective date and when requested by FHWA in the future. The total estimated cost to collect, manage, and report preliminary inventory data is $56,160 (2,808 hours @ $20/hour = $56,160). As a result, FHWA estimates the total aggregate annual cost increase for the inspections for the two affected tunnel owners to range between $219,485 (low) ($163,325 + $56,160) and $2,506,102 (high) ($2,449,942 + $56,160).

The FHWA expects that the overall increase in costs of inspecting tunnels would be modest, as the vast majority of tunnel owners already inspect at the 24-month interval proposed by the NTIS. However, FHWA does not have sufficient information regarding the cost increase from the rest of the provisions of the rulemaking such as fixing critical defects and closing tunnels and roads in order to conduct the inspections. The FHWA recognizes that the 2003 tunnel inventory survey does not represent the full universe of tunnel owners and tunnels, but believes that it is comprehensive enough to draw preliminary conclusions on the cost effects of this proposed rule. The FHWA also assumes that any increase in the cost per inspection resulting from the rule's requirements would not cause the cost per inspection to exceed the upper end of the range of inspection costs assumed in the analysis. The FHWA requests tunnel owners to submit comments on the accuracy and reasonableness of FHWA's tunnel inventory and inspection cost assumptions (above).

In addition to the costs associated with more frequent inspections, FHWA expects that tunnel owners may experience a modest increase in costs as a result of the training requirements contained in the proposed rule. Based on the training of bridge inspectors under the NBIS, we estimate that the cost to train a tunnel inspector will be approximately $3,000 over a 10-year period (1 basic class and 2 refresher classes).

The above estimated tunnel inspection costs were compiled based on the limited cost data submitted by tunnel owners in response to the NPRM. The FHWA requests that States, Federal agencies, and others submit their most current inspection costs per each tunnel in their inventory which will help the agency prepare a more comprehensive cost estimate of tunnel inspections. In addition, FHWA requests that tunnel owners submit information on the costs associated with training tunnel inspectors and the costs associated with the repair of critical defects identified during inspections (including user costs resulting from lane closures during the repair period). The FHWA also requests information on how frequently currently conducted inspections identify significant safety defects in tunnels that require repairs and what costs appear to have been prevented as a result of identifying the defect during an inspection rather than as a result of a failure.

Benefits Resulting From the NTIS

Timely tunnel inspection could uncover safety problems. The agency is taking this action to respond to the statutory directive in MAP–21 and because it believes that ensuring timely and reliable inspections of highway tunnels will result in substantial benefits by enhancing the safety of the traveling public and protecting investments in key infrastructure. In addition, we believe that any repairs or changes that take place because of problems identified in the inspections could lead to substantial economic savings.

Additionally, the proposed NTIS could protect investments in key infrastructure, as early detection of problems in tunnels could increase the longevity of these assets and avoid more costly rehabilitation and repair actions over time. It is generally accepted in the transportation structures community that inspection and maintenance are effective forms of avoiding substantial future costs. For example, a 2005 University of Minnesota study on the benefits of asphalt runway maintenance concluded that, at a minimum, the costs of maintaining a runway were half those of not maintaining a runway when measured over the life of the asset.[14] However, the study's conclusions only considered the direct costs of maintenance and construction and not the indirect costs associated with the mobility of the traveling public, goods and services and freight. As tunnels provide mobility, which is vital to local, regional, and national economies, and to our national defense, it is imperative that these facilities are properly inspected and maintained to avoid both the direct costs associated with rehabilitation and the indirect costs to users.

The above description of tunnel inspection benefits were summarized from the limited benefit data submitted by tunnel owners in response to the NPRM and compiled by FHWA. The FHWA requests that States, Federal agencies, and others submit any additional benefit data that will help the agency prepare a more comprehensive analysis of the benefits associated with tunnel inspections. The FHWA specifically requests data on the cost savings associated with the repair of

[14] ''Pavement preservation: protecting your airport's biggest investment,'' AirTAP Briefings, Airport Technical Assistance Program of the Center for Transportation Studies at the University of Minnesota, summer 2005. An electronic version is located at: *http://www.airtap.umn.edu/publications/briefings/2005/Briefings-2005-Summer.pdf.*

critical defects identified during inspections.

Summary

As established above, FHWA does not have sufficient information to estimate total costs and total benefits of this rulemaking. The Agency has preliminary estimates regarding just the inspection portion of the rulemaking and believes them to be between $219,485 (low) and $2,506,102 (high). The FHWA seeks information regarding the full costs and benefits of this rulemaking.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (Pub. L. 96–354, 5 U.S.C. 601–612), FHWA has evaluated the effects of this SNPRM on small entities and anticipates that this action will not have a significant economic impact on a substantial number of small entities. Because the regulations are primarily intended for States and Federal agencies, FHWA has determined that the action will not have a significant economic impact on a substantial number of small entities. States and Federal agencies are not included in the definition of small entity set forth in 5 U.S.C. 601. Therefore, the Regulatory Flexibility Act does not apply, and FHWA certifies that the action will not have a significant economic impact on a substantial number of small entities.

Unfunded Mandates Reform Act of 1995

The FHWA has determined that this SNPRM will not impose unfunded mandates as defined by the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4, March 22, 1995, 109 Stat. 48). The NTIS is needed to ensure safety for the users of the Nation's tunnels and to help protect Federal infrastructure investment. As discussed above, FHWA finds that this regulatory action will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $143,100,000 or more in any one year (2 U.S.C. 1532). Additionally, the definition of ''Federal mandate'' in the Unfunded Mandates Reform Act excludes financial assistance of the type in which State, local, or tribal governments have authority to adjust their participation in the program in accordance with changes made in the program by the Federal Government. The Federal-aid highway program permits this type of flexibility.

Executive Order 13132 (Federalism Assessment)

The FHWA has analyzed this SNPRM in accordance with the principles and criteria contained in Executive Order 13132. The FHWA has determined that this action will not have sufficient federalism implications to warrant the preparation of a federalism assessment. The FHWA has also determined that this action will not preempt any State law or State regulation or affect the States' ability to discharge traditional State governmental functions.

Executive Order 12372 (Intergovernmental Review)

The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program. Local entities should refer to the Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction, for further information.

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501 *et seq.*), Federal agencies must obtain approval from OMB for each collection of information they conduct, sponsor, or require through regulations. This action contains a collection of information requirement under the PRA. The MAP–21 requires the Secretary to inventory all tunnels on public roads, on and off Federal-aid highways, including tribally owned and federally owned tunnels. In addition, each State, Federal agency, and tribal government is required to report to the Secretary on: the results of tunnel inspections and notations of any action taken pursuant to the findings of the inspections, and current inventory data for all highway tunnels reflecting the findings of the most recent tunnel inspection conducted. In order to be responsive to the requirements of MAP–21, FHWA proposes to collect data to establish a NTI and to require the submission of data on the results of tunnel inspections. A description of the collection requirements, the respondents, and an estimate of the estimated annual reporting burden are set forth below:

National Tunnel Inventory Collection

The FHWA proposes to collect data to establish an NTI. Initially a subset of the Inventory Items defined in the Specifications of the National Tunnel Inventory will be collected. This information will be reported to FHWA on the Preliminary Tunnel Inventory Data Form which is included in the NTIS docket and available on the FHWA Web site at: *www.fhwa.dot.gov/bridge/tunnel/library.htm.*

The following is the data that will be collected under the NTI on the Preliminary Tunnel Inventory Data Form:

(1) Identification Items: tunnel number, tunnel name, State code, county code, place code, highway agency district, route number, route direction, route type, facility carried, LRS route ID, LRS mile point, tunnel portal's latitude, tunnel portal's longitude, border tunnel State or county code, border tunnel financial responsibility, border tunnel number and border tunnel inspection responsibility.

(2) Age and Service Items: year built, year rehabilitated, total number of lanes, average daily traffic, average daily truck traffic, year of average daily traffic, detour length and service in tunnel.

(3) Classification Items: owner, operator, direction of traffic, toll, NHS designation, STRAHNET designation and functional classification.

(4) Geometric Data Items: tunnel length, minimum clearance over tunnel roadway, roadway curb-to-curb width, and left curb and right curb widths.

(5) Structure Type and Material Items: number of bores, tunnel shape, portal shape, ground conditions and complexity.

The anticipated respondents include the 50 States, the District of Columbia, Puerto Rico, and any Federal agencies and tribal governments that own tunnels. The estimated burden on the States to collect, manage, and report this data is assumed to be 8 hours per tunnel for a total estimate of 2,808 hours for all 350 estimated tunnels in the Nation. This represents an average of 54 hours per responder. With the average time of 54 hours per responder to collect, manage and report preliminary inventory data, it is estimated that the burden hours will total 2,808 hours per year (52 responses x 54.00 hours per responder = 2,808 hours).

Annual Inspection Reporting

In addition to the preliminary inventory information described above, tunnel owners are required to report to the Secretary on the results of tunnel inspections and notations of any action taken pursuant to the findings of the inspections. For all inspections, tunnel owners would be required to enter the appropriate inspection data into the State DOT, Federal agency, or tribal government inventory within 3 months from the completion of the inspection. The number of responses per year is based on the total number of tunnels in the United States of 350, with approximately one half being inspected each year based on the standard 24 month inspection frequency. The annual responses are estimated at 175

for routine inspections. With the average time of 40 hours to collect, manage and report routine inspection data, and an additional 2,080 hours to follow up on critical findings, it is estimated that the burden hours will total 9,080 hours per year (7,000 hours (175 responses x 40.00 hours per response) + 2,080 hours (for follow-up on critical findings) = 9,080 burden hours).

Estimated Total Annual Burden Hours

The FHWA estimates that the collection of information contained in this proposed rule would result in approximately 11,888 total annual burden hours (2,808 hours for preliminary inventory collection + 9,080 for annual inspections = approximately 11,888 total annual burden hours). Since the majority of States are already inspecting their tunnels, they are likely to have much of the data needed to satisfy the preliminary inventory data collection burden. Likewise, since many States are already collecting and storing inspection data they are likely to already have much of the data needed to satisfy the routine inspection burden. As a result, FHWA expects that the additional burden on the States to report this data will be very minimal.

A notice seeking public comments on the collection of information included in this proposed rule was published in the **Federal Register** on June 14, 2010 at 75 FR 33659. The FHWA received comments from 4 commenters, including 1 organization (AASHTO) and 3 State DOTs (New York, Oregon, and Virginia). These comments have been addressed above.

The Department again invites interested persons to submit comments on any aspect of the information collection, including the following: (1) Whether the proposed collection of information is necessary for the DOT's performance, including whether the information will have practical utility; (2) the accuracy of the DOT's estimate of the burden of the proposed information collection; (3) ways to enhance the quality, usefulness, and clarity of the collected information; and (4) ways that the burden could be minimized, including the use of electronic technology, without reducing the quality of the collected information. Comments submitted in response to this notice will be summarized or included, or both, in the request for OMB approval of this information collection.

National Environmental Policy Act

The Department has analyzed this action for the purpose of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*), and has determined that this action would not have a significant effect on the quality of the environment and qualifies for the categorical exclusion at 23 CFR 771.117(c)(20).

Executive Order 12630 (Taking of Private Property)

This action 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.

Executive Order 12988 (Civil Justice Reform)

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

Executive Order 13045 (Protection of Children)

The FHWA has analyzed this action under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This proposed rule does not concern an environmental risk to health or safety that may disproportionately affect children.

Executive Order 13175 (Tribal Consultation)

The FHWA has conducted a preliminary analysis of this proposed action under Executive Order 13175, dated November 6, 2000. The FHWA believes that this proposed ruled will not have substantial direct effects on one or more Indian Tribes, will not impose substantial direct compliance costs on Indian tribal governments, and will not preempt tribal law. To FHWA's knowledge, there are no tunnels that are owned, operated, or maintained by Indian tribal governments. However, FHWA requests comments from Indian tribal governments and others regarding any potential impacts that this SNPRM may have on Indian Tribes. The FHWA specifically requests information on the number of tunnels owned or operated by Indian tribal governments. This information will allow the agency to conduct a more thorough analysis of the possible effect of this SNPRM on Indian Tribes.

Executive Order 13211 (Energy Effects)

The FHWA has analyzed this proposed rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that the rule will not constitute a significant energy action under that order because, although it is considered a significant regulatory action under Executive Order 12866, it is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

Executive Order 12898 (Environmental Justice)

Executive Order 12898 requires that each Federal agency make achieving environmental justice part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minorities and low-income populations. The FHWA has determined that this rule does not raise any environmental justice issues.

Regulation Identification Number

A regulation identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

List of Subjects in 23 CFR Part 650

Bridges, Grant programs—transportation, Highways and roads, Incorporation by reference, Reporting and record keeping requirements.

Issued in Washington, DC, on July 16, 2013, under authority delegated in 49 CFR 1.85(a)(1).

Victor M. Mendez,

FHWA Administrator.

In consideration of the foregoing, the FHWA proposes to amend title 23, Code of Federal Regulations, part 650, by adding subpart E, as set forth below:

PART 650—BRIDGES, STRUCTURES, AND HYDRAULICS

■ 1. The authority citation for part 650 is amended to read as follows:

Authority: 23 U.S.C. 119, 144, and 315.

■ 2. Add Subpart E to read as follows:

Subpart E—National Tunnel Inspection Standards

Sec.

650.501 Purpose.
650.503 Applicability.
650.505 Definitions.
650.507 Tunnel Inspection Organization.
650.509 Qualifications of personnel.
650.511 Inspection interval.
650.513 Inspection procedures.

650.515 Inventory.
650.517 Incorporation by reference.
650.519 Additional materials.

Subpart E—National Tunnel Inspection Standards

§ 650.501 Purpose.

This subpart sets the national standards for the proper safety inspection and evaluation of all highway tunnels in accordance with 23 U.S.C. 144.

§ 650.503 Applicability.

The National Tunnel Inspection Standards (NTIS) in this subpart apply to all structures defined as highway tunnels on all public roads, on and off Federal-aid highways, including tribally and federally owned tunnels.

§ 650.505 Definitions.

The following terms used in this subpart are defined as follows:

American Association of State Highway and Transportation Officials (AASHTO) Manual for Bridge Evaluation. The term ''AASHTO Manual for Bridge Evaluation'' has the same meaning as in § 650.305.

At-grade roadway. Paved or unpaved travel ways within the tunnel that carry vehicular traffic and are not suspended or supported by a structural system.

Bridge inspection experience. The term ''bridge inspection experience'' has the same meaning as in § 650.305.

Complex tunnel. A tunnel characterized by advanced or unique structural elements or functional systems.

Comprehensive tunnel inspection training. FHWA-approved training that covers all aspects of tunnel inspection and enables inspectors to relate conditions observed in a tunnel to established criteria.

Critical finding. The term ''critical finding'' has the same meaning as in § 650.305.

Damage inspection. The term ''damage inspection'' has the same meaning as in § 650.305.

Federal-aid highway. The term ''Federal-aid highway'' has the same meaning as in 23 U.S.C. 101(a)(5).

Functional systems. Non-structural systems, such as electrical, mechanical, fire suppression, ventilation, lighting, communications, monitoring, drainage, traffic signals, emergency response (including egress, refuge room spacing, or carbon monoxide detection), or traffic safety components.

Hands-on inspection. The term ''hands-on inspection'' has the same meaning as in § 650.305.

Highway. The term ''highway'' has the same meaning as in 23 U.S.C. 101(a)(11).

In-depth inspection. A close-up inspection of one, several, or all tunnel structural elements or functional systems to identify any deficiencies not readily detectable using routine inspection procedures; hands-on inspection may be necessary at some locations. In-depth inspections may occur more or less frequently than routine inspections, as outlined in the tunnel-specific inspection procedures.

Initial inspection. The first inspection of a tunnel to provide all inventory and appraisal data and to determine the condition baseline of the structural elements and functional systems.

Inspection Date. The date established by the Program Manager on which a regularly scheduled routine inspection begins for a tunnel.

Legal load. The maximum legal load for each vehicle configuration permitted by law for the State in which the tunnel is located.

Load rating. The determination of the vehicular live load carrying capacity within or above the tunnel using structural plans and supplemented by information gathered from a routine, in-depth, or special inspection.

Operating rating. The term ''operating rating'' has the same meaning as in 23 CFR 650.305.

Portal. The entrance and exit of the tunnel exposed to the environment; portals may include bare rock, constructed tunnel entrance structures, or buildings.

Procedures. Written documentation of policies, methods, considerations, criteria, and other conditions that direct the actions of personnel so that a desired end result is achieved consistently.

Professional engineer (P.E.). An individual who has fulfilled education and experience requirements and passed rigorous examinations that, under State licensure laws, permits them to offer engineering services within their areas of expertise directly to the public. Engineering licensure laws vary from State to State. In general, to become a P.E., an individual must be a graduate of an engineering program accredited by the Accreditation Board for Engineering and Technology, pass the Fundamentals of Engineering exam, gain 4 years of experience working under a P.E., and pass the Principles of Practice of Engineering exam.

Program manager. The individual in charge of the inspection program who has been assigned or delegated the duties and responsibilities for tunnel inspection, reporting, and inventory. The Program Manager provides overall leadership and guidance to inspection Team Leaders.

Public road. The term ''public road'' has the same meaning as in 23 U.S.C. 101(a)(21).

Quality assurance. The use of sampling and other measures to assure the adequacy of quality control procedures in order to verify or measure the quality level of the entire tunnel inspection and load rating program.

Quality control. Procedures that are intended to maintain the quality of a tunnel inspection and load rating at or above a specified level.

Routine inspection. A regularly scheduled comprehensive inspection encompassing all tunnel structural elements and functional systems and consisting of observations and measurements needed to determine the physical and functional condition of the tunnel, to identify any changes from initial or previously recorded conditions, and to ensure that tunnel components continue to satisfy present service requirements.

Routine permit load. A vehicular load that has a gross weight, axle weight, or distance between axles not conforming with State laws for legally configured vehicles, and is authorized for unlimited trips over an extended period of time to move alongside other heavy vehicles on a regular basis.

Special inspection. An inspection, scheduled at the discretion of the tunnel owner, used to monitor a particular known or suspected deficiency.

State transportation department (State DOT). The term ''State transportation department'' has the same meaning as in 23 U.S.C. 101(a)(34).

Team leader. The on-site individual in charge of an inspection team responsible for planning, preparing, performing, and reporting on tunnel inspections.

Tunnel. An enclosed roadway for motor vehicle traffic with vehicle access limited to portals, regardless of type of structure or method of construction. Tunnels do not include bridges or culverts inspected under the National Bridge Inspection Standards (23 CFR part 650, subpart C—National Bridge Inspection Standards). Tunnels are structures that require, based on the owner's determination, special design considerations that may include lighting, ventilation, fire protection systems, and emergency egress capacity.

Tunnel inspection experience. Active participation in the performance of tunnel inspections in accordance with the National Tunnel Inspection Standards, in either a field inspection, supervisory, or management role. A combination of tunnel design, tunnel maintenance, tunnel construction, and

tunnel inspection experience, with the predominant amount in tunnel inspection, is acceptable.

Tunnel inspection refresher training. A FHWA-approved training course that aims to improve the quality of tunnel inspections, introduce new techniques, and maintain the consistency of the tunnel inspection program.

Tunnel Operations, Maintenance, Inspection and Evaluation (TOMIE) Manual. The ''Tunnel Operations, Maintenance, Inspection and Evaluation (TOMIE) Manual'' 2013 edition, published by the Federal Highway Administration (incorporated by reference, *see* § 650.517).

Tunnel-specific inspection procedures. Written documentation of the directions necessary to plan for and conduct an inspection. Directions include, among other things, coverage of inspection methods, frequency of each method, inspection equipment, access equipment, identification of tunnel elements, components and functional systems, traffic coordination, and specialized qualifications for inspecting personnel.

§ 650.507 Tunnel Inspection Organization.

(a) Each State DOT must inspect, or cause to be inspected, all highway tunnels located on public roads, on and off Federal-aid highways, that are fully or partially located within the State's boundaries, except for tunnels that are owned by Federal agencies or tribal governments.

(b) Each Federal agency must inspect, or cause to be inspected, all highway tunnels located on public roads, on and off Federal-aid highways, that are fully or partially located within the respective agency's responsibility or jurisdiction.

(c) Each tribal government must inspect, or cause to be inspected, all highway tunnels located on public roads, on and off Federal-aid highways, that are fully or partially located within the respective tribal government's responsibility or jurisdiction.

(d) Where a tunnel is jointly owned, all bordering States, Federal agencies, and tribal governments with ownership interests should determine through a joint formal written agreement the inspection responsibilities of each State, Federal agency, and tribal government.

(e) Each State that contains one or more tunnels subject to these regulations, or Federal agency or tribal government with a tunnel under its jurisdiction, must include a tunnel inspection organization that is responsible for the following:

(1) Statewide, Federal agency-wide, or tribal government-wide tunnel inspection policies and procedures (both general and tunnel-specific), quality control and quality assurance procedures, and preparation and maintenance of a tunnel inventory.

(2) Tunnel inspections, written reports, load ratings, and other requirements of these standards.

(3) Maintaining a registry of nationally certified tunnel inspectors that work in their State or for their Federal agency or tribal government that includes, at a minimum, a method to positively identify each inspector, documentation that the inspector's training requirements are up-to-date, the inspector's current contact information and detailed information about any adverse action that may affect the good standing of the inspector.

(f) Functions identified in paragraphs (e)(1), (e)(2), and (e)(3) of this section may be delegated through a formal written agreement, but such delegation does not relieve the State DOT, Federal agency, or tribal government of any of its responsibilities under this subpart.

(g) The State DOT, Federal agency, or tribal government tunnel inspection organization must have a Program Manager with the qualifications listed in § 650.509(a), who has been delegated responsibility for paragraphs (e)(1), (e)(2) and (e)(3) of this section.

§ 650.509 Qualifications of personnel.

(a) A Program Manager must, at a minimum, be a registered P.E. and have 10 years tunnel or bridge inspection experience and be a nationally certified tunnel inspector. In evaluating 10 years of experience, the following criteria should be considered:

(1) The relevance of the individual's actual experience, including the extent to which the individual's experience has enabled the individual to develop the skills needed to properly lead a tunnel safety inspection.

(2) The individual's exposure to the problems or deficiencies common in the types of tunnels being inspected by the individual.

(3) The individual's understanding of the specific data collection needs and requirements.

(b) A Team Leader must, at a minimum, be a registered P.E. and be a nationally certified tunnel inspector.

(c) The individual responsible for load rating a tunnel must be a registered P.E.

(d) An inspector must, at a minimum, be a nationally certified tunnel inspector.

(e) A nationally certified tunnel inspector must:

(1) Complete a FHWA-approved comprehensive tunnel inspection training course,

(2) Complete a FHWA-approved tunnel inspection refresher training course once every 48 months subsequent to satisfying the requirement of paragraph (e)(1) of this section,

(3) Provide documentation of their training status and current contact information to the Tunnel Inspection Organization of each State DOT, Federal agency, or tribal government for which they will be performing tunnel inspections.

§ 650.511 Inspection interval.

Each State DOT, Federal agency, or tribal government tunnel inspection organization must conduct or cause the following to be conducted for each tunnel described in § 650.503:

(a) *Initial Inspection.* (1) For existing tunnels, within 24 months of the effective date of this rule, conduct a routine inspection of each tunnel according to the inspection guidance provided in the Tunnel Operations, Maintenance, Inspection and Evaluation (TOMIE) Manual (incorporated by reference, *see* § 650.517).

(2) For tunnels completed after these regulations take effect, the initial routine inspection shall be conducted after all construction is completed and prior to opening to traffic according to the inspection guidance provided in the Tunnel Operations, Maintenance, Inspection and Evaluation (TOMIE) Manual (incorporated by reference, *see* § 650.517).

(b) *Routine Inspections.* (1) Establish for each tunnel the NTIS routine inspection date in a month and year (MM/YY) format. This date should only be modified by the Program Manager in rare circumstances.

(2) Inspect each tunnel at regular 24-month intervals.

(3) For tunnels needing inspection more frequently than at 24-month intervals, establish criteria to determine the level and frequency to which these tunnels are inspected based on a risk analysis approach that considers such factors as tunnel age, traffic characteristics, geotechnical conditions, and known deficiencies.

(4) Certain tunnels may be inspected at regular intervals up to 48 months. This may be appropriate when past inspection findings and analysis justifies the increased inspection interval. At a minimum, the following criteria shall be used to determine the level and frequency of inspection based on an assessed lower risk: Tunnel age, time from last major rehabilitation, tunnel complexity, traffic characteristics, geotechnical conditions, functional systems, and known deficiencies. A written request that

justifies a regular routine inspection interval between 24 and 48 months shall be submitted to FHWA for review and comment prior to the extended interval being implemented.

(5) Inspect each tunnel in accordance with the established interval. The acceptable tolerance for inspection interval is within 2 months before or after the inspection date established in § 650.511(b)(1) in order to maintain that date. The actual month and year of the inspection are to be reported in the tunnel inventory.

(c) *Damage, in-depth, and special inspections.* The Program Manager shall establish criteria to determine the level and frequency of damage, in-depth, and special inspections. Damage, in-depth, and special inspections may use non-destructive testing or other methods not used during routine inspections at an interval established by the Program Manager. In-depth inspections should be scheduled for complex tunnels and for certain structural elements and functional systems when necessary to fully ascertain the condition of the element or system.

§ 650.513 Inspection procedures.

Each State DOT, Federal agency, or tribal government tunnel inspection organization, to carry out its inspection responsibilities, must perform or cause to be performed the following:

(a) Inspect tunnel structural elements and functional systems in accordance with the inspection guidance provided in the Tunnel Operations, Maintenance, Inspection and Evaluation (TOMIE) Manual (incorporated by reference, *see* § 650.517).

(b) Provide at least one Team Leader, who meets the minimum qualifications stated in § 650.509, at the tunnel at all times during each initial, routine, and in-depth inspection. The State DOT, Federal agency or tribal government national certified tunnel inspector identification for each Team Leader that is wholly or partly responsible for a tunnel inspection must be reported to the tunnel inventory.

(c) Prepare and document tunnel-specific inspection procedures for each tunnel inspected and inventoried, taking into account the design assumptions, commensurate with tunnel complexity, identifying tunnel structural elements and functional systems to be inspected, methods of inspection, frequency of inspection for each method, and inspection equipment, access equipment and traffic coordination needed.

(d) Establish requirements for functional system testing, direct observation of critical system checks, and testing documentation.

(e) For complex tunnels, identify specialized inspection procedures, and additional inspector training and experience required to inspect complex tunnels. Inspect complex tunnels according to the specialized inspection procedures.

(f) Conduct tunnel inspections with qualified staff not associated with the operation or maintenance of the tunnel structure or functional systems.

(g) Rate each tunnel as to its safe vehicular load-carrying capacity in accordance with the AASHTO Manual for Bridge Evaluation (2011 edition). A load rating evaluation shall be conducted as soon as practical but not later than 1 month after the completion of the inspection. Post or restrict the highways in or over the tunnel in accordance with this same manual, or in accordance with State law when the maximum unrestricted legal loads or State routine permit loads exceed that allowed under the operating rating or equivalent rating factor. Postings shall be made as soon as possible but not later than 48 hours after a valid load rating determines their need. At-grade roadways in tunnels are exempt from load rating. Load rating calculations or input files with a summary of results are to be maintained as a part of the tunnel record.

(h) Prepare tunnel inspection documentation as described in the Tunnel Operations, Maintenance, Inspection and Evaluation (TOMIE) Manual (incorporated by reference, *see* § 650.517), and maintain written reports on the results of tunnel inspections together with notations of any action taken to address the findings of such inspections. Maintain relevant maintenance and inspection data to allow assessment of current tunnel condition. At a minimum, information collected must include data regarding basic tunnel information (e.g., tunnel location, posted speed, inspection reports, repair recommendations, and repair and rehabilitation work completed), tunnel and roadway geometrics, interior tunnel structural features, portal structure features, and tunnel systems information. Tunnel data collected must also include diagrams, photos, condition of each structural and functional system component, and notations of any action taken to address the findings of such inspections as well as the national tunnel inspector certification registry identification for each Team Leader responsible in whole or in part for the inspection.

(i) Ensure that systematic quality control and quality assurance procedures are used to maintain a high degree of accuracy and consistency in the inspection program. Include periodic field review of inspection teams, data quality checks, and independent review of inspection reports and computations.

(j) Establish a Statewide, Federal agency-wide, or tribal government-wide procedure to ensure that critical findings are addressed in a timely manner. Notify FHWA within 24 hours of any critical finding and the activities taken, underway, or planned to resolve or monitor the critical finding. Update FHWA regularly or as requested on the status of each critical finding until it is resolved. Annually provide a written report to FHWA with a summary of the current status of the resolutions for each critical finding identified within that year or unresolved from a previous year.

(k) Provide information annually or as required in cooperation with any FHWA review of State DOT, Federal agency, or tribal government compliance with the NTIS. FHWA will annually assess State DOT compliance using statistically based assessments and well-defined measures based on the requirements of this subpart.

§ 650.515 Inventory.

(a) *Preliminary inventory.* Each State, Federal agency, or tribal government must collect and submit the inventory data and information described in FHWA-approved recording and coding guidance for all tunnels subject to the NTIS within 120 days of the effective date of this subpart.

(b) *National Tunnel Inventory.* Each State, Federal agency, or tribal government must prepare, maintain, and make available to FHWA upon request, an inventory of all highway tunnels subject to the NTIS that includes the preliminary inventory information submitted in paragraph (a) of this section, that reflects the findings of the most recent tunnel inspection conducted, and is consistent and coordinated with the requirements of any FHWA-approved recording and coding guidance.

(c) *Data entry for inspections.* For all inspections, enter the appropriate tunnel inspection data into the State DOT, Federal agency, or tribal government inventory within 3 months from the completion of the inspection.

(d) *Data entry for tunnel modifications and new tunnels.* For modifications to existing tunnels that alter previously recorded data and for new tunnels, enter the appropriate data into the State DOT, Federal agency, or

tribal government inventory within 3 months after the completion of the work.

(e) *Data entry for tunnel load restriction and closure changes.* For changes in traffic load restriction or closure status, enter the data into the State DOT, Federal agency, or tribal government inventory within 3 months after the change in status of the tunnel.

§ 650.517 Incorporation by reference.

(a) Certain material is incorporated by reference into this part with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. To enforce any edition other than that specified in this section, the FHWA must publish notice of change in the **Federal Register** and the material must be available to the public. All approved material is available for inspection at 1200 New Jersey Avenue SE., Washington, DC 20590. For questions regarding the availability of this material at the FHWA, call Ms. Jennifer Outhouse, Office of the Chief Counsel, HCC–10, (202) 366–0761. This material is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741–6030 or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html*.

(b) A hard copy of the following incorporated material is available for inspection at the Office of Asset Management, Federal Highway Administration, U.S. Department of Transportation, 1200 New Jersey Avenue SE., Washington, DC 20590.

(1) ''Tunnel Operations, Maintenance, Inspection and Evaluation (TOMIE) Manual,'' 2013 edition, U.S. Department of Transportation, FHWA–IF–13–XXX, available in electronic format at *http://www.fhwa.dot.gov/bridge/tunnel/management/*. In the event there is a conflict between the standards in this subpart and any of these materials, the standards in this subpart will apply.

(2) [Reserved]

(c) [Reserved]

§ 650.519 Additional materials.

The FHWA recommends the States consult the following materials when establishing their tunnel inspection programs.

(a) The FHWA Technical Manual for Design and Construction of Road Tunnels—Civil Elements, December 2009, Publication No. FHWA–NHI–10–034. This manual is available from FHWA at the following URL: *http://www.fhwa.dot.gov/bridge/tunnel/pubs/nhi09010/index.cfm*.

(b) The AASHTO Technical Manual for Design and Construction of Road Tunnels—Civil Elements, First Edition. The manual is available for purchase from the American Association of State Highway and Transportation Officials, Suite 249, 444 North Capitol Street NW., Washington, DC 20001, (202) 624–5800. The manual may also be ordered via the AASHTO bookstore located at the following URL: *http://www.transportation.org*.

(c) The NFPA 502: *Standard for Road Tunnels, Bridges, and Other Limited Access Highways* (2011 edition). The manual is available for purchase from the National Fire Protection Association, 1 Batterymarch Park, PO Box 9101, Quincy, MA 02269–9101, call toll-free: 1–800–344–3555. The manual may also be ordered via NFPA online catalog located at the following URL: *http://catalog.nfpa.org*.

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Part IV

Environmental Protection Agency

40 CFR Part 52

Approval and Disapproval of Air Quality State Implementation Plans; Arizona; Regional Haze and Interstate Transport Requirements; Rules

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2012–0904, FRL–9838–4]

Approval and Disapproval of Air Quality State Implementation Plans; Arizona; Regional Haze and Interstate Transport Requirements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is taking final action to approve in part and disapprove in part a portion of Arizona's State Implementation Plan (SIP) to implement the regional haze program for the first planning period through 2018. This final rule completes our evaluation of Arizona's Best Available Retrofit Technology (BART) control analyses and determinations, Reasonable Progress Goals (RPGs) for the State's 12 Class I areas, Long-term Strategy (LTS), and other elements of the State's regional haze plan as well as the Interstate Transport requirements for visibility. Today's action includes our responses to comments that we received on our proposed rules published in the **Federal Register** on December 21, 2012, and on May 20, 2013. Regional haze is caused by emissions of air pollutants from numerous sources located over a broad geographic area. The Clean Air Act (CAA) requires states to adopt and submit to EPA SIPs that assure reasonable progress toward the national goal of achieving natural visibility conditions in 156 national parks and wilderness areas designated as Class I areas. EPA will continue to work with Arizona to develop plan revisions to address the provisions of the SIP that we are disapproving today.

DATES: *Effective date:* This rule is effective August 29, 2013.

ADDRESSES: EPA has established docket number EPA–R09–OAR–2012–0904 for this action. Generally, documents in the docket are available electronically at *http://www.regulations.gov* or in hard copy at EPA Region 9, 75 Hawthorne Street, San Francisco, California. Please note that while many of the documents in the docket are listed at *http://www.regulations.gov,* some information may not be specifically listed in the index to the docket and may be publicly available only at the hard copy location (e.g., copyrighted material, large maps, multi-volume reports or otherwise voluminous materials), and some may not be available at either locations (e.g., confidential business information). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed directly below.

FOR FURTHER INFORMATION CONTACT: Gregory Nudd, U.S. EPA, Region 9, Planning Office, Air Division, Air-2, 75 Hawthorne Street, San Francisco, CA 94105. Gregory Nudd can be reached at telephone number (415) 947–4107 and via electronic mail at *r9azreghaze@epa.gov.*

SUPPLEMENTARY INFORMATION:

Definitions

(1) The words or initials *Act* or *CAA* mean or refer to the Clean Air Act, unless the context indicates otherwise.

(2) The initials *ADEQ* mean or refer to the Arizona Department of Environmental Quality.

(3) The words *Arizona* and *State* mean the State of Arizona.

(4) The initials *BACT* mean or refer to Best Available Control Technology.

(5) The initials *BART* mean or refer to Best Available Retrofit Technology.

(6) The term *Class I area* refers to a mandatory Class I Federal area.

(7) The initials *CD* mean or refer to Consent Decree.

(8) The initials *dv* mean or refer to deciview, a measure of visual range.

(9) The words *EPA, we, us* or *our* mean or refer to the United States Environmental Protection Agency.

(10) The initials *FGD* mean or refer to flue gas desulfurization.

(11) The initials *FIP* mean or refer to Federal Implementation Plan.

(12) The initials *FLM* mean or refer to Federal Land Managers.

(13) The initials *IMPROVE* mean or refer to Interagency Monitoring of Protected Visual Environments monitoring network.

(14) The initials lb/MMBtu mean or refer to pounds per one million British thermal units.

(15) The initials *LTS* mean or refer to Long-term Strategy.

(16) The initials *MACT* mean or refer to Maximum Achievable Control Technology.

(17) The initials *NAAQS* mean or refer to National Ambient Air Quality Standards.

(18) The initials *NM* mean or refer to National Monument.

(19) The initials NO_X mean or refer to nitrogen oxides.

(20) The initials *NP* mean or refer to National Park.

(21) The initials *NPS* mean or refer to the National Park Service.

(22) The initials *NSPS* mean or refer to new source performance standards.

(23) The initials *PM* mean or refer to particulate matter.

(24) The initials $PM_{2.5}$ mean or refer to fine particulate matter with an aerodynamic diameter of less than 2.5 micrometers.

(25) The initials PM_{10} mean or refer to particulate matter with an aerodynamic diameter of less than 10 micrometers (coarse particulate matter).

(26) The initials *PSD* mean or refer to Prevention of Significant Deterioration.

(27) The initials *PTE* mean or refer to Potential to Emit.

(28) The initials *RH* mean or refer to regional haze.

(29) The initials *RHR* mean or refer to the Regional Haze Rule, originally promulgated in 1999 and codified at 40 CFR 51.301–309.

(30) The initials *RMC* mean or refer to Regional Modeling Center.

(31) The initials *RP* mean or refer to Reasonable Progress.

(32) The initials *RPG* or *RPGs* mean or refer to Reasonable Progress Goal(s).

(33) The initials *SCR* mean or refer to Selective Catalytic Reduction.

(34) The initials *SIP* mean or refer to State Implementation Plan.

(35) The initials *SNCR* mean or refer to Selective Non-catalytic Reduction.

(36) The initials SO_2 mean or refer to sulfur dioxide.

(37) The initials *SRP* mean or refer to Salt River Project Agricultural Improvement and Power District.

(38) The initials *tpy* mean tons per year.

(39) The initials *TSD* mean or refer to Technical Support Document.

(40) The initials *URP* mean or refer to Uniform Rate of Progress.

(41) The initials *VOC* mean or refer to volatile organic compounds.

(42) The initials *WRAP* mean or refer to the Western Regional Air Partnership.

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I. Summary of Proposed Actions

A. Regional Haze

EPA proposed on December 21, 2012, to approve in part and disapprove in part the remaining portion of Arizona's Regional Haze (RH) SIP submitted to EPA Region 9 on February 28, 2011 (''2011 RH SIP''), to meet the requirements of Section 308 of the Regional Haze Rule (RHR).[1] We proposed to take action on Arizona's BART control analyses and determinations, RPGs for each of the 12 Class I areas, and LTS. We also proposed to take action on the requirements that support these major components of the plan, including the identification of Class I areas impaired by Arizona's emissions, estimated visibility conditions, emission inventories, and the State's monitoring strategy. Arizona submitted a revision to its 2011 RH SIP on May 3, 2013 (''Arizona RH SIP Supplement'' or ''Supplement''), addressing some of the elements of its SIP that we had proposed to disapprove in our notice of December 21, 2012. We then proposed in a notice published on May 20, 2013, to approve in part and disapprove in part elements of the supplemental SIP. Today, we are taking final action on those portions of the 2011 RH SIP as modified by the Supplement (collectively ''Arizona RH SIP''), which were addressed in our proposed rules on December 21, 2012, and on May 20, 2013. Not included in today's action are the three BART sources in Arizona that we addressed in a final rule published on December 5, 2012.[2] The following is a summary of our proposed rules published on December 21, 2012, and May 20, 2013.

Supporting Elements: In our notice of December 21, 2012, EPA proposed to approve Arizona's identification of Class I areas that may experience visibility impairment due to emissions from sources within the State; Arizona's estimated visibility conditions for baseline, 2018 and 2064; Arizona's uniform rate of progress (URP) for each Class I area; Arizona's emission inventories for 2002 and 2018; and Arizona's identification of the sources of visibility impairment. However, because the 2011 RH SIP did not include the most recently available emission inventory, we proposed to disapprove the 2011 RH SIP with respect to this requirement. In our notice of May 20, 2013, we proposed to approve Arizona's emissions inventory for 2008 submitted on May 3, 2013, as part of the Supplement.

BART-Eligible: In our notice of December 21, 2012, EPA proposed to approve Arizona's determination that specific units at the following six sources are eligible for BART: ASARCO Hayden Smelter (Hayden Smelter); Freeport-McMoRan Inc. Miami Smelter (Miami Smelter); Chemical Lime Nelson Plant (Nelson Lime Plant) Kilns 1 and 2; Arizona Public Service West Phoenix Power Plant (West Phoenix Power Plant) Combined Cycle Units 1 through 3; CalPortland Rillito Cement Plant (Rillito Cement Plant) Kiln 4; and Catalyst Pulp Mill in Snowflake (Catalyst Paper) Power Boiler 2.[3] We proposed to disapprove Arizona's determination that Tucson Electric Power Sundt Generating Station (Sundt) Unit 4 is not eligible for BART. Finally, we proposed to approve the State's determination that no other units in the State are BART-eligible. In particular, we proposed to approve the State's finding that Cholla Power Plant Unit 1 and Sundt Unit 3 are not BART-eligible. In our notice of May 20, 2013, we proposed to approve revisions to the sets of BART-eligible units at the Hayden and Miami Smelters.

Not Subject to BART: In our notice of December 21, 2012, EPA proposed to approve Arizona's decision to set 0.5 deciview (dv) as the threshold for determining whether sources are subject to BART, but requested comments on whether this threshold is reasonable. We proposed to approve Arizona's determination that two eligible sources are exempt from BART based on this threshold. These BART-exempt sources are the West Phoenix Power Plant and the Rillito Cement Plant. We proposed to disapprove Arizona's determination that Nelson Lime Plant is exempt from BART, but sought comments on whether this determination was reasonable. In our notice of May 20, 2013, we proposed again to disapprove Arizona's new determination that the Miami Smelter is exempt from a BART analysis for nitrogen oxides (NO_X), and that the Hayden Smelter is exempt from a BART analysis for coarse particulate matter (PM_{10}). We also proposed to approve the State's finding that a BART analysis is not required for Catalyst Paper due to the plant's closure.

BART-Subject: In our notice of December 21, 2012, EPA proposed to approve Arizona's determination that two sources are subject to BART. These sources are the Hayden and Miami Smelters. In our notice of May 20, 2013, we proposed to approve revised sets of BART-subject units for the Miami and Hayden Smelters.

BART Determination: In our notice of December 21, 2012, EPA proposed to approve Arizona's BART determinations for NO_X at Hayden Smelter and for PM_{10} at Miami Smelter. We proposed to disapprove Arizona's conclusion that a BART determination is not required for PM_{10} at the Hayden Smelter and for NO_X at the Miami Smelter. We proposed alternatively to approve or disapprove the State's BART determination for sulfur dioxide (SO_2) at the Hayden and Miami Smelters depending on a more detailed BART demonstration from the State. We proposed not to act on the State's BART determination for Catalyst Paper because this facility is no longer in operation. Further, we proposed to disapprove the compliance schedules and requirements for equipment maintenance and operation related to BART controls at the Hayden Smelter and the Miami Smelter because these were not included in the State's 2011 RH SIP. In our notice of May 20, 2013, we proposed to approve Arizona's determination that BART for PM_{10} at the Hayden Smelter is no additional controls. We also proposed a clarification in the application of the emissions limit to Apache Unit 1, and a correction to Table 4 in our December 21, 2012, notice in which the baseline values for Saguaro East and Saguaro West were reversed.

Reasonable Progress Goals: In our notice of December 21, 2012, EPA proposed to disapprove Arizona's RPGs for 2018 on the 20 percent least impaired (''best'') days and 20 percent most impaired (''worst'') days at all of the State's Class I areas. We proposed to find that the State has not demonstrated that these goals constitute reasonable progress by 2018 toward the ultimate goal of natural conditions by 2064. Based on our own supplemental analysis, we proposed to approve the State's finding that it is not reasonable to require additional controls on mobile sources of NO_X, SO_2 or volatile organic compounds (VOCs) or on point sources

[1] 77 FR 75704. Please see the proposal for a summary of the requirements of the RHR and the CAA concerning visibility protection.

[2] See 77 FR 72512.

[3] We have already approved ADEQ's determination that Arizona Electric Power Cooperative (AEPCO) Apache Generating Station (Apache) Units 1–3, Arizona Public Service Cholla Power Plant (Cholla) Units 2–4, and Salt River Project Coronado Generating Station (Coronado) 1–2 are BART-eligible. See 77 FR 72512.

of SO_2 during this planning period. However, we proposed to disapprove the State's finding that no additional controls are needed on coarse mass and fine soil emissions, point sources of NO_X, and area sources of NO_X and SO_2. In our notice of May 20, 2013, we proposed to approve the State's finding that it is not reasonable to require additional controls on sources of coarse mass and fine soil during the first planning period. However, we proposed to disapprove the State's determination that it is not reasonable to require additional controls on point sources of NO_X or area sources of NO_X and SO_2. Because we were still proposing to disapprove certain aspects of the State's RP analysis, we did not revise our proposal to disapprove the State's RPGs.

Long-term Strategy: In our notice of December 21, 2012, EPA proposed to approve Arizona's interstate consultation process, the technical basis for its apportionment of emission reductions, and the identification of all anthropogenic sources of visibility impairment. Regarding the seven mandatory factors a state must consider for the LTS, we proposed to find that Arizona considered emissions reductions due to ongoing air pollution control programs, measures to mitigate the impacts of construction activities, source retirement and replacement schedules, smoke management techniques, and the anticipated net effect on visibility due to projected changes in emissions through 2018. However, we proposed to find that the Arizona RH SIP did not include all measures needed to achieve the State's apportionment of emission reduction obligations with respect to out-of-state Class I areas. We also proposed to find that Arizona did not meet the requirements for emissions limitations and schedules of compliance to achieve the RPGs or the enforceability of emissions limits and control measures. Our notice of May 20, 2013, did not propose any further action on the LTS since the State did not address these requirements in its supplemental SIP.

B. Interstate Transport of Pollutants That Affect Visibility

CAA section 110(a)(2)(D)(i)(II) requires that all SIPs contain adequate provisions to prohibit emissions that will interfere with other states' required measures to protect visibility. In response to the promulgation of the revised National Ambient Air Quality Standard (NAAQS) for ozone in 1997,[4] the new NAAQS for fine particulate matter ($PM_{2.5}$) in 1997,[5] and the revised $PM_{2.5}$ NAAQS in 2006,[6] states were required to submit SIP revisions to address the interstate transport visibility requirement. ADEQ submitted such SIP revisions in 2007 for the 1997 ozone and 1997 $PM_{2.5}$ NAAQS (2007 Transport SIP)[7] and in 2009 for the 2006 $PM_{2.5}$ NAAQS (2009 Transport SIP).[8] Each of these SIP revisions indicated that it would be appropriate to assess Arizona's interference with other states' measures to protect visibility in conjunction with the State's regional haze SIP. Because ADEQ did not specify a particular part of the Arizona RH SIP as addressing the interstate transport visibility requirement, we interpreted those SIP revisions to mean that ADEQ intended the Arizona RH SIP as a whole to address the interstate transport visibility requirement for these three NAAQS. Thus, our December 21, 2012, proposal presented EPA's evaluation of the Arizona RH SIP in addressing these requirements. Based on this evaluation, we proposed to disapprove Arizona's 2007 and 2009 Transport SIPs, along with the Arizona RH SIP itself, with respect to the interstate transport visibility requirement of CAA section 110(a)(2)(D)(i)(II) for the 1997 8-hour ozone, 1997 p.m.2.5, and 2006 p.m.2.5 NAAQS.

II. Review of State and EPA Actions on Regional Haze

A. EPA's Schedule to Act on Arizona's RH SIP

EPA received a notice of intent to sue in January 2011 stating that we had not met the statutory deadline for promulgating Regional Haze FIPs and/or approving Regional Haze SIPs for dozens of states, including Arizona. This notice was followed by a lawsuit filed by several advocacy groups (Plaintiffs) in August 2011.[9] In order to resolve this lawsuit and avoid litigation, EPA entered into a Consent Decree with the Plaintiffs, which sets deadlines for action for all of the states covered by the lawsuit, including Arizona. This decree was entered and later amended by the United States District Court for the District of Columbia over the opposition of Arizona.[10] Under the terms of the Consent Decree, as amended, EPA is currently subject to three sets of deadlines for taking action on Arizona's RH SIP as listed in Table 1.[11]

TABLE 1—CONSENT DECREE DEADLINES FOR EPA TO ACT ON ARIZONA'S RH SIP

EPA Actions	Proposed rule	Final rule
Phase 1—BART determinations for Apache, Cholla and Coronado	July 2, 2012 [1]	November 15, 2012 [2].
Phase 2—All remaining elements of the Arizona RH SIP	December 8, 2012 [3]	July 15, 2013.
Phase 3—FIP for disapproved elements of the Arizona RH SIP (if required)	September 6, 2013	February 6, 2014.

[1] Published in the **Federal Register** on July 20, 2012, 77 FR 42834.
[2] Published in the **Federal Register** on December 5, 2012, 77 FR 72512.
[3] Published in the **Federal Register** on December 21, 2012, 77 FR 75704.

[4] 62 FR 38856, July 18, 1997.

[5] 62 FR 38652, July 18, 1997.

[6] 71 FR 61144, October 17, 2006.

[7] "Revision to the Arizona State Implementation Plan Under Clean Air Act Section 110(a)(2)(D)(i)—Regional Transport," submitted by ADEQ on May 24, 2007. As noted in our proposal of December 21, 2012, EPA approved this SIP revision with respect to the first three interstate transport requirements of CAA section 110(a)(2)(D)(i), but deferred action on the interstate transport visibility requirement, often referred to as prong 4, until we received Arizona's final Regional Haze SIP. 72 FR 41629, July 31, 2007.

[8] "Arizona State Implementation Plan Revision under Clean Air Act Section 110(a)(1) and (2); 2006 $PM_{2.5}$ NAAQS, 1997 $PM_{2.5}$ NAAQS, and 1997 8-hour Ozone NAAQS," submitted by ADEQ on October 14, 2009, which addressed the requirements of section 110(a)(2)(D)(i) with respect to the 2006 $PM_{2.5}$ NAAQS in Section 2.4 and Appendix B of the submittal. As noted in our proposal of December 21, 2012, EPA finalized action on this SIP revision with respect to the first three requirements of section 110(a)(2)(D)(i), but deferred action on the interstate transport visibility requirement until we received Arizona's final Regional Haze SIP. 77 FR 66398, November 5, 2012.

[9] National Parks Conservation Association v. Jackson (D.D.C. Case 1:11–cv–01548).

[10] National Parks Conservation Association v. Jackson (D.D.C. Case 1:11–cv–01548), Memorandum Order and Opinion (May 25, 2012), Minute Order (July 2, 2012), Minute Order (November 13, 2012) and Minute Order (February 15, 2013).

[11] *Id.*

B. History of State Submittals and EPA Actions

Because four of Arizona's twelve mandatory Class I Federal areas are on the Colorado Plateau, the State had the option of submitting a Regional Haze SIP under section 309 of the RHR. A SIP that is approved by EPA as meeting all of the requirements of section 309 is ''deemed to comply with the requirements for reasonable progress with respect to the 16 Class I areas [on the Colorado Plateau] for the period from approval of the plan through 2018.'' [12] When these regulations were first promulgated, 309 SIPs were due no later than December 31, 2003. Accordingly, ADEQ submitted to EPA on December 23, 2003, a 309 SIP for Arizona's four Class I Areas on the Colorado Plateau. ADEQ submitted a revision to its 309 SIP, consisting of rules on emissions trading and smoke management, and a correction to the State's regional haze statutes, on December 31, 2004. EPA approved the smoke management rules submitted as part of the revisions in 2004,[13] but did not propose or take final action on any other portion of the 309 SIP.

In response to an adverse court decision,[14] EPA revised 40 CFR 51.309 on October 13, 2006, making a number of substantive changes and requiring states to submit revised 309 SIPs by December 17, 2007.[15] Subsequently, ADEQ sent a letter to EPA dated December 24, 2008, acknowledging that it had not submitted a SIP revision to address the requirements of 40 CFR 51.309(d)(4) related to stationary sources and 40 CFR 51.309(g), which governs reasonable progress requirements for Arizona's eight mandatory Class I areas outside of the Colorado Plateau.[16] EPA proposed on February 5, 2013,[17] to disapprove Arizona's 309 SIP except for the smoke management rules that we had previously approved.

EPA made a finding on January 15, 2009, that 37 states, including Arizona, had failed to make all or part of the required SIP submissions to address regional haze.[18] Specifically, EPA found that Arizona failed to submit the plan elements required by 40 CFR 51.309(d)(4) and (g). EPA sent a letter to ADEQ on January 14, 2009, notifying the State of this failure to submit a complete SIP. ADEQ later decided to submit a SIP under section 308, instead of under section 309.

ADEQ adopted and transmitted its 2011 Regional Haze SIP under section 308 of the RHR to EPA Region 9 in a letter dated February 28, 2011. The SIP was determined complete by operation of law on August 28, 2011.[19] The SIP was properly noticed by the State and available for public comment for 30 days prior to a public hearing held in Phoenix, Arizona, on December 2, 2010. Arizona included in its SIP responses to written comments from EPA Region 9, the National Park Service, the U.S. Forest Service, and other stakeholders including regulated industries and environmental organizations. The 2011 RH SIP is available to review in the docket for the proposed rule.[20]

As indicated in Table 1, the first phase of EPA's action on the 2011 RH SIP addressed three BART sources. The final rule for this phase (a partial approval and partial disapproval of the State's plan and a partial FIP) was signed by the Administrator on November 15, 2012, and published in the **Federal Register** on December 5, 2012. The emission limits on the three sources will improve visibility by reducing NO_X emissions by about 22,700 tons per year. In the second phase of our action, we proposed on December 21, 2012, to approve in part and disapprove in part the remainder of the 2011 RH SIP. ADEQ submitted the Arizona RH SIP Supplement on May 3, 2013, to correct certain deficiencies identified in that proposal. We then proposed on May 20, 2013, to approve in part and disapprove in part the Supplement. Today, we are taking final action on those elements of the Arizona RH SIP included in our proposed rules of December 21, 2012, and May 20, 2013. We intend to address all the disapproved elements of the Arizona RH SIP from Phase 2 in a proposed FIP due for signature by September 6, 2013 (See Table 1).

C. Legal Basis for Our Final Action

Our action is based on an evaluation of the Arizona RH SIP submitted on February 28, 2011, and supplemented on May 3, 2013, to meet the requirements of Section 308 of the RHR (collectively ''Arizona RH SIP''). We evaluated the Arizona RH SIP for compliance with the requirements of the RHR and CAA sections 169A and 169B. We also applied the general SIP requirements in CAA section 110 and 40 CFR Part 51. Our authority for action on the Arizona RH SIP is based on CAA section 110(k). Our authority to promulgate a FIP is based on CAA section 110(c).

III. Overview of Final Action on Regional Haze and Interstate Transport

This is an overview of today's final action on the rules that were proposed on December 21, 2012, and on May 20, 2013. In this section, we list the final approvals and disapprovals for each of the three major portions of the RHR: BART Analyses and Determinations, RPGs, and LTS. This is followed by our final action on the Interstate Transport requirement. EPA must address all of the final disapprovals in an upcoming proposed FIP, which will be available for review and comment. In addition, we are approving all the supporting elements of the Arizona RH SIP as proposed. For a general description of our evaluation of Arizona's BART and RP analyses, please refer to the section entitled ''Summary of Final Action.''

EPA takes very seriously the decision to disapprove in part the Arizona RH SIP. However, for the reasons set forth in our proposals and elsewhere in this document, we have determined this partial approval and partial disapproval is consistent with the requirements of the CAA and the RHR, while full approval of the SIP would be inconsistent with these requirements. EPA will continue to work with ADEQ to address all of the elements of the Arizona RH SIP that we have disapproved.

A. BART Analyses and Determinations

Final approval: We are approving Arizona's determination that Cholla Unit 1 and Sundt Unit 3 are not BART-eligible. We are approving Arizona's BART threshold of 0.5 dv and its determination that West Phoenix Power Plant and the Rillito Cement Plant are not subject to BART. We are approving the State's conclusion that the Hayden Smelter is subject to BART for SO_2 and the Miami Smelter is subject to BART for SO_2 and PM_{10}. We also are approving a revised set of emission units that are subject to BART at each smelter. We are approving Arizona's determination that BART for PM_{10} at the Hayden Smelter is no additional controls and that the NESHAP for Primary Copper Smelting constitutes BART for PM emissions at the Miami Smelter. Finally, we are approving the State's determination that a BART analysis is not required for Catalyst Paper, and approving a

[12] 40 CFR 51.309(a).

[13] 71 FR 28270 and 72 FR 25973.

[14] Center for Energy and Economic Development v. EPA, 398 F.3d 653 (D.C. Circuit 2005).

[15] 71 FR 60612.

[16] Letter from Stephen A. Owens, ADEQ, to Wayne Nastri, EPA (December 24, 2008).

[17] 78 FR 8083.

[18] 74 FR 2392.

[19] CAA section 110(k)(1)(B).

[20] ''Arizona State Implementation Plan, Regional Haze under Section 308 Of the Federal Regional Haze Rule,'' February 28, 2011.

correction to the applicability of the BART limit for NO_X on Apache Unit 1.

Final disapproval: We are disapproving Arizona's determination that Sundt Unit 4 is not BART eligible, and that Chemical Lime Nelson is not subject to BART. We are disapproving the State's determination that the Hayden Smelter is not subject to BART for PM_{10} and that the Hayden and Miami Smelters are not subject to BART for NO_X. We also are disapproving the State's BART determinations for SO_2 at the Hayden and Miami Smelters. Based on these final disapprovals, EPA is required to conduct BART analyses in an upcoming FIP for Sundt Unit 4, Chemical Lime Nelson Kilns 1 and 2, the Hayden Smelter (NO_X and SO_2), and the Miami Smelter (NO_X and SO_2).

B. Reasonable Progress Goals

Final approval: We are approving Arizona's calculations of the URP to 2064 and the number of years it will take to attain natural conditions at the State's Class I areas. Regarding sub-parts of the RP analysis, we are approving the State's decision to consider no further reductions from mobile sources, to exclude coarse mass and fine soils, and to require no additional SO_2 controls on non-BART point sources.

Final disapproval: We are disapproving Arizona's RPGs for the 20 percent worst days and 20 percent best days as well as portions of the State's broader RP analysis that provides the basis for the RPGs. In particular, we are disapproving specific elements of the State's RP analysis for area sources of NO_X and SO_2 and point sources of NO_X. We also are disapproving the State's demonstration that the rates of progress reflected in its RPGs are reasonable.

C. Long-Term Strategy

Final approval: We are approving most of the mandatory factors that a state must consider in the LTS. These factors include interstate consultation, the technical basis for the State's apportionment of emission reduction obligations, identification of anthropogenic sources of visibility impairment, emission reductions from ongoing air programs, measures to mitigate construction activities, smoke management plans and techniques, anticipated net effect on visibility by 2018, and source retirement and replacement schedules.

Final disapproval: We are disapproving the Arizona RH SIP with respect to measures needed to achieve emission reductions, emission limits and schedules of compliance, and enforceability of emission limits and controls.

D. Interstate Transport

Final disapproval: EPA is disapproving Arizona's 2007 and 2009 Transport SIPs and the Arizona RH SIP with respect to the interstate transport visibility requirement of CAA section 110(a)(2)(D)(i)(II) for the 1997 8-hour ozone, 1997 $PM_{2.5}$, and 2006 $PM_{2.5}$ NAAQS. This follows from our finding that, as a result of the partial disapprovals of the RH SIP, the Arizona SIP does not contain adequate provisions to prohibit emissions that will interfere with SIP measures required of other states to protect visibility.

E. Supporting Elements

We are approving the following the supporting elements of the Arizona RH SIP: Arizona's identification of Class I areas that may experience visibility impairment due to emissions from sources within the State; Arizona's estimated visibility conditions for baseline, 2018 and 2064; Arizona's uniform rate of progress for each Class I area; Arizona's emission inventories for 2002, 2008 and 2018; and Arizona's identification of the sources of visibility impairment.

IV. EPA's Responses to Comments

A. Responses to Comments on the Proposal of December 21, 2012

The initial deadline for public comments on our December 21, 2012, proposal was February 4, 2013. After receiving several requests for an extension of the comment period, we extended the due date for public comments to March 6, 2013.[21] We received timely comments from representatives of the following entities:

- ADEQ;
- Apache County Board of Supervisors (Apache County);
- Arizona Mining Association (AMA);
- Arizona Public Service Co (APS);
- American Smelting and Refining Company (ASARCO);
- CalPortland Company (CalPortland);
- Earthjustice (on behalf of National Parks Conservation Association, Sierra Club, Physicians for Social Responsibility (Arizona Chapter) and San Juan Citizens Alliance);
- Freeport-McMoRan Miami Inc. (FMMI);
- Lhoist North America of Arizona (LNA);
- National Park Service (NPS);
- Phoenix Cement Company (PCC);
- Salt River Project (SRP);
- Mayor, Town of Clarkdale (Clarkdale);
- Tucson Electric Power Company (TEP); and
- Supervisor, Yavapai County District 3 (Yavapai County).

We also received one late comment from the Competitive Enterprise Institute (CEI). All of the comments we received along with attached technical reports and analyses are available for review in the docket for this action. The following sections contain summaries of the comments and our responses to the comments.

1. State and EPA Actions on Regional Haze

a. State and Federal Roles in the Regional Haze Program

Comment: Several commenters asserted that EPA's proposed disapprovals infringe on Arizona's discretion under the CAA and the RHR. These commenters noted that the CAA and the RHR provide that the states, not EPA, have the primary role in implementing the regional haze program, including making BART determinations and that EPA may disapprove an RH SIP only where the SIP fails to satisfy the minimum requirements of the Act. They generally asserted that there is no basis for EPA to determine that the Arizona RH SIP violates any applicable requirement of the CAA or RHR. In discussing the roles of EPA and states under the CAA, the commenters cited CAA section 110, as well as *Train* v. *NRDC;*[22] *Union Electric* v. *EPA;*[23] *Montana Sulphur and Chemical* v. *EPA; EME Homer City Generation* v. *EPA;*[24] *Luminant Generation Co.* v. *EPA;*[25] and *State of Texas,* v. *EPA.*[26] With regard to the regional haze program specifically, commenters also cited CAA section 169A and *American Corn Growers Ass'n* v. *EPA.*[27]

One commenter (ASARCO) asserted that EPA is relegated by the Act to a secondary role in the process of determining and enforcing the specific, source-by-source emission limitations, and that in developing SIPs the state has virtually absolute power in allocating emission limitations so long as the national standards are met.

Another commenter (CalPortland) stated that EPA cannot substitute its judgment for Arizona's determination of reasonable progress. According to the commenter, the State reasonably determined that additional controls

[21] 78 FR 7702.

[22] 421 U.S. 60, 79 (1975).

[23] 427 U.S. 246 (1976).

[24] 696 F.3d 7 (D.C. Cir. 2012).

[25] 675 F.3d 917 (5th Cir. 2012).

[26] 690 F.3d 670 (5th Cir. 2012).

[27] 291 F.3d 1 (D.C. Cir. 2002).

should not be required during this planning period, and the Arizona RH SIP provides significant and sufficient analysis to support its RPGs. CalPortland asserted that 40 CFR 51.308(d) limits EPA's role to evaluating the sufficiency of Arizona's reasonable progress demonstration ''to achieve the progress goal adopted by the State.'' Citing *Montana Sulphur & Chemical Co.* v. *EPA,* 666 F.3d 1174, 1181 (9th Cir. 2012), the commenter contended that the State is free to adopt whatever mix of emissions limitations it deems best suited to its particular situation. On this basis, the commenter asserted that EPA must approve the Arizona RH SIP as adopted by the State.

Response: We do not agree that our partial disapproval of the Arizona RH SIP is contrary to the CAA, the RHR, or relevant case law. As noted by several commenters, states have the lead role in developing Regional Haze SIPs. However, EPA also has a crucial role in reviewing SIPs for compliance with the requirements of the CAA and its implementing regulations. Pursuant to CAA section 110, states must submit SIPs to EPA for review and EPA must review SIPs for consistency with the Act's requirements and may not approve any SIP revision that ''would interfere with any applicable requirement'' of the Act.[28] Furthermore, the CAA mandates that EPA promulgate a FIP when EPA finds that a state has failed to submit a required SIP to the Agency, failed to submit a complete SIP, or where EPA disapproves a SIP in whole or in part.[29] Thus, the CAA provides EPA with a critical oversight role in ensuring that SIPs meet the Act's requirements.

Nothing in the CAA indicates that EPA's role is less important in the context of the regional haze program than under other CAA programs. On the contrary, CAA section 110(a)(2)(J) explicitly requires that SIPs ''meet the applicable requirements'' of Part C of Title I of the CAA including the requirements for visibility protection set forth in sections 169A and 169B.[30] Pursuant to section 169A(b), EPA is required to promulgate visibility protection regulations that apply to ''each applicable implementation plan'' (i.e., each SIP or FIP)[31] for each state containing one or more Class I areas and each state ''emissions from which may reasonably be anticipated to cause or contribute to any impairment of visibility in any [Class I area].''[32] The CAA specifies that these regulations (including the RHR) must require each such SIP or FIP to ''contain such emission limits, schedules of compliance and other measures as may be necessary to make reasonable progress toward meeting the national goal,'' including implementation of BART, as determined by the state (or by EPA in the case of a FIP).[33] Thus, the statute provides EPA a key oversight role in reviewing SIPs for compliance with the RHR and BART requirements.

The cases cited by the commenters do not support an argument that EPA's role as a reviewer is any less critical in the regional haze context than it is in reviewing other SIP components. In *American Corn Growers* v. *EPA,* the petitioners challenged the original RHR because, among other things, the RHR treated one of the five statutory factors differently than the others by requiring states to consider the degree of visibility improvement from imposing BART on a group of sources rather than on a source-specific basis.[34] The D.C. Circuit concluded that such a requirement could force states to apply BART controls at sources without evidence that the individual sources contributed to visibility impairment at a Class I area, which encroached on states' primary authority under the regional haze provisions to determine which individual sources are subject to BART and what BART controls are appropriate for each source.[35] Therefore, the court vacated the visibility improvement part of the original RHR as contrary to the statute.[36] Contrary to some commenters' suggestions, however, the *American Corn Growers* decision did not address EPA's authority to reject a state's BART determinations for failure to conform to the CAA and the RHR.

Commenters also cite *Luminant Generation* v. *EPA*[37] and *Texas* v. *EPA.*[38] Neither of these cases involves BART or the CAA's regional haze provisions. Rather, they involved EPA's disapprovals of SIP revisions involving Texas's minor new source review (NSR) program. As noted by the *Luminant* court, ''because 'the Act includes no specifics regarding the structure or functioning of minor NSR programs' and because the implementing regulations are 'very general [,] . . . SIP-approved minor NSR programs can vary quite widely from State to State.' ''[39] By contrast, Regional Haze SIPs are subject to detailed requirements set forth in CAA sections 169A and the RHR. While in *Luminant* and *Texas,* the Fifth Circuit found that EPA had failed to tie its disapproval to any requirement of the CAA or EPA's implementing regulations,[40] in this case our partial disapproval is based on the SIP's failure to comply with CAA sections 110(a)(2) and 169A, as implemented through the RHR.[41]

The other CAA cases cited by commenters, *Train v. NRDC, Union Electric* v. *EPA* and *Montana Sulphur and Chemical* v. *EPA,* all pertain to EPA's role in reviewing nonattainment SIPs (i.e., SIPs designed to ensure attainment of the NAAQS). Both *Train* and *Union Electric* were decided *prior* to Congress's adoption of the visibility protection requirements of CAA section 169A and 169B in 1977 and 1990 respectively, and EPA's adoption of the RHR in 1999. Nonetheless, in both cases, the Supreme Court recognized the basic principle that EPA must review SIPs for compliance with the requirements of CAA section 110(a)(2).[42]

[28] CAA section 110(a)(1), (k)(3) and (*l*), 42 U.S.C. 7410(a)(1), (k)(3) and (*l*).

[29] *See id.* 7410(c)(1).

[30] CAA sections 110(a)(2)(J), 169A and 169B, 42 U.S.C. 7410(a)(2)(J), 7491 and 7492.

[31] Under the CAA, ''applicable implementation plan'' is defined as ''the portion (or portions) of the implementation plan, or most recent revision thereof, which has been approved under [CAA 110], or promulgated under [CAA section 110](c) . . . and which implements the relevant requirements of [the CAA].'' CAA section 302(q), 42 U.S.C. 7602(q). In other words, an ''applicable implementation plan'' is an EPA-approved SIP or Tribal Implementation Plan, or an EPA-promulgated FIP.

[32] 42 U.S.C. 7491(b)(2). In promulgating the RHR, EPA determined that ''all States contain sources whose emissions are reasonably anticipated to contribute to regional haze in a Class I area and, therefore, must submit regional haze SIPs.'' 64 FR 35720; see also 40 CFR 51.300(b)(3).

[33] 42 U.S.C. 7491(b)(2).

[34] 291 F.3d 1, 5–9 (D.C. Cir. 2002).

[35] *Id.,* pages 7–8.

[36] EPA revised the RHR to address the court's decision in *American Corn Growers* at the same time as we promulgated the BART Guidelines. 70 FR 39104 (July 6, 2005). The revised RHR and the Guidelines were upheld by the D.C. Circuit in *Utility Air Regulatory Group v. EPA,* 471 F.3d 1333 (D.C. Cir. 2006).

[37] 675 F.3d 917, 921 (5th Cir. 2012).

[38] 690 F.3d 670 (5th Cir. 2012).

[39] 675 F.3d at 922 (citing 74 FR 51418, 51421 (Oct. 6, 2009).

[40] *Id.* at 924, 929; 690 F.3d at 679, 682, 686.

[41] In particular, as discussed further in our proposals and elsewhere in this rule, our partial disapproval is based on the following provisions of 40 CFR 51.308: (d)(1)(i)(A), (d)(1)(ii), (d)(3)(ii), (d)(3)(v)(C), d)(3)(v)(F), (e)(1)(ii)(A), (e)(1)(ii)(C), (e)(1)(iv), and (e)(1)(v).

[42] See *Train,* 421 U.S. 60, 79 (''Under § 110(a)(2), the Agency is required to approve a state plan which provides for the timely attainment and subsequent maintenance of ambient air standards, *and which also satisfies that section's other general requirements.* The Act gives the Agency no authority to question the wisdom of a State's choices of emission limitations *if they are part of a plan which satisfies the standards of section 110(a)(2) . . .*'' (emphasis added)); *Union Electric,* 427 U.S. 246, 250 (''Each State is given wide discretion in formulating its plan, and the Act provides that the Administrator 'shall approve' the

Continued

As part of the 1977 Amendments to the CAA, Congress added to section 110(a)(2) requirements that SIPs (1) meet the newly enacted visibility protection requirements of Part C of Title I of the Act and (2) prohibit stationary source emissions that interfere with other states' required visibility protection measures.[43] As noted above, these visibility protection requirements include the obligation for SIPs to ''contain such emission limits, schedules of compliance and other measures as may be necessary to make reasonable progress'' toward elimination of man-made visibility impairment at Class I areas, including implementation of BART.[44] Section 169A further specifies five factors that must be considered in determining BART and four factors that must be considered in determining reasonable progress.[45] The RHR was promulgated pursuant to these requirements and sets forth the specific criteria that all RH SIPs must meet in order to fulfill these requirements. Thus, to the extent that *Train* and *Union Electric* are relevant to RH SIPs, they support the principle that EPA must ensure that RH SIPs adequately address the requirements of 110(a)(2), including the visibility protection requirements of CAA section 169A, as implemented through EPA's visibility protection regulations, including the RHR.

The Ninth Circuit's decision in *Montana Sulphur,* which rejected a challenge to EPA's issuance of a SIP call, partial disapproval of a SIP and promulgation of a partial FIP for the State of Montana,[46] also reinforces the importance of EPA's oversight role under the CAA. In upholding EPA's partial disapproval, the court recognized that EPA's role in reviewing of SIPs is not limited to a ministerial review of state decisions, but involves the exercise of technical expertise and judgment.[47] Here, as in *Montana Sulphur,* EPA's partial disapproval results from our determination that the SIP failed to meet all of the applicable statutory and regulatory criteria. Our findings regarding the specific shortcomings of the Arizona RH SIP are set out in detail in our proposals and elsewhere in this final rule.

b. EPA's Schedule to Act on the Arizona RH SIP

Comment: One commenter (CalPortland) asserted that EPA has not given Arizona and affected stakeholders sufficient opportunity to address EPA's concerns with the Arizona RH SIP. While acknowledging that EPA has tried to address this problem by extending the comment deadline and delaying publication of a FIP until after it takes final action on the SIP, the commenter asserted that these two actions are not legally or practically sufficient to provide due process for affected entities such as the commenter.

According to the commenter, EPA has asserted that it must act now given its finding that Arizona failed to submit a complete 309 SIP, but EPA has made no such finding with respect to the State's Section 308 SIP. On this basis, the commenter concluded that unless EPA has the authority (which it has not claimed or identified) to adopt a FIP under a different regulatory provision than the SIP submitted by the State, under CAA section 110(c)(1)(B) EPA's deadline to adopt a Section 308 FIP will be July 15, 2015. CalPortland concluded that the best approach would be to seek further revisions to the third-party consent decree so that the State and affected stakeholders have a full and fair opportunity to participate in the SIP process, and EPA has the necessary time to fully and fairly consider the Arizona RH SIP.

Response: We do not agree that the State has been given insufficient time to address our concerns with the Arizona RH SIP or that the timing of our action raises any due process concerns. All RH SIPs, whether adopted pursuant to section 308 or section 309 of the RHR, were due on December 17, 2007. As explained in section II.B of this document, Arizona had submitted a partial SIP under Section 309 in 2003 and 2004, but never re-submitted the SIP in response to the 2006 RHR amendments to include provisions to address stationary source emissions under 40 CFR 51.309(d)(4) or reasonable progress for eight of the State's Class I areas under 40 CFR 51.309(g).[48] On January 15, 2009, EPA found that 37 states, including Arizona, had failed to make all or part of the required SIP submissions to address regional haze and explained that this finding triggered a two-year ''FIP clock.''[49] Specifically, we found that Arizona had failed to submit a SIP addressing 40 CFR 51.309(d)(4) and (g).[50]

At the time of our finding of failure to submit in 2009, EPA anticipated that ADEQ would submit a SIP revision covering 309(d)(4) and 309(g), which would enable EPA to fully approve ADEQ's 309 SIP as meeting all of the requirements of the RHR, thus ending the FIP clock. As it turned out, ADEQ did not submit a 309 SIP revision, but instead decided to develop a 308 SIP, which it submitted to EPA in February 2011. Arizona's decision to change from a 309 SIP to a 308 SIP did not nullify EPA's prior finding of failure to submit, nor did it reset the resulting two-year FIP clock under CAA section 110(c). As noted above, December 17, 2007, was the final deadline for states to submit a complete RH SIP under 308 or 309. Accordingly, our January 2009 Finding covered both 308 SIPs and 309 SIPs. The fact that the 2009 Finding reflected Arizona's decision to submit 309 SIP in lieu of a 308 SIP does not relieve the State of its obligation to fulfill all of the requirements of the RHR (whether under section 308 or section 309) and does not relieve EPA of our FIP duty in the event that the State did not meet these requirements.

As explained above, EPA is subject to a consent decree (CD) that sets deadlines for us to promulgate a RH FIP and/or approve a RH SIP action for all of the states for which we missed the statutory deadline under CAA section 110(c). In Arizona's case, we repeatedly sought extensions to the CD in order to have sufficient time to adequately address all of the requirements of the RHR, though approval of the Arizona RH SIP wherever possible and promulgation of a FIP where necessary. Had we not agreed to the deadlines currently reflected in the CD, we would have had to demonstrate to the court that it would have been impossible to comply with the Plaintiff's proposed schedule.[51] Contrary to the commenter's

proposed plan if it has been adopted after public notice and hearing and *if it meets eight specified criteria* [in section 110(a)(2)]'' (emphasis added)).

[43] PL 95–95, 91 Stat 685 (HR 6161) section 108(b) (August 7, 1977) (codified at CAA section 110(a)(2)(J), 42 U.S.C. 7410(a)(2)(J)). In addition, as part of the 1990 amendments to the CAA, Congress added to section 110(a)(2) a requirement that SIPs ''include enforceable emission limitations and other control measures, means, or techniques . . . as well as schedules and timetables for compliance, as may be necessary or appropriate to meet the applicable requirements of this Act.'' Public Law 101–549, 104 Stat 2399 sec. 101(b) (November 15 1990) (codified at CAA section 110(a)(2)(A), 42 U.S.C. 7410(a)(2)(A)). As explained in our notice of proposed rulemaking and elsewhere in this document, the Arizona RH SIP does not include such enforceable limitations or schedules for compliance.

[44] 42 U.S.C. 7491(b)(2).

[45] 42 U.S.C. 7491(g)(1) and (2).

[46] 666 F.3d 1174 (9th Cir. 2012).

[47] *Id.* at 1189.

[48] Letter from Stephen A. Owens, ADEQ, to Wayne Nastri, EPA (December 24, 2008). We have included a more detailed history of Arizona's submissions under 309 in the docket for this action.

[49] 74 FR 2392 (''2009 Finding'').

[50] Id. at 2393.

[51] See Sierra Club v. Johnson, 444 F.Supp.2d 46, 58 (D.D.C. 2006) (''this case devolves to a single issue: whether defendant has met the ''heavy burden'' of demonstrating that it would be impossible to comply with plaintiff's proposed schedule for the enactment of the remaining standards . . .'').

assertion, these deadlines are neither inconsistent with the Act nor unduly accelerated. As explained above, the FIP clock for addressing requirements of the RHR ran out in January 2011. The CD effectively provides EPA with an extension of more than three years to meet that deadline.

We also note that, as a practical matter, ADEQ was informed of EPA's concerns with the 2011 RH SIP well in advance of our December 21, 2012, notice of proposed rulemaking. EPA provided comments on December 2, 2010, to ADEQ regarding the State's proposed version of the 2011 RH SIP, noting that the SIP ''does not provide a sufficient level of information and analysis to support its conclusions'' and setting out specific concerns with ADEQ's BART and RP analyses.[52] Nonetheless, when ADEQ submitted the 2011 RH SIP to EPA, the SIP did not contain revisions to address the majority of these comments.

With respect to the commenter's concern regarding the burden placed on regulated entities, we note that today's action does not establish any new requirements for any sources. If any new requirements were to apply to CalPortland or any other entity, they would be proposed as part of a FIP in a future notice-and-comment rulemaking. Finally, we note that ADEQ has submitted a Supplement that addresses a number of our proposed disapprovals, and we are approving much of that Supplement in today's action. Therefore, we do not agree that the State has had insufficient time to correct its SIP or that the timing of our action raises any due process concerns.

c. EPA's Final Rule Affecting Three BART Sources

Comment: One commenter (Apache County) raised issues related to the BART determination for the Coronado Generating Station promulgated by EPA in the FIP for Phase 1. The commenter noted that ''[t]hroughout the coming planning periods, Apache County wishes to be a coordinating agency and be fully apprised of all actions, hearings, plans, meetings and outcomes as the process moves forward.''

Response: While we appreciate the commenter's interest in regional haze planning, this comment pertains to our rule for Phase 1, which was finalized on December 5, 2012, and became effective on January 4, 2013. We encourage the commenter to contact ADEQ in order to engage in consultation for future planning periods.

d. History of State Submittals and EPA Actions

Comment: ADEQ objected to EPA's decision to bifurcate its action on the Arizona RH SIP into two different phases, one for the application of BART to three of Arizona's major power plants and a second action for addressing the remaining elements of the SIP. The commenter indicated that this approach has created problems for the State, as it might be forced to file two appeals with respect to its SIP, and has had to address one EPA decision on its SIP without knowing what EPA's later decision might require. While acknowledging that CAA section 110(k)(3) allows EPA to approve a plan revision in part and disapprove it in part, ADEQ contended that the language of the section plainly requires that action to apply to ''the plan revision,'' not to selected pieces of the revision. ASARCO expressed support for ADEQ's position on this issue.

Response: We do not agree that we are required to act on Arizona's RH SIP in a single rulemaking action. As noted by the commenters, our action on Arizona's SIP is governed by, CAA section 110(k)(3), which provides that:

> In the case of any submittal on which the Administrator is required to act under section 110(k)(2), the Administrator shall approve such submittal as a whole if it meets all of the applicable requirements of this chapter. If a portion of the plan revision meets all the applicable requirements of this chapter, the Administrator may approve the plan revision in part and disapprove the plan revision in part. The plan revision shall not be treated as meeting the requirements of this chapter until the Administrator approves the entire plan revision as complying with the applicable requirements of this chapter.[53]

We disagree with ADEQ's assertion that this language addresses the question of whether EPA may consider different elements of a state's plan in separate notice and comment rulemakings. However, even assuming that this provision of the Act did limit EPA's ability to act sequentially on portions of a SIP submission, the provision of 110(k) that requires EPA to act on a submittal ''as a whole'' applies only if the submittal meets all of the applicable requirements of the CAA. As explained in our proposal and elsewhere in this document, we have determined that the State's plan does not meet all of the applicable requirements of the CAA. Under these circumstances, we are clearly not obligated to act on the plan ''as a whole,'' but are given discretion to act on distinct portions of the plan.[54]

We also do not agree that the bifurcation of our action on the Arizona RH SIP has placed an undue burden on the State. As explained elsewhere in this document, Arizona's 2011 RH SIP was submitted more than three years after the regulatory deadline and more than two years after EPA had found that Arizona had failed to submit a complete RH SIP. As a result, EPA is legally obligated under CAA section 110(c) to promulgate a FIP to address all requirements of the RHR that cannot be addressed through SIP approvals. Initially, we were subject to a court-ordered deadline of November 15, 2012, for addressing all aspects of the RHR via SIP approval or FIP promulgation.[55] We sought, but were unable to obtain, a negotiated extension of the deadline to address all of these elements. Rather than trying to meet the original deadline of November 15, 2012, for all elements of the plan, we agreed to address BART for three sources by this deadline,[56] while receiving an extension of the deadline to address the remaining elements. This extension provided ADEQ sufficient time to submit the RH SIP Supplement, which we are partially approving today. Had we not agreed to bifurcated deadlines, a supplemental SIP submittal would almost certainly not have been possible.

Comment: Citing CAA section 110(k)(1)(A) and (B), PCC asserted that, because EPA did not make a determination that the Arizona RH SIP failed to meet the minimum criteria within six months after it was submitted, the SIP was deemed by operation of law to meet the minimum criteria. The commenter stated that as a result, EPA's proposed disapproval of the State's reasonable progress analysis is invalid. PCC added that, if EPA had notified Arizona within the required six-month timeframe that the 2011 RH SIP was administratively incomplete for failing to include four-factor analyses for non-BART sources of NO_X, the State would have responded with a supplemental submittal as envisioned by the Act.

Response: We agree that Arizona's 2011 RH SIP was deemed ''complete''

[52] Letter from Colleen McKaughan, EPA, to Eric Massey, ADEQ (December 2, 2010).

[53] 42 U.S.C. 7410(k)(3).

[54] Hall v. EPA, 273 F.3d 1146, 1159 (9th Cir. 2001) (section 110(k)(3) ''permits EPA to issue 'partial approvals,' that is, to approve the States' SIP revisions in piecemeal fashion'').

[55] See National Parks Conservation Association v. Jackson (D.D.C. Case 1:11-cv-01548), Docket # 21, Partial Consent Decree (March 30, 2012).

[56] Although these BART determinations are part of the overall RH SIP they are also severable from that plan, since BART determinations are made on a source-by-source basis and are not dependent upon other elements of the plan.

by operation of law under CAA section 110(k)(1)(B).[57] However, this completeness determination does not remove EPA's legal authority and obligation under CAA section 110(k)(3) to review the SIP for compliance with the requirements of the CAA and EPA's implementing regulations.[58] The completeness determination simply sets a deadline for EPA to complete this review and take action on the SIP under CAA section 110(k)(2).[59]

Contrary to the commenter's suggestion, the completeness criteria that the 2011 RH SIP has been deemed to meet by operation of law, are administrative and technical in nature and do not include a comprehensive list of the *substantive* provisions required for particular types of SIP revisions.[60] The substantive regulatory requirements applicable to Regional Haze SIPs are found at 40 CFR part 51, subpart P. It is these substantive requirements that we must consider in reviewing the SIP for approvability. Among these is the requirement that RPGs must be based on an analysis of the compliance, time necessary for compliance, energy and non-air quality environmental impacts, and the remaining useful life of potentially affected sources.[61] The plan must also include documentation supporting this analysis.[62]

2. EPA's Evaluation of Visibility Conditions in Arizona's Class I Areas

Comment: CalPortland commented that EPA has been inconsistent and selective in its assessment of the State's 2018 emission inventory, 2018 RPGs and 2064 natural visibility conditions. According to the commenter, EPA proposed to find that the State's 2018 inventory is adequate, even though EPA mentions that the State's estimates are incorrect. The commenter asserted that to the extent that the State's emission inventory estimate did not properly account for the recession, EPA must determine, or ask Arizona to reassess, estimated emissions for 2018. CalPortland asserted that this is a significant issue because the extent to which the State overestimated 2018 emissions affects the need for, and the sufficiency of, any supplemental RP analysis.

CalPortland also indicated that the extent to which the State underestimated natural visibility conditions also affects the results of the State's RP analysis. The commenter stated that EPA's review of the State's extremely low estimates for natural visibility conditions is cursory and insufficient, particularly when compared to its review of the State's RP analysis. The commenter asserted that EPA cannot disapprove the State's RP analysis without also conducting a thorough review of the State's natural visibility conditions estimate.

Response: EPA disagrees with the commenter's assertion that our proposed actions on the State's 2018 emissions inventory, 2018 visibility projections and estimates of natural visibility conditions are inconsistent. These three elements of the Arizona RH SIP are subject to distinct requirements under the RHR, and EPA's actions on each of these elements are consistent with these requirements.

With regard to the 2018 emissions inventory, RH SIPs must include ''[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'' including ''estimates of future projected emissions.''[63] Thus, the RHR does not require exact precision for future emissions inventories, but rather *estimates* of future *projected* emissions. Arizona's 2018 inventory is sufficiently accurate to fulfill this requirement.

The commenter correctly noted that both the 2018 emissions inventory and the natural visibility conditions estimate impact the determination as to whether the State has met the URP by the end of the first planning period. However, the commenter appears to misunderstand the role of the URP under the RHR. The RHR requires that a state consider four factors when setting RPGs: costs of compliance, time necessary for compliance, energy and non-air quality environmental impacts, and the remaining useful life of potentially affected sources.[64] This requirement applies to all states with Class I areas, regardless of whether or not those areas are projected to meet the URP. The rule does require an additional demonstration based on the four factors, when the URP is not projected to be met,[65] but merely meeting the URP does not exempt the State from having to perform a four-factor analysis.[66]

Finally, EPA disagrees with the commenter's assertion that EPA's review of the State's natural conditions estimate was cursory and insufficient. The RHR provides that ''[n]atural visibility conditions must be calculated by estimating the degree of visibility impairment existing under natural conditions for the most impaired and least impaired days, based on available monitoring information and appropriate data analysis techniques.''[67] EPA has reviewed the State's natural conditions estimate in relation to this requirement. As mentioned in Section VI.B of the December 21, 2012, proposed action, Arizona used the natural conditions estimates developed by the Western Regional Air Partnership (WRAP) for the western states. A description of EPA's thorough review of the WRAP methodology may be found in the WRAP TSD.[68]

Comment: ADEQ noted that EPA proposed to disapprove the emissions inventory element of the 2011 RH SIP on the grounds that it does not include the most recent inventory available and that it is working on a SIP revision to cure this deficiency.

Response: EPA acknowledges ADEQ's efforts in submitting a SIP revision that includes the most recent inventory. That inventory was submitted to the Agency on May 3, 2013 as part of the Supplement. Our evaluation of the inventory may be found in our May 20, 2013, proposed action. We find that the Arizona RH SIP now meets the requirement for inclusion of the most recent emission inventory.

3. EPA's Evaluation of Arizona's BART-Eligibility Determinations

a. Cholla Unit 1

Comment: One commenter (APS) expressed agreement with EPA's proposal to approve ADEQ's determination that the commenter's Cholla Unit 1 is not BART-eligible

[57] 42 U.S.C. 7410(k)(1)(B).

[58] 42 U.S.C. 7410(k)(3) (''In the case of any submittal on which the Administrator is required to act under [110(k)(2)], the Administrator shall approve such submittal as a whole if it meets all of the applicable requirements of this chapter. If a portion of the plan revision meets all the applicable requirements of this chapter, the Administrator may approve the plan revision in part and disapprove the plan revision in part.'').

[59] 42 U.S.C. 7410(k)(2) (''Within 12 months of a determination by the Administrator (or a determination deemed by operation of law) under [110(k)(1)] that a State has submitted a plan or plan revision . . . that meets the minimum criteria established pursuant to [110(k)(1)] . . . the Administrator shall act on the submission in accordance with [110(k)(3)].''

[60] See 40 CFR part 51, appendix V.

[61] 40 CFR 51.308(d)(1)(i).

[62] 40 CFR 51.308(d).

[63] 40 CFR 51.308(d)(4)(v).

[64] 40 CFR 51.308(d)(1)(i)(A).

[65] 40 CFR 51.308(d)(1)(ii).

[66] See, e.g. 77 FR 14604, 14621(March 12, 2012) (''The RHR and EPA's guidance for establishing RPGs do not provide that a State may forego an analysis of the four statutory factors if modeling demonstrates that it is expected to meet the URP in 2018 for . . . its Class I areas.'').

[67] 40 CFR 51.308(d)(2)(iii).

[68] ''Technical Support Document for Technical Products prepared by the Western Regional Air Partnership in Support of Western Regional Haze Plans,'' Final, February 2011 (WRAP TSD).

because it was placed into commercial operation before August 7, 1962. The commenter attached supporting documentation to the comments.

Response: We agree that Cholla Unit 1 is not BART-eligible.

b. Sundt Unit 4

Comment: Two commenters (Earthjustice, NPS) supported EPA's proposal to disapprove the State's determination that Sundt Unit 4 is not BART-eligible, arguing that Sundt Unit 4 is BART-eligible despite a 1987 coal-conversion reconstruction because it never underwent New Source Review/Prevention of Significant Deterioration (NSR/PSD) review as part of the reconstruction. Earthjustice and NPS further asserted that Sundt Unit 4 causes and contributes to visibility impairment and is therefore subject to BART.

In contrast, TEP and ADEQ argued that Sundt Unit 4 is not BART-eligible because it was reconstructed in 1987 and the BART Guidelines specify that ''any emissions unit for which a reconstruction 'commenced' after August 7, 1977, is not BART-eligible.'' [69] Citing *New Jersey* v. *EPA,*[70] the commenters asserted that in the context of the Act, the word ''any'' has an expansive meaning. TEP and ADEQ further stated that the footnote in the preamble to the BART Guidelines that EPA cited to support its proposed disapproval simply reflected the reality that post-1977 source reconstructions in most cases would have gone through NSR/PSD permitting.[71] They also contended that while it is generally true that BART was intended to apply to sources that had been grandfathered from NSR/PSD permitting requirements, it does not follow that BART applies to all grandfathered sources.

TEP also noted that, while Appendix Y is not binding on Arizona with respect to Sundt Unit 4, EPA encouraged states to follow the BART Guidelines. TEP asserted that it is arbitrary and capricious for EPA to claim it can ignore the BART Guidelines in reviewing a particular SIP, given that the BART Guidelines are the means by which EPA intends to ensure that consistency is maintained across the states.

Response: We do not agree with ADEQ and TEP that we ignored the BART Guidelines in finding Sundt Unit 4 to be BART-eligible. On the contrary, we carefully considered the BART Guidelines' statement that, ''any emissions unit for which a reconstruction 'commenced' after August 7, 1977, is not BART-eligible.'' [72] We further noted that:

> This language in the Guidelines, read in isolation, seems to indicate that *any* reconstruction commenced after August 7, 1977 exempts a source from BART eligibility. However, the BART Guidelines are not binding with respect to TEP Sundt Unit 4 because it is not part of a fossil fuel-fired electric generating plant with a total generating capacity in excess of 750 MW. The Guidelines still provide important guidance, but must be considered in the context of the relevant statutory and regulatory provisions, none of which even refer to such an exemption for post-1977 reconstructions.[73]

Therefore, we considered the BART Guidelines in conjunction with the applicable statutory and regulatory requirements. Based on our review of these requirements, we found that:

> . . . given that the Guidelines are not mandatory for TEP Sundt, and that no binding statutory or regulatory provision provides for such a post-1977 reconstruction exemption, it is appropriate to read this exemption narrowly. An interpretation of ''BART-eligible'' as including reconstructed sources that did not go through NSR/PSD permitting is also consistent with Congressional intent and with EPA's intent in promulgating the relevant regulations. . . .[74]

We are not persuaded by the commenters' assertions that we should read the reconstruction exemption more broadly because the relevant sentence in the BART Guidelines uses the word ''any.'' While we agree that the word ''any'' generally has an expansive meaning, this expansiveness applies with equal force to the regulatory definition of ''existing stationary facility'' as ''*any* of the following stationary sources of air pollutants, *including any* reconstructed source, which was not in operation prior to August 7, 1962, and was in existence on August 7, 1977 . . .'' [75] The use of the word ''any'' modifying both ''stationary source'' and ''reconstructed source'' indicates that EPA intended to include all such sources within the definition of ''existing stationary facility'' (and hence the definition of ''BART-eligible source''). To the extent that the reconstruction exemption provided by the BART Guidelines is inconsistent with this definition, it is the regulatory definition, not the BART Guidelines, which is binding on states and EPA.

The BART Guidelines must also be read in the context of Congressional intent with regard to the visibility requirements of the CAA and EPA's visibility regulations. When EPA promulgated our initial visibility regulations in 1980, we explained our view that ''a source either is new (i.e., subject to PSD) or existing (subject to BART) and *that it cannot be neither.*'' [76] Consistent with this interpretation, we defined the term 'in existence' for purposes of visibility protection, ''to assure, as Congress intended, that a major stationary source be subject to BART under [CAA section] 169A as an existing source, or to PSD as a new source.'' [77] Similarly, when EPA promulgated the BART Guidelines, we noted that ''sources reconstructed after 1977, which reconstruction had gone through NSR/PSD permitting, are not BART-eligible.'' We read this statement to mean that EPA intended for the reconstruction exemption to apply only to sources that went through NSR/PSD permitting. Like the Guidelines themselves, this preamble language is not binding with respect to TEP Sundt, but it still provides important guidance as to how EPA interprets the applicable statutory and regulatory provisions. If EPA had intended for the reconstruction exemption to apply to all sources reconstructed after 1977, there would have been no reason to include the clause ''which reconstruction had gone through NSR/PSD permitting.''

Thus, Congress did not intend and EPA does not read the RHR or BART as allowing a source to use reconstruction as a way to circumvent both BART and PSD review and thereby not address the source's effect on visibility in any fashion. Accordingly, while we acknowledge that the BART Guidelines provide an exemption from BART-eligibility for sources reconstructed after August 7, 1977, we find that this reconstruction exemption does not apply to Sundt Unit 4. Therefore, we are finalizing our disapproval of ADEQ's

[69] Citing 40 CFR part 51, appendix Y, section II.A.2.

[70] 517 F.3d 574, 582 (D.C. Cir. 2008).

[71] The footnote in the preamble to the BART Guidelines is located at 70 FR 39111, footnote 9, and stated that ''sources reconstructed after 1977, which reconstruction had gone through NSR/PSD permitting, are not BART-eligible.'' EPA cited this footnote in the preamble for the present action at 77 FR 75722.

[72] BART Guidelines § II.A.2.

[73] Memorandum to Docket Regarding TEP Sundt Unit 4—BART Eligibility (Nov. 21, 2011) [hereinafter ''Sundt Memorandum] at 4 (internal citations omitted).

[74] *Id.* at 5.

[75] 40 CFR 51.301 (emphasis added). As noted in the Sundt Memorandum, the ''reconstruction'' provision of the definition was intended ''to ensure that sources reconstructed between 1962 and 1977 were included in the definition of BART-eligible sources. Neither the text nor the preamble to this regulation refers to an exemption for sources reconstructed *after* August 7, 1977.

[76] Summary of Comments and Responses on the May 22, 1980, Proposed Regulations for Visibility Protection for Federal Class I Areas, page 225.

[77] *Id.*

determination that Sundt Unit 4 is not BART-eligible. Since our action today is limited to the Arizona RH SIP, we are not making a determination on whether TEP Sundt Unit 4 is subject to BART. We expect to address this issue in a partial FIP, which will be the subject of a future rulemaking.

Comment: Two commenters (Earthjustice and NPS) who assert that Sundt Unit 4 is subject to BART provided comments on appropriate BART controls.

Response: We have not proposed BART determinations for any pollutants for Sundt Unit 4, but proposed disapproval of the State's finding that Sundt Unit 4 is not BART-eligible. We acknowledge the information provided by the commenters, and will examine it, along with similar information provided by other commenters on this issue, as we work toward developing and proposing a FIP for those elements of the Arizona RH SIP that we do not approve.

c. Hayden Smelter

Comment: Earthjustice requested that EPA analyze the BART eligibility of all the emission units at the Hayden Smelter and support its independent analysis with documents demonstrating when the smelter's units began operations. The analysis should include all available operating records for the relevant time periods and all CAA construction and operating permits issued to the smelter. The commenter also requested that EPA post all relevant documentation to the docket and allow the public to comment on EPA's determination.

Response: ADEQ relied upon a combination of information contained in the current Title V permit, with additional information provided by the facility, to make its determination regarding which units constitute the BART-eligible source. Based upon our review of the information provided by the facility [78] as well as our review of the Title V permit, we consider ADEQ's determination regarding BART-eligible units to be reasonable.[79] ADEQ included information revising the scope of BART-eligible sources at the Hayden Smelter as part of the Arizona RH SIP Supplement submitted on May 3, 2013. We proposed to approve this determination in our May 20, 2013 notice of proposed rulemaking on the SIP supplement, and are finalizing that proposed approval in today's action.

d. Miami Smelter

Comment: FMMI asserted that EPA did not properly identify the BART-eligible emissions units at the Miami Smelter. According to FMMI, the 2011 RH SIP identified the converters, the Remelt Vessel and the acid plant as potentially BART-eligible, while Table 11 in the proposal preamble incorrectly listed ''Converters 1–5, Anode Furnace, Shaft Furnace, Fugitives'' as BART-eligible.

FMMI also stated that, based on an independent review of its records, the Remelt CVessel should not be considered BART-eligible because it commenced operations before 1962. Although the estimated SO_2 emissions from the Remelt Vessel are less than two tons per year and therefore relatively insignificant, the commenter requested that the EPA remove the Remelt Vessel as part of the necessary corrections to the emissions units that comprise the Miami Smelter BART-eligible source.

Response: The Arizona RH SIP Supplement submitted on May 3, 2013, included this revision to the list of units comprising the BART-eligible source at the FMMI Miami Smelter. In our May 20, 2013 proposed rulemaking on the Supplement, we proposed approval of this element. As part of today's action, we are finalizing our proposed approval of the revised set of BART-eligible units.

4. EPA's Evaluation of Arizona's Subject-to-BART Analyses and Determinations

a. Contribution Threshold

Comment: Six commenters stated that EPA should approve ADEQ's use of the 0.5 dv threshold as proposed. Commenters emphasized the discretionary nature of the threshold selection and noted that EPA has approved other states' use of a 0.5 dv threshold. Some of the commenters also contended that EPA's discussion of the BART-eligible sources in proximity to Class I areas makes clear that there is no basis for choosing a threshold lower than 0.5 dv because lower thresholds would subject at most one or two additional sources to BART.

LNA also commented that EPA appears to question the reasonableness of the threshold because the modeled impacts of the Nelson Lime Plant were very close to the threshold. The commenter asserted that this is not a legitimate reason to question the reasonableness of this threshold or any threshold. The commenter stated that, just as is true for dispersion modeling to determine compliance with NAAQS and for stack testing to determine compliance with emission limits, a modeled impact is either above or below the threshold with no further assessment as to the degree to which the value is above or below the threshold.

Response: Arizona set a 0.5 dv as the threshold for determining whether a source ''contributes'' to visibility impairment. The BART Guidelines state that ''[as] a general matter, any threshold that you use for determining whether a source 'contributes' to visibility impairment should not be higher than 0.5 deciviews.[80] In setting a threshold, states should consider the number of BART-eligible sources within the state and the magnitude of each source's impacts.[81] ADEQ did not provide a rationale for choosing 0.5 dv as the threshold for determining BART eligibility. In our December 21, 2012 proposal, we examined whether there was any evidence that a lower threshold was justified.[82] Based on our analysis of the possible implications of a lower threshold, we proposed to approve ADEQ's threshold, but sought comment on whether it the threshold was reasonable.

In our proposal of December 21, 2012, we noted that the source with a modeled impact closest to the 0.5 dv threshold is the Nelson Lime Plant. As explained elsewhere in today's notice, we have determined that Nelson Lime Plant is subject to BART. Setting the threshold as low as 0.3 dv would only subject two additional sources to BART and those sources have their maximum impact at different Class I areas.[83] Based on this analysis and the comments received, EPA finds that a subject-to-BART threshold of 0.5 dv is reasonable. Therefore, we are approving this threshold.

Comment: Earthjustice urged EPA to disapprove the 0.5 dv threshold and set a lower threshold for Arizona in the final rule. Earthjustice stated that ADEQ's 0.5 dv contribution threshold ignores all cumulative visibility impacts, with the consequence that (if approved) a source that is just under the contribution threshold—such as the Nelson Lime Plant—may have a cumulative visibility impact of over 2 dv or more but not be subject to BART. The commenter asserts that EPA has rightfully recognized the importance of analyzing cumulative visibility impacts when making BART determinations in

[78] See Docket Item H–09, which contains the 1948 purchase order for Converter No. 2.

[79] See ADEQ Title V Permit 10042, Attachment C ''Equipment List'', which contains equipment installation dates.

[80] BART Guidelines, 40 CFR part 51, appendix Y, section III.A.1.

[81] Id.

[82] 77 FR 75722.

[83] Ibid.

Arizona (citing the proposed and final Phase 1 rule). The commenter asserted that EPA would be acting inconsistently with its prior actions if it now approves a contribution threshold that isolates the analysis to one Class I area, while excluding impacts to other Class I areas. The commenter noted that Arizona did not explain why its 0.5 dv contribution threshold was reasonable, and concluded on this basis that EPA owes no deference to the State's unsupported threshold. In addition, Earthjustice noted that the Arizona RH SIP does not come close to making reasonable progress toward the 2064 natural visibility goal, so significant additional emissions reductions are needed. Finally, Earthjustice questioned the modeling ADEQ relied on in exempting several BART-eligible sources under the 0.5 dv threshold. Consequently, the commenter requested that EPA independently evaluate and rerun ADEQ's modeling.

Response: EPA shares the commenter's concerns about the importance of reducing visibility impairment at Arizona's Class I areas and ensuring that reasonable progress is being made toward eliminating human-caused impairment at these important areas. However, the BART requirement is intended to address a particular set of sources that are of a certain age and ''which may reasonably be anticipated to cause or contribute to any impairment of visibility'' in any mandatory Class I area.[84] A source that is not subject to BART is not necessarily free from the requirement to reduce emissions. It must be considered in the RP analysis in this and subsequent planning periods.

As explained in the preceding response, EPA has found that conditions in Arizona do not justify a threshold lower than 0.5 dv. Therefore, we are approving the State's decision to set a threshold of 0.5 dv when determining if a source is subject to BART. EPA disagrees with the commenter's assertion that cumulative impacts must be considered when determining if a source is subject to BART. A source might have very small impacts across many Class I areas, but not ''contribute,'' within the meaning of the CAA and RHR, to visibility impairment at any one of them. Therefore, EPA does not agree that a cumulative analysis is required for purposes of determining whether sources are subject to BART.

By contrast, once a source has been found subject to BART, a complete five-factor analysis is required. One of the five factors that must be considered is ''the degree of improvement in visibility which may reasonably be anticipated to result'' from implementation of controls. If modeling indicates that controls will significantly benefit multiple Class I areas, those benefits should be considered as part of this visibility improvement factor.[85] However, such an evaluation of potential visibility benefits is only required once a source has been found to cause or contribute to visibility impairment at one or more Class I areas based upon the threshold selected by the state or EPA in accordance with the BART Guidelines.

In response to the commenter's request that we independently evaluate and rerun ADEQ's modeling, we note that, for purposes of determining whether individual sources were subject-to-BART, ADEQ relied upon modeling either performed by the by the WRAP Regional Modeling Center (RMC) or performed in accordance with the modeling protocol developed by the RMC (''CALMET/CALPUFF Protocol for BART Exemption Screening Analysis for Class I Areas in the Western United States''). EPA's review of this protocol may be found in the WRAP TSD.[86] The commenter has not raised any specific concerns with this protocol or its use for BART-eligible sources in Arizona. Accordingly, it is not necessary or appropriate for EPA to rerun all of the modeling underlying the Arizona RH SIP. Issues related to the interpretation of modeling results for specific sources are addressed further below.

b. Nelson Lime Plant

Comment: Two commenters (Earthjustice and NPS) expressed support for EPA's proposal to disapprove the State's determination that the Nelson Lime Plant is not subject to BART. Two other commenters (LNA and ADEQ) opposed the proposal. The two supportive commenters both argued that it was inappropriate for the State to use the three-year average impact rather than the PSD-style method of looking at each year individually, which would have resulted in a finding of contribution (0.624 dv in 2003). Earthjustice also asserted that the State's adoption of a contribution threshold for the regional haze program that is less stringent than the federal land managers' (FLMs) methodology under the PSD program is inappropriate and unreasonable because the regional haze program's primary purpose is to protect and improve visibility at Class I areas, while visibility impacts at Class I areas are just one of a much broader array of air quality issues addressed by the PSD program.

NPS also conducted modeling, using the same emissions inputs as were used by the facility in its own modeling, but included condensable PM_{10} emissions and used the best 20 percent of days for natural background. NPS's modeling showed an impact on the 98th percentile highest day greater than 0.50 dv for both 2002 and 2003. The NPS results showed an average 98th percentile impact of 0.684 dv, which is well above the 0.5 dv threshold. Based on this analysis, NPS asserted that the Nelson Lime Plant is subject to BART.

In contrast, ADEQ and LNA argued that EPA does not have the authority to decide which approach to determining BART applicability is the most reasonable. ADEQ contended that EPA can point to no provision of the CAA or the applicable rules that is violated by the State's determination (1) to use three-year averages or (2) not to round up the 0.498 dv impact for the facility. LNA similarly stated that the BART Guidelines are not binding and that EPA has stated that average and merged values are both unbiased estimates of the true 98th percentile impacts. Based on these arguments, LNA asserted that the State's decision to use the 3-year average of the 98th percentile impacts is both reasonable and appropriate.

LNA and ADEQ also argued that the use of the 3-year average for comparison to the 0.5 dv threshold is justified because it is in line with other regulatory programs involving compliance thresholds, such as determining compliance with many NAAQS on the basis of three-year averages. ADEQ added that the FLM guidance on which EPA relies uses one-year modeling results as a screening level for further scrutiny of the applicant's proposal, not a threshold for action.

Finally, LNA cited recent additional modeling performed by LNA using the same CALMET meteorological inputs used by EPA Region 9 in other haze FIP modeling and the revised Interagency Monitoring of Protected Visual Environments (IMPROVE) equation, and reported that the resulting three-year average 98th percentile impact at the Grand Canyon was only 0.424 dv, which is well below the 0.5 dv threshold. This would make the rounding issue moot.

Response: As an initial matter, we wish to emphasize that the purpose of the 0.5 dv threshold is to screen out those BART-eligible facilities that may not reasonably be anticipated to cause

[84] CAA section 169A(b)(2)(A), 42 U.S.C. 7491(b)(2)(A).

[85] See e.g., 77 FR 72519.

[86] ''Technical Support Document for Technical Products Prepared by the Western Regional Air Partnership in Support of Western Regional Haze Plans'', Final, February 2011 (WRAP TSD).

or contribute to visibility impairment at any single Class I area. The subject-to-BART determination is not a decision to require air pollution controls; it is a screening step that states may take to determine if further analysis is required.[87]

EPA acknowledges the supportive comments from Earthjustice. However, as explained above, states are not required to consider cumulative baseline visibility impacts when determining if a source is subject to BART. We agree with the State that the maximum impact on the most affected Class I area is the appropriate parameter to use for screening out sources that do not cause or contribute to visibility impairment.

EPA also acknowledges the additional modeling work completed by the NPS. We agree that it is appropriate to include condensable PM when modeling visibility impacts from BART-eligible facilities. The results provided by the NPS support EPA's conclusion that it is appropriate to conduct a full BART analysis for this facility. We also agree with the NPS that the method used by the State (averaging the 98th percentile impacts of the three years instead of selecting the highest impact), is not how the threshold is typically applied and is less stringent than the FLM's preferred approach.

EPA disagrees with ADEQ's assertion that the modeling for the Nelson Lime Plant shows that the source is not causing or contributing to visibility impairment. ADEQ set the threshold at 0.5 dv, a decision with which EPA agrees for reasons explained in section IV.A.4.a above. It's unlikely that the modeling could provide a result that is precise to 1/1000th of a deciview. To say that an estimate of 0.498 dv is definitively less than 0.5 dv overburdens the modeling results. In addition, averaging the 98th percentile impacts across the three years is not the standard approach and is less conservative than the FLM-recommended approach of selecting the highest impact from among the annual 98th percentile results.

It should be noted that EPA is not making a finding that a specific control technology or any controls at all are required to satisfy BART in this case. We are finding that further analysis is needed, based on the fact that the average of the 98th percentile impacts is conceivably within the margin of error of the results, and that the highest of the three 98th percentile impacts is above the threshold. We are also finding that the commenters' arguments in favor of a three-year average are not persuasive, especially given the screening nature of the subject-to-BART test. EPA's position is that the highest 98th percentile impact is more appropriate for this test. EPA disagrees with ADEQ's characterization of a subject-to-BART determination being a threshold for action. It is screen to determine if further analysis is needed. Any regulatory requirements on the source would be the result of this full BART analysis. The subject-to-BART determination does not automatically result in additional requirements for the source.

Regarding LNA's additional modeling, it is not clear what emissions inputs or natural background conditions were used. EPA cannot evaluate results without complete information on the inputs. Also, individual year results were not provided, so it only addresses the rounding issue, since the single highest year 98th percentile criterion cannot be evaluated. Given the omission of condensables in the LNA modeling, and the lack of documentation of the model inputs and outputs, EPA does not consider LNA's results to be persuasive in showing that the source clearly does not contribute to visibility impairment.

Comment: Three commenters (LNA, Earthjustice, and NPS) responded to EPA's request for comments on whether there are cost-effective pollution controls for the Nelson Lime Plant. LNA, the owner of the plant, stated that the plant uses state-of-the-art baghouse controls to control particulate emissions from both kilns at the plant and that there are no gaseous emission controls at the plant.

Earthjustice stated that EPA's partial FIP must include a BART determination for Nelson Lime Plant. The commenter indicated that lime plants across the nation have successfully employed various pollution controls to reduce emissions, including Selective Catalytic Reduction (SCR) for NO_X, wet scrubbers for SO_2, and fabric filters for PM. The commenter opined that many of these controls will likely be cost-effective at the facility and will result in significant emissions reductions and visibility benefits compared to the existing controls.

NPS requested that, upon finding the Nelson Lime Plant is subject to BART, EPA should make a complete BART analysis available for public review and comment.

Response: EPA acknowledges the information on air pollution controls provided by LNA and Earthjustice. We plan to provide a complete BART analysis for review and comment in our upcoming FIP proposal.

c. Rillito Cement Plant

Comment: One commenter (CalPortland) agreed with EPA's proposed approval of the determination that the Rillito Cement Plant does not contribute to visibility at any Class I area and is therefore not subject to BART. The commenter noted that the Arizona RH SIP relied on modeling conducted by WRAP's RMC to determine that the average visibility impact from Rillito at Saguaro National Park is 0.4 dv (citing Table 10 in the proposal).

Response: As shown in Table 10 of our December 21, 2012, proposal, according to the WRAP RMC BART Modeling Results for Arizona, Kiln 4 at the Rillito Cement plant has a maximum 98th percentile impact of 0.48 dv at the Saguaro National Monument. This is below the 0.5 dv threshold that ADEQ used to determine which sources are subject to BART. As explained in section IV.A.4.a above, we are approving the use of that threshold. Therefore, we are finalizing our approval of the State's determination that the Rillito plant is not subject to BART.

d. Hayden Smelter

Comment: ADEQ agreed that it had erred in applying a 250 tpy threshold for PM_{10}, and noted that the correct threshold for PM_{10} is 15 tpy under 40 CFR 51.308(e)(1)(ii)(C), but asserted that EPA erred in proposing to apply the 15 tpy threshold to the aggregate PM_{10} emissions from all the BART-eligible sources at the smelter. Citing the definitions of ''BART-eligible source,'' ''existing stationary source,'' ''stationary source,'' ''building, structure or facility,'' and ''installation'' in 40 CFR 51.301, the commenter asserted that each identifiable piece of process equipment at the Hayden Smelter constitutes a separate BART-eligible source and the 15 tpy PM_{10} threshold applies to each such piece of equipment individually. ADEQ also noted that the aggregate potential to emit (PTE) for PM_{10} at the Hayden Smelter is 70 tpy, and therefore the average PTE for each BART-eligible unit is less than 15 tpy. The commenter asserted that at least some of the BART-eligible units at the plant must be exempt from BART on this basis.

[87] Under the BART Guidelines, States are permitted to require a five-factor BART analysis for all BART-eligible sources without conducting this initial screening. 40 CFR pt. 51, appendix Y, section II (''Once you have compiled your list of BART-eligible sources, you need to determine whether (1) to make BART determinations for all of them or (2) to consider exempting some of them from BART because they may not reasonably be anticipated to cause or contribute to any visibility impairment in a Class I area.'').

Response: We disagree with the commenter's assertion that, at the Hayden Smelter, the ''BART-eligible source'' can be defined at the equipment level for the purpose of exempting emission units from BART. In the Arizona RH SIP Supplement, ADEQ reiterated the position set forth in this comment. As part of our notice of proposed rulemaking on May 20, 2013, we explained why this position is inconsistent with the RHR and proposed to disapprove ADEQ's determination that the Hayden Smelter is not subject to BART for PM_{10}.[88] As part of today's action, we are finalizing our proposed disapproval of this element from both our proposals dated December 21, 2012, and May 20, 2013.

We also note, however, that despite its determination that the Hayden Smelter is not subject to BART for PM_{10}, ADEQ also included in its May 3, 2013, Supplement, a PM_{10} BART determination for the Hayden Smelter indicating that no additional controls were required as BART. We proposed to approve this determination in our May 20, 2013, notice of proposed rulemaking on the Supplement, and are finalizing that proposed approval in today's action.

Comment: One commenter (Earthjustice) agreed with EPA's proposed disapproval of ADEQ's determination that a BART analysis is not required at the Hayden Smelter for PM_{10}. Two other commenters (ADEQ and ASARCO) disagreed with the proposed disapproval.

Earthjustice pointed out that the State incorrectly exempted this smelter from BART based on PM_{10} emissions of less 250 tpy when the correct exception threshold for PM_{10} was 15 tpy once the facility had been found to be BART-eligible and subject to BART for SO_2. In contrast, ADEQ and ASARCO asserted that, despite the incorrect application of a 250 tpy threshold, the Hayden Smelter is not subject to BART for PM because its projected visibility impairment impacts are too low to warrant a BART analysis. ADEQ contended that a BART determination is not required for every pollutant emitted in amounts exceeding the exemption levels in 40 CFR 51.308(e)(1)(ii)(C).

ASARCO added that the CALPUFF model inputs used for the Hayden Smelter in the WRAP's visibility analysis were the facility's PTE values rather than high utilization emissions rates as required under the BART Guidelines. ASARCO therefore recalculated the CALPUFF model inputs using what the commenter characterized as the approach set forth in the BART Guidelines and provided the results of its revised modeling. Based on these results, ASARCO concluded that PM emissions from the Hayden Smelter are a *de minimis* contributor to visibility impairment.

Response: Based on the visibility results provided by ASARCO, we agree that the visibility impact of particulate emissions from the Hayden Smelter is below 0.50 dv. However, under the RHR, the determination of whether a source causes or contributes to visibility impairment is not made on a pollutant-by-pollutant basis.[89] Rather, as explained in the BART Guidelines, states must ''look at SO_2, NO_X, *and* direct PM emissions in determining whether sources cause or contribute to visibility impairment . . .''[90] As indicated in the Arizona RH SIP, when all of these emissions are accounted for, the Hayden Smelter has a total visibility impact greater than 0.50 dv, and is therefore subject to BART.

Once a source is determined to be subject to BART, the RHR allows for the exemption of a specific pollutant from a BART analysis only if the PTE for that pollutant is below a specified *de minimis* level.[91] Although a small pollutant-specific baseline visibility impact may be informative in determining what control option may be BART, a BART analysis is still required for any pollutant with a PTE that exceeds the *de minimis* threshold at an otherwise subject-to-BART source. As explained in the preceding response, the PTE for PM_{10} from the BART eligible units at the Hayden Smelter exceed the *de minimis* threshold of 15 tpy. Therefore, a BART analysis for PM_{10} is required.

Comment: ASARCO agreed with EPA's evaluation that the Hayden Smelter is not subject to BART for NO_X. The commenter concurred that a BART determination is not needed for NO_X emissions, which according to the commenter are less than 40 tpy. ASARCO also indicated, based on the modeling analysis presented in the previous comment, that the Hayden Smelter's visibility impacts from NO_X emissions are at most 0.01 dv and may be effectively zero. The commenter concluded from this that Hayden's NO_X emissions are not subject to BART because CAA section 169A(g)(2) mandates that the reviewing agency consider the degree of improvement in visibility that may reasonably be anticipated from the use of BART. The commenter also stated that if a BART analysis is undertaken, the commenter agrees with the conclusion in the State's RH SIP that no NO_X controls are available for primary copper smelting converter and anode furnace operations; the commenter contended that this conclusion is as applicable to BART as it was to reasonable progress goal determination.

Another commenter (Earthjustice) asserted to the contrary that EPA should disapprove ADEQ's BART determination and independently determine whether the Hayden Smelter is subject to BART for NO_X. The commenter stated that there is no discussion in the 2011 RH SIP or the proposal preamble of why this smelter is not subject to BART for NO_X, which the commenter finds unjustified and unreasonable. According to the commenter, the Hayden Smelter emits 80 tpy of NO_X based on the same WRAP modeling document relied on by EPA as the source for NO_X emissions data for the Miami Smelter. Because this is well in excess of the 40 tpy exception threshold for NO_X, the commenter requested that EPA independently determine whether the Hayden Smelter is subject to BART for NO_X and include a NO_X BART determination in the proposed FIP.

Response: As part of our proposed rulemaking on December 21, 2012, we proposed to approve ADEQ's determination that a BART analysis was not required for NO_X at the Hayden Smelter. As noted by Earthjustice, the total NO_X emission rate used by WRAP in determining the baseline NO_X visibility impact was 2.27 grams/second (g/s). This modeled emission rate, when converted to tons/year based on 8,760 hours/year of operation, equals 78.9 tpy.

Since this estimate is based on continuous operation of the BART eligible source at 2.27 g/s, we consider this to be an overly conservative estimate of NO_X PTE given the batch nature of the operations at the Hayden Smelter. However, in our review of the Hayden Smelter's current Title V permit and the Arizona RH SIP, we were unable to identify any physical or operational limitations that would limit the PTE of the BART-eligible source below the NO_X *de minimis* threshold of 40 tpy. Although the baseline NO_X visibility impact is below 0.50 dv, we note that, as explained in the response

[88] 77 FR 29302.

[89] See 40 CFR 51.308(e)(1)(ii) (requiring a BART determination ''for each BART-eligible source in the State that emits *any* air pollutant which may reasonably be anticipated to cause or contribute to *any* impairment of visibility in any mandatory Class I Federal area.'').

[90] 40 CFR part 51, appendix Y, section III. A.2, ''What Pollutants Do I Need To Consider?'' (emphasis added).

[91] 40 CFR 51.308(e)(1)(ii)(C). This provision was promulgated at the same time as the BART Guidelines. 77 FR 39104, 39156 (July 6, 2005).

to a comment regarding PM_{10} emissions from the Hayden Smelter, once a facility is determined to be subject to BART, the RHR allows for the exemption of specific pollutants from a BART analysis only if they are below specified *de minimis* levels.[92] As a result, we are today finalizing disapproval of ADEQ's determination that a BART determination is not required for NO_X at the Hayden Smelter.

e. Miami Smelter

Comment: ADEQ agreed that it had erred in applying a 250 tpy threshold for NO_X, and noted that the correct threshold for NO_X is 40 tpy under 40 CFR 51.308(e)(1)(ii)(C). However, ADEQ asserted that each BART-eligible unit at the smelter constitutes a separate BART-eligible source under the RHR and that EPA therefore erred in proposing to apply the 40 tpy threshold to the aggregate NO_X emissions from all the BART-eligible units at the smelter. ADEQ also noted that the aggregate PTE for NO_X at the Miami Smelter is 158 tpy, and therefore the average PTE for the BART-eligible sources is less than 40 tpy. The commenter asserted that at least some of the BART-eligible sources at the plant must be exempt from BART on this basis.

Response: As noted in a previous response to a similar comment about the ASARCO Hayden Smelter, we disagree with the commenter's assertion that the ''BART-eligible source'' can be defined at the equipment-level. When determining if a subject-to-BART source can be exempted from a BART analysis for a particular pollutant, the total emissions of that pollutant from all units that comprise the BART-eligible source must be compared to the *de minimis* threshold.

ADEQ reiterated in its RH SIP Supplement submitted on May 3, 2013, that the Miami Smelter was exempt from a NO_X BART determination. As discussed in our May 20, 2013, notice of proposed rulemaking on the RH SIP Supplement, we proposed disapproval of this element. As part of today's action, we are finalizing our proposed disapproval of this element from both our December 21, 2012, and May 20, 2013, proposals.

Comment: Earthjustice agreed with EPA's proposed disapproval of the State's determination that BART is not required for NO_X emissions from the Miami Smelter. Two FMMI and ADEQ took the opposite position, contending that EPA is mistaken if it based its proposed disapproval on the position that a BART determination is mandatory for any emissions of a visibility-impairing pollutant that exceed the exemption threshold. Instead, the commenters asserted that a BART determination is required only when the emissions are reasonably anticipated to cause or contribute to visibility impairment in a Class I area which, at a modeled impact of 0.11 dv, the commenters asserted is not the case for NO_X emissions from the Miami Smelter.

Response: Based on the visibility results provided by the commenters, we agree that the visibility impact of NO_X emissions from the Miami Smelter is below 0.50 dv. However, as explained in response to a similar comment regarding PM_{10} emissions from the Hayden Smelter, once a facility is determined to be subject to BART, the RHR allows for the exemption of specific pollutants from a BART analysis only if they are below specified *de minimis* levels.[93] Although a small pollutant-specific baseline visibility impact may be informative in determining what control option may be BART, a BART analysis is still required for any pollutant that exceeds the *de minimis* threshold at an otherwise subject-to-BART source. Emissions of NO_X from the BART-eligible units at Miami exceed the *de minimis* threshold of 40 tpy. Therefore, we are finalizing our proposed disapproval of ADEQ's determination that the Miami Smelter is exempt from BART for NO_X.

Comment: FMMI asserted that even if the Miami Smelter is subject to BART for NO_X, the State effectively conducted a streamlined BART determination in its RP analysis and concluded that existing controls constitute BART. According to the commenter, the State recognized that the Miami Smelter holds a PSD permit that contains Best Available Control Technology (BACT) limits for NO_x. FMMI added that the State considered the costs of compliance, time necessary for compliance, energy and non-air quality impacts of compliance and remaining useful life of Arizona's copper smelters, and concluded that no additional NO_X controls were retrofit options for this source category.

Response: We partially agree with this comment. We agree with the commenter's assertion that several elements of ADEQ's RP analysis for the copper smelters are potentially relevant and could inform a BART determination. However, neither the 2011 RH SIP nor the Supplement contained or identified a NO_X BART analysis for the Miami Smelter. As a result, we are not able to approve a streamlined NO_X BART determination of no additional controls.

Comment: FMMI also included a five-factor NO_X BART analysis in its comments. The commenter indicated that the BACT analysis for NO_X conducted in support of the Miami Smelter's 1997 PSD permit eliminated combustion modifications and selective non-catalytic reduction (SNCR) due to technical infeasibility and eliminated SCR based on economic infeasibility (costs of at least $10,000/ton of NO_X reduced).

Response: In our proposal of December 21, 2012, we did not propose a NO_X BART determination for the Miami Smelter. Rather, we proposed to disapprove ADEQ's finding that the Miami Smelter was exempt from a NO_X BART determination. We acknowledge the information provided by the commenters, and will examine it, along with similar information provided by other commenters on this issue, as we develop a proposed FIP for those elements of the Arizona RH SIP that we do not approve.

5. EPA's Evaluation of Arizona's BART Analyses and Determinations

a. BART Determination for Catalyst Paper

Comment: ADEQ commented that Catalyst Paper has now cancelled the operating permit for its permanently closed facility. Accordingly, the commenter stated that there is no reason for EPA to require Catalyst Paper to notify EPA prior to resuming operation, as proposed. The commenter added that since the plant has permanently closed, resuming operation will be treated as the construction of a new plant and will be subject to NSR, rather than BART. Two other commenters (Earthjustice and NPS also provided comments regarding the proposed approach to BART at Catalyst Paper.

Response: ADEQ submitted as Appendix B to its comments two letters regarding the Snowflake Mill at Catalyst Paper: a letter from the site manager seeking termination of the facility's operating permit and a letter from the ADEQ Air Division Director terminating the permit.[94] Both letters, as well as

[92] 40 CFR 51.308(e)(1)(ii)(C). This provision was promulgated at the same time as the BART Guidelines. 77 FR 39104, 39156 (July 6, 2005).

[93] *Id.*

[94] Letter from John Groothuizen, Site Manager at the Catalyst Paper Snowflake to Eric Massey, Director Air Quality Division, ADEQ, Re: Catalyst Paper (Snowflake) Inc Facility Closure, Title V Permit No. 46898 Termination (December 21, 2012); Letter from Eric Massey, Director Air Quality Division, ADEQ to John Groothuizen, Site Manager at the Catalyst Paper Snowflake, Re: Termination of Air Quality Control Permit No. 46898, Snowflake Paper Mill (Jan. 24, 2013).

ADEQ's comments describe the plant's closure as ''permanent.'' [95] Pursuant to long-standing EPA policy, ''reactivation of a permanently shutdown facility will be treated as operation of a new source for purposes of PSD review.'' [96] Consistent with this policy, ADEQ's comments affirm that reactivation of the Snowflake Mill ''will be treated as the construction of a new plant and will be subject to new source review.'' [97] In addition, as part of the May 3, 2013, Supplement, ADEQ revised various sections of its plan to clarify that this facility is permanently closed and that they are therefore not conducting a BART analysis.

In our notice of May 20, 2013, we proposed to approve ADEQ's decision not to include such an analysis in the SIP.[98] We did not receive any adverse comments on that proposal and we are finalizing that approval today.

b. BART Analysis and Determination for PM_{10} at Miami Smelter

Comment: Earthjustice disagreed with EPA's proposal to approve ADEQ's streamlined BART analysis for PM at the Miami Smelter, stating that a full five-factor BART analysis for PM is required. The commenter noted that the State conducted a streamlined BART analysis for PM based on the maximum achievable control technology (MACT) standard for primary copper smelters, which requires various controls limiting PM emissions as a surrogate for hazardous air pollutants. While conceding that the BART Guidelines allow, in general, a streamlined BART analysis if the source is subject to a MACT standard, the commenter asserted that the BART Guidelines require a full five-factor BART analysis in circumstances where the MACT standard likely does not represent the most stringent level of control, such as when new technologies that are likely cost-effective and more stringent are introduced after the MACT determination was made.

Response: We disagree with the commenter's assertion that a full five-factor BART analysis is required for PM_{10} at the Miami Smelter. The BART Guidelines specifically note that ''unless there are new technologies subsequent to the MACT standards that would lead to cost-effective increases in the level of control, you may rely on the MACT standards for purposes of BART.'' [99] Based on the most recent Title V permit for the facility, the maximum allowable emission rate for particulate matter at the acid plant tail gas stack, which represents emissions from the converters and acid plant, is 87.67 tpy.[100] Although this emission limit does not precisely apply to the BART-eligible source, the relatively small quantity of PM_{10} emissions from the acid plant tail gas stack indicates that large amounts of additional particulate emission reductions from the BART-eligible source are not likely. As a result, we did not identify any control options that ''would lead to cost-effective increases in the level of control.'' The commenters, similarly, have not identified any new technologies or any control options that would result in cost-effective increases in the level of particulate matter control. As a result, we continue to consider ADEQ's streamlined BART analysis for PM_{10} appropriate for the Miami Smelter, and are today finalizing our proposed approval of this element of the Arizona RH SIP.

c. BART Analyses and Determinations for SO_2 at the Hayden and Miami Smelters

Comment: One commenter (Earthjustice) supported EPA's proposal to disapprove ADEQ's BART determination for SO_2 at the Hayden and Miami Smelters, asserting that the streamlined BART determinations carried out by the State are impermissible under the BART Guidelines. Other commenters (ADEQ, ASARCO and FMMI) opposed EPA's proposed disapproval, arguing that ADEQ's analyses were consistent with all applicable legal requirements and that EPA had not demonstrated that ADEQ's approach was arbitrary or capricious. ASARCO added that EPA cannot disapprove the State's BART analysis for the Hayden Smelter on the basis that it does not comply with the BART Guidelines because the EPA has expressly stated that the BART Guidelines do not bind the states for non-electric generating units.

Response: As an initial matter, we agree that the BART Guidelines are not binding for sources other than fossil fuel-fired electric generating plants with a total generating capacity in excess of 750 megawatts.[101] However, as explained in the preamble to the BART Guidelines, EPA ''encourage[s] States to follow the guidelines for all source categories.'' [102] Moreover, the Arizona RH SIP itself indicates that ADEQ generally followed the BART Guidelines in conducting all of its BART analyses.[103] Therefore, we considered the BART Guidelines in our review of ADEQ's BART determinations. Where we found that ADEQ's analyses diverged from the BART Guidelines, we did not consider this as a cause for disapproval *per se,* but as an indication that we needed to perform a more thorough review of the analyses.

The CAA and the RHR require BART to be determined based upon an analysis of five 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.[104] ADEQ did not conduct such a five-factor analysis for SO_2 at either of the copper smelters, but instead chose to conduct ''streamlined'' analyses relying on the 1974 New Source Performance Standard (NSPS) for primary copper smelters at 40 CFR part 60, subpart P. While the BART Guidelines allow for streamlined analyses under specific circumstances (e.g., for VOC and PM sources subject to MACT standards), they also note that ''we do not believe that technology determinations from the 1970s or early 1980s, including new source performance standards (NSPS), should be considered to represent best control for existing sources, as best control levels for recent plant retrofits are more stringent than these older levels.'' [105] The Guidelines also explain that ''[a]nalysis of the BART factors could result in the selection of a NSPS level of control, *but you should reach this conclusion only after considering the full range of control options.''* [106] Accordingly, ADEQ's streamlined

[95] *Id.;* ADEQ Comments at page 12.

[96] In re Monroe Electric Generating (Petition No. 6–99–2), EPA Order Partially Granting and Partially Denying Petition for Objection to Permit at 8 (June 11, 1999).

[97] ADEQ Comments at page 12.

[98] 77 FR 29304.

[99] 40 CFR Part 51, Appendix Y, Section IV.C.

[100] ADEQ Title V Permit 53592, issued 2012–11–26.

[101] See 40 CFR part 51, appendix Y, section I.H (''For sources other than 750 MW power plants . . . States retain the discretion to adopt approaches that differ from the guidelines.''

[102] 70 FR 39104, 39108 (July 6, 2005).

[103] See, e.g., Arizona RH SIP, Appendix D at 33–39 (explaining Arizona's approach to it five-factor analyses and how it corresponds to the process set out in the Guidelines).

[104] CAA section 169A(g)(2), 40 CFR 51.308(e)(1)(ii)(A). The RHR also allows states to adopt an emissions trading program or other alternative program instead of source-specific BART controls, as long as the alternative provides greater reasonable progress towards improving visibility than BART. 40 CFR 51.308(e)(2). However, this ''better than BART'' approach was not employed by ADEQ and is not relevant here.

[105] 40 CFR part 51, appendix Y, section IV.C.

[106] *Id.* section IV.D.1., n. 13 (emphasis added).

analysis based on the NSPS of 1974 is inconsistent with the general statutory and regulatory requirement for a complete five-factor analysis and with the BART Guidelines' admonition that NSPS should be selected as BART only after a complete five-factor analysis.

Moreover, even if a streamlined analysis were appropriate in this instance, ADEQ should have considered whether any new technologies had become available subsequent to the NSPS.[107] As part of its streamlined analysis, ADEQ did examine the RBLC[108] and found that no emission limitation or air pollution control devices have been approved for copper smelters for sulfur oxides since the installation of the double-contact acid plant in 1974. However, in order to determine whether new technologies have become available, ADEQ should have looked more broadly at other sources of information.[109] In particular, acid plant catalyst vendor information and industry trade journals indicate that a number of advances in acid plant catalyst technology have been made since promulgation of Subpart P in 1974, including development of cesium-promoted catalyst as well as certain enhancements to standard potassium-promoted catalysts.[110] [111] [112] These improvements to acid plant catalysts have the ability to increase conversion rates of SO_2 to SO_3 in the acid plant, resulting in decreased SO_2 emissions.[113] [114] Accordingly, ADEQ should have considered whether any such improvements could be made at the Hayden and Miami acid plants. Without even considering such potential improvements, it was not reasonable for ADEQ to conclude that the existing acid plant at each facility constitutes the most stringent control available and to thus avoid performance of a complete five-factor analysis.[115] In sum, because ADEQ performed neither a full five-factor analysis nor an adequate streamlined analysis for SO_2 at the Hayden and Miami Smelters, we find that its determinations do not comply with CAA section 169A(g)(2) and 40 CFR 51.308(e)(1)(ii)(A).

Comment: ASARCO and FMMI asserted that there are substantial technical and operational differences between sulfur-burning and other acid-producing plants and metallurgical plants used for emissions control, and there is no technical basis for seeking to compare metallurgical acid plant conversion efficiencies to such other plants. ASARCO also asserted that there are considerable differences between metallurgic acid plants at lead and zinc smelters, primarily as a result of the concentration of SO_2 at the acid plant inlet.

Response: While we appreciate the information provided by the commenters, we find it is insufficient to rule out the consideration of other acid plants in the BART analyses for the copper smelters. We note that, with respect to identification of available controls, the BART Guidelines indicate that, ''control alternatives can include not only existing controls for the source category in question but also take into account technology transfer of controls that have been applied to similar source categories and gas streams.'' [116] In this case, all sulfuric acid plants, whether elemental sulfur, spent acid, or metallurgical, utilize the contact process to manufacture sulfuric acid. That is, *all plants* use the same equipment and the same technology to convert SO_2 to sulfuric acid—the same converters, catalyst, and absorbing towers. Also, all sulfuric acid plants utilize the same pollution control technology. In dual absorption contact plants, maximization of catalyst loading and updates to catalyst, including the use of cesium promoted catalyst in the fourth pass of the converter, is demonstrated as being very effective at reducing SO_2 emissions. The efficacy of catalyst improvements is independent of whether the sulfuric acid plant is attached to a copper smelter.

The difference between primary sulfuric acid plants and metallurgical sulfuric acid plants is the source of the SO_2 coming into the acid plant and the front-end equipment necessary to prepare the SO_2-rich gas to be introduced to the converter. The commenters assert that there is variation in the concentration SO_2 gas feed to their sulfuric acid plant converters. However, the fact that the Hayden and Miami Smelters successfully operate dual absorption sulfuric acid plants demonstrates that they can handle variations in SO_2 concentration. So long as this is the case, these plants would be expected to achieve cost-effective SO_2 emissions reductions through catalyst improvements. In order to assess what improvements may be achievable at the copper smelters, it is appropriate to look to what degree of control has been achieved at other acid plants. Therefore, we do not agree that it was reasonable for ADEQ not to evaluate the emissions levels achieved at primary sulfuric acid plants in the State's SO_2 BART analyses for the Hayden and Miami Smelters.

Comment: ASARCO disagreed with EPA's suggestion that ADEQ did not analyze whether the acid plant at the Hayden Smelter was operating at an optimal control level in establishing the double contact acid plant as BART.

ASARCO asserted that EPA's suggestion that its acid plant may be able to achieve higher levels of control than the NSPS was made without any technical support. It argued that EPA had not pointed to any change in technology or practice that would make irrelevant the technical considerations that drove the NSPS subpart P conclusions.

Response: The NSPS for primary copper smelters was issued approximately four decades ago. As noted in a previous response, significant improvements have been made to catalyst technology, computerized process control, and continuous process monitoring since that time. For these reasons, we find that higher levels of control may well be achievable in practice. Nonetheless, we are not finalizing any additional requirements or any particular level of control in today's action. We will consider these comments as we develop a FIP proposal including a BART analysis for the Hayden Smelter.

[107] 40 CFR part 51, appendix Y, section IV.C.

[108] The Reasonably Available Control Technology (RACT)/Best Available Control Technology (BACT)/Lowest Achievable Emission Rate (LAER) Clearinghouse. The RBLC is a database of control technology determinations and emission limits established in construction permits issued by state and local agencies.

[109] See the BART Guidelines 40 CFR part 51, appendix Y, section IV.D (listing various sources of information regarding control options, including the RBLC, State and Local Best Available Control Technology Guidelines, control technology vendors; NSR permits and associated inspection/performance test reports; environmental consultants; and technical journals, reports and newsletters, air pollution control seminars).

[110] ''Improving Sulfuric Acid Plant Performance,'' AIChE Clearwater Convention 2011, Phosphate Fertilizer and Sulfuric Acid Technology Conference.

[111] ''VK Series sulphuric acid catalysts'', Haldor Topsoe.

[112] Winkler, Chris ''MECS Catalyst Products and Technical Services Update'', The Southern African Institute of Mining and Metallurgy, Sulphur and Sulphuric Acid Conference 2009.

[113] ''Meeting future SO_2 emission challenges with Topsøe's new VK–701 LEAP5™ sulphuric acid catalyst'', Haldor Topsoe.

[114] Malevu, Siyabonga ''J Acid Plant Capacity Increase'', The Southern African Institute of Mining and Metallurgy, Sulphur and Sulphuric Acid Conference 2009.

[115] See BART Guidelines section IV.D.1. (''If you find that a BART source has controls already in place which are the most stringent controls available (*note that this means that all possible improvements to any control devices have been made*), then it is not necessary to comprehensively complete [a full five-factor analysis]''.

[116] See BART Guidelines, 40 CFR part 51, appendix Y, section IV.D. As explained elsewhere in this document, although the Guidelines are not binding for copper smelters, EPA recommends their use for all source categories.

Comment: ASARCO stated that the company's experts were not able to identify any control technology that would result in more substantial SO_2 emission reductions than the present double absorption, double contact acid plant at the Hayden Smelter. The commenter indicated that replacement of the five existing variably-sized converters with three identically-sized converters to allow more balanced operation could result in decreased SO_2 emissions, but asserted that changing the Hayden Smelter from a five-converter operation to a three-converter operation constitutes a redesign of the source, which is not required as BART.

Response: We agree that replacing the converters would constitute fundamental redesign of the source and is not required as BART. However, before concluding that the existing controls constitute BART, it is necessary to consider not only whether there are any new control technologies are available, but also whether there are any improvements that could be made to the operations of existing equipment, the capture of process emissions, and the control of captured emissions. ADEQ did not consider any such improvements in its streamlined analysis.

Comment: Three commenters (FMMI, ADEQ and ASARCO) asserted that NSPS subpart P's limit on SO_2 emissions from primary copper smelters was designed and intended to apply to emissions controlled by a double-contact acid plant. The commenters stated that the NSPS does not apply to emissions that are not susceptible to acid plant control such as fugitives and secondary converter emissions.

Response: As explained elsewhere in this document, we are disapproving ADEQ's SO_2 BART determinations for the Hayden and Miami Smelters because they are not based on a complete five-factor analysis or an adequate streamlined analysis. Therefore, the applicability of the NSPS subpart P emission limit is not directly relevant to our action today. We will take these comments into consideration as we prepare to propose a FIP that will include SO_2 BART analyses and determinations for the Hayden and Miami Smelters.

Comment: FMMI indicated that the Miami Smelter has been evaluating potential additional SO_2 controls in preparation for the State's revised SIP to demonstrate compliance with the recent one-hour SO_2 NAAQS, resulting in the preliminary conclusion that the only possible additional controls involve upgrades to the scrubbing system and the capture of fugitive SO_2 emissions for treatment in a scrubber. The commenter asserted that while some such measures may ultimately be necessary to achieve the one-hour NAAQS, the costs and possibly the degree of visibility improvement would not justify these controls as BART.

Response: In our December 21, 2012 proposal we did not propose an SO_2 BART determination for the Miami Smelter. Rather, we proposed to disapprove ADEQ's streamlined SO_2 BART analysis. We acknowledge the information provided by the commenters, and will consider it, along with similar information provided by other commenters on this issue, as we develop a proposed FIP for those elements of the SIP that we do not approve.

Comment: FMMI commented that EPA should consider the forthcoming Arizona SIP revision to address the new one-hour SO_2 NAAQS, as part of EPA's proposed action on ADEQ's BART determination for the Miami Smelter. The commenter noted that ADEQ has determined that the Miami Smelter is the only major source of SO_2 in the proposed Miami one-hour SO_2 nonattainment area. As a result, all reductions in SO_2 emissions necessary to bring the Miami area into attainment must be accomplished by the Miami Smelter by 2018. The commenter noted that this timing is consistent with the 2018 milestone year adopted by EPA in the RHR and adopted by Arizona in its RH SIP. Given these parallel timing requirements and EPA's past practice of allowing entities several years to install BART controls, the commenter requested that EPA give this alternative compliance approach due consideration.

Response: We recognize that there are potentially similar timing requirements between BART and complying with the one-hour SO_2 NAAQS, and that some of the measures planned for attaining the NAAQS may also affect the BART-subject units at the Miami Smelter. At this time, we have not received information related to the State's SO_2 SIP revisions. In the event that we receive such information, we will consider it as we work toward proposal of a FIP.

d. Compliance Provisions for Hayden and Miami Smelters

Comment: FMMI and ASARCO disagreed with EPA's finding that the Arizona RH SIP lacks adequate compliance provisions. FMMI contended that the controls and limits determined to be BART are already in place and currently enforceable. It noted that, to the extent that the State's BART determinations are based on NESHAP or NSPS requirements, these requirements are, by definition, ''federally enforceable.'' These and other requirements, including those necessary to ensure compliance (e.g., testing, monitoring, recordkeeping and reporting) with the limits identified as BART are also included in the source's permit as conditions, which are likewise federally enforceable. The commenter also indicated that because the source is currently required to maintain the controls determined to be BART, and has established and must comply with procedures to ensure that the equipment is properly operated and maintained, the EPA's concerns in this area also appear unwarranted.

Response: As explained in our proposal, Regional Haze SIPs must include requirements to ensure that BART emission limits are enforceable.[117] In particular, the RHR requires inclusion of (1) a schedule for compliance with BART emission limitations for each source subject to BART; (2) a requirement for each BART source to maintain the relevant control equipment and (3) procedures to ensure control equipment is properly operated and maintained.[118] General SIP requirements also mandate that the SIP include all regulatory requirements related to monitoring, recordkeeping and reporting for the BART emissions limitations.[119] While some of the required compliance provisions may be contained in the Hayden and Miami Smelters' Title V permits, these provisions are not incorporated into the applicable SIP. Likewise the SIP contains no compliance schedules or requirements or procedures to ensure that the control equipment is properly operated and maintained. Therefore, we find that the SIP does not meet the requirements of 40 CFR 51.212(c) and 51.308(e)(1)(iv) and (v).

6. EPA's Evaluation of Arizona's Reasonable Progress Goals

a. Reasonable Progress Goals for the Best Days

Comment: ADEQ expressed support for EPA's proposed determination that the modeled increase in visibility impairment at IMPROVE monitors CHIR1 and SAGU1 is not a concern. The commenter added that this determination is supported by the analysis supplied in a November 21, 2011, letter from Eric Massey of ADEQ

[117] 77 FR 75725–75726 (internal citations omitted).

[118] 40 CFR 51.308(e)(1)(iv), (v).

[119] See, e.g. CAA section 110(a)(2)(F) and 40 CFR 51.212(c).

to Deborah Jordan, which the commenter attached as Appendix C to the comments.

In contrast, Earthjustice found fault with EPA's statement that it is not overly concerned with the modeling results, which the commenter characterized as downplaying the projected visibility degradation at these two monitors that represent four Class I areas. The commenter stated that the evidence cited by EPA regarding improvement in visibility on the worst days provides no support for the conclusion that visibility would correspondingly improve on the best days. The commenter also asserted that while visibility at these four Class I areas may be better than ADEQ's modeling predicts because the State did not take into account EPA's BART FIP for three coal-fired power plants in Arizona, EPA cannot dismiss modeling that shows visibility degradation simply based on speculation that the model may not be accurate. The commenter expressed support for EPA's proposed disapproval of ADEQ's RPGs for the 20 percent best visibility days because, contrary to the requirements of the RHR, visibility at four Class I areas represented by these two monitors is projected to be degraded under the Arizona RH SIP.

Response: EPA acknowledges ADEQ's support on this issue. The analysis provided in the November 21, 2011, letter was helpful. Table 14 of the Supplemental TSD was also helpful in demonstrating that the model's prediction of increased impairment from fine soil is not supported by the monitoring data. Nonetheless, we wish to clarify that a lack of degradation does not necessarily constitute reasonable progress for the best days. In addition to ensuring no degradation for the 20-percent best days, a state's RPGs must be based on an analysis of the four RP factors when setting these goals: costs of compliance, time necessary for compliance, energy and non-air quality environmental impacts, and the remaining useful life of potentially affected sources.[120] As described elsewhere in this document, we have determined that ADEQ has not conducted an adequate four-factor analysis in support of its RPGs. In addition, ADEQ's RPGs rely on emission reductions from BART determinations for which there are no enforceable emissions limitations in the applicable SIP. Therefore, we are finalizing our proposed disapproval of ADEQ's RPGs for the 20-percent best days.

With regard to Earthjustice's concern, we note that we are not dismissing the modeling results. Rather, we are considering these results in the context of additional information and analysis that has been developed since the modeling was performed. In particular the emissions inventory upon which the modeling was based was completed before the nationwide recession that began in late 2008. The inventory was updated in 2009 with more up-to-date data on projected emissions from electric generating units, but many source categories that are sensitive to economic growth projections were not updated.

b. Reasonable Progress Goals for the Worst Days

Comment: ADEQ indicated that EPA failed to recognize the ''wide latitude'' and ''considerable flexibility'' afforded to states by the CAA and the RHR in its review of the State's analysis and RPGs,[121] instead substituting its own judgment for the State's. The commenter asserted that the 2011 RH SIP includes an analysis that considers the four statutory factors and provides a reasoned basis for excluding various emission sources from consideration for additional controls in establishing the State's initial RPGs. The commenter added that while the proposal asserts that a number of the elements of the State's RPG analysis lacked ''adequate'' analysis or included ''insufficient'' information, the proposal is short on specifics and fails to identify any requirement of the CAA or RHR that the State has violated. CalPortland similarly asserted that EPA failed to adequately explain why Arizona's RP analysis is insufficient.

Response: While the CAA and the RHR do provide considerable flexibility to states in setting RPGs, they also provide specific requirements that must be met in order for the RPGs to be approved. In particular, both the CAA and the RHR require states to consider four factors when setting RPGs: costs of compliance, time necessary for compliance, energy and non-air quality environmental impacts, and the remaining useful life of potentially affected sources.[122] In addition, because Arizona's RPGs provide for a rate of improvement slower than the URP, the RHR requires the State to demonstrate why its RPGs are reasonable and why a rate of progress leading to natural visibility conditions by 2064 is not reasonable.[123] The Arizona RH SIP does not meet these requirements.

In conducting its RP analysis, ADEQ elected to focus on point and area sources of SO_2 and NO_X.[124] ADEQ then identified several categories of sources with significant NO_X and SO_2 emissions.[125] However, in most instances, ADEQ did not conduct a four-factor analysis of sources in these categories. For example, with respect to boilers (including non-BART electric generating units), the SIP states, ''it is not possible to complete a exhaustive facility-by-facility review to evaluate each unit and therefore no further analysis was conducted.'' [126] Thus, the SIP contains no four-factor analysis of the very sources that the State has identified as potentially contributing to visibility impairment.[127]

Accordingly, we find that the Arizona RH SIP does not meet the requirements of 40 CFR 51.308(d)(1)(i)(A) and (ii) with respect to point and area sources of NO_X and SO_2. Nonetheless, as explained elsewhere in this document, we have conducted our own four-factor analysis for point sources of SO_2 and have concluded that it is reasonable not to require additional controls for this source category during this planning period. Therefore, we are approving the State's decision not to require additional controls for SO_2 emissions from point sources for this planning period.

Comment: CalPortland noted that Arizona, in conjunction with WRAP, conducted an extraordinarily detailed and thorough RP analysis for each Class I area that identified and analyzed existing emission sources, the rate of progress needed to attain natural visibility conditions, pollutant-specific contributions to regional haze, and reasonable controls. The commenter added that the data developed by WRAP has been relied on in several other SIPs, has been reviewed and approved by EPA and, as EPA has agreed, should be considered in EPA's review of Arizona's SIP.

CalPortland also indicated that the results of Arizona's thorough analysis demonstrate that significant progress is being made. According to the commenter, the 2011 RH SIP indicates

[120] 40 CFR 51.308(d)(1)(i)(A).

[121] Citing EPA's *Guidance for Setting Reasonable Progress Goals Under the Regional Haze Program* at 4–2 (June 1, 2007) (''RP Guidance'').

[122] CAA section 169A(g)(1), 42 U.S.C. 7491(g)(1). 40 CFR 51.308(d)(1)(i)(A).

[123] 40 CFR 51.308(d)(1)(ii).

[124] Arizona RH SIP Section 11.3.1 (Supplement, page 47).

[125] See Arizona's RH SIP Tables 11.2 and 11.3.

[126] Arizona RH SIP Section 11.3.3 (Supplement, page 50).

[127] The Arizona RH SIP Supplement does contain a four-factor analysis for NO_X PCC. However, as explained elsewhere in this document, this analysis is inadequate to meet the requirements of 40 CFR 51.308(d)(1)(i)(A), since it does not include an accurate assessment of the four reasonable progress factors.

that anthropogenic emissions of NO_X and SO_2 will decrease by 39.4 and 29.6 percent, respectively, by 2018. The commenter asserted that the proposal to disapprove Arizona's RP analysis subjects Arizona to a higher standard for reasonable progress demonstrations than EPA has approved, and promulgated itself, for other states. In particular, CalPortland stated that Arizona's analysis for Saguaro National Park compares favorably to the approved approaches taken by New Mexico and California, and with the approach taken by EPA for the Hawaii FIP.

Regarding New Mexico, CalPortland noted that even though the State's Class I areas were not projected to meet the URP, EPA approved the State's RP analysis because uncontrollable sources such as natural wildfires, wind-blown dust, and emissions from Mexico were significant contributors to regional haze.[128] The commenter pointed out that these same uncontrollable sources are significant contributors to regional haze in Arizona and the major impediment to meeting the URP at Saguaro National Park.

CalPortland added that EPA also approved California's RP analysis even though the State's Class I areas did not all meet the URP. The commenter reproduced a 17-line paragraph that it asserted was the full extent of California's RP analysis for 35 facilities that emit more than 100 tons per year of SO_x in the California Coastal sub-region. In addition, the commenter reproduced a paragraph that was purported to be the entire four-factor analysis for NO_X point sources in Hawaii. Given that these RP analyses were deemed adequate by EPA, the commenter asserted that it would be inconsistent to conclude that Arizona's ''thorough and accurate'' RP analysis is insufficient.

Response: EPA agrees that the technical work conducted by the WRAP for the emissions inventory, natural conditions estimates and IMPROVE monitoring data analysis was of appropriate technical quality to meet the requirements of the RHR. We also concur that significant progress in reducing NO_X and SO_2 emissions is projected by 2018. However, as detailed in section IV.B.2 of this document, Arizona did not provide an adequate four-factor analysis as required by the RHR.

EPA disagrees with the commenter's assertion that we are holding Arizona to a higher standard than other states. As described elsewhere in this rule, EPA finds that Arizona's RP analysis was not adequate to comply with the requirements of the RHR. This determination is not inconsistent with our findings in New Mexico, California and Hawaii.

In the case of New Mexico, the State's plan [129] provided a more complete analysis of the four factors than was found in the Arizona RH SIP. New Mexico's analysis fully incorporated the work performed by WRAP and included an additional four-factor analysis for select refinery sources. The New Mexico SIP also provided a RP analysis for individual Class I areas, addressing the requirement for additional analysis when the URP is not projected to be met.

Moreover, the commenter is making an incomplete presentation of the RP analysis in the California RH SIP. Chapter 4 of California's RH SIP [130] provides a detailed state-wide four-factor analysis as well as a region-by-region assessment of the reasonableness of additional controls. Another key difference between California and Arizona is that California's point sources are well controlled because nearly all are in areas that exceed state and Federal standards for ozone and/or $PM_{2.5}$.[131] In addition, California's on-road mobile sources are subject to State requirements that exceed the Federal requirements in Arizona.[132] These facts were all key factors in EPA's evaluation of California's RP analysis. Similarly, the commenter has mischaracterized the nature of the four-factor analysis in the Hawaii RH FIP. The quoted section covered only a small part of the RP analysis for Hawaii.[133] In addition, the situation in Hawaii is not comparable with any other regional haze plan in the United States. The visibility impairment on the worst 20 percent of days is dominated by sulfur emissions from natural and man-made sources.[134] Due to the highly variable nature of volcanic sulfur emissions, it was not practicable to perform photochemical grid modeling to set RPGs.[135] As a result, the Hawaii-specific method of gauging reasonable progress that was used makes any comparisons with Arizona inappropriate.[136]

Comment: Earthjustice supported EPA's proposal to disapprove the State's RPGs for the 20 percent worst visibility, since the State did not explain why the 2064 natural visibility goal is unreasonable at Arizona's Class I areas, nor how the State's RPGs could possibly be reasonable. Earthjustice also argued that even if the State had attempted to defend its RPGs, EPA's disapproval would be well justified, since a RH SIP that attempts to transform the RHR's 50-year compliance window into a 125-year to 8,370-year compliance window is unreasonable and legally indefensible.

Response: EPA acknowledges the supportive comments. We agree that the State failed to meet the requirements of 40 CFR 51.308(d)(1) in that the State failed to fully demonstrate, using the four factors required for a RP analysis, why its goals are reasonable. EPA notes, however, that the State is not required to provide a plan that demonstrates elimination of anthropogenic visibility impairment by 2064. Rather, as noted above, the RHR requires the State to demonstrate why its RPGs are reasonable and why a rate of progress leading to natural visibility conditions by 2064 is not reasonable.[137] As explained above, EPA has determined that Arizona's SIP does not meet this requirement and that further analysis is required to determine whether there are any additional cost-effective controls that could reasonably be required in this planning period.

Comment: Earthjustice supported EPA's proposal to disapprove the State's determination that no RP controls are necessary or reasonable on non-BART sources, but disagreed with EPA's proposal to approve the State's determination that RP controls are not necessary for certain source categories, arguing that it is premature to exempt any source category from RP controls until EPA knows what emissions reductions will be necessary to maintain the glide path to natural visibility by 2064.

Specifically, Earthjustice supported EPA's proposed disapproval of the State's conclusion that it would be unreasonable: (1) To reduce coarse mass or fine soil emissions from any sources, (2) to require any emissions reductions

[128] Citing 77 FR 36044 and 77 FR 70693.

[129] ''New Mexico State Implementation Plan Regional Haze Section 309(g)'', New Mexico Department of Environmental Quality, Revised March 31, 2011. See Chapter 11 and Appendices E and F (*http://www.nmenv.state.nm.us/aqb/reghaz/NMRegionalHazeandInfrastructureSIP submittals.htm*).

[130] California Regional Haze Plan submitted to EPA on March 16, 2009, Sections 4.6–4.7.

[131] California Regional Haze Plan, Sections 4.3 and 4.7.

[132] California Regional Haze Plan, Section 4.2.1.

[133] See Hawaii RH FIP proposal, May 29, 2012, 77 FR 31707–31712 and Hawaii RH FIP final rule, October 9, 2012, 77 FR 61489–61493.

[134] See ''Technical Support Document for the Proposed Action on the Federal Implementation Plan for the Regional Haze Program in the State of Hawaii'', Air Division, U.S. EPA Region 9, May 14, 2012, sections II.A.3 and II.B.3.

[135] See 77 FR 31707.

[136] See 77 FR 31708.

[137] 40 CFR 51.308(d)(1)(ii).

from area sources, and (3) to reduce NO_X emissions from point sources, but disagreed with EPA's proposal to approve the State's conclusion that no reductions in VOC or primary organic aerosol emissions are necessary across the State, and that no reductions are necessary from mobile sources, fire, and SO_2 point sources.

Response: EPA acknowledges the commenter's support for our proposed disapproval of the State's determination that no controls on non-BART sources are required to provide for reasonable progress. However, it is important to emphasize that the State's plan is not required to provide for a uniform rate of progress toward the goal of zero anthropogenic visibility impairment at Class I areas. Calculation of the URP is an analytical requirement for setting RPGs, but the URP does not constitute a presumptive target.[138]

Regarding the comment that it is premature to determine that no additional controls are required on some sources, EPA finds that our four-factor analyses, along with the information provided by the State, are sufficient to conclude that it is not reasonable to impose additional air pollution controls on the following source categories for the purposes of ensuring reasonable progress: mobile sources, primary organic aerosol sources, VOC sources and point sources of SO_2. The determination of whether additional controls are required is to be made using the four factors specified in the RHR.[139] The commenter does not provide any evidence that additional reasonable, cost-effective controls are available for these sources with the exception of Springerville power plant. EPA's response to these facility-specific comments may be found elsewhere in this rule.

Comment: PCC asserted that EPA is inappropriately applying to non-BART sources the standards that apply to BART sources. The commenter questioned this interpretation both generally and to the extent that EPA applies the interpretation to the PCC's plant, arguing that EPA should maintain a meaningful distinction in practice between control technology determinations required for BART sources and reasonable progress evaluations.

Response: EPA disagrees with the commenter's assertion that we are applying BART standards to non-BART sources. In reviewing Arizona's RP analysis, we have applied the requirements of 40 CFR 51.308(d)(1), not the BART requirements in 40 CFR 51.308(e)(1). As explained elsewhere in this document, we have concluded that Arizona's analysis of NO_X controls on point source does not meet these requirements. We are therefore disapproving the State's determination that it is not reasonable to require additional controls on point sources of NO_X during this planning period.

EPA acknowledges the commenter's assertion that we should maintain a meaningful distinction between BART and non-BART sources when making control technology determinations. However, we also note that there is substantial overlap in the statutory and regulatory requirements applicable to BART and non-BART sources. In particular, the CAA and the RHR require consideration of the costs of compliance, the energy and non-air quality environmental impacts of compliance and the remaining useful life of the source for both BART and non-BART sources.[140] In addition, the ultimate purpose of requiring controls for both types of sources is to achieve reasonable progress toward the national goal of eliminating man-made visibility impairment.[141] Therefore, it is appropriate for analyses of potential controls for non-BART sources to resemble BART analyses in many respects.

Comment: NPS asserted that additional emission controls should be required at Cholla Unit 1 in order for Arizona to achieve reasonable progress. While conceding that the RP analysis differs from the BART analysis, the commenter indicated that there is also substantial overlap between these analyses and it can be informative to consider relevant BART guidance and examples in conducting RP analyses. Accordingly, the commenter analyzed the cost-effectiveness of potential additional SO_2 and NO_X controls for Cholla Unit 1. Based on these analyses the commenter argued that EPA should consider requiring the replacement of or upgrades to the existing wet flue gas desulfurization (FGD) scrubber for SO_2 control and installation of an SCR system for NO_X control.

Response: We agree with NPS that BART guidance and examples can be helpful for estimating the cost of controls as part of an RP analysis.[142] However, the analyses performed by NPS are not entirely consistent with the BART Guidelines. In particular, NPS provided a cost analysis indicating that the cost-effectiveness of a new FGD system is $1,320 per ton, based on an uncontrolled baseline emission rate that does not reflect the effect of the existing wet lime FGD at Cholla Unit 1. This approach is inconsistent with the BART Guidelines, which provide that, for purposes of calculating the costs of compliance:

> The baseline emissions rate should represent a realistic depiction of anticipated annual emissions for the source. In general, for the existing sources subject to BART, you will estimate the anticipated annual emissions based upon actual emissions from a baseline period.[143]

Accordingly, the baseline emissions rate for Cholla Unit 1 should reflect use of the existing wet lime FGD, which is more than 30 years old, but continues to operate effectively.[144] Based on this more accurate baseline, we estimate that the cost-effectiveness of a new scrubber would be over $20,000/ton.[145]

Although the existing wet FGD was upgraded in 2007, the scope and precise nature of the upgrades are unclear. Therefore, we have included wet FGD upgrades as a control option in our SO_2 cost-effectiveness calculations. Based on these calculations, we estimate that upgrades to the wet FGD would cost more than $5,200/ton and result in emissions reductions of less than 250 tons per year.[146] Given the significant reductions in point source SO_2 emissions achieved through ADEQ's BART determinations in this planning period,[147] we find that it was reasonable for ADEQ not to require additional SO_2 controls for Cholla 1 as a reasonable progress measure. However, such controls may be necessary in the next planning period to ensure continued progress toward eliminating anthropogenic visibility impairment.

In addition, the commenter provided estimates of visibility improvement and

[138] See 64 FR 35730–35731.

[139] 40 CFR 52.308(d)(1)(i) and (ii).

[140] CAA section 169A(g)(1) and (2), 42 U.S.C. 7491(g)(1) and (2); 40 CFR 51.308(d)(1)(i)(A) and (e)(1)(ii)(A). See also RP Guidance pages 5–1 and 5–3 (referring to the BART Guidelines for guidance on how to apply these factors to non-BART sources).

[141] CAA section 169A(b) (2), 42 U.S.C. 7491(b)(2).

[142] See, e.g. RP Guidance page 5–1 (''For additional guidance on applying the cost of compliance factor to stationary sources, you may wish to consult the BART guidelines.'').

[143] BART Guidelines, 40 CFR Part 51, Appendix Y, section IV.D.4.d.1.

[144] Under Section II.D.1.a of Cholla's Title V Permit (2012) the existing wet FGD is required to achieve at least 80 percent SO_2 removal efficiency. As a point of comparison, the BART Guidelines recommend that states consider upgrading, rather than replacing, existing scrubbers that achieve greater than 50 percent removal.

[145] See ''Cholla 1 SO_2 costs.xls''.

[146] *Id.*

[147] See Arizona RH SIP, page 67, Table 8.1 (projecting 28.81 percent reduction in annual point source SO_2 emissions between 2002 and 2018); Arizona RH SIP Supplement, page 5, Table 8 (showing reduction in annual point source SO_2 emissions of 15,700 tpy between 2002 and 2008).

cost-effectiveness for NO_X control options such as SCR. At this time, we are finalizing a disapproval of ADEQ's finding that no RP controls for NO_X at point sources are reasonable. However, we have not proposed any NO_X controls for any point sources as a RP measure. We will consider the information submitted by the commenter as we work towards proposing a FIP.

Comment: TEP agreed with EPA's conclusion that it is not reasonable to require additional SO_2 controls on Springerville Units 1 and 2. Two commenters (Earthjustice and NPS) disagreed with EPA's conclusion. TEP stated that Springerville Units 1 and 2 are equipped with dry FGD systems for SO_2 control, which operate at greater than 90-percent control efficiency, and both systems were upgraded as recently as 2006 reducing the emission rate from these units to between 0.17 and 0.26 lb/MMBtu on an annual average basis. The commenter asserted that EPA's estimate of $17,000 to $22,000/ton to install additional controls is far beyond any reasonable threshold for cost-effectiveness, noting that EPA used an initial screening level of $5,000 per ton to gauge cost-effectiveness. The commenter expressed the belief that a cost per ton of pollutant removed below this screening level could very well be not cost-effective, and encouraged EPA to refrain from applying a generalized cost-effectiveness threshold. The commenter added that cost-effectiveness should be considered on a site-specific basis and be weighed in reference to the other factors.

NPS asserted that additional emission controls should be required at Springerville Units 1 and 2 in order for Arizona to achieve reasonable progress. While conceding that the RP analysis differs from the BART analysis, the commenter indicated that there is also substantial overlap between these analyses and it can be informative to consider relevant BART guidance and examples in conducting RP analyses. Accordingly, the commenter analyzed the cost-effectiveness and visibility benefits of potential additional SO_2 and NO_X controls for Springerville Units 1 and 2. Based on these analyses, the commenter argued that EPA should consider requiring the replacement of or upgrades to the existing scrubbers for SO_2 control and installation of an SCR system for NO_X control.

Earthjustice noted that Springerville is the second largest source of SO_2 emissions in Arizona, and commented that it is premature for EPA to conclude that controls should not be required at this source before it knows what emissions reductions will be necessary to ensure reasonable progress. The commenter argued that EPA's assumption that wet FGD would reduce existing SO_2 emissions from 0.21 lb/MMBtu at Unit 1 and 0.18 lb/MMBtu at Unit 2 down to 0.06 lb/MMBtu at both units was overly conservative and that power plants across the nation have achieved 0.04 lb/MMBtu or lower SO_2 emission rates with wet FGD and upgrades to existing dry scrubbers. The commenter also argued that EPA's cost estimates were inflated by various factors, such as use of a 7-percent interest rate and a 20-year estimated life and amortization period. Based on these points, Earthjustice urged EPA to delay determining whether RP controls are warranted at Springerville Units 1 and 2 until after (1) EPA knows what emissions reductions will be necessary to achieve reasonable progress and maintain the glide path to the 2064 natural visibility goal, and (2) EPA obtains more accurate cost-effectiveness information for wet FGD at the units.

Response: As noted in our response regarding Cholla Unit 1 above, we agree with NPS that the BART Guidelines can be helpful for estimating the cost of controls as part of an RP analysis.[148] Among other things, the BART Guidelines recommend use of a baseline emissions rate that represents a realistic depiction of anticipated annual emissions, which generally may be determined from actual emissions from a baseline period.[149] In this case, the baseline emissions rate for Springerville Units 1 and 2 should reflect use of the existing dry FGD systems. The average cost-effectiveness of a new dry FGD system based on the units' existing baselines is approximately $16,000/ton and $19,000/ton, which we do not consider cost-effective for reasonable progress. In addition, Earthjustice argued that we should have used a FGD emission rate of 0.04 lb/MMBtu (rather than 0.06 lb/MMBtu) in our calculations of cost-effectiveness, as this is an emission rate that has been achieved by power plants operating new wet FGD systems. While we acknowledge that emission rates more stringent than 0.06 lb/MMBtu have been achieved, use of a more stringent 0.04 lb/MMBtu emission rate would only reduce cost-effectiveness values to approximately $14,000/ton.

We also disagree with commenters' assertions that our use of a 7-percent interest rate and 20-year lifetime have resulted in inflated or overestimated control costs. For cost analyses related to government regulations, an appropriate ''social'' interest (discount) rate should be used. The latest real interest rate for cost-effectiveness analyses published by the Office of Management and Budget (OMB) is 2.8 percent for a 20-year period (Revised January 2008). EPA calculated capital recoveries using 3-percent and 7-percent interest rates in determining cost-effectiveness for the Regulatory Impact Analysis (RIA) for the Guidelines for BART Determinations under the Regional Haze regulations. We consider our use of 7 percent over a 20-year period to be consistent within the context of Regional Haze regulations, and to result in a reasonable estimate of control costs.[150]

Although the existing dry FGDs have been upgraded recently, the scope and precise nature of the upgrades is unclear. As a result, we agree with NPS's assertion that additional upgrades should be considered. Therefore, we have included dry FGD upgrades as a control option in our SO_2 cost-effectiveness calculations.[151] Based on these calculations, we estimate that upgrades to the existing dry FGDs would cost $6,000 to 10,000/ton and result in a total annual emissions reduction of approximately 1,200 tpy.[152] Given the significant reductions in point source SO_2 emissions achieved through ADEQ's BART determinations in this planning period,[153] we find that it was reasonable for ADEQ not to require additional SO_2 controls for Springerville Units 1 and 2 as a RP measure. However, such controls may be necessary in the next planning period to ensure continued progress toward eliminating anthropogenic visibility impairment.

With regard to NO_X, we note that in our proposal of December 21, 2012, we did not propose RP controls on NO_X for any point sources, but instead only proposed disapproval of the State's finding that it is not reasonable to require additional NO_X controls. We acknowledge the information provided

[148] See, e.g., RP Guidance, page 5–1, ''For additional guidance on applying the cost of compliance factor to stationary sources, you may wish to consult the BART guidelines.''

[149] BART Guidelines, 40 CFR Part 51, Appendix Y, section IV.D.4.d.1.

[150] Regulatory Impact Analysis for the Final Clean Air Visibility Rule or the Guidelines for Best Available Retrofit Technology (BART) Determinations Under the Regional Haze Regulations, EPA–0452/R–05–004, June 2005.

[151] See Docket Item I.12, ''Springerville FGD costs (updated), a revised version of docket item F.10, Springerville FGD costs.xls''.

[152] *Id.*

[153] Arizona RH SIP, page 67, Table 8.1 (projecting 28.81 percent reduction in annual point source SO_2 emissions between 2002 and 2018); Arizona RH SIP Supplement, page 5, Table 8 (showing reduction in annual point source SO_2 emissions of 15,700 tpy between 2002 and 2008).

by the commenter, and will examine it, along with similar information provided by other commenters on this issue, as we develop a proposed FIP.

Comment: Two commenters, NPS and TEP, noted that Sundt Units 1–3 are all fired with pipeline-quality natural gas and agreed with EPA that it is not reasonable to require more stringent SO_2 controls on this facility at this time.

Response: We agree with these comments.

Comment: NPS agreed that it is not reasonable to require additional SO_2 controls on the Douglas Lime Plant at this time because emissions inventory data indicate that production at this plant essentially stopped during the recession. The commenter added that this plant should be considered for SO_2 controls in future planning periods, as it may return to its previous levels of emissions.

Response: We agree with this comment.

Comment: NPS concurred with the proposal to disapprove Arizona's finding that it is not reasonable to require additional NO_X controls on non-BART point sources. The commenter agreed that given the slow rate of visibility improvement on the worst days at all Class I areas in Arizona, a thorough analysis is required before concluding that nothing more can be done to improve visibility.

In contrast, three other commenters (TEP, ADEQ and PCC) stated that EPA is not justified in its proposed disapproval of Arizona's finding that it is not reasonable to require additional NO_X controls on non-BART point sources. TEP indicated that it is premature for EPA to disapprove the State's finding, based on the commenter's understanding that the State is interested in addressing EPA's concerns about the adequacy of the analyses in its SIP. This commenter asserted that EPA's proper course of action is to work with and support the State in developing the analysis required for the evaluation of additional NO_X controls on non-BART point sources.

PCC added that EPA cannot disapprove the State's RP determination for the Phoenix Cement Plant without first concluding that a four-factor analysis under 40 CFR 51.308(d)(l)(i)(A) would have indicated that additional emissions controls at PCC are needed to improve visibility in the Sycamore Canyon Wilderness Area. The commenter stated that there is nothing in the proposal or rulemaking docket that indicates that EPA has found that the Phoenix Cement Plant contributes to visibility impairment in a Class I area, or that additional emissions controls at the Phoenix Cement Plant would improve visibility in a Class I area.

Response: EPA acknowledges the support of NPS for our disapproval of the State's conclusion that it is not reasonable to require further NO_X control on non-BART sources. We agree that the State did not provide sufficient analysis to justify that position. We also note that we have worked with ADEQ on various aspects of the Arizona RH SIP over the last several months. Based on the contents of the Arizona RH SIP Supplement, which ADEQ submitted in May 2013, we have approved more of the State's conclusions with respect to what sources are reasonable to control during this progress period.[154] Unfortunately, as explained in section IV.B.3 of our May 20, 2013, proposal[155] and later in this section, the State still has not provided sufficient analysis for EPA to approve its determination that no additional controls are required for sources of NO_X.

Comment: PCC stated that EPA has shared an RP analysis concerning Phoenix Cement. The commenter asserted that this RP analysis has no legal bearing on the sufficiency of the Arizona RH SIP for NO_X emissions from non-BART stationary sources. Nonetheless, the commenter provided various comments on the contents of this analysis

Response: The draft analysis of potential controls at Phoenix Cement[156] was conducted in preparation for a possible FIP action and it is not complete or final. We shared this analysis with PCC in order to give the company an opportunity to correct any errors or weak assumptions in the analysis. The analysis was not used as a basis for this action. Rather, EPA's disapproval of the State's conclusion with respect to further control on NO_X point sources is based on our review of the SIP and supporting material submitted by ADEQ. EPA's analyses of potential controls on point sources of NO_X in Arizona will be included in our upcoming FIP proposal. All of the supporting material for those analyses will be in the docket for that proposal and the public will have an opportunity to review and comment on our analysis and supporting documentation and data.

Comment: Two commenters (Clarkdale and Yavapai County) urged EPA to substantially reconsider its proposal, especially as it relates to RPG determinations involving non-BART sources like Phoenix Cement. While acknowledging that the proposal does not identify the precise impacts upon Phoenix Cement, the commenter stated that it does clearly indicate that emissions reductions from non-BART sources like PCC will be needed to achieve reasonable progress. The commenters expressed concern that the proposal could unnecessarily and negatively impact the local economy and jobs provided by PCC.

Response: We appreciate the commenters' concerns about potential impacts on the local economy. However, the commenters appear to misunderstand the scope of this action. Today's action simply approves certain provisions of the Arizona RH SIP and disapproves certain other provisions. It does not impose controls upon any source. If EPA proposes any controls on PCC, it will be in a separate notice-and-comment rulemaking.

Comment: CalPortland stated that EPA's proposal treats SO_2 and NO_X point sources differently in its review of Arizona's RP analysis. The commenter noted that, while EPA concluded that Arizona's analysis is insufficient for both, for SO_2 point sources EPA conducted a supplemental analysis and proposed to approve Arizona's conclusion based on that analysis. The commenter pointed out that for NO_X point sources, EPA carried out no supplemental analysis, and EPA proposed to disapprove Arizona's determination. The commenter indicated that EPA made no attempt to explain why it proposed to treat NO_X and SO_2 sources differently.

The commenter (CalPortland) asserted that on its face, this differential treatment is unreasonable and does not make sense in the context of the determination of RPGs. The commenter expressed the opinion that the original analysis conducted by Arizona is legally sufficient and should be approved.

PCC similarly asserted that the absence of a four-factor analysis for non-BART point sources of NO_X deprives the commenter and other non-BART point sources of NO_X of their due process right to comment in an informed manner on the proposal.

Response: EPA addresses the approvability of the State's RP analyses for point source NO_X and SO_2 in section IV.B.2 of this document. Given the inadequacy of the State's analyses, EPA

[154] 78 FR 29292.

[155] 78 FR 29299–29300.

[156] See email from Colleen McKaughan, EPA to Verle Martz, Salt River Materials Group dated November 6, 2012 and attachments, Non EGU_RP_Ch5 (Phoenix Cement, CalPortland only).xls and WA5–12 Task 9 Deliverable—RPAnalysis Report (CalPortland-Phoenix ONLY)_final.docx.

has undertaken supplemental analyses of potential additional NO_X and SO_2 controls for point sources to determine whether any such controls are reasonable. In the case of point sources of SO_2, the relatively small number of sources and the fact that they were well controlled made it possible for EPA to do the analyses necessary to determine that no further controls are reasonable. EPA is conducting similar analyses for point sources of NO_X. These analyses are more complex and EPA has therefore sought input from potentially affected sources in order to ensure that our analyses are accurate and complete.[157] As a result, we have not yet concluded with the necessary analyses. We intend to complete our initial analyses prior to proposing the FIP that will address the disapprovals we are finalizing today.

Comment: One commenter (CalPortland) argued that Arizona reasonably determined that additional controls are not necessary for the commenter's Rillito Cement Plant at this time. According to the commenter, EPA stated in the proposal that there is no technical documentation to support Arizona's conclusion that Rillito does not impair visibility, and that EPA implied that a thorough analysis was not conducted for NO_X point sources such as Rillito. The commenter asserted that there is an ample record that contradicts the implications that Arizona's analysis was not legally sufficient under 40 CFR 51.308(d)(l) for NO_X sources near Saguaro National Park.

CalPortland also speculated that perhaps EPA is concerned that Arizona's RH SIP does not contain an explicit, source-specific four-factor analysis for Rillito. The commenter stated that such a concern would be unfounded because the applicable guidelines do not require a full four-factor analysis for every potential source (citing *Guidance for Setting Reasonable Progress Goals under the Regional Haze Program,* Section 3). Based on the fact that Arizona reasonably determined that Rillito did not contribute to visibility impairment, the commenter stated that there was no requirement to conduct an explicit four-factor analysis.

The commenter (CalPortland) further asserted that, even if a four-factor analysis were required for the Rillito plant, it would be unreasonable to disapprove the SIP on this basis because the significant analysis contained in Arizona's RH SIP fits within the framework of a four-factor analysis and is consistent with the analysis conducted by New Mexico and approved by EPA. According to the commenter, New Mexico's reasonable progress demonstration relied in part on WRAP's *Supplementary Information for Four Factor Analyses by WRAP States.*

Response: In our December 12, 2012, proposed action we stated that ''with respect to cement kilns, the SIP contends that the Rillito Cement Plant does not 'appreciably diminish or impair visibility', but the plan does not provide technical documentation of that assertion.'' [158] In fact, the quoted sentence in the 2011 RH SIP referred to the Phoenix Cement Plant, not the Rillito Cement Plant.[159] With respect to the Rillito Plant, the Arizona Regional Haze SIP does provide a visibility analysis for kiln 4, but not for kilns 1–3.[160] Thus, there is no information in the SIP regarding the visibility impacts of the entire Rillito Plant.

Moreover, the fact that nitrate-driven visibility impairment is projected to decrease at Class I areas such as Saguaro National Park does not remove the requirement to perform a complete RP analysis. Given the State's decision to focus its RP analysis on point and area sources of NO_X and SO_2, the Rillito Cement plant's high NO_X emission rates and proximity to Class I areas make it a good candidate for a source-specific four factor analysis. The State failed to either conduct such an analysis or adequately explain why it was not needed.

7. EPA's Evaluation of Arizona's Long-Term Strategy

Comment: One commenter (Earthjustice) expressed support for EPA's proposal to disapprove portions of the LTS described in the 2011 RH SIP. Another commenter (CalPortland) opposed the proposed disapproval.

The opposing commenter (CalPortland) asserted that the 2011 RH SIP complies with the Act's LTS requirements. The commenter stated that EPA's conclusion that the State's BART and reasonable progress determinations are insufficient is not a valid reason to disapprove the LTS. Citing 40 CFR 51.308(d)(3), the commenter contended that EPA does not propose to find, nor can it, that the State's LTS is insufficient to meet the RPGs established by the State.

This commenter (CalPortland) also asserted that the proposed disapproval was incorrect when it indicated that the State's LTS does not include all measures needed to achieve its allotment of emission reductions agreed upon through the WRAP process. The commenter stated that page 178 of the 2011 RH SIP indicates that Arizona and neighboring states agreed that the implementation of BART and other existing measures in state regional haze plans were sufficient. According to the commenter, the states that participated in the WRAP process are in the best position to determine whether each other's plans are sufficient, and they agreed that Arizona's SIP is sufficient.

Response: As an initial matter, we would like to clarify the scope of our proposed partial disapproval of Arizona's LTS. We did not propose to disapprove the LTS as whole. Rather, we proposed to disapprove only those portions of the LTS that rely on other elements of the SIP that we have disapproved or proposed to disapprove. Specifically, we proposed to find that the LTS does not meet the requirements of 40 CFR 51.308(d)(3)(ii), (v)(C) and (v)(F). As we explained in the proposal, pursuant to 40 CFR 51.308(d)(3)(ii), Arizona is required to include in its LTS all measures needed to achieve its allotment of emission reductions agreed upon through the WRAP process. The commenter is correct that the SIP indicates that Arizona and neighboring states in the WRAP agreed that ''implementation of BART and other existing measures in state regional haze plans were sufficient to address interstate impacts.'' [161] However, because we have disapproved portions of Arizona's BART determinations, the reductions that Arizona agreed to through the WRAP process are not all SIP-approved and therefore cannot be relied upon for purposes of the LTS. In addition, because Arizona's BART determinations lack the necessary compliance dates and requirements for operation and maintenance of control equipment and monitoring, recordkeeping and reporting, the SIP does not ensure that the reductions attributed to these BART determinations will be realized. Therefore, the SIP does not include all measures needed to achieve Arizona's apportionment of emission reduction obligations agreed upon through the WRAP process.

The other two elements of Arizona's LTS that we proposed to disapprove pertain to consideration of emissions

[157] See email from Colleen McKaughan, EPA to Verle Martz, Salt River Materials Group dated November 6, 2012 and attachments; email from Colleen McKaughan, EPA to Erik Bakken and Jeff Yockey, Tuscon Electric Power dated November 6, 2012, and email from Colleen McKaughan, EPA to Jay Grady, California Portland Cement dated November 9, 2012.

[158] 77 FR 75730.

[159] See 2011 Arizona RH SIP at 165; 2013 Arizona RH SIP Supplement at 52.

[160] *Id.*

[161] Arizona RH SIP, page 178.

limitations and schedules for compliance to achieve the RPGs and the enforceability of emissions limitations and control measures. Since the SIP lacks measures to ensure the enforceability of its BART determinations, and contains no other emissions limitations, schedules for compliance or other control measures, these two elements of the LTS are also not approvable. Therefore, we are finalizing our proposed disapproval of the Arizona RH SIP with respect to the requirements of 40 CFR 51.308(d)(3)(ii), (d)(3)(v)(C) and (d)(3)(v)(F).

8. EPA's Evaluation of Arizona's Provisions for Interstate Transport of Pollutants

Comment: EPA received adverse comments from CalPortland and CEI on the portion of our December 21, 2012, proposal that relates to the CAA requirement that SIPs contain adequate provisions to prohibit emissions that will interfere with other states' required measures to protect visibility per CAA section 110(a)(2)(D)(i)(II). We refer to this requirement herein as the interstate transport visibility requirement.

CalPortland asserted that, even if EPA found Arizona's BART and RP analyses to be insufficient, such a determination would not be a lawful reason to find that the Arizona SIP submittals do not comply with the interstate transport visibility requirement. The commenter contended that EPA did not propose that the Arizona SIP interferes with measures in another state's SIP to protect visibility.

CEI argued that EPA failed to articulate how Arizona interferes with visibility protection measures required by the CAA of downwind states. The commenter interpreted section XI (''EPA's Evaluation of Arizona's Provisions for Interstate Transport of Pollutants'') of our December 21, 2012, proposal to mean that any emission of haze pollutants above the levels assumed by the WRAP modeling constituted interference with downwind attainment. The commenter asserted that this approach violates the proportionality ''requirement'' of the D.C. Circuit Court's decision in *EME Homer City Generation L.P.* v. *EPA* (*EME Homer City*) [162] because it does not take into account the commitment of other WRAP states to reduce the emission of haze pollutants beyond the emission levels assumed by the WRAP modeling.

Response: The commenters appear to misunderstand the relevant statutory requirement. Section 110(a)(2)(D)(i)(II) of the CAA requires that each SIP ''*contain adequate provisions prohibiting* . . . any source or other type of emissions activity within the State from emitting any air pollutant in amounts which will. . . interfere with measures required to be included in [other states' SIPs]. . . to protect visibility.'' [163] As explained in our proposal, Arizona relied on its RH SIP for purposes of satisfying this requirement.[164] However, EPA has disapproved certain provisions of the SIP and is today disapproving several other aspects of the submission.[165] Therefore, the SIP as a whole will not be incorporated into the applicable SIP. Since Arizona has not provided any other analysis or explanation of how the Arizona SIP fulfills the requirement of 110(a)(2)(D)(i)(II), it follows that the Arizona SIP does not contain adequate provisions to prohibit emissions that would interfere with other states' visibility protection measures.

This analysis is not inconsistent with the *EME Homer City* decision. *EME Homer City* concerned the Cross State Air Pollution Rule,[166] which addressed only section 110(a)(2)(D)(i)(I) of the CAA (often referred to as prongs 1 and 2 of the interstate transport requirements). This decision does not apply to the interstate transport *visibility* requirement (often referred to as prong 4). Since the interstate transport portion of our December 21, 2012, proposed rule addressed only the visibility requirement for Arizona, the *EME Homer City* decision does not apply to this action.

Furthermore, even if the concept of ''proportionality'' set out in the *EME Homer City* decision were to apply to the visibility prong of the transport requirements, we disagree that our action here is contrary to that concept. We are not specifying a particular amount of emissions reductions that Arizona must achieve to meet the requirement of prong 4, nor are we making an affirmative determination that emissions from Arizona are interfering with other states' visibility protection measures. Rather, we are finding that the Arizona SIP does not contain adequate provisions to prohibit emissions that would interfere with other states' visibility protection measures. In particular, Arizona asserted that its SIP would achieve the emissions reductions necessary to meet the requirement of prong 4. However, due to our partial disapproval of the SIP, the Arizona SIP will not include many of these reductions. Accordingly, the SIP does not contain the emissions reductions that Arizona itself determined to be necessary to meet the interstate visibility transport requirement.

Finally, we note that ADEQ asserts in section 11.8 (''Emission Reductions with Respect to Out-of-State Class I Areas'') of the Arizona RH SIP Supplement that its revised demonstration showing reasonable progress at Arizona's Class I areas is adequate to achieve the necessary reductions in visibility impairment in Class I areas in neighboring states. However, the vast majority of the deficiencies in the Arizona RH SIP, which led to our proposed disapproval for the interstate transport visibility requirement, remain. Accordingly, we are finalizing our disapproval of the State's SIP revisions for the interstate transport visibility requirement for the 1997 8-hour ozone, 1997 $PM_{2.5}$, and 2006 $PM_{2.5}$ NAAQS.

9. Statutory and Executive Order Reviews

Comment: PCC noted that it is a division of the government of the Salt River Pima-Maricopa Indian Community (SRPMIC), and asserted that SRPMIC relies substantially on the revenues of PCC to meet the safety, health and educational needs of its members. The commenter noted that, while EPA's proposal refers to the ''Rillito Cement Plant'' at 77 FR 75730 in its discussion of the proposed disapproval of the State's finding that it is not reasonable to require additional NO_X controls on non-BART sources; the 2011 RH SIP actually refers to the Phoenix Cement Plant in this context, not the Rillito Cement Plant. The commenter concluded that the proposed disapproval is based materially on the SIP's treatment of the Phoenix Cement Plant and, therefore, directly affects the commenter.

PCC argued that EPA did not satisfy tribal consultation requirements that apply to the proposed disapproval of the

[162] *EME Homer City Generation, L.P.* v. *EPA.,* 696 F.3d 7 (D.C. Cir. 2012).

[163] 42 U.S.C. 7410(a)(2)(D)(i)(II) (emphasis added). This interstate visibility transport requirement is often referred to as ''prong 4'' of the interstate transport requirements of section 110(a)(2)(D)(i).

[164] See 77 FR 75735.

[165] EPA has previously disapproved Arizona's determinations for NO_X emission limits at most of the units at Apache, Cholla, and Coronado power plants (77 FR 72512, December 5, 2012), and, in this final action, is disapproving several aspects of Arizona's other BART and reasonable progress analyses, and related deficiencies in Arizona's long-term strategy. Thus, the Arizona SIP lacks enforceable emissions limits to achieve the RPGs for Class I areas affected by emissions from Arizona, including those in other states (as noted in our proposal rule), and we are disapproving the State's SIP submittals for the interstate transport visibility requirement for the 1997 8-hour ozone, 1997 $PM_{2.5}$, and 2006 $PM_{2.5}$ NAAQS. 77 FR 75704 at 75735, December 21, 2012.

[166] 76 FR 48208, August 8, 2011.

portion of the State's RH SIP that addresses the Phoenix Cement Plant. The commenter indicated that EPA was incorrect in stating in the preamble that the proposal does not have tribal implications, as specified in Executive Order 13175, because it will not impose substantial direct costs on tribal governments. The commenter stated that the proposed disapproval creates the basis for a FIP that could impose on SRPMIC costly requirements to install additional NO_X controls at the Phoenix Cement Plant and, therefore, does have significant tribal implications warranting consultation with the tribe early in the process. The commenter asserted that if SRPMIC had been consulted, the tribe would have provided to EPA information on the real costs to SRPMIC of installing NO_X controls at the Phoenix Cement Plant and the true measure of visibility benefits that would result. The commenter added that this information would have informed EPA's decision on whether to propose to disapprove the State's finding that it is not reasonable to require additional NO_X controls on non-BART point sources.

Response: The commenter is correct that the sentence in the Arizona RH Plan quoted in our proposal concerns the Phoenix Cement Plant, not the Rillito Cement Plant. However, we do not agree that our action on the Arizona RH SIP directly impacts the Tribe. Today's action simply approves certain provisions of the Arizona RH SIP and disapproves certain other provisions, based on an evaluation of their compliance with the applicable statutory and regulatory requirements.

Under Executive Order 13175 the term "'[p]olicies that have tribal implications' refers to (among other things) "regulations . . . and other policy statements or actions that have substantial direct effects on one or more Indian tribes . . ." [167] EPA's action on the Arizona RH SIP has no such substantial direct effects. Our statement that "this action creates the basis for future action which could impact a tribally-owned source" was intended as an acknowledgment of the possible tribal implications of a potential future Regional Haze FIP for Arizona. We do not agree that "[b]ut for the proposed SIP disapproval in relation to PCC, there could lawfully be no FIP proposal in relation to PCC." As explained elsewhere, EPA has a pre-existing FIP obligation with respect to the regional haze requirements for Arizona, resulting from our January 2009 finding of failure to submit. However, even if the SIP disapproval were a prerequisite to any FIP proposal in relation to the Phoenix Cement Plant, it is the future notice-and-comment rulemaking process for that FIP that would be the appropriate subject of consultation. Accordingly, EPA Region 9 has offered SRMPIC opportunities for meetings and formal consultation in anticipation of such a possible FIP.[168]

Finally, we note that we sent our initial analysis of potential controls at the Phoenix Cement Plant to PCC on November 6, 2012.[169] PCC provided feedback on this analysis as part of its comments on our initial proposal and in materials submitted to ADEQ and EPA.[170] ADEQ incorporated this feedback into its RH SIP Supplement.[171] EPA will also take this information into account in any future analyses regarding the Phoenix Cement Plant.

10. Other Comments

Comment: AMA detailed the importance of the mining industry to the economy of Arizona and noted that copper has become one of the most important metals in the generation and transmission of renewable energy and in helping to drive down auto emissions through its application in hybrid and electrical vehicles. The commenter expressed support for the comments submitted by FMMI and ASARCO.

Response: We acknowledge the comment. We have responded to specific comments from FMMI and ASARCO in the preceding sections.

B. Responses to Comments on the Proposal of May 20, 2013

1. State and EPA Actions on Regional Haze

Comment: ADEQ summarized the contents of the Arizona RH SIP Supplement and expressed appreciation for the opportunity to work with EPA on the Supplement, despite the fact that EPA is not proposing to approve all of the supplemental analyses.

Response: We acknowledge the comment and appreciate ADEQ's efforts to revise the Arizona RH SIP. We look forward to working with ADEQ on future revisions to the Arizona RH SIP.

Comment: ADEQ commented that states have the primary role in implementing the regional haze program and asserted that, "EPA has proposed disapproval of elements of the Arizona Regional Haze Plan on the basis of considerations that find no basis in the CAA or rule and that in some cases violate the RHR."

Response: As explained in our response to similar comments on our December 21, 2012, proposal in section V.A.1.a, we do not agree that we have exceeded our authority under the CAA and the RHR in any of our actions on the Arizona RH SIP. The commenter did not specify which aspects of our May 20, 2013, proposal it believes are inconsistent with the CAA and RHR. To the extent the commenter is referring to other comments regarding specific elements of the Supplement, our responses are included below.

Comment: ADEQ reiterated its objection to the bifurcation of EPA's action on the Arizona RH SIP into two different phases, arguing that this created an unfair burden on the State and is forbidden by Section 110(k)(3) of the Clean Air Act.

Response: Please see our response to a nearly identical comment in section IV.A.1.d above.

2. EPA's Evaluation of Arizona's Reasonable Progress Analysis

a. Reasonable Progress Analysis for Coarse Mass and Fine Soil

Comment: Earthjustice argued that EPA should disapprove Arizona's determination that no reductions in coarse mass and fine soil emissions are necessary to make reasonable progress for this planning period. The commenter asserted that, "[u]ntil EPA conducts modeling demonstrating that its regional haze plan will put Arizona's Class I areas on the glide path to achieving natural visibility by 2064, EPA should not limit opportunities to require additional emissions reductions from sources of coarse mass and fine soil emissions."

Response: We do not agree with this comment. As explained in our May 20, 2013, proposal, the State's monitoring analysis and our supplemental analysis of sources of coarse mass and fine soil showed no clear relationship between any particular source category of these pollutants and observed visibility impairment at the State's Class I areas.[172] The commenter has not provided any data or analysis to rebut this finding. Therefore, we are approving the State's decision to

[167] EO 13175: Consultation and Coordination with Indian Tribal Governments, 65 FR 67249, section 1(a) (Nov. 9, 2000).

[168] See Memorandum to File from Colleen McKaughan regarding EPA Region 9 communications with SRPMIC (May 8, 2013).

[169] Email from Colleen McKaughan, EPA, to Verle Martz, PCC (November 6, 2012).

[170] Letter from Verle Martz, PCC, to Gregory Nudd, EPA, (March 6, 2013), Attachment 3; Arizona RH SIP Supplement, Attachments; Email from Brett Lindsay, PCC, to Balaji Vaidyanathan, ADEQ (March 21, 2013).

[171] See Arizona RH SIP Supplement, page 52.

[172] See 77 FR 29297–29298.

exclude coarse mass and fine soils from its four-factor reasonable progress analysis for the first planning period.

We also disagree with the commenter's suggestion that meeting the URP is a requirement of the RHR. The URP is not a presumptive target and a state or EPA may set RPGs that provide for less progress than the URP if those RPGs are demonstrated to be reasonable (and achievement of the URP to be unreasonable) based upon an analysis of the four RP factors.[173] Therefore, we do not agree that we must conduct modeling to demonstrate achievement of the URP prior to approving any portion of the State's RP analysis.

b. Visibility Monitoring Trend Analysis

Comment: Earthjustice expressed support for EPA's proposed disapproval of portions of Arizona's revised RP analysis. In particular, Earthjustice agreed with EPA's determination that Arizona's monitoring trend analysis was insufficient to establish that no additional controls were reasonable for this planning period.

Response: We acknowledge Earthjustice's support on this issue.

Comment: ADEQ noted that its monitoring trend analysis is not intended as a substitute for a four-factor RP analysis. Rather, the analysis was intended to support ADEQ's position that its categorical four-factor analysis is the appropriate approach. ADEQ noted that it intends to develop guidance for conducting a comprehensive analysis for the next planning period.

Response: EPA notes ADEQ's clarification regarding the intent of its monitoring trend analysis. The RHR requires a complete analysis for every planning period. The approach that ADEQ used in this planning period was incomplete in that ADEQ did not evaluate the reasonableness of controls for the categories of sources that it identified as contributing to visibility impairment.

Comment: Quoting EPA's RP Guidance, ADEQ asserted that, in proposing to disapprove portions of Arizona's RP analysis, EPA had not recognized the ''wide latitude'' and ''considerable flexibility'' that the CAA and RHR provide states with respect to RP analyses. ADEQ noted that EPA found that a number of the elements of ADEQ's RP analysis lacked ''adequate'' support or included ''insufficient'' information, but that EPA had not identified any requirement of the CAA and RHR that the Arizona RH SIP violated. ADEQ added that the monitoring trend analysis in the Supplement indicates that further progress has been made than projected in ADEQ's 2011 RH SIP and that existing source controls have resulted in improvement in visibility or maintenance of current trends. ADEQ noted that it plans to develop guidance for conducting a comprehensive four-factor analysis of non-BART source categories and individual sources for the next planning period.

Response: Please see our response to a similar comment from ADEQ on our December 21, 2012, proposal, in section IV.A.6.b above. With regard to the monitoring trend analysis included in the Supplement, as explained in section IV.B.2 of our May 20, 2013, proposal, this analysis cannot substitute for the four-factor analysis required by the RHR.[174] In addition, while the Supplement provides helpful information about trends in monitored visibility impairment between the baseline period of 2000–2004 and the following five-year period of 2005–2009, it does not provide any analysis that indicates that these trends will continue through 2018.

c. Point Sources of NO_X

Comment: PCC reiterated its assertion that EPA lacks authority to disapprove the Arizona RH SIP with regard to non-BART sources of NO_X because the SIP was previously deemed complete by operation of law.

Response: As explained in section IV.A.1 above, completeness findings under CAA section 110(k)(1)(B) deal with administrative and technical criteria and do not remove our authority to review SIPs for compliance with the substantive requirements of the CAA and 40 CFR part 51. Our evaluation of the Arizona RH SIP in relation to these substantive criteria is set out in our proposals and elsewhere in this preamble.

Comment: TEP disagreed with what it characterized as EPA's assessment that ADEQ had ''failed to submit sufficient evidence to demonstrate that it is achieving its Reasonable Progress Goals for this planning period.'' TEP asserted that the State was not required to conduct a four-factor analysis and that by proposing to disapprove the State's RP analysis, EPA was not fully considering the flexibility that states have in conducting such analyses. TEP noted that the monitoring trend analysis supplied by the State demonstrates that actual progress in reducing visibility impairment exceeds the projected improvement in the original 2011 RH SIP. TEP concluded that ''EPA should have concluded that ADEQ has met all the elements required to demonstrate RPG during this progress period.''

Response: We do not agree with this comment. Contrary to TEP's suggestion, the question of whether the State's Class I areas are likely to meet the State's chosen RPGs is not relevant to our evaluation of the Arizona RH SIP. This type of analysis is a required component of regional haze progress report SIPs, which are due five years after submittal of the State's initial RH SIP.[175] The Arizona RH SIP Supplement, however, is not a progress report SIP, but a revision to the State's 2011 RH SIP, which is subject to the requirements of 40 CFR 51.308(d) and (e). Among these is the requirement to demonstrate that the State's RPGs are reasonable, based on an analysis of the four RP factors.[176] In this case, Arizona identified point sources of NO_X as contributing to visibility impairment, but did not complete a four-factor analysis for most NO_X point sources or source categories, because it deemed the analysis to be too resource intensive.[177] Therefore, the State did not fulfill the requirements of 40 CFR 51.308(d)(1)(i)(A) and (ii) to demonstrate that its RPGs are reasonable based on an analysis of the four RP factors.

Comment: Citing EPA's RP Guidance, CalPortland asserted that ''[s]ources that contribute to visibility impairment at a Class I area must undergo a four-factor analysis. Sources that do not contribute are not required to undergo such analysis.'' CalPortland argued that in this case, Arizona's decision not to conduct a four-factor RP analysis for the Rillito Cement Plant was lawful and reasonable. The commenter noted that visibility modeling performed by the WRAP indicated that the baseline visibility impact of emissions from Kiln 4 at the Rillito Cement Plant was less than 0.5 dv and that Kiln 4 therefore not subject-to-BART. Quoting Arizona's RH SIP Supplement, CalPortland asserted that ADEQ reasonably concluded that, given the lack of visibility impacts from Kiln 4, no RP analysis for this unit was needed and that any other conclusion would render the subject-to-BART exercise meaningless. CalPortland further commented that ADEQ's decision to defer consideration of Kilns 1–3 is reasonable and consistent with 40 CFR 51.308, given that the three kilns have been in care and maintenance mode since 2008. Finally, CalPortland

[173] See 64 FR 35730–35731.

[174] 78 FR 29298–29299.

[175] See 40 CFR 51.308(g) and (h).

[176] 40 CFR 51.308(d)(1)(i)(A) and (ii).

[177] See Section 11.3.3 of the Supplement, pages 23, 24 and 25.

asserted that Arizona's monitoring trend analysis for Saguaro National Park supports ADEQ's decision not to conduct a four-factor analysis for the Rillito Cement Plant.

Response: We do not agree with this comment. CalPortland has mischaracterized the contents of the RHR, EPA's RP Guidance, Arizona's RP analysis, and EPA's evaluation of that analysis. The RHR provides that, in determining whether Arizona's RPGs provide for reasonable progress towards natural visibility conditions, we must evaluate the State's demonstration ''that the rate of progress for the implementation plan to attain natural conditions by 2064 is not reasonable; and that the progress goal adopted by the State is reasonable.'' [178] This demonstration, in turn, must be based on an analysis of the four RP factors.[179] Contrary to the commenter's assertion, neither the RHR nor EPA's RP Guidance provides that a determination that an individual source ''contributes'' to visibility impairment is a prerequisite to conducting a four-factor analysis for that source. Rather, the RP Guidance recommends that, prior to conducting source- or category-specific four-factor analyses, states should first identify key pollutants and source *categories* that are contributing to visibility impairment at the Class I area.[180]

In this instance, ADEQ identified NO_X and SO_2 as key pollutants and internal combustion engines and turbines, boilers, asphalt plants, lime plants, Portland cement plants, primary copper smelters, and nitric acid plants as key source categories. However, ADEQ did not conduct source-specific four-factor analyses for any sources in these categories (except for the Phoenix Cement Plant) and conducted only a cursory four-factor analysis for two source categories.[181] In other words, ADEQ did not conduct four-factor analyses for the majority of sources and categories that it identified as contributing to visibility impairment at the State's Class I areas. In the absence of such analysis, we find that ADEQ has not demonstrated that achievement of the URP at its Class I areas is unreasonable and that ADEQ's RPGs are reasonable.[182] As explained in section IV.B.2 of our May 20, 2013, proposal and section IV.B.3 above, the monitoring trend analysis included in the Supplement cannot substitute for the four-factor analysis required by the RHR. Therefore, we are finalizing our disapproval of ADEQ's determination that no additional controls for point sources of NO_X are reasonable.

This disapproval is based on the inadequacy of ADEQ's overall analysis for point sources of NO_X and does not pertain to the Rillito Cement Plant specifically. Nonetheless, we note that Kiln 4's modeled visibility impact at the most affected Class I area was 0.48 dv. On this basis, Arizona concluded that ''the modeling has shown Kiln 4 is not a contributor to visibility impairment and as such, should be excluded from the requirement for a 4-factor analysis.'' [183] However, while ADEQ set a contribution threshold of 0.5 dv for BART sources, it set no such threshold for its RP sources, nor did it explain why a visibility impact of 0.48 dv from a single emissions unit is too small to warrant consideration of potential controls. Accordingly, we do not agree that ADEQ reasonably concluded that no four-factor analysis for Kiln 4 was needed.

Comment: CalPortland commented that EPA's May 20, 2013, proposal overlooked new information provided in the Supplement. In particular, CalPortland asserted that our proposal failed to evaluate additional explanation and analysis regarding the Rillito Cement Plant in Section 11.3.3.5 of the Supplement. The commenter also alleged that neither of EPA's proposals provided notice or an explanation of EPA's proposed decision to disapprove Arizona's RP analysis for the Rillito Cement Plant.

Response: We do not agree with the commenter's suggestion that we are required to evaluate and take action on Arizona's discussion of the Rillito Cement Plant separately from the remainder of the State's RP analysis for point sources of NO_X. The 2011 RH SIP contained a single paragraph setting out ADEQ's rationale for not conducting a four-factor analysis for any of the four kilns at the Rillito Cement Plant, which was included as part of the overall assessment of non-BART point sources of NO_X and SO_2.[184] The Supplement contained the following two additional sentences concerning the Rillito Cement Plant:

> Pursuant to EPA guidance for setting RP goals, determining the sources that contribute to visibility impairment in a Class I area is a pre-requisite to conducting a 4-factor analysis. From perspective, the modeling has shown Kiln 4 is not a contributor to visibility impairment and as such, should be excluded from the requirement for a 4-factor analysis.[185]

As explained in the preceding response, we find that this rationale is insufficient to support ADEQ's conclusion that no further analysis of controls at the Rillito Cement Plant is needed. In particular, ADEQ based its determination not to consider controls on Kiln 4 on the incorrect premise that an individual unit must have a baseline impact above 0.5 dv in order to be considered for RP controls.

Comment: CalPortland noted that Kilns 1–3 at the Rillito Cement Plant had been shut down since 2008 due to economic conditions as had the Douglas Lime Plant. CalPortland noted that EPA found that it wasn't reasonable to require SO_2 controls for the Douglas Lime Plant at this time, given that the plant had not been operating. CalPortland asserted that because EPA did not make a similar finding about NO_X at CalPortland's facility, it was treated differently than the Douglas Lime Plant. While contending that such an analysis is not necessary for EPA to approve Arizona's findings, CalPortland also included a four-factor analysis for Kilns 1–3 and for Kiln 4.

Response: EPA's analysis regarding the Douglas Lime Plant was part of a larger assessment of SO_2 point sources. At the time, EPA did not have sufficient data to conduct a similar assessment of NO_X point sources. As a result, we were not able to determine whether it was reasonable to control any point sources of NO_X in Arizona in order to ensure reasonable progress. Because Arizona did not conduct an adequate analysis to support its conclusions on this subject, we are finalizing our disapproval of that aspect of the Arizona RH SIP. We will address this disapproval in our upcoming FIP proposal. We will consider the economic shutdown of Kilns 1–3 and the information provided in the four-factor analyses for Kilns 1–3 and Kiln 4 as we develop our proposed FIP. Because these analyses were not submitted as part of the Arizona RH SIP, we are not acting on them at this time.

Comment: ADEQ provided additional information regarding its decision not to conduct a source-specific RP analysis for the CalPortland Rillito Cement Plant. ADEQ used modeling conducted by the WRAP demonstrating that Kiln 4 did not contribute to visibility impairment at nearby Class I areas. ADEQ also said that Kilns 1–3 had been in maintenance

[178] 40 CFR 51.308(d)(1)(ii) and (iii).

[179] 40 CFR 51.308(d)(1)(i) and (ii).

[180] RP Guidance page 3–1 (emphasis added).

[181] See Arizona RH SIP section 11.3.3 (RH Supplement pages 48–54).

[182] As explained elsewhere in this rule, we have found, based on additional analyses performed by ADEQ and ourselves, we are approving other portions of the State's RP analysis.

[183] Arizona RH SIP section 11.3.3 (page 52 of the RH Supplement).

[184] 2011 RH SIP page 165.

[185] Supplement page 51–52.

mode since 2008. ADEQ further noted that visibility is improving more quickly than expected at the Class I area closest to the Rillito Cement Plant. ADEQ also noted that CalPortland had performed a source-specific RP analysis, but submitted it after ADEQ had submitted the Arizona RH SIP Supplement. ADEQ explained that it has reviewed this analysis and believes it supports ADEQ's position not to require additional controls on the Rillito Cement Plant at this time.

Response: Because the source-specific RP analysis was not submitted as part of the Arizona RH SIP Supplement and was not made available for public review and comment, we are not considering it under this action. However, EPA will consider that analysis and other information presented by ADEQ in our upcoming FIP.

Comment: Earthjustice agreed with EPA's proposal to disapprove the State's RP control determination for the Phoenix Cement Plant.

Response: We acknowledge the commenter's support.

Comment: ADEQ and PCC disagreed with EPA's assessment of the four-factor analysis of the Phoenix Cement Plant included in the Supplement. In particular, PCC objected to EPA's reliance on the RP Guidance, BART Guidelines, and Control Cost Manual in its evaluation of the State's analysis because these are non-binding guidance documents. ADEQ added that it had ''reviewed the cost analysis provided by PCC and found it to be [an] acceptable and appropriate substitute for the Cost Control Manual.'' ADEQ further asserted that ''EPA does not justify its cost analysis over the site-specific costs submitted by the source'' and that ''[t]he EPA costing approach based mostly on generic assumptions essentially amounts to a group-BART approach that has been rejected by the courts.''

Response: We agree with the commenters that the RP Guidance, BART Guidelines and Control Cost Manual are not binding with respect to RP analyses. Contrary to the commenters' assertions, however, our disapproval of ADEQ's RP analysis for point sources of NO_X is not based solely or primarily on these guidance documents. While we considered the guidance documents in our review of the Arizona RH SIP, our disapproval results from the Arizona RH SIP's failure to meet the requirements of 40 CFR 51.308(d)(1)(i)(A) and (ii) with respect to point sources of NO_X.

In evaluating ADEQ's four-factor analysis for the Phoenix Cement Plant, we did take into consideration the RP Guidance, which recommends use of the BART Guidelines and the Control Cost Manual in performing four-factor analyses.[186] While these materials are not legally binding, they are relevant to our evaluation of whether the State's four-factor analysis was reasonable. For example, in evaluating PCC's analysis of the cost of compliance for SNCR, we compared PCC's method to the costing method provided by the Control Cost Manual in order to ensure a reasonable ''apples-to-apples'' comparison of pollution control costs at Phoenix Cement Plant with costs at other facilities. In this case, PCC's analysis assumed an equipment lifetime of 10 years without any explanation or support, despite the fact that the Control Cost Manual establishes an economic lifetime of 20 years for an SNCR system and the kiln itself is expected to last for 50 years. We found that PCC's 10-year assumption effectively inflated the annualized cost of SNCR.[187] Neither the Arizona RH SIP nor ADEQ's comments provide any evidence of an independent review by ADEQ or any explanation as to why this assumption is reasonable.[188] Therefore, contrary to ADEQ's suggestion, EPA is not insisting that ADEQ employ EPA's own cost analysis in lieu of PCC's.[189] Rather, we are finding that ADEQ did not independently evaluate PCC's analysis to determine whether its assumptions were reasonable and supported by appropriate documentation.[190] In doing so, we are not requiring a ''group BART'' approach, as suggested by ADEQ. The term ''group BART'' refers to the consideration of the combined visibility impacts (or benefits) from multiple BART sources.[191] No such consideration is at issue here.

In any case, our disapproval of the Arizona RH SIP with regard to non-BART sources of NO_X is not based solely on the shortcomings of ADEQ's analysis for the Phoenix Cement Plant, but rather on the overall inadequacy of the analysis for the categories of NO_X point sources that ADEQ had identified as contributing to visibility impairment at the State's Class I areas.[192] Given this lack of analysis, we find that the Arizona RH SIP does not meet the requirements of 40 CFR 51.308(d)(1)(i)(A) and (ii) with respect to point sources of NO_X.

3. BART for the Miami Smelter

a. BART-Eligibility Determination

Comment: FMMI agrees and strongly supports EPA's proposal to approve ADEQ's clarification that the BART-eligible source at the Miami Smelter does not include the Remelt Vessel.

Response: We agree with this comment and are finalizing our proposed approval of ADEQ's clarification of the BART-eligible source at the Miami Smelter.

b. NO_X Subject-to-BART Analysis and Determination

Comment: Earthjustice supported EPA's proposed disapproval of Arizona's determination that the Miami Smelter is not subject to BART for NO_X.

Response: We acknowledge this commenter's support.

Comment: FMMI disagreed that enforceable limits are required for purposes of determining the maximum capacity of the NO_X emission units at the Miami Smelter. FMMI noted that EPA guidance indicates that inherent[193] physical limitations and operational design features, which restrict the potential emissions of individual emission units, should be taken into account when estimating PTE at facilities for which the theoretical use of equipment is much greater than could ever actually occur in practice.[194] FMMI

[186] See RP Guidance page 5–1 (''For additional guidance on applying the cost of compliance factor to stationary sources, you may wish to consult the BART guidelines'') and 5–3 (''To maintain and improve consistency wherever possible, cost estimates should be based on EPA's Air Pollution Control Cost Manual.'').

[187] PCC objects to our characterization of this inflation as ''significant'' because it amounts to approximately $80,000 per year or less than seven percent of the total annual cost. Given that ADEQ did not specify what cost of control it would consider to be reasonable, we consider a difference of seven percent to be significant, albeit not overwhelming.

[188] Indeed, ADEQ's four-factor analysis consists almost entirely of text provided by PCC itself. *Compare* Arizona RH SIP Supplement at 52–53 *with* ''4-Factor Reasonable Progress Analysis for Phoenix Cement Company Facility in Clarkdale, Arizona'', sent from PCC to ADEQ on March 21, 2013.

[189] ADEQ refers to PCC's cost analysis as a ''site-specific'' analysis. However, PCC's analysis relied largely on cost estimates from an entirely different facility, with no explanation as to why these estimates were reasonable for PCC. See Docket No. B.12, Attachment to the Regional Haze SIP Revision, Attachment to PCC Comments on Proposed SIP Disapproval.

[190] See 40 CFR 51.308(d) (To meet the core requirements for regional haze for these areas, the State must submit an implementation plan containing the following plan elements [including analyses of the four RP factors] *and supporting documentation for all required analyses* . . .'') (emphasis added).

[191] See *American Growers,* # F.3d at 4–5; *CEED,* 398 F.3d at 660.

[192] Please see section VIII.B of our proposal dated December 21, 2012, and section IV.B.3 of our proposal dated May 20, 2013, and sections IV.A.6 and IV.B.2 of this document for the details of our evaluation.

[193] Citing ''Options for Limiting the Potential to Emit of a Stationary Source Under Section 112 and Title V of the Clean Air Act'' (January 25, 1995).

[194] Citing ''Calculating Potential to Emit (PTE) and Other Guidance for Grain Handling Facilities''

asserted that this is the case with natural gas usage at the units that constitute the Miami Smelter BART-eligible source and that FMMI was therefore not required to obtain legally and practically enforceable limitations to restrict natural gas usage to those levels for purposes of estimating PTE.

Response: Under the RHR, PTE is defined as ''the maximum capacity of a stationary source to emit a pollutant under its physical and operational design . . . .'' [195] Based on this definition, we agree that an inherent physical limitation and operational design features, which restrict the potential emissions of individual emission units, should be taken into account when estimating PTE. We disagree, however, that FMMI has identified any inherent physical or operational limitation that restricts PTE at the Miami Smelter.

As explained in the guidance document cited by FMMI, the most straightforward examples of inherent limitations are for single-emission unit type operations, whereas such limitations are more difficult to identify for larger sources involving multiple emission units and complex operations.[196] The Miami Smelter is just such a large source with multiple emission units and complex operations. The other two guidance documents cited by FMMI concern grain elevators and emergency generators, two source categories for which EPA has identified ''inherent limitations.'' [197] In contrast, EPA has never identified such an inherent limitation for primary copper smelters, nor has ADEQ identified such a limitation here. Accordingly, in the absence of an enforceable limit on operations, the NO_X PTE for the BART-eligible units at the Miami Smelter is greater than 40 tpy and a BART analysis for NO_X is required.

Comment: Noting that visibility modeling performed by WRAP indicated that the visibility impact attributable to NO_X emissions from the Miami Smelter is approximately 0.11 dv, FMMI asserted that the Miami Smelter should not be considered subject-to-BART for NO_X.

Response: We disagree with this comment. As explained in sections IV.A.4.d and e above, once a facility is determined to be subject to BART, the RHR allows for the exemption of a specific pollutant from a BART analysis only if the PTE for that pollutant is below the specified *de minimis* level.[198] Therefore, we disagree that NO_X emissions from the Miami smelter are not ''subject to BART'' or are exempt from a BART analysis simply because the NO_X-specific baseline impact from the Miami Smelter is less than 0.5 dv.

Comment: FMMI states that given the Miami Smelter's low baseline NO_X emissions and the low baseline visibility impact indicated by WRAP visibility modeling results, improvements in visibility resulting from reductions in NO_X emissions at the units that constitute the Miami Smelter BART-eligible source would be negligible. Accordingly, FMMI requests that EPA consider this alternative determination and conclude that NO_X visibility impacts are so small that additional controls are not warranted for purposes of BART.

Response: As noted in section IV.A.4.e above, we did not propose a NO_X BART determination for the Miami Smelter; we proposed disapproval of the ADEQ's finding that the Miami Smelter was exempt from a NO_X BART determination. We acknowledge the information provided by the commenters, and will examine it as we work towards developing and proposing a FIP for those elements of the Arizona RH SIP that we do not approve today.

V. Summary of Final Action

EPA is taking final action to approve in part and disapprove in part the remaining portion of the Arizona RH SIP. Along with our final rule dated December 5, 2012, that addressed three major BART sources (Apache, Cholla and Coronado), today's action completes our evaluation of the Arizona RH SIP for the first planning period through 2018. In this section of the notice, we provide a summary of our evaluation of the BART analyses and determinations, RPGs, and Interstate Transport followed by a description of our legal obligation to promulgate a FIP to fill the gap left by the disapproved elements of the State's plan. EPA acknowledges ADEQ's efforts in developing the RH SIP Supplement that resulted in approval of additional elements of the Arizona RH SIP. We look forward to continuing our collaborative working relationship with ADEQ to resolve the outstanding issues and to ensure the Arizona RH SIP includes all the elements of a regional haze program.

In today's final action, we are approving much of Arizona's RH SIP including all the supporting elements, many of the State's BART-eligibility and BART-subject findings, two of the State's BART control determinations, aspects of the reasonable progress analysis, and most of the mandatory factors in the LTS. As a result of the RH SIP Supplement, we are approving an emissions inventory for 2008; some aspects of a reasonable progress analysis (i.e., decision to focus on SO_2 and NO_X and that no controls are needed on sources of PM in the first planning period); and the BART determination that no additional controls are needed for PM_{10} at the Hayden Smelter.

We are disapproving Arizona's determinations that Sundt Generating Station Unit 4 is not BART-eligible; that the Nelson Lime Plant is not subject to BART; that the Miami and Hayden Smelters are not subject to BART for NO_X; and that the existing controls at the Hayden and Miami Smelters constitute BART for SO_2. We also are disapproving the RPGs for all of Arizona's Class I areas because the State did not perform a complete four-factor analysis and demonstration of reasonable progress. Moreover, our final disapproval of the RPGs and partial disapproval of the LTS is based on the fact that the Arizona RH SIP does not include enforceable emission limits to implement the State's BART determinations. We also are partially disapproving two transport SIPs with respect to the visibility protection requirements of 110(a)(2)(D)(i)(II), since these submittals relied entirely on the Arizona RH SIP to meet these requirements.

A. Regional Haze

1. BART Analyses and Determinations

Sources not eligible or subject to BART: EPA is approving Arizona's BART threshold (0.5 dv) and its determination that West Phoenix Power Plant and the Rillito Cement Plant are not subject to BART. We also are approving Arizona's determination that Cholla Unit 1 and Sundt Unit 3 are not eligible for BART, and that a BART analysis is not required for Catalyst Paper.

Sundt Unit 4: EPA is disapproving Arizona's determination that Sundt Unit 4 is not BART-eligible. Our decision is based on the fact that this unit did not

(November 14, 1995); ''Calculating Potential to Emit (PTE) for Emergency Generators'' (September 6, 1995).

[195] 40 CFR 51.301.

[196] ''Options for Limiting the Potential to Emit of a Stationary Source under Section 112 and Title V of the Clean Air Act'', memorandum from John Seitz to EPA Air Directors (January 25, 1995).

[197] See ''Calculating Potential to Emit (PTE) for Emergency Generators,'' September 6, 1995 (explaining that emergency generators are ''are used only during periods where electric power from public utilities is unavailable'') and ''Calculating Potential to Emit (PTE) and Other Guidance for Grain Handling Facilities'' November 14,1995 (explaining that grain elevators are ''designed to service, and as a matter of operation only service, a limited geographic area from which a finite amount of grain can be grown and harvested.'').

[198] 40 CFR 51.308(e)(1)(ii)(C).

undergo NSR/PSD review as part of its reconstruction.

Chemical Lime Nelson: EPA is disapproving Arizona's determination that Nelson Lime Plant is not subject to BART. Our decision is based on the fact that the plant had a modeled 98th percentile impact on visibility in 2003 that exceeded 0.5 dv as well as additional modeling results from NPS.

Miami Smelter: We are approving Arizona's determination that the Miami Smelter is eligible and subject to BART for SO_2 and PM_{10}, but disapproving the State's determination that a BART analysis is not required for NO_X. Our disapproval is based on the fact that the facility's NO_X PTE is greater than the *de minimis* threshold of 40 tpy. Regarding SO_2, we are disapproving Arizona's streamlined analysis and determination that BART for SO_2 is the existing double contact acid plant. Our decision is based on the fact that the State did not conduct a five-factor analysis or an adequate streamlined analysis, and that the Arizona RH SIP lacks emission limits and compliance requirements. Regarding PM_{10}, we are approving Arizona's streamlined BART determination for PM_{10} at the Miami Smelter that compliance with MACT Subpart QQQ is BART. We are also approving the revised set of BART-eligible units at the Miami Smelter that were identified in the State's Supplement.

Hayden Smelter: We are approving Arizona's determination that the Hayden Smelter is BART-eligible and subject to BART for SO_2, but disapproving the State's determination that a BART analysis is not required for NO_X and PM_{10}. Regarding SO_2, we are disapproving Arizona's streamlined determination that BART for SO_2 is the existing double contact acid plant. Our decision is based on the fact that the State did not conduct a five-factor analysis or an adequate streamlined analysis. In addition, the SIP does not require all BART-eligible units to meet the emission limit and lacks compliance requirements. Regarding our disapprovals, a BART analysis and determination is required for NO_X because the facility's NO_X PTE exceeds the *de minimis* threshold of 40 tpy. Regarding PM_{10}, we are disapproving the State's determination that the Hayden Smelter is exempt from a BART determination because the facility's PM_{10} is greater than the *de minimis* level of 15 tpy. However, we are approving Arizona's BART analysis and determination for PM_{10} in its Supplement, which concluded that BART is no additional controls.

2. Reasonable Progress

EPA is finalizing our disapproval of the State's RPGs for the 20-percent worst days and 20-percent best days for three reasons. First, the Arizona RH SIP does not meet the requirements of 40 CFR 51.308(d)(1)(i)(A) and (ii) because it does demonstrate, based on an analysis of the four RP factors, that the State's RPGs are reasonable, while achievement of the URP is not reasonable. In particular, the State has not demonstrated that it is reasonable not to require any additional controls on point sources of NO_X and area sources of NO_X and SO_2 during this planning period. Second, EPA has disapproved ADEQ's BART determinations for NO_X at three power plants and its determinations for SO_2 at two copper smelters. Third, all of Arizona's BART determinations, including the ones we are approving, lack enforceable emission limitations and compliance schedules to ensure that the emissions reductions attributed to BART will, in fact, be achieved during this planning period. For each of these three reasons, we are disapproving Arizona's RPGs for this planning period.

However, we are approving certain elements of the State's RP analysis. In particular, EPA is approving the State's decision to focus on NO_X and SO_2 sources for this planning period. As explained in our December 21, 2012, proposal [199] and in our May 20, 2013, proposal,[200] the best information available indicates that VOC and secondary organic aerosols are largely uncontrollable. Therefore, it makes sense for Arizona to focus on other pollutants for this planning period. Similarly, as discussed in our May 20, 2013, proposal,[201] EPA is approving the State's decision not to pursue additional controls for coarse mass and fine soil during this first planning period, based on the monitoring data analysis supplied by the State as well as our own supplemental analysis of the major sources of these air pollutants. No commenter provided evidence that it was reasonable to control any particular source of these pollutants.

EPA is also approving the State's decision not to require additional controls on point sources of SO_2 in order to ensure reasonable progress during this planning period. EPA conducted our own four-factor analyses that confirmed the State's conclusion with regard to these sources. These analyses may be found in our December 21, 2012, proposal [202] and our responses to comments on these analyses may be found in section IV.A.6.b above.

However, EPA is not approving ADEQ's RP analyses and determinations for area sources of SO_2 and NO_X and point sources of NO_X. ADEQ identified categories of area sources of SO_2 and NO_X as appropriate candidates for four-factor analyses, but did not conduct complete four-factor analyses for these categories.[203] While the RHR does not require a complete four-factor analysis for every source or category in every planning period, it also does not allow for the deferral of all such analyses to future planning periods, particularly for the source categories that the State has identified as contributing to visibility impairment. Therefore, EPA is finalizing our proposed disapproval of the State's determination that it is not reasonable to control area sources of SO_2 and NO_X in order to ensure reasonable progress this planning period. We will conduct our own analyses of these categories and present it for public comment in our upcoming FIP proposal.

Similarly, ADEQ did not complete four-factor analyses for most of the point sources of NO_X that were identified as contributing to visibility impairment.[204] EPA is currently conducting our own four-factor analyses of these sources. We are consulting with the owners and operators of these facilities in order to make certain that we are using the best possible technical information to make our determination. However, that process did not conclude in time for us to present our findings in our proposed action on the Arizona RH SIP. Therefore, we were unable to fully evaluate whether the State correctly determined that it is not reasonable to require additional controls on point sources of NO_X at this time. As a result, we are disapproving the State's determination on this question and are planning to address it in our upcoming FIP proposal.

B. Interstate Transport

As discussed in section III.D (''Overview of Final Action on Regional Haze and Interstate Transport: Interstate Transport'') and section IV.A.8 (''EPA's Response to Comments: Arizona's Provisions for Interstate Transport of Pollutants'') of this final rule, EPA finds that the Arizona SIP, as revised by Arizona's 2007 and 2009 Transport SIPs

[199] 77 FR 75728.

[200] 78 FR 29296–29297.

[201] 78 FR 29297–29299.

[202] 77 FR 75728–75730.

[203] See Arizona Supplement Section 11.3.3.

[204] ADEQ did conduct a four-factor analysis for the Phoenix Cement Plant, but, as explained in section IV.B.3.a of our May 20, 2013 proposal, and section IV.B.2.c above, this analysis was inadequate to support ADEQ's determination that it was not reasonable to require any additional controls at this source.

and RH Plan, does not contain adequate provisions to prohibit emissions that will interfere with SIP measures required of other states to protect visibility. Therefore, we disapprove Arizona's 2007 and 2009 Transport SIPs and the Arizona RH Plan for the interstate transport visibility requirement of section 110(a)(2)(D)(i)(II) for the 1997 8-hour ozone, 1997 $PM_{2.5}$, and 2006 $PM_{2.5}$ NAAQS.

This disapproval triggers the obligation under CAA section 110(c)(1) for EPA to promulgate a FIP for the interstate transport visibility requirement for these NAAQS within two years from the effective date of this final rule. We anticipate that this FIP obligation could be satisfied by a combination of the measures that we previously approved (i.e., for Apache, Cholla, and Coronado power plants), the measures we are approving today with respect to the SIP, and EPA's promulgation of FIPs for the disapproved elements of the Arizona RH Plan. Alternately, this FIP obligation could be resolved by EPA approval of subsequent SIP revisions from ADEQ that either resolve the deficiencies in the SIP or provide a demonstration that emissions from the State's sources and activities will not have the prohibited impacts under the existing SIP.

C. Federal Implementation Plan

CAA section 110(c)(1) requires EPA to promulgate a FIP within two years after finding that a state has failed to make a required submission or disapproving a SIP submission in whole or in part, unless EPA approves a SIP revision correcting the deficiencies within that two-year period. As explained above, due to our previous finding that Arizona had failed to make part of the required regional haze submission, EPA is already subject to a FIP duty under section 110(c)(1) with respect to the regional haze requirements for Arizona. Moreover, we are also subject to a set of court-ordered deadlines for approval of a SIP and/or promulgation of a FIP that collectively meet the regional haze implementation plan requirements for Arizona, based on this FIP obligation.[205] Thus, we do not construe today's partial disapproval as creating any new FIP obligation with respect to RHR requirements. However, Arizona is appealing the district court's entry and modification of the consent decree that sets the deadlines for EPA action on regional haze plans for Arizona.[206] If Arizona's challenge ultimately results in any changes to the scope of EPA's existing FIP duty with respect to regional haze in Arizona, then today's action will trigger a two-year FIP clock for the elements of the SIP that we are disapproving and that are not subject to the already-expired FIP clock. We intend to fulfill our FIP obligation by proposing a FIP addressing the elements of the SIP that we have disapproved today.

Under section 179(a) of the CAA, final disapproval of a submittal that addresses a requirement of part D, title I of the CAA (CAA sections 171–193) or is required in response to a finding of substantial inadequacy as described in CAA section 110(k)(5) (SIP Call) starts a sanction's clock. Arizona's 308 Regional Haze SIP was not submitted to meet either of these requirements. Therefore, today's action will not trigger mandatory sanctions under CAA section 179.

VI. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

This action is not a ''significant regulatory action'' under the terms of Executive Order (EO) 12866 (58 FR 51735, October 4, 1993) and is therefore not subject to review under the EO.

B. Paperwork Reduction Act

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 et seq., because this partial approval and partial disapproval of SIP revisions under CAA section 110 will not in-and-of itself create any new information collection burdens but simply approves certain State requirements, and disapproves certain other State requirements, for inclusion into the SIP. Burden is defined at 5 CFR 1320.3(b).

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. For purposes of assessing the impacts of today's rule on small entities, small entity is defined as: (1) A small business as defined by the Small Business Administration's (SBA) regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's rule on small entities, I certify that this action will not have a significant impact on a substantial number of small entities. This rule does not impose any requirements or create impacts on small entities. This partial SIP approval and partial SIP disapproval under CAA section 110 will not in-and-of itself create any new requirements but simply approves certain State requirements, and disapproves certain other State requirements, for inclusion into the SIP. Accordingly, it affords no opportunity for EPA to fashion for small entities less burdensome compliance or reporting requirements or timetables or exemptions from all or part of the rule. Therefore, this action will not have a significant economic impact on a substantial number of small entities.

D. Unfunded Mandates Reform Act

This action contains no Federal mandates under the provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1531–1538 for state, local, or tribal governments or the private sector. EPA has determined that the partial approval and partial disapproval action does not include a Federal mandate that may result in estimated costs of $100 million or more to either state, local, or tribal governments in the aggregate, or to the private sector. This action approves certain pre-existing requirements, and disapproves certain other pre-existing requirements, under state or local law, and imposes no new requirements. Accordingly, no additional costs to state, local, or tribal governments, or to the private sector, result from this action.

E. Executive Order 13132: Federalism

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and

[205] National Parks Conservation Association v. Jackson (D.D.C. Case 1:11–cv–01548).

[206] National Parks Conservation Association v. EPA (D.C. Cir., USCA Case #12–5211).

the States, or on the distribution of power and responsibilities among the various levels of government.''

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, because it merely approves certain state requirements, and disapproves certain other state requirements, for inclusion into the SIP and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. Thus, Executive Order 13132 does not apply to this action.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This action does not have tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP on which EPA is taking action would not 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. Thus, Executive Order 13175 does not apply to this action.

Nonetheless, we note that the Phoenix Cement Plant is owned by the tribal government of the Salt River Pima-Maricopa Indian Community (SRPMIC). Our disapproval of ADEQ's determination not to require additional controls on this source leaves open the possibility that this source could be regulated in a future regional haze FIP. Therefore, consistent with the EPA Policy on Consultation and Coordination with Indian Tribes (May 2, 2011), we have shared our initial analyses with SRPMIC and PCC to ensure that the tribe has an early opportunity to provide feedback on such a potential FIP. In addition EPA Region 9 has offered opportunities for meetings and formal consultation.[207]

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

EPA interprets EO 13045 (62 FR 19885, April 23, 1997) as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under section 5–501 of the EO has the potential to influence the regulation. This action is not subject to EO 13045 because it is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997). This partial approval and partial disapproval under CAA section 110 will not in-and-of itself create any new regulations but simply approves certain state requirements, and disapproves certain other state requirements, for inclusion into the SIP.

H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

This rule is not subject to Executive Order 13211 (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (''NTTAA''), Public Law 104–113, 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards. The EPA has determined that this action is not subject to requirements of Section 12(d) of NTTAA because application of those requirements would be inconsistent with the Clean Air Act.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Population

Executive Order (EO) 12898 (59 FR 7629 (Feb. 16, 1994)) establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States. EPA lacks the discretionary authority to address environmental justice in this rulemaking.

K. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this 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). This rule will be effective on December 5, 2012.

L. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by January 4, 2013. 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, Nitrogen oxides, Sulfur dioxide, Particulate matter, Reporting and recordkeeping requirements, Visibility, Volatile organic compounds.

Dated: July 15, 2013.

Jane Diamond,

Director, Water Division, Region 9.

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

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

[207] Memo dated May 8, 2013, from Colleen McKaughan regarding EPA Region 9 communications with SRPMIC.

Subpart D—Arizona

■ 2. Section 52.120 is amended by adding paragraphs (c)(154)(ii)(A)(*2*) and (c)(158) to read as follows:

§ 52.120 Identification of plan.

* * * * *

(c) * * *

(154) * * *

(ii) * * *

(A) * * *

(*2*) Arizona State Implementation Plan, Regional Haze Under Section 308 of the Federal Regional Haze Rule (January 2011), excluding:

(*i*) Chapter 6: table 6.1; chapter 10: sections 10.4, 10.6 (regarding Unit I4 at the Irvington (Sundt) Generating Station), 10.7, and 10.8; chapter 11; chapter 12: sections 12.7.3 (''Emission Limitation and Schedules of Compliance'') and 12.7.6 (''Enforceability of Arizona's Measures''); and chapter 13: section 13.2.3 (''Arizona and Other State Emission Reductions Obligations'');

(*ii*) Appendix D: chapter I; chapter V (regarding Unit I4 at the Irvington (Sundt) Generating Station); chapter VI, sections C and D; chapter VII; chapter IX; chapter X, section E.1; chapter XI, section D; chapter XII, sections B and C; chapter XIII, sections B, C, and D; and chapter XIV, section D; and

(*iii*) Appendix E.

* * * * *

(158) The following plan was submitted May 3, 2013, by the Governor's designee.

(i) [Reserved]

(ii) Additional materials.

(A) Arizona Department of Environmental Quality (ADEQ).

(*1*) Arizona State Implementation Plan Revision, Regional Haze Under Section 308 of the Federal Regional Haze Rule (May 2013), excluding:

(*i*) Chapter 10, section 10.7 (regarding ASARCO Hayden Smelter (PM_{10} emissions) and Chemical Lime Company—Nelson Lime Plant);

(*ii*) Chapter 11, except subsection 11.3.1(3) (''Focus on SO_2 and NO_X pollutants'');

(*iii*) Appendix D: chapter I, except for the footnotes in tables 1.1, 1.2 and 1.3 to the entries for AEPCO [Apache], and the entry in table 1.2 for Freeport-McMoRan Miami Smelter; chapter VI, section C (regarding PM_{10} emissions from ASARCO Hayden smelter); chapter XII, section C, and chapter XIII, subsection D; and

(*iv*) Appendix E.

■ 3. Section 52.123 is amended by revising paragraphs (l), (m), and (n) to read as follows:

§ 52.123 Approval status.

* * * * *

(l) *1997 8-hour ozone NAAQS:* The SIPs submitted on May 24, 2007, October 14, 2009 and August 24, 2012 are fully or partially disapproved for Clean Air Act (CAA) elements 110(a)(2)(C), (D)(i)(II) (interfere with measures in any other state to protect visibility), (D)(ii), (J) and (K) for all portions of the Arizona SIP; for CAA element 110(a)(2)(E)(ii) for the Maricopa County, Pima County, and Pinal County portions of the Arizona SIP; and for CAA element 110(a)(2)(F) for the Pima County portion of the Arizona SIP.

(m) *1997 $PM_{2.5}$ NAAQS:* The SIPs submitted on May 24, 2007, October 14, 2009 and August 24, 2012 are fully or partially disapproved for Clean Air Act (CAA) elements 110(a)(2)(C), (D)(i)(II) (interfere with measures in any other state to protect visibility), (D)(ii), (J) and (K) for all portions of the Arizona SIP; for CAA element 110(a)(2)(E)(ii) for the Maricopa County, Pima County, and Pinal County portions of the Arizona SIP; and for CAA element 110(a)(2)(F) for the Pima County portion of the Arizona SIP.

(n) *2006 $PM_{2.5}$ NAAQS:* The SIPs submitted on October 14, 2009 and August 24, 2012 are fully or partially disapproved for Clean Air Act (CAA) elements 110(a)(2)(C), (D)(i)(II) (interfere with measures in any other state to prevent significant deterioration of air quality or to protect visibility), (D)(ii), (J) and (K) for all portions of the Arizona SIP; for CAA element 110(a)(2)(E)(ii) for the Maricopa County, Pima County, and Pinal County portions of the Arizona SIP; and for CAA element 110(a)(2)(F) for the Pima County portion of the Arizona SIP.

■ 4. Section 52.145 is amended by adding paragraphs (e)(2) and (g) to read as follows:

§ 52.145 Visibility protection.

* * * * *

(e) * * *

(2) The following portions of the Arizona Regional Haze SIP are disapproved because they do not meet the applicable requirements of Clean Air Act sections 169A and 169B and the Regional Haze Rule in 40 CFR 51.301 through 51.308:

(i) The determination that Unit I4 at TEP's Irvington [Sundt] Generating Station is not BART-eligible;

(ii) The portions of the long-term strategy for regional haze related to emission reductions for out-of-state Class I areas, emissions limitations and schedules for compliance to achieve the reasonable progress goal and enforceability of emissions limitations and control measures.

(iii) The NO_X BART determination for Units ST2 and ST3 at AEPCO Apache Generating Station;

(iv) The NO_X BART determination for Units 2, 3, and 4 at APS Cholla Power Plant;

(v) The NO_X BART determination for Units 1 and 2 at SRP Coronado Generating Station; and

(vi) The BART compliance provisions for all BART emissions limits at Units ST1, ST2 and ST3 at AEPCO Apache Generating Station, Units 2, 3, and 4 at APS Cholla Power Plant, and Units 1 and 2 at SRP Coronado Generating Station.

* * * * *

(g) On May 3, 2013, the Arizona Department of Environmental Quality (ADEQ) submitted the ''Arizona State Implementation Plan Revision, Regional Haze Under Section 308 of the Federal Regional Haze Rule'' (''Arizona Regional Haze SIP Supplement'').

(1) The following portions of the Arizona Regional Haze SIP Supplement are disapproved because they do not meet the applicable requirements of Clean Air Act sections 169A and 169B and the Regional Haze Rule in 40 CFR 51.301 through 51.308:

(i) The determination that the Chemical Lime Company's Nelson Lime Plant is not subject-to-BART;

(ii) The determination that the Freeport McMoRan Miami Inc (FMMI) Smelter is not subject to BART for NO_X;

(iii) The determination that existing controls constitute BART for SO_2 at the Freeport McMoRan Miami Inc (FMMI) Smelter;

(iv) The determination that the ASARCO Hayden smelter is not subject to BART for NO_X and PM_{10};

(v) The determination that existing controls constitute BART for SO_2 at ASARCO Hayden Smelter;

(vi) The reasonable progress goals for the first planning period;

(vii) The determination that no additional controls for point sources of NO_X are reasonable for the first planning period; and

(viii) The determination that no additional controls for area sources of NO_X and SO_2 are reasonable for the first planning period.

(2) [Reserved]

■ 5. Add § 52.147 to subpart D to read as follows:

§ 52.147 Interstate transport.

(a) *Approval.* The SIP submitted on May 24, 2007 meets the requirements of Clean Air Act section 110(a)(2)(D)(i)(I) (contribute significantly to

nonattainment or interfere with maintenance of the NAAQS in any other state) and section 110(a)(2)(D)(i)(II) (interfere with measures in any other state to prevent significant deterioration of air quality, only) for the 1997 8-hour ozone and 1997 $PM_{2.5}$ NAAQS.

(b) *Disapproval.* The SIPs submitted on May 24, 2007, February 28, 2011, and May 3, 2013 do not meet the requirements of Clean Air Act section 110(a)(2)(D)(i)(II) (interfere with measures in any other state to protect visibility, only) for the 1997 8-hour ozone and 1997 $PM_{2.5}$ NAAQS.

(c) *Approval.* The SIP submitted on October 14, 2009 meets the requirements of Clean Air Act section 110(a)(2)(D)(i)(I) (contribute significantly to nonattainment or interfere with maintenance of the NAAQS in any other state) for the 2006 $PM_{2.5}$ NAAQS.

(d) *Disapproval.* The SIPs submitted on October 14, 2009 and August 24, 2012 do not meet the requirements of Clean Air Act section 110(a)(2)(D)(i)(II) (interfere with measures in any other state to prevent significant deterioration of air quality, only) for the 2006 $PM_{2.5}$ NAAQS.

(e) *Disapproval.* The SIPs submitted on October 14, 2009, February 28, 2011, and May 3, 2013 do not meet the requirements of Clean Air Act section 110(a)(2)(D)(i)(II) (interfere with measures in any other state to protect visibility, only) for the 2006 $PM_{2.5}$ NAAQS.

[FR Doc. 2013–18022 Filed 7–29–13; 8:45 am]

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Part V

Department of Energy

Federal Energy Regulatory Commission

18 CFR Parts 35 and 101

Third-Party Provision of Ancillary Services; Accounting and Financial Reporting for New Electric Storage Technologies; Rules

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 35 and 101

[Docket Nos. RM11–24–000 and AD10–13–000; Order No. 784]

Third-Party Provision of Ancillary Services; Accounting and Financial Reporting for New Electric Storage Technologies

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is revising its regulations to foster competition and transparency in ancillary services markets. The Commission is revising certain aspects of its current market-based rate regulations, ancillary services requirements under the *pro forma* open-access transmission tariff (OATT), and accounting and reporting requirements. Specifically, the Commission is revising its regulations to reflect reforms to its Avista policy governing the sale of ancillary services at market-based rates to public utility transmission providers. The Commission is also requiring each public utility transmission provider to add to its OATT Schedule 3 a statement that it will take into account the speed and accuracy of regulation resources in its determination of reserve requirements for Regulation and Frequency Response service, including as it reviews whether a self-supplying customer has made ''alternative comparable arrangements'' as required by the Schedule. The final rule also requires each public utility transmission provider to post certain Area Control Error data as described in the final rule. Finally, the Commission is revising the accounting and reporting requirements under its Uniform System of Accounts for public utilities and licensees and its forms, statements, and reports, contained in FERC Form No. 1, Annual Report of Major Electric Utilities, Licensees and Others, FERC Form No. 1–F, Annual Report for Nonmajor Public Utilities and Licensees, and FERC Form No. 3–Q, Quarterly Financial Report of Electric Utilities, Licensees, and Natural Gas Companies, to better account for and report transactions associated with the use of energy storage devices in public utility operations.

DATES: This rule is effective November 27, 2013.

FOR FURTHER INFORMATION CONTACT:

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SUPPLEMENTARY INFORMATION:

Before Commissioners: Jon Wellinghoff, Chairman; Philip D. Moeller, John R. Norris, Cheryl A. LaFleur, and Tony Clark.

Order No. 784

Final Rule

Issued July 18, 2013.

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1. The Federal Energy Regulatory Commission (Commission) is revising its regulations to enhance competition and transparency in ancillary services markets. The Commission is revising certain aspects of its current market-based rate regulations, ancillary services requirements under the *pro forma* open-access transmission tariff (OATT), and accounting and reporting requirements. Specifically, the Commission is revising Part 35 of its regulations to reflect reforms to its *Avista Corp.*[1] policy governing the sale of ancillary services at market-based rates to public utility transmission providers. The Commission is also requiring each public utility transmission provider to add to its OATT Schedule 3 a statement that it will take into account the speed and accuracy of regulation resources in its determination of reserve requirements for Regulation and Frequency Response service, including as it reviews whether a self-supplying customer has made ''alternative comparable arrangements'' as required

[1] *See* 87 FERC ¶ 61,223 (*Avista*), *order on reh'g,* 89 FERC ¶ 61,136 (1999).

by the Schedule. Each public utility transmission provider is also required to post certain Area Control Error data on the open access same-time information system (OASIS). Finally, the Commission is revising the accounting and reporting requirements under its Uniform System of Accounts for public utilities and licensees (USofA) [2] and its forms, statements, and reports, contained in FERC Form No. 1 (Form No. 1), Annual Report of Major Electric Utilities, Licensees and Others,[3] FERC Form No. 1–F (Form No. 1–F), Annual Report for Nonmajor Public Utilities and Licensees,[4] and FERC Form No. 3–Q (Form No. 3–Q), Quarterly Financial Report of Electric Utilities, Licensees, and Natural Gas Companies,[5] to better account for and report transactions associated with the use of energy storage devices in public utility operations.

2. First, the Commission reforms the *Avista* policy governing sales of certain ancillary services to a public utility purchasing the ancillary service to satisfy its own OATT requirements to offer ancillary services to its own customers. As noted in the Notice of Proposed Rulemaking,[6] there is a growing need for ancillary services to support grid functions in the face of potential changes in the portfolio of generation resources and a growing interest of transmission providers to have flexibility in meeting ancillary services needs.[7] There is also interest in third-party provision of ancillary services and that interest may be unnecessarily frustrated by the *Avista* policy. Comments to the NOPR's proposal to reconsider the *Avista* restrictions generally supported these concepts. As such, and as discussed further below, we conclude that elements of our existing market-based rate regulations can be modified in a manner that continues to limit the exercise of market power, while also enhancing the ability of third parties to compete for the sale of certain ancillary services.

3. Second, we adopt reforms to provide greater transparency with regard to reserve requirements for Regulation and Frequency Response. Under the requirements of the *pro forma* OATT, transmission customers may either purchase Regulation and Frequency Response service at cost-based rates from the public utility transmission provider pursuant to its OATT or self-supply the service, including through purchases from third-parties.[8] With regard to the notion of self-supply, the *pro forma* OATT Schedule 3 merely states that the transmission customer must make alternative comparable arrangements to satisfy is Regulation and Frequency Response Service obligation. In particular, Schedule 3 provides no discussion of the meaning of the term ''comparable'' as it relates to reliance on resources with dispatch speed and accuracy characteristics that may differ from those used by the public utility transmission provider. Because the system must be operated reliably at all times, the customer may not decline the transmission provider's offer of ancillary services unless it demonstrates that it has acquired comparable services from another source.[9] In order to clarify the role of resource speed and accuracy in the determination of alternative comparable arrangements, in this Final Rule the Commission requires each public utility transmission provider to add to its OATT Schedule 3 a statement that it will take into account the speed and accuracy of regulation resources in its determination of reserve requirements for Regulation and Frequency Response service, including as it reviews whether a self-supplying customer has made ''alternative comparable arrangements'' as required by the Schedule. This statement will also acknowledge that, upon request by the self-supplying customer, the public utility transmission provider will share with the customer its reasoning and any related data used to make the determination of whether the customer has made ''alternative comparable arrangements.'' To aid the transmission customer's ability to make an ''apples-to-apples'' comparison of regulation resources, the final rule also requires each public utility transmission provider to post on OASIS historical one-minute and ten-minute Area Control Error data as described in the final rule for the most recent calendar year, and update this posting once per year.

4. With this information, a transmission customer will be in a position to demonstrate to the public utility transmission provider that the resource(s) it selects for self-supply are comparable to those of the public utility transmission provider. As such, these reforms are necessary to address the potential for undue discrimination against transmission customers choosing to self-supply Regulation and Frequency Response, including through purchases from third-parties. Acknowledging the speed and accuracy of the resources used to provide this service will help to ensure that self-supply requirements of the public utility transmission provider do not unduly discriminate by requiring customers to procure a different amount of regulation reserves than the particular speed and accuracy characteristics of the resources in question justify (i.e., to be comparable, a customer self-supply arrangement that relies on slower, less accurate resources than those of the public utility transmission provider should probably involve a larger reserve requirement than would a purchase from the transmission provider, and vice versa). Moreover, as the Commission has previously stated, because most generation-based ancillary services can be provided by many of the generators connected to the transmission system, some customers may be able to provide or procure such services more economically than the transmission provider can.[10]

5. Finally, we adopt reforms to our accounting and reporting regulations to add new electric plant and operation and maintenance (O&M) expense accounts for energy storage devices. These reforms are necessary to accommodate the increasing availability of these new resources for use in public utility operations. These reforms are also necessary to ensure that the activities and costs of new energy

[2] *Uniform System of Accounts Prescribed for Public Utilities and Licensees Subject to the Provisions of the Federal Power Act,* 18 CFR Part 101 (2012).

[3] 18 CFR 141.1 (2012).

[4] 18 CFR 141.2 (2012).

[5] 18 CFR 141.400 (2012).

[6] *Third-Party Provision of Ancillary Services; Accounting and Financial Reporting for New Electric Storage Technologies,* Notice of Proposed Rulemaking, FERC Stats. & Regs. ¶ 32,690 (2012) (NOPR).

[7] *Integration of Variable Energy Resources,* Order No. 764, FERC Stats. & Regs. ¶ 32,331, *order on reh'g,* Order No. 764–A, 141 FERC ¶ 61,232 (2012); and *Demand Response Compensation in Organized Wholesale Energy Markets,* Order No. 745, FERC Stats. & Regs. ¶ 31,322, *order on reh'g,* Order No. 745–A, 137 FERC ¶ 61,215 (2011).

[8] *See, e.g., Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Services by Public Utilities; Recovery of Stranded Costs by Public Utilities and Transmitting Utilities,* Order No. 888, FERC Stats. & Regs. ¶ 31,036, at 31,716 (1996), *order on reh'g,* Order No. 888–A, FERC Stats. & Regs. ¶ 31,048, *order on reh'g,* Order No. 888–B, 81 FERC ¶ 61,248 (1997), *order on reh'g,* Order No. 888–C, 82 FERC ¶ 61,046 (1998), *aff'd in relevant part sub nom. Transmission Access Policy Study Group* v. *FERC,* 225 F.3d 667 (D.C. Cir. 2000), *aff'd sub nom. New York* v. *FERC,* 535 U.S. 1 (2002); *pro forma* OATT, Original Sheet Nos. 20–21 and Schedule 3, Original Sheet No. 113.

[9] Order No. 888, FERC Stats. & Regs. ¶ 31,036 at 31,716.

[10] *Id.* at 31,718. We note that customers could conceivably procure such services more economically either by paying much less per unit for a larger amount of slower, less accurate resources, or by paying somewhat more per unit for a smaller amount of faster, more accurate resources.

storage operations are sufficiently transparent to allow effective oversight.

Background

6. The Commission has taken numerous steps over the last several decades to foster the development of competitive wholesale energy markets by ensuring non-discriminatory access and comparable treatment of resources in jurisdictional wholesale markets.[11] With regard to ancillary services, the Commission in Order No. 888 delineated two categories of ancillary services: Those that the transmission provider is required to provide to all of its basic transmission customers [12] and those that the transmission provider is only required to *offer* to provide to transmission customers serving load in the transmission provider's control area.[13] With respect to the second category the Commission reasoned that the transmission provider is not always uniquely qualified to provide the services and customers may be able to more cost-effectively self-supply them or procure them from other entities. The Commission contemplated that third parties (i.e., parties other than a transmission provider supplying ancillary services pursuant to its OATT obligation) could provide ancillary services on other than a cost-of-service basis if such pricing was supported, on a case-by-case basis, by analyses that demonstrated that the seller lacks market power in the relevant product market.[14] Later, in *Ocean Vista Power Generation, L.L.C.,*[15] the Commission provided guidance regarding such analyses, explaining that as a general matter a study of ancillary services markets should address the nature and characteristics of each ancillary service, as well as the nature and characteristics of generation capable of supplying each service, and that the study should develop market shares for each service.

7. The Commission subsequently acknowledged in *Avista* [16] that data limitations can impair the ability of sellers to perform a market power study for ancillary services consistent with the requirements of *Ocean Vista.* The Commission therefore adopted a policy allowing third-party ancillary service providers that could not perform a market power study to sell certain ancillary services at market-based rates with certain restrictions.[17] In so doing, the Commission reasoned that the backstop of cost-based ancillary services from transmission providers, in effect, limits the price at which customers are willing to buy ancillary services, thus ensuring that the third-party sellers' rates would remain just and reasonable even without a showing of lack of market power. However, the Commission found that this backstop failed to provide adequate mitigation of potential third-party market power in three situations: (1) Sales to a regional transmission organization (RTO) or an independent system operator (ISO), which has no ability to self-supply ancillary services but instead depends on third parties; [18] (2) to address affiliate abuse concerns, sales to a traditional, franchised public utility affiliated with the third-party supplier, or sales where the underlying transmission service is on the system of the public utility affiliated with the third-party supplier; and (3) sales to a public utility that is purchasing ancillary services to satisfy its own OATT requirements to offer ancillary services to its own customers.[19] Therefore, the Commission's *Avista* policy has allowed third-party suppliers to sell certain ancillary services at market-based rates without showing a lack of market power, except under these three circumstances.

8. In its ongoing effort to enhance competitive markets as a means to ensure just and reasonable rates, including those for ancillary services, the Commission has continued to evaluate its *Avista* policy, including, with particular regard to this proceeding, the restriction on the sale of ancillary services by third-parties to a public utility that is purchasing ancillary services to satisfy its own OATT requirements to offer ancillary services to its own customers. The Commission's concern has been to ensure that the cost-based OATT ancillary service rates of public utilities remain a viable backstop or alternative that transmission customers can rely upon instead of the market-based sales from third parties who have not been shown to lack market power. The Commission has reasoned that, if such third-party sellers were permitted to sell to public utilities seeking to meet their OATT ancillary service obligations, the public utility's ability to seek recovery of such purchase costs in OATT rates might lead to increases in those OATT ancillary service rates that may reflect the exercise of market power thus reducing the rates' ability to serve as an effective alternative to purchases from a third-party seller unable to show lack of market power. This would undermine the effectiveness of the mitigation measure that the Commission relied upon in *Avista* to relax the requirement for a market power analysis.[20]

9. However, as the record in this proceeding demonstrates, the restriction on sales of ancillary services at market-based rates to a public utility for purposes of satisfying its OATT requirements has proven to be an

[11] *See, e.g.,* Order No. 888, FERC Stats. & Regs. ¶ 31,036, at 31,781; *Market-Based Rates for Wholesale Sales of Electric Energy, Capacity and Ancillary Services by Public Utilities,* Order No. 697, FERC Stats. & Regs. ¶ 31,252, *clarified,* 121 FERC ¶ 61,260 (2007), *order on reh'g,* Order No. 697–A, FERC Stats. & Regs. ¶ 31,268, *clarified,* 124 FERC ¶ 61,055, *order on reh'g,* Order No. 697–B, FERC Stats. & Regs. ¶ 31,285 (2008), *order on reh'g,* Order No. 697–C, FERC Stats. & Regs. ¶ 31,291 (2009), *order on reh'g,* Order No. 697–D, FERC Stats. & Regs. ¶ 31,305 (2010), *aff'd sub nom. Montana Consumer Counsel v. FERC,* 659 F.3d 910 (9th Cir. 2011), *cert. denied sub nom. Pub. Citizen, Inc. v. FERC,* 133 S. Ct. 26 (2012); *Preventing Undue Discrimination and Preference in Transmission Service,* Order No. 890, FERC Stats. & Regs. ¶ 31,241, *order on reh'g,* Order No. 890–A, FERC Stats. & Regs. ¶ 31,261 (2007), *order on reh'g,* Order No. 890–B, 123 FERC ¶ 61,299 (2008), *order on reh'g,* Order No. 890–C, 126 FERC ¶ 61,228 (2009), *order on reh'g,* Order No. 890–D, 129 FERC ¶ 61,126 (2009); *Wholesale Competition in Regions with Organized Electric Markets,* Order No. 719, FERC Stats. & Regs. ¶ 31,281 (2008), *order on reh'g,* Order No. 719–A, FERC Stats. & Regs. ¶ 31,292 (2009), *order on reh'g,* Order No. 719–B, 129 FERC ¶ 61,252 (2009).

[12] The first category consists of Scheduling, System Control and Dispatch service and Reactive Supply and Voltage Control from Generation Sources service.

[13] The second category consists of Regulation and Frequency Response service, Energy Imbalance service, Operating Reserve-Spinning service, and Operating Reserve-Supplemental service. Order No. 890 later added an additional OATT ancillary service to this category: Generator Imbalance service. *See* Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 85.

[14] Order No. 888, FERC Stats. & Regs. ¶ 31,036 at 31,720–21.

[15] 82 FERC ¶ 61,114, at 61,406–07 (1998) (*Ocean Vista*).

[16] *Avista,* 87 FERC at 61,882.

[17] These ancillary services included: Regulation and Frequency Response, Energy Imbalance, Operating Reserve-Spinning, and Operating Reserve-Supplemental. The Commission did not extend this *Avista* policy to Reactive Supply and Voltage Control from Generation Sources service, which means that third parties wishing to sell this ancillary service at market-based rates would remain subject to the pre-*Avista* market power screen requirement. The Commission also did not extend the *Avista* policy to Scheduling, System Control and Dispatch service. However, because only balancing area operators can provide this ancillary service, it does not lend itself to competitive supply.

[18] Subsequently, as the Commission recognized in Order No. 697, most RTOs and ISOs developed formal ancillary service markets, thus rendering this component of the *Avista* policy largely superfluous. *See* Order No. 697, FERC Stats. & Regs. ¶ 31,252 at n.1194 and P 1069.

[19] *Avista,* 87 FERC ¶ 61,223 at n.12.

[20] *See Avista Rehearing Order,* 89 FERC at 61,391–92 (stating that the Commission is ''able to grant blanket authority for flexible pricing only because the price charged by the third-party supplier is disciplined by the obligation of the transmission provider to offer these services under cost-based rates. This discipline would be thwarted if the transmission provider could substitute purchases under non-cost-based rates for its mandatory service obligation.'').

unreasonable barrier to entry, unnecessarily restricting access to potential suppliers. In the NOPR, the Commission proposed to address this problem by reforming the *Avista* restrictions, both by modifying the showing an entity must make to establish that it lacks market power and by establishing market power mitigation options in the absence of such a showing.

10. Building off the Commission's action in Order No. 755, which found that accounting for a given resource's speed and accuracy can help ensure just and reasonable rates and prevent against undue discrimination, in the NOPR, the Commission also proposed to require each public utility transmission provider to include provisions in its OATT explaining how it will determine regulation service reserve requirements for transmission customers, including those that choose to self-supply regulation service, in a manner that takes into account the speed and accuracy of resources used.

11. Finally, the Commission proposed to modify its accounting regulations to increase transparency for energy storage facilities. While the Commission's accounting and reporting requirements associated with the USofA do not dictate the ratemaking decisions of this Commission or State Commissions, these accounting and reporting requirements nevertheless support the rate oversight needs of both this Commission and State Commissions. This information is important in developing and monitoring rates, making policy decisions, compliance and enforcement initiatives, and informing the Commission and the public about the activities of entities that are subject to these accounting and reporting requirements.[21]

Discussion

The Avista Policy

12. As noted above, the Commission's *Avista* policy authorizes the sale of certain ancillary services at market-based rates without showing a lack of market power except under specified circumstances. As relevant here, a third-party may not sell ancillary services at market-based rates to a public utility that is purchasing ancillary services to satisfy its own OATT requirements to offer ancillary services to its own customers. In order to overcome this restriction, a potential seller must provide a market power study demonstrating a lack of market power for the particular ancillary service in the particular geographic market. Based on the record before us, the Commission adopts a number of the reforms to the ancillary services pricing policy proposed in the NOPR and in some instances adopts a number of modifications to those reforms based on the comments received in response to the NOPR.

13. Specifically, this Final Rule allows a resource with market-based rate authority for sales of energy and capacity to sell imbalance services at market-based rates to a public utility transmission provider in the same balancing authority area, or to a public utility transmission provider in a different balancing authority area, if those areas have implemented intra-hour scheduling for transmission service. In addition, upon consideration of the comments to the NOPR, this Final Rule also allows a resource with market-based rate authority for sales of energy and capacity to sell operating reserve services at market-based rates to a public utility transmission provider in the same balancing authority area, or to a public utility transmission provider in a different balancing authority area, if those areas have implemented intra-hour scheduling for transmission service that supports the delivery of operating reserve resources from one balancing authority area to another. As a result, the only remaining limitation on third-party market-based sales of ancillary services is on sales of Reactive Supply and Voltage Control service and Regulation and Frequency Response service to a public utility that is purchasing ancillary services to satisfy its own OATT requirements absent a showing of lack of market power or adequate mitigation of potential market power. In that regard, third-party sales of Reactive Supply and Voltage Control service and Regulation and Frequency Response service to public utility transmission providers will be permitted at rates not to exceed the buying public utility transmission provider's OATT rate for the same service. Further, to the extent a transmission provider chooses to procure either Reactive Supply and Voltage Control service or Regulation and Frequency Response service through a competitive solicitation that meets the requirements of this Final Rule, third-party sellers of these services may sell at market-based rates.

14. While the record in this proceeding was insufficient for the Commission to relieve the restrictions for Reactive Supply and Voltage Control service and Regulation and Frequency Response service in the same manner as Imbalance and Operating reserves, we remain interested in exploring the technical, economic and market issues concerning the provision of Reactive Supply and Voltage Control service and Regulation and Frequency Response service. As such, the Commission intends to gather further information regarding the provision of Reactive Supply and Voltage Control service and Regulation and Frequency Response service in a separate, new proceeding.

15. Thus, while we decline to adopt some of the reforms proposed in the NOPR based on the record in this proceeding, we expect that this Final Rule substantially enhances the overall opportunities for third-parties to compete to make sales of ancillary services while continuing to limit the exercise of market power.

16. We will first discuss the market power analyses used to establish authority to sell at market-based rates, followed by a discussion of alternative cost-based mitigation in the event a market participant cannot show it lacks market power for a specific product or service.

Use of Market Power Analyses

17. The Commission analyzes horizontal market power[22] for sales of energy and capacity using two indicative screens, the wholesale market share screen and the pivotal supplier screen, to identify sellers that raise no horizontal market power concerns and can otherwise be considered for market-based rate authority.[23] The wholesale market share screen measures whether a seller has a dominant position in the relevant geographic market in terms of the number of megawatts of uncommitted capacity owned or controlled by the seller, as compared to the uncommitted capacity of the entire market.[24] A seller whose share of the relevant market is less than 20 percent during all seasons passes the wholesale market share screen.[25] The pivotal supplier screen evaluates the seller's potential to exercise horizontal market power based on the seller's uncommitted capacity at the time of annual peak demand in the relevant

[21] Applicants for market-based rate authority that do not sell under cost-based rates frequently seek and typically are granted waiver of many or all of these requirements.

[22] 18 CFR 35.37(b) (2012).

[23] Order No. 697, FERC Stats. & Regs. ¶ 31,252 at PP 13, 62. *See also* 18 CFR 35.37(b), (c)(1) (2012).

[24] Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 43. Uncommitted capacity is determined by adding the total nameplate or seasonal capacity of generation owned or controlled through contract and firm purchases, less operating reserves, native load commitments and long-term firm sales. *Id.* P 38.

[25] *Id.* PP 43–44, 80, 89.

market.[26] A seller satisfies the pivotal supplier screen if its uncommitted capacity is less than the net uncommitted supply in the relevant market.[27]

18. Passing both the wholesale market share screen and the pivotal supplier screen creates a rebuttable presumption that the seller does not possess horizontal market power with respect to sales of energy or capacity; failing either screen creates a rebuttable presumption that the seller possesses horizontal market power for such sales.[28] A seller that fails one of the screens may present evidence, such as a delivered price test (DPT), to rebut the presumption of horizontal market power.[29] In the alternative, a seller may accept the presumption of horizontal market power and adopt some form of cost-based mitigation.[30]

19. Three of the key components of the analysis of horizontal market power are the definition of products, the determination of appropriate geographic scope of the relevant market for each product, and the identification of the uncommitted generation supply within the relevant geographic market. In Order No. 697, the Commission adopted a default relevant geographic market for sales of energy and capacity.[31] In particular, the Commission will generally use a seller's balancing authority area plus first-tier markets,[32] or the RTO/ISO market as applicable, as the default relevant geographic market. For sales of energy and capacity, the product definitions are well understood: the relevant geographic market is generally the default market described above; and, the uncommitted generation supply is generally identified as all such supply located within the seller's balancing authority area, plus potential uncommitted imports, as determined largely by available transmission capacity in the form of simultaneous import limits.[33] Except in the circumstances set forth in *Avista,* entities seeking to sell ancillary services at market-based rates have been required to provide market power analyses that address the nature and characteristics of each ancillary service, as well as the nature and characteristics of generation capable of supplying each service.[34] This requirement was based on an assumption that such characteristics might differ from those related to sales of energy and capacity.

a. Reliance on Existing Indicative Screens

20. In the NOPR, the Commission analyzed whether passage of the existing market-based rate screens for sales of energy and capacity can adequately demonstrate lack of market power for sales of ancillary services, based on the relevant characteristics of resources capable of providing each ancillary service. Based on this analysis, the Commission proposed that only the two imbalance ancillary services (Energy Imbalance and Generator Imbalance), and no other ancillary services, could be encompassed by the existing market-based rate screens.[35] The Commission sought comment on both this analysis and the resulting proposal.[36]

21. As discussed in more detail below, commenters addressed both the Commission's ancillary service-by-ancillary service analysis of this issue, and the proposal to apply the existing market power screens to only the imbalance ancillary services.

i. Application to Imbalance Ancillary Services

Commission Proposal

22. In the NOPR, the Commission stated that resources capable of providing Energy Imbalance and Generator Imbalance do not appear to require any different technical equipment or suffer from any different geographical limitations compared to resources that provide energy or capacity. As a result, the Commission proposed that sellers passing existing market power analyses should be permitted to sell not only energy and capacity in the relevant geographic market(s), but also Energy Imbalance and Generator Imbalance services at market-based rates. The Commission sought comments on, among other things, any unique technical requirements or limitations that might apply to the provision of the imbalance ancillary services that might impact the Commission's proposal to find that passage of the existing market power screens also indicates a lack of market power for imbalance services.[37]

Comments

23. The majority of commenters support the Commission's proposal. AWEA, Beacon, California Storage Alliance, EEI, Electricity Consumers, EPSA, ESA, Iberdrola, Hydro Association, Public Interest Organizations, Powerex, Solar Energy Association, Shell Energy, Southern California Edison, and WSPP support the NOPR proposal to revise the Commission's regulations governing market-based rate authorizations to provide that sellers passing existing market-based rate analyses in a given geographic market should be granted a rebuttable presumption that they lack horizontal market power for sales of Energy Imbalance and Generator Imbalance ancillary services in that market.

24. ESA, Electricity Consumers, Beacon, and EEI, among others, agree that there are no special technical requirements or other limitations that apply to the provision of the Energy Imbalance or Generator Imbalance ancillary services.[38] Electricity Consumers and WSPP, among others, argue that the proposed revisions should reduce barriers to ancillary service providers and increase the supply of needed ancillary services. WSPP agrees that the proposal would enable additional sellers of balancing energy to transact with public utility transmission providers in both bilateral markets or a multi-lateral balancing market, and states that it would likely foster sales of balancing energy even outside of the transmission provider market. AWEA contends that the Commission's proposed reforms strike

[26] 18 CFR 35.37(c)(1) (2012).

[27] Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 42.

[28] 18 CFR 35.37(c)(1) (2012).

[29] 18 CFR 35.37(c)(2) (2012). For purposes of rebutting the presumption of horizontal market power, sellers may use the results of the DPT to refine the default relevant geographic market used to perform pivotal supplier and market share analyses and market concentration analyses using the Herfindahl-Hirschman Index (HHI). The HHI is a widely accepted measure of market concentration, calculated by squaring the market share of each firm competing in the market and summing the results. The Commission has stated that a showing of an HHI less than 2,500 in the relevant market for all season/load periods for sellers that have also shown that they are not pivotal and do not possess a market share of 20 percent or greater in any of the season/load periods would constitute a showing of a lack of horizontal market power, absent compelling contrary evidence from intervenors. Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 111.

[30] 18 CFR 35.37(c)(3) (2012).

[31] Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 15.

[32] First-tier markets are those markets directly interconnected to the seller's balancing authority area. *See, e.g.,* Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 232.

[33] Studies of Simultaneous Transmission Import Limits (SIL) quantify a study area's simultaneous import capability from its aggregated first-tier area. SIL studies are used as a basis for calculating import capability to serve load in the relevant geographic market when performing market power analyses.

[34] *See, Ocean Vista,* 82 FERC ¶ 61,114, at 61,406–07 (1998).

[35] NOPR, FERC Stats. & Regs. ¶ 32,690 at PP 18–24.

[36] *Id.* P 24.

[37] *Id.* PP 19–20.

[38] ESA Comments at 6; Beacon Comments at 5; Electricity Consumers Comments at 3; and EEI Comments at 9.

the appropriate balance between reducing barriers to entry and protecting against market power.

25. WSPP and Powerex, with Iberdrola concurring by reference, urge the Commission to clarify that this proposal includes the capacity associated with balancing energy sales, not just the energy.[39] WSPP states that without the underlying capacity, sales of balancing energy could have no firmness and would be of little value in the market, in particular the bilateral market. Further, WSPP contends that the likely market for balancing energy would not differentiate energy and capacity products by OATT Schedules. Rather, sellers would sell ''flexible capacity'' capable of fulfilling multiple OATT Schedules and operators would look to flexible capacity to support various system stabilizing functions to which the OATT Schedules refer. Thus, WSPP contends that the market would be more efficient if the capacity and energy required to provide OATT services are not required to be unbundled when the natural market for supply would be a bundled ''flexible capacity'' product.[40]

26. Solar Energy Association states conceptual support for the proposal, but argues that sellers may have market power in certain ancillary services markets even if not in energy or capacity markets, and urges the Commission to police markets that are created due to the adoption of a rebuttable presumption of lack of market power.[41]

27. Two commenters express concern with the NOPR proposal. TAPS objects to the NOPR's preliminary finding that any available unit in a given geographic market is capable of providing energy that helps address imbalances in that market. TAPS contends that significant technical limitations limit the resources that can provide imbalance services absent special arrangements like pseudo-ties, and therefore the first tier resources included in the horizontal market power screen are not generally available to provide intra-hour imbalance service. TAPS asserts that Order No. 890–A supports this contention by allegedly finding ''that generation outside the control area can provide imbalance service when pseudo-tied and thus subject to within-area dispatch control.''[42] TAPS further states that outside organized markets, generators capable of providing imbalance service must have a special relationship with the control area operator in order to supply changing within-the-hour energy needs, without the constraints of hourly transmission scheduling requirements and that even the recently adopted 15-minute scheduling requirement is insufficient, especially when combined with the need to schedule 20 minutes in advance.[43]

28. TAPS asserts that, in non-RTO regions, imbalance service is typically provided by the energy associated with regulation and operating reserves, and thus resources capable of providing imbalance services would necessarily be subject to the same technical requirements as the NOPR described for regulation and operating reserves.[44] TAPS supports this assertion by claiming that Order No. 890 found that ''demand costs of providing imbalance service are already being provided under Schedule 3, 5, and 6 charges [i.e., Regulation and Frequency Response Service, Operating Reserve-Spinning Reserve Services, and Operating Reserve Supplemental Reserve Services].''[45]

29. TAPS further rejects the Commission's assertion in the NOPR that this proposal is consistent with the decision in Order No. 890–A to base cost-based imbalance charges in the OATT on the incremental cost of the last 10 MW dispatched by the transmission provider for any purpose, without imposing any requirement that this last 10 MW be based on resources with any particular capabilities.[46] TAPS contends that the pricing of OATT imbalance service does not demonstrate the absence of the alleged restrictions described above on the supply of intra-hour energy that allows transmission providers to provide energy imbalance service.

30. Morgan Stanley contends that the existing market power screens are flawed even in their application to energy and capacity products and thus should not be applied to additional products. Morgan Stanley argues that the existing market power screens in some cases fail to assess the full import capability into a given geographic market, and thus the true market size. Morgan Stanley ultimately argues that a revised market power screen ''should include any transmission located outside of the relevant market area, but which is interconnected and over which there is transfer capacity.''[47] However, Morgan Stanley does not state opposition to the idea that a lack of market power in energy and capacity can justify an assumption of equivalent lack of market power in Energy Imbalance and Generator Imbalance services.

Commission Determination

31. The Commission will adopt its proposal with modification. The Commission will allow third-party sellers passing existing market power screens to sell Energy Imbalance and Generator Imbalance services at market-based rates to a public utility transmission provider within the same balancing authority area, or to a public utility transmission provider in a different balancing authority area, if those areas have implemented intra-hour scheduling for transmission service.[48] The Commission continues to believe that there are no unique technical requirements or limitations that apply to a resource's provision of Energy Imbalance or Generator Imbalance services. However, the Commission agrees with TAPS that the delivery of Energy Imbalance and Generator Imbalance services may be limited by hourly transmission scheduling practices in place within certain regions and, as such, refines the NOPR proposal as discussed below.

32. Energy Imbalance and Generator Imbalance services are a subset of a broader set of ancillary services offered by a public utility transmission provider to manage system conditions and ensure reliable transmission service. Energy Imbalance and Generator Imbalance services involve the balancing of differences between scheduled and actual delivery of energy or output of generation over an hour.[49] In comparison, Regulation and Frequency Response service involves the matching of resources to load in a shorter timeframe, requiring automated dispatch at four- or five-second intervals.[50] As a result, resources used

[39] WSPP Comments at 6; and Powerex Comments at 9–10.

[40] WSPP Comments at 7.

[41] Solar Energy Association Comments at 4.

[42] TAPS Comments at 11–12.

[43] *Id.* at 11–13.

[44] *Id.* at 12–13.

[45] *Id.* at 12 (citing Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 690).

[46] NOPR, FERC Stats. & Regs. ¶ 32,690 at P 19 (citing Order No. 890–A, FERC Stats. & Regs. ¶ 31,261 at P 309).

[47] Morgan Stanley Comments at 2–5.

[48] We note that sales of Energy Imbalance and Generator Imbalance services to entities other than a public utility transmission provider remain authorized under *Avista.*

[49] *See pro forma* OATT, Schedules 4 and 9. Under the *pro forma* OATT, imbalances are calculated and charged on an hourly basis. *See* Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 722; Order No. 890–A, FERC Stats. & Regs. ¶ 61,297 at P 325 & n.117; *see also* Order No. 764, FERC Stats. & Regs. ¶ 32,331 at P 104. Energy Imbalance and Generator Imbalance services also may be self-supplied by a transmission customer.

[50] *See, e.g.,* Pro Forma OATT, Schedule 3 Regulation and Frequency Response Service—''Regulation and Frequency Response Service is

Continued

to provide Regulation and Frequency Response service must be capable of balancing moment-to-moment fluctuations, whereas resources used to provide Energy and Generator Imbalance can respond at longer time frames within the hour.

33. In practice, public utility transmission providers often have a portfolio of resources, some owned and some purchased from third-parties, from which they provide capacity, energy, and ancillary services. This portfolio typically includes resources with automatic generation control (AGC) equipment capable of handling both moment-by-moment frequency adjustments and longer duration imbalance needs, as well as other capacity and energy resources that may only be capable of addressing longer duration imbalance needs because they are not equipped with AGC. These longer duration resources may include block purchases from third parties that are dispatched or otherwise scheduled at varying timeframes. The relative amount of AGC-controlled and other resources used by a public utility transmission provider for intra-hour balancing will depend on the resources available and the public utility transmission provider's operating practices.

34. In the NOPR, the Commission did not separately discuss this range of resources and, instead, preliminarily concluded that there are no unique technical requirements or limitations that distinguish the resources capable of providing energy and capacity from those capable of providing imbalance services. The majority of commenters agree with the Commission's preliminary conclusion, arguing that the set of resources available to follow imbalances over an hour is the same set of resources capable of providing energy and capacity. However, TAPS disagrees, arguing that the set of resources capable of providing imbalance services must have a special relationship with the control area operator in order to supply changing within-the-hour energy needs.

35. We understand TAPS' argument to be that resources used to provide imbalance service must be able to respond to a dynamic four- or five-second signal, which might require special arrangements in order to permit imbalance sales outside of the resource's home balancing authority area such that even the ability to submit transmission schedules on a 15-minute basis would be insufficient to provide intra-hour imbalance energy.[51] We agree that some of the public utility transmission provider's energy imbalance needs are addressed by resources that manage the moment-by-moment difference between load and resources. We also agree that imbalance service would generally require deliveries on intervals shorter than the current hour. But we do not agree, as explained more fully below, that imbalance services require dynamic dispatch or more sophisticated delivery mechanisms than intra-hour transmission scheduling.

36. Under the *pro forma* OATT, imbalances are calculated on an hourly basis.[52] As a result, any energy deliveries within the hour can be used by a public utility transmission provider (or by a transmission customer) to manage imbalances across the hour. That is, energy deliveries within the hour can be included in the portfolio of resources used to follow imbalance trends across the hour, similar to a public utility transmission provider's decision to redispatch its own internal resources within the hour. While it is true, as TAPS states, that dynamically dispatched resources capable of providing regulation also would be capable of providing imbalance services, it does not follow that resources using intra-hour transmission schedules are incapable of providing imbalance services. As noted above, imbalance service can be provided from a collection of resources so long as they are deliverable within the hour.[53]

37. The question before the Commission here is whether the set of resources considered available to provide energy and capacity in a market power analysis is sufficiently similar to the set of resources capable of providing imbalance services. Based on the record before us in which numerous commenters agree that the resources are sufficiently similar and given that intra-hour transmission schedules are currently being offered by a number of public utility transmission providers, and must be offered by all public utility transmission providers under Order No. 764 on or before November 12, 2013,[54] the Commission finds it appropriate at this time to revise the *Avista* restriction to better reflect current operational realities.

38. With regard to TAPS' additional comments in support of its basic argument, as stated above, just because a public utility transmission provider may have chosen to rely on the energy associated with regulation or operating reserves to meet imbalances, it does not follow that those are the only resources capable of providing imbalance services. Moreover, TAPS' reference to a portion of a passage from Order No. 890 referring to demand costs of providing imbalance energy being recoverable through regulation (Schedule 3) and operating reserve (Schedules 5 and 6) services is not dispositive here. The rate mechanisms used by a public utility transmission provider to recover the cost of capacity associated with providing Energy Imbalance or Generator Imbalance service do not precisely reflect the technical capabilities of resources available to provide the imbalance services. There is no requirement, in past Commission pronouncements or otherwise, that imbalance services be provided only from resources capable of providing regulation or operating reserves. Indeed, TAPS criticizes the NOPR for asserting the Commission's proposal was consistent with the decision in Order No. 890–A to base cost-based imbalance charges on the incremental cost of the last 10 MW dispatched by the transmission provider for any purpose, without imposing any requirement that this last 10 MW be based on resources with any particular capabilities.[55] We agree with TAPS that the pricing of OATT imbalance services does not necessarily determine the technical capabilities of resources available to provide those services and reject the NOPR's assertion in this regard. Similarly, we find that the pricing of regulation and operating reserve services, whether through Schedules 3, 5, 6 or some other mechanism (such as generator regulation service), do not necessarily determine the technical capabilities of resources available to provide imbalance services.

39. TAPS also cites Order No. 890–A as finding that generation outside a control area can provide imbalance

necessary to provide for the continuous balancing of resources (generation and interchange) with load . . . .''

[51] TAPS Comments at 13.

[52] *See* Order No. 890, FERC Stats. & Regs. at P 722, *order on reh'g,* Order No. 890–A, FERC Stats. & Regs. ¶ 61,297 at P 325 & n.117; *see also* Order No. 764, FERC Stats. & Regs. ¶ 32,331 at P 104.

[53] The Commission acknowledges that energy purchases scheduled on an hourly basis might enable a public utility transmission provider to use other resources to provide imbalance or other ancillary services more efficiently or precisely. Such hourly sales of energy would not be an indirect sale of ancillary services within the meaning of *Avista.*

[54] In order to comply with Order No. 764, public utility transmission providers must allow transmission customers to modify existing schedules as well as create new transmission schedules at intervals not to exceed 15 minutes, on or before November 12, 2013. Order No. 764, FERC Stats. & Regs. ¶ 32,331 at P 91, *order on reh'g,* Order 764–A, 141 FERC ¶ 61,232.

[55] *See* NOPR, FERC Stats. & Regs. ¶ 32,690 at P 19 (citing Order No. 890–A, FERC Stats. & Regs. ¶ 31,261 at P 309).

service when pseudo-tied and thus subject to within-area dispatch.[56] The cited passage of Order No. 890–A, however, states that a pseudo-tie arrangement causes a control area to ''assum[e] responsibility for ensuring that the load is properly balanced moment-to-moment, for planning for the load, and for providing various other ancillary services including energy or generator balancing service.'' The Commission made no determination in that passage as to the universe of resources capable, or incapable, of providing imbalance services. Nevertheless, the Commission acknowledges that some public utility transmission providers may choose not to purchase imbalance service from resources that cannot also be dynamically dispatched. While that may inform the relative ability of a resource to find a buyer for its service, it does not define the set of resources from which imbalance services are available, which is the relevant question for market power analyses.

40. We also find the opposing arguments of Morgan Stanley to be beyond the scope of this proceeding. Morgan Stanley does not appear to object to the use of the same market power screens for energy, capacity and imbalance services. Rather, Morgan Stanley argues that the existing indicative screens should be reformulated to include greater transmission imports than are currently assumed. Arguments as to the make-up of the existing market power screens are beyond the scope of this proceeding. The question before us in this proceeding is whether the resources in a given geographic market capable of providing imbalance ancillary services are sufficiently similar to the resources capable of providing energy and capacity that the same market power analysis can apply to both sets of products. Moreover, the Commission already permits applicants to demonstrate that the relevant geographic market is larger or smaller than that default.[57]

41. Accordingly, this Final Rule establishes that sellers found to lack market power in a geographic market, and which are granted market-based rate authority to make sales of energy and capacity, will also be granted market-based rate authority for sales of Energy Imbalance and Generator Imbalance services to public utility transmission providers within the same balancing authority area, or to public utility transmission providers in different balancing authority areas, if those areas allow transmission customers to modify or create transmission schedules within the hour. Because, as explained above, such scheduling practices enable the delivery of within-hour imbalance services from one balancing authority area to another, their use ensures that the first-tier resources included in the existing market power screens can compete with resources in the home balancing authority area, and thus that the existing market power screens can be applied to imbalance services without modification. This finding applies both to sellers that currently have a market-based rate tariff on file and applicants seeking market-based rate authority. For administrative convenience, we make this change to the Commission's ancillary services pricing policy effective as of the effective date of this Final Rule (120 days after publication in the **Federal Register**), which will result in these changes becoming effective after November 12, 2013, the date by which all public utility transmission providers must offer intra-hour transmission scheduling. As noted above, we acknowledge that some transmission providers already offer intra-hour scheduling. However, rather than performing a transmission provider-by-transmission provider review of current scheduling practices in this rulemaking, the Commission will defer implementation of this change to our ancillary services pricing policy until after the effectiveness of the intra-hour scheduling requirements of Order No. 764, by which time all public utility transmission providers must offer intra-hour scheduling. Thus, as of the effective date, all sellers that have a market-based rate tariff on file as of that date may begin making third-party sales of Energy Imbalance and Generator Imbalance services at market-based rates to a public utility transmission provider that is purchasing Energy Imbalance and Generator Imbalance services to satisfy its own open access transmission tariff requirements to offer ancillary services to its own customers, without having to make a separate showing to the Commission.

42. In response to WSPP, we clarify that this authorization to undertake sales at market-based rates may include both the capacity and the energy associated with providing Energy Imbalance and Generator Imbalance services. Imbalance services are products designed to address differences between scheduled and actual deliveries and withdrawals of energy. As such, they can only be provided by ensuring the availability of capacity and then increasing or decreasing the energy output from that capacity as necessary to address these differences.[58]

ii. Application to Other Ancillary Services

Commission Proposal

43. In the NOPR, the Commission proposed to allow the existing market-based rate screens to be applied to Energy Imbalance and Generator Imbalance services, but sought comment on whether the characteristics of resources used to provide the other ancillary services would necessitate a market power analysis based on a different geographic market or different set of resources as compared to those analyzed to determine market power for sales of energy and capacity.[59]

44. With regard to Operating Reserve-Spinning and Operating Reserve-Supplemental, the NOPR discussed the technical considerations, such as minimum ramp and start-up rates for off-line resources and the ability for extended operation below fully loaded set point for online resources, that seemed to indicate that fewer resources would be capable of providing these ancillary services as compared to the set of resources capable of providing energy or capacity. With regard to Reactive Supply and Voltage Control from Generation Sources, the NOPR discussed the technical and geographic considerations that generally limit the resources capable of providing this ancillary service as compared with the broader set of resources capable of providing energy or capacity. With regard to Regulation and Frequency Response, the Commission discussed the technical requirements, such as automatic generation control (AGC) equipment, that limit the set of resources capable of supplying this ancillary service.[60]

Comments

45. A number of commenters argue for application of the existing market power screens to Operating Reserve-Spinning and Operating Reserve-Supplemental.[61] EPSA argues that operating reserves are

[56] TAPS Comments at 12 (citing Order No. 890–A, FERC Stats. & Regs. ¶ 31,261 at P 631).

[57] Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 268.

[58] *See, e.g.,* Order No. 764, FERC Stats. & Regs. ¶ 32,331 at P 240.

[59] NOPR, FERC Stats. & Regs. ¶ 32,690 at P 24.

[60] *Id.* PP 22–23.

[61] EPSA Comments at 6, WSPP Comments at 8 (with Iberdrola supporting by reference), EEI Comments at 3 and 10, Western Group Comments at 3–4, Hydro Association Comments at 7, and Powerex Comments at 7 and 13.

merely derivatives of a resource's ability to generate energy.[62]

46. WSPP argues that the same considerations that led the Commission to believe that the rebuttable presumption should be extended to the imbalance ancillary services also apply to the operating reserve ancillary services. WSPP further asserts that all of these ancillary services are widely deliverable and that all generators capable of being redispatched to higher or lower set-points within a scheduling window are capable of providing these ancillary services.[63]

47. EEI argues that except for variable energy resources, essentially the same set of resources evaluated as competing supply under the existing market power screens possess the required technical capabilities to provide operating reserves.[64] Western Group makes a similar argument, asserting that products in Schedules 3, 5, and 6 (Regulation and Operating Reserves) share operational characteristics of Schedules 4 and 9 (Imbalance services).[65]

48. While Powerex agrees that resources capable of providing spinning and non-spinning reserves may be limited by response time requirements, Powerex argues that the existing market power screens nonetheless can be applied to operating reserve services.[66]

49. With respect to Regulation and Frequency Response, some commenters argue that passage of the existing market power screens indicates lack of market power for that service. For example, while EPSA agrees that the market power of sellers of Reactive Supply and Voltage Control service cannot be gauged by the existing market power screens due to significant technical and geographic impediments, it argues that Regulation and Frequency Response service is merely a derivative of a resource's ability to generate energy. Accordingly, EPSA argues that application of the existing market power screens to this ancillary service would be appropriate.[67]

50. Powerex agrees that the existing market power screens could be applied to Regulation and Frequency Response service. Powerex believes that technical improvements such as the dynamic scheduling system adopted by some users of the Western Interconnection facilitate widespread delivery of regulating reserves, thus overcoming any locational requirements for that service, while any technical impediments could be overcome because AGC or equivalent power electronic controls could be added by most market participants if the markets provide correct price signals.[68] WSPP similarly argues that, while not all generators have the AGC equipment needed to provide Regulation and Frequency Response service, installation of this capability is an economic decision and is not such an impediment that it should be treated as a market defining barrier to entry.[69]

51. FTC Staff urges the Commission to recognize that even though a particular resource may not currently have the ability to provide a given ancillary service due to lack of relevant equipment, if such equipment could be installed in a timely fashion in response to high prices, then such resource should be considered a potential competitor for purposes of market power analysis. Accordingly, FTC Staff suggests that the Commission revise its market power analysis to incorporate as existing market participants those potential entrants that are likely to enter a given ancillary service market (i.e., install needed equipment such as AGC) rapidly and profitably should market prices justify such entry.[70]

52. EEI argues that, before extending application of the existing market power screens to Regulation and Frequency Response, the Commission should separate this service into two separate ancillary services: primary frequency control and secondary frequency control. EEI argues that secondary frequency control, which it labels as Regulation, is a prime candidate to be extended the rebuttable presumption (i.e., to be subject to the existing market power screens).[71]

53. Two parties filed comments opposing the application of existing market power screens to non-imbalance ancillary services. Southern California Edison and TAPS state that they agree with the NOPR's reasoning as to why the existing market power screens cannot be applied to non-imbalance ancillary services.[72] Remaining commenters did not address the question of applying the existing market power screens to non-imbalance ancillary services.

Commission Determination

54. Upon consideration of the comments to the NOPR, and as discussed more fully below, the Commission will allow third-party sellers passing existing market power screens to sell Operating Reserve-Spinning and Operating Reserve-Supplemental services at market-based rates to a public utility transmission provider within the same balancing authority area, or to a public utility transmission provider in a different balancing authority area, if those areas have implemented intra-hour scheduling for transmission service that supports the delivery of operating reserve resources from one balancing authority area to another. Commenters have persuaded us that to the extent there are technical requirements and limitations associated with operating reserves, they do not materially distinguish resources capable of providing energy and capacity from those capable of providing operating reserves. As with the imbalance services, however, the Commission finds that the delivery of operating reserves from one balancing authority area to another may be limited by hourly scheduling practices in place within certain regions, which could impact the assumption in the existing market power screens that first-tier resources are able to compete with home balancing authority area resources. Therefore, the Commission will allow third-party sellers passing existing market power screens to sell these services to public utility transmission providers to the extent within-hour transmission service scheduling practices, including intra-hour transmission scheduling mandated by Order No. 764, support the delivery of operating reserves from one balancing authority area to another.

55. In contrast, the Commission affirms the preliminary finding in the NOPR that the set of resources capable of providing Regulation and Frequency Response service and Reactive Supply and Voltage Control service would differ significantly from the broader set of resources capable of supplying energy and capacity. Accordingly, the *Avista* restrictions will remain in place for sales of those services to public utility transmission providers at market-based rates. As noted below, the Commission will establish a new proceeding to further explore the technical, economic and market issues concerning the provision of Reactive Supply and Voltage Control service and Regulation and Frequency Response service.

[62] EPSA Comments at 6.

[63] WSPP Comments at 8. Iberdrola supports these WSPP comments by reference.

[64] EEI Comments at 10.

[65] Western Group Comments at 3.

[66] Powerex Comments at 7 and 13.

[67] EPSA Comments at 6.

[68] Powerex Comments at 12.

[69] WSPP Comments at 8. Iberdrola supports these WSPP comments by reference.

[70] FTC Staff Comments at 6–8.

[71] EEI Comments at 10–11.

[72] Southern California Edison Comments at 1–2; and TAPS Comments at 9–10.

Operating Reserve Services

56. Operating Reserve-Spinning and Operating Reserve-Supplemental are products designed to serve load temporarily in the event of contingencies. As such, sellers must ensure the availability of capacity sufficient to address a contingency event and, if the contingency occurs, energy must be supplied from that capacity. While the NOPR preliminarily found that the operating reserve products appeared to require the availability of resources with relatively fast ramping capabilities, and in the case of off-line resources used for operating reserve-supplemental, relatively fast start-up capabilities as well,[73] comments to the NOPR argue otherwise.

57. Many comments to the NOPR make the case that the flexibility and response time requirements associated with operating reserve services are not so significant that the universe of resources that can provide these services is meaningfully different than the universe of resources used to assess energy and capacity market power. While traditional generation scheduling practices only require the resources that provide energy and capacity to be able to change output levels once an hour, the record in this proceeding indicates that most resources can change output levels on shorter time scales. In other words, most conventional resources can change output in response to contingency events on a time scale shorter than the typical hourly scheduling window, even if in the past they have only been selling hourly block energy and capacity. Therefore, the Commission will allow third-party sellers passing existing market power screens for energy and capacity for a given market to also sell Operating Reserves-Spinning and Operating Reserves-Supplemental services at market-based rates to a public utility transmission provider within the same balancing authority area, or to a public utility transmission provider in a different balancing authority area, if within-hour transmission scheduling practices in those areas support the delivery of operating reserves from one balancing authority area to another.[74]

58. We note that our approach for market-based sales of operating reserves differs slightly from the reforms adopted above for sales of imbalance services. We have found above that the existence of 15-minute scheduling in a region renders the set of resources capable of supplying imbalance services substantially similar to the set of resources capable of providing energy and capacity so that the same market power screens can be applied to both sets of services. This may not be the case in all circumstances for potential sellers of operating reserves and, therefore, we require such entities to explain in their market-based rate applications for such authority how the scheduling practices in their regions support the use of operating reserves. For example, while 15-minute scheduling might be sufficient for Operating Reserve-Supplemental because this service only requires designated resources to be available within a short period of time,[75] 15-minute scheduling by itself may not be sufficient for Operating Reserve-Spinning, which requires designated resources to be available immediately.[76] The Commission recognizes that unlike the imbalance services, operating reserve services are targeted only at addressing contingency events, and some regions such as WECC may have already developed within-hour capacity tagging and scheduling practices intended to support the use of operating reserves across multiple balancing authority areas.[77] These are the types of region-specific practices that sellers seeking authority to sell operating reserves to public utility transmission providers should describe in their market-based rate applications. Thus, as of the effective date of this Final Rule, both sellers that have a market-based rate tariff on file as of that date and applicants seeking new market-based rate authority must satisfactorily make the above showing and receive Commission authorization before making sales of Operating Reserve-Spinning and Operating Reserve-Supplemental to a public utility that is purchasing Operating Reserve-Spinning and Operating Reserve-Supplemental to satisfy its own open access transmission tariff requirements to offer ancillary services to its own customers.

Regulation and Reactive Power Services

59. The Commission affirms the preliminary finding in the NOPR that the more stringent technical and geographic considerations associated with the regulation and reactive power ancillary services suggest that they are not simple combinations of basic energy and capacity products. Most commenters addressing this issue agree that the set of resources considered by the existing market power screens would differ too significantly from the set of resources that would be considered by market power analyses designed specifically for Reactive Supply and Voltage Control service.

60. While some commenters do argue that the existing market power screens are adequate for Regulation and Frequency Response service, we are not persuaded by their arguments on the record here. We continue to believe that significant technical requirements, such as the need for AGC equipment, limit the set of resources capable of supplying this ancillary service. While we agree in principle with FTC Staff's comments that potential competitors could be viewed as existing competitors for purposes of market power analysis if it is known that they can install needed equipment rapidly and profitably in response to appropriate price signals, the record does not conclusively support the notion that such equipment upgrades (e.g., to install AGC equipment in an existing generator) can be accomplished in such a manner. Although Powerex asserts that AGC or equivalent power electronic controls could be added by most market participants if the markets provide correct price signals, and WSPP asserts that the addition of AGC is an economic decision, we are not persuaded based on the limited information in the record before us. Also, the record indicates that third-party sellers of Regulation and Frequency Response service might need to enter into or facilitate special arrangements between neighboring balancing authorities, such as dynamic scheduling or pseudo-tie arrangements, in order to make sales outside of their home balancing authority area.

61. Accordingly, because the record before us does not support a modification at this time, the *Avista* restrictions will remain in place for sales of Regulation and Frequency Response and Reactive Supply and

[73] *See* NOPR, FERC Stats. & Regs. ¶ 32,690 at P 22.

[74] As with Energy Imbalance and Generator Imbalance services, we clarify that the authorization to undertake sales at market-based rates may include both the capacity and the energy associated with providing Operating Reserve-Spinning and Operating Reserve-Supplemental services.

[75] *See pro forma* OATT, Schedule 6 ''Supplemental Reserve Service is needed to serve load in the event of a system contingency; however, it is not available immediately to serve load but rather within a short period of time.''

[76] *Id.* Schedule 5 ''Spinning Reserve Service is needed to serve load immediately in the event of a system contingency.''

[77] *See, e.g.,* WECC Regional Business Practice INT–018–WECC–RBP–0, Tagging Protocols, at WR5.1 and WR5.2, defining capacity e-tags for, respectively, spinning reserves and non-spinning reserves as ''product(s) that can be activated through the adjustment of a capacity e-tag.'' *Available at http://www.wecc.biz/library/Documentation%20Categorization%20Files/Forms/AllItems.aspx?RootFolder=%2flibrary%2fDocumentation%20Categorization%20Files%2fRegional%20Business%20Practices&FolderCTID=0x01200015E7900DB2E794468FDE06D520B95C07.*

Voltage Control services to a public utility transmission provider that is purchasing these ancillary services to satisfy its own OATT requirements to offer ancillary services to its own customers. However, the Commission intends to gather more information regarding this issue in a separate, new proceeding that will further explore the technical, economic and market issues concerning the provision of Reactive Supply and Voltage Control service and Regulation and Frequency Response service. Such proceeding will consider, among other things, the ease and cost-effectiveness of relevant equipment upgrades, the need for and availability of appropriate special arrangements such as dynamic scheduling or pseudo-tie arrangements, and other technical requirements for provision of Regulation and Frequency Response and Reactive Supply and Voltage Control services.

b. Optional Market Power Screen

Commission Proposal

62. In the NOPR, the Commission proposed a new optional market power screen solely applicable to ancillary services, together with a limited new reporting requirement that would provide potential sellers of ancillary services with the information needed to develop market power analyses using that optional market power screen.[78] Specifically, the optional market power screen for an ancillary service would compare the amount of capacity in MWs (or, as applicable, MVARs) that a potential seller can dedicate to providing the ancillary service in the relevant geographic market with the buyer's aggregate requirement for that ancillary service, taking into account any historical locational requirements (e.g., locational requirements due to such things as binding transmission constraints or the geographic limitations of Reactive Supply). Using this optional market power screen, sellers whose available capacity is no more than 20 percent of the relevant aggregate requirement for an ancillary service would receive a rebuttable presumption that they lack horizontal market power for the ancillary service in question.

63. In order to provide sellers with information as to the buyer's aggregate requirement for an ancillary service, the Commission proposed to require each public utility transmission provider to publicly post on its OASIS the aggregate amount (MW or MVAR, as applicable) of each ancillary service that it has historically required, including any geographic limitations it may face in meeting such ancillary service requirements. For example, a transmission provider may report that it has historically maintained 100 MW of Regulation and Frequency Response reserves for its balancing authority area and 100 MVAR of Reactive Supply and Voltage Control in each of two submarkets within its balancing authority area.

Comments

64. Some commenters support the optional market power screen on the basis that it provides a practical alternative to performing a traditional market power analysis, given the data constraints associated with the latter. WSPP, for example, states that the optional market power screen is a constructive response to the disconnection between regulatory market power study requirements and the incapability of market participants to perform those studies due to lack of data.[79] WSPP states that it strongly supports the Commission's proposal that public utility transmission providers be required to post the information needed for sellers to prepare the optional market power screen if the rebuttable presumption applicable to the imbalance ancillary service is not extended to all ancillary services.[80]

65. Public Interest Organizations argue that the optional screen is similar in intent to a *de minimis* capacity threshold and, as such, can remove the barrier of a burdensome market power analysis for smaller entities.[81] The Solar Energy Association asserts that the optional market power screen likely will broaden the number of participants in the markets for certain ancillary services.[82] Electricity Consumers similarly argues that the optional market power screen should reduce barriers to ancillary service providers and increase the supply of ancillary services in a timely and cost-effective manner.[83]

66. However, there was no consensus among the commenters supporting the proposed optional market power screen regarding the necessary granularity of the associated reporting requirement. Some commenters, such as WSPP and Shell Energy, argue that postings should reflect a transmission provider's annual peak requirements for ancillary services, rather than annual averages. WSPP argues that posting an annual average would tend to understate requirements for higher periods, thereby skewing screen results in the direction of violations.[84] Similarly, Shell Energy states that relying on annual peaks is preferable to annual averages because it better reflects the amounts that transmission providers need to procure. Shell Energy further argues that postings of annual peak values are preferable to postings of seasonal or quarterly values, which Shell Energy claims would be burdensome for transmission providers and suppliers.[85]

67. Conversely, the ESA, Beacon, and California Storage Alliance recommend that public utilities provide seasonal and time-of-day requirements (if any) for each ancillary service versus a single average annual amount and note that this is consistent with the type of data provided by RTOs/ISOs in the open wholesale markets.[86]

68. Some commenters oppose the optional market power screen, arguing that it would yield too many false positives because it does not measure a seller's ability to supply relative to the total potential supply of the overall market. EPSA, for example, argues that the optional screen would routinely result in false-positive indications of market power.[87] EPSA states that if the Commission decides to use a threshold test, it should compare the subject generator to total product capability, not merely the quantity demanded.[88] EEI similarly argues that the optional screen likely will result in many suppliers failing the 20 percent threshold.[89] EEI contends that there are alternatives that would refine the test to be more applicable and useful in promoting robust participation in competitive ancillary services markets in bilateral regions. EEI offers as an example requiring transmission providers to report on its OASIS in the aggregate its historical demand and its historical ability to supply the relevant ancillary services. EEI offers that if the Commission decides to pursue optional screen it should have a technical conference.[90]

69. Powerex claims that the optional market power screen does not appear workable in certain respects and is likely to result in too many false positives.[91] Powerex argues that establishing a test that is overly restrictive, and that a majority of sellers

[78] NOPR, FERC Stats. & Regs. ¶ 32,690 at PP 25–30.

[79] WSPP Comments at 12.

[80] *Id.* at 10.

[81] Public Interest Organizations Comments at 6.

[82] Solar Energy Association Comments at 5.

[83] Electricity Consumers Comments at 3.

[84] WSPP Comments at 11.

[85] Shell Energy Comments at 8.

[86] ESA Comments at 7; Beacon Comments at 6; and California Storage Alliance Comments at 4.

[87] EPSA Comments at 6.

[88] *Id.* at 7.

[89] EEI Comments at 16.

[90] EEI Comments at 15.

[91] Powerex Comments at 16.

will not be able to satisfy, will create a significant administrative burden that will continue to pose an obstacle to the development of competitive markets for ancillary services.[92] Powerex asserts that when using market shares as a metric of market power, the proper measurement is a seller's ability to supply relative to the total potential supply of the overall market.[93]

70. Morgan Stanley argues that the optional market power screen does not provide a complete picture of an entity's market power and that it is more relevant to compare the amount of supply a seller controls to the total supply available and the total market demand, than it is to compare it to a single buyer's requirements.[94] Morgan Stanley claims that a seller actually could have greater market power even if it only can serve a small portion of the buyer's aggregate requirements if the buyer has no other viable options for procuring the remaining portion of its ancillary service needs.[95]

71. Other commenters oppose the optional market power screen on the basis that its need and usefulness is unclear. For example, TAPS argues that the usefulness of the optional screen is uncertain, particularly given the acknowledged data limitations. TAPS further argues that one cannot be confident that the proxy would provide a meaningful screen for market power.[96]

72. The California PUC states that is sees no need for alternative methodologies and further argues that a 20 percent threshold is too high for ancillary services.[97] The Hydro Association also states that it does not see a need at this time for the Commission to develop alternative market screens.[98]

Commission Determination

73. The Commission will not adopt the optional market power screen for ancillary services as proposed in the NOPR. As suggested by EEI, ESPA and others, the fact that the proposed optional screen would not consider the full amount of competing supply available to a buyer likely means that the screen may result in so many false positive indications of potential market power that it would provide little benefit to the effort to foster competition in ancillary service markets.

74. The comments also indicate that establishing the reporting requirements associated with the optional market power screen would not be a trivial task, particularly given the lack of consensus regarding the granularity of information needed. The Commission believes that the costs of developing and imposing this new reporting requirement on transmission providers might not be justified, particularly in light of the other actions taken in this Final Rule. The need for the proposed optional screen, and its associated reporting requirement, is significantly reduced because this Final Rule, as explained above, will permit sellers to apply the existing market power screens to imbalance and operating reserve ancillary services. As such, the Commission has determined not to adopt the optional market power screen and its associated reporting requirement.

Alternative Mitigation

75. In the NOPR, the Commission proposed to permit sellers unable or unwilling to perform the market power study for ancillary services to propose price caps at or below which sales of Regulation and Frequency Response, Reactive Supply and Voltage Control, Operating Reserve-Spinning, or Operating Reserve-Supplemental service would be allowed where the purchasing entity is a public utility transmission provider purchasing ancillary services to satisfy its OATT requirements to offer ancillary services to its own customers.[99] Such a price cap would have been based on one of the two possible OATT ancillary service rate caps discussed below and, as in *Avista,* the Commission proposed that sales under these price caps would only be permitted in geographic markets where the seller has been granted market-based rate authority for sales of energy and capacity. In addition, a seller unable to perform a market power study for ancillary services could rely on competitive solicitations meeting certain minimum requirements in order to make sales in geographic markets where the seller has been granted market-based rate authority for sales of energy and capacity.

Use of Price Caps

Commission Proposal

76. In the NOPR, the Commission proposed two cost-based mitigation measures as alternatives to the prohibition adopted in *Avista* with regard to sales to a public utility transmission provider that is purchasing ancillary services to meet its OATT requirements to offer ancillary services to its own customers. Sales of ancillary services at or below either alternative would be permitted. Under the first, third parties would be permitted to sell to a public utility transmission provider at rates not to exceed the buying public utility transmission provider's existing OATT rate for the same ancillary service. Under the second option, third parties could propose to sell a given ancillary service to a public utility transmission provider at rates not to exceed the highest public utility transmission provider OATT rate within the relevant geographic market for physical trading of the ancillary service in question. The Commission proposed that the seller (or group of sellers) would file with the Commission a proposal that defines the scope of a contiguous geographic region that both encompasses the service territory(ies) of the public utility transmission provider whose OATT ancillary service rate will form the basis for the price cap, and within which trading of the ancillary service in question is physically possible.

Single OATT Rate Cap Option

Comments

77. There was a range of support for the establishment of a rate cap at the buyer's OATT rate for the same ancillary service. TAPS and Southern California Edison support this proposal outright as an option to enable ancillary service sales.[100] EEI states that while the Commission should primarily rely on existing market power analyses and screens to allow third-parties to sell certain ancillary services at market-based rates, cost-based mitigation measures are also appropriate in certain seller-specific circumstances. EEI states that these two alternative options should be included in any Final Rule. EEI contends that this flexibility should encourage an increased number of participating sellers in bilateral markets, provide options for transmission providers to meet obligations, create market efficiencies, and potentially lower prices.[101]

78. WSPP states that it supports inclusion of this option to enhance flexibility in the sale of ancillary services, but with reservations. WSPP's reservations essentially concern whether existing OATT ancillary services rates provide appropriate price signals. WSPP contends that because reserve sales are from the same units as energy sales, mitigation price caps that

[92] *Id.* at 17.
[93] *Id.* at 19.
[94] Morgan Stanley Comments at 6.
[95] *Id.* at 7.
[96] TAPS Comments at 14.
[97] California PUC Comments at 5–6.
[98] Hydro Association Comments at 8.
[99] NOPR, FERC Stats. & Regs. ¶ 32,690 at PP 33–40.
[100] TAPS Comments at 15–18 and Southern California Edison Comments at 6.
[101] EEI Comments at 18–19.

fail to take opportunity costs into account during peak periods are unduly low.[102] Separately, WSPP asks the Commission to clarify that for the single OATT rate cap there is no filing with the Commission as a prerequisite to the sale.[103] AWEA and Solar Energy Association either support the proposal or do not state opposition to it.[104] Iberdrola supports WSPP's and AWEA's comments by reference.[105] Electricity Consumers state that they do not object to the proposed alternatives provided that they are in fact promulgated as alternatives to the proposed revisions to the market power analysis.[106]

79. Although ESA, Beacon, and California Storage Alliance all support this proposal, they each argue that for this mitigation measure to be successful in fostering robust competitive markets, the Commission must ensure that cost-based schedules for ancillary services, in particular Regulation and Frequency Response, are compared on an ''apples-to-apples'' basis taking into account resource performance.[107]

80. Some commenters oppose this price cap proposal unless the cap can be raised in some way. For example, Shell Energy argues that a cap based on the buyer's OATT rate would not produce prices high enough to entice competitive supply. Instead, Shell Energy suggests establishment of a price cap set at 200 percent of the buyer's OATT rate for the ancillary service in question.[108] Similarly, EPSA asserts that cost-based price caps systematically fail to represent the true value of capacity products and will fail to allow a full range of economic tradeoffs in the bilateral markets. EPSA states support for the use of price caps as a last resort, and only if they reflect the seller's lost opportunity costs as represented by energy transactions during a recent historical period.[109] Powerex makes similar arguments, favoring the use of energy price indices to represent lost opportunity costs. Failing that, Powerex argues that a component for transmission costs for remote suppliers should be added to any OATT-based price cap.[110]

81. ENBALA argues that a cost-based cap limited to the buying utility's OATT rate might be too restrictive and lead the Commission to scrutinize more agreements than necessary, but ENBALA states that ''Reactive Supply and Voltage Control service should be excluded from the regional price cap, being priced by the buying utility's OATT rate to reflect the geographic limitations of the ancillary service.'' [111]

Commission Determination

82. As one option available to sellers, the Commission will permit market-based sales of Regulation and Frequency Response service and Reactive Supply and Voltage Control service to public utility transmission providers at rates not to exceed the buying public utility transmission provider's OATT rate for the same service.[112] We find that a price cap based on the buying public utility transmission provider's OATT rate for the same ancillary service would produce a just and reasonable rate, and do so in a manner that is administratively simple. As discussed in the NOPR,[113] because the buying public utility transmission provider's OATT ancillary service rates have already been found to be just and reasonable, it is reasonable to find that any third-party sales of the same ancillary service to that buyer at or below that buyer's own approved rates for that service would also be just and reasonable. Accordingly, we will not require sellers to make a separate showing as to the justness and reasonableness of such rates and will allow sellers to make third-party sales of such services at rates as discussed here as of the effective date of this Final Rule.

83. Allowing the sale of ancillary services below the purchasing public utility transmission provider's OATT rate is a reasonable extension of the mitigation measure relied upon by the *Avista* policy itself. As discussed earlier,[114] the *Avista* policy sought to protect buyers of third-party ancillary services from potential exercise of market power by ensuring that they would continue to have access to cost-based ancillary services from transmission providers, in effect limiting the price at which customers are willing to buy ancillary services from third-parties. The result of the *Avista* mitigation measure is an implicit soft cap on the price at which third-party ancillary services could be offered to non-transmission provider customers. The price cap proposal adopted here extends this concept to transmission providers by creating an explicit price cap at the same level.

84. While a few commenters opine that a cap based on the buyer's OATT rate would not produce prices high enough to entice competitive supply, the Commission finds that, given the reforms adopted elsewhere in this Final Rule, it is appropriate to take the more conservative step of adopting a price cap based on the buyer's OATT rate for sales of Regulation and Frequency Response service and Reactive Supply and Voltage Control service to public utility transmission providers. This measure can be implemented quickly and easily with few administrative burdens on either the Commission or the industry. Alternative proposals by commenters would require more complicated design, analysis, and oversight to ensure that they achieve just and reasonable rates.

85. With respect to the arguments of ESA, Beacon, and California Storage Alliance that for this mitigation measure to be successful, the Commission must ensure that cost-based schedules for ancillary services are compared on an ''apples-to-apples'' basis taking into account resource performance, the Commission addresses this issue below in sub-section B of this Final Rule.

Regional OATT Rate Cap Option

Comments

86. Some commenters, such as ESA, Beacon, and the California Storage Alliance, support the regional OATT rate cap option on the basis that it is a reasonable approximation of the cost of entry.[115] ENBALA also expresses support for a regional cost-based rate cap, arguing that it provides an adequate alternative to the current formal market power requirement.[116] EEI and Electricity Consumers also express support for a regional OATT rate cap but offer no specific recommendations.[117]

87. Southern California Edison states that it supports a cap based on the highest OATT rate within the geographic market as long as it is capped at the lesser of (a) the highest OATT rate in the market or (b) three times the median OATT rate in the relevant geographic market. Southern

[102] WSPP Comments at 15.

[103] *Id.* at 14.

[104] AWEA Comments at 3 and Solar Energy Association Comments at 6.

[105] Iberdrola Comments at 3.

[106] Electricity Consumers Comments at 4.

[107] ESA Comments at 8–10; Beacon Comments at 7–9; and California Storage Alliance Comments at 5–6.

[108] Shell Energy Comments at 8–9.

[109] EPSA Comments at 9–10.

[110] Powerex Comments at 25–29.

[111] ENBALA Comments at 2–4.

[112] We do not apply this mitigation option to the other OATT ancillary services because this Final Rule allows sales of those services at market-based rates for any seller that has market-based rate authority for energy and capacity.

[113] NOPR, FERC Stats. & Regs. ¶ 32,690 at P 34.

[114] *See supra* P 7.

[115] ESA Comments at 10; California Storage Alliance Comments at 7; and Beacon Comments at 9.

[116] ENBALA Comments at 2.

[117] EEI Comments at 18–19; and Electricity Consumers Comments at 4.

California Edison explains that it proposes this modification to protect against having a small balancing authority area with an extremely high outlier rate setting the cap.[118]

88. Other commenters criticize the highest OATT rate cap proposal. Some parties, such as WSPP, EPSA, and Powerex, argue that setting caps based on cost-based rates would not allow sellers to recover foregone opportunity costs associated with energy sales and thus would fail to create any incentives for sellers to enter ancillary service markets. They argue that this is particularly true for short-term ancillary service sales, given that opportunity costs vary materially for hourly, daily, monthly, and seasonal periods, but these variations are not reflected in OATT rates and therefore would not be reflected in the cap.

89. For example, Powerex contends that any alternative price cap must be high enough to create economic incentives for potential sellers to forego other opportunities, namely, energy sales.[119] Powerex argues that setting price caps based on transmission providers' cost-based rates in many instances will not allow sellers to recover the foregone opportunity costs associated with energy sales and that this is particularly true for short-term ancillary service sales.[120] Powerex states that short-term energy prices in the CAISO and other Western markets are frequently several-fold higher than Northwest transmission providers' OATT rates for ancillary services.[121]

90. Similarly, EPSA argues that a price cap should include a seller's lost opportunity costs, represented by energy transactions during a recent historical period. EPSA states that it is critically important to include lost opportunity costs, in order to allow a generator to rationally choose between producing energy and not producing energy.[122]

91. WSPP asserts that the Commission's observation that the OATT rate could be indicative of the cost of new entry appears speculative. WSPP contends that a cost-based rate may reflect a fully or substantially depreciated unit, rather than the cost of new construction.[123] WSPP also argues that because reserve sales are made from the same resources as energy sales, mitigation price caps that fail to take opportunity costs into account during peak periods are unduly low.[124]

92. Other commenters raise concerns about setting the geographic boundaries for a regional OATT rate cap. Shell Energy asserts that identifying the region in which an ancillary service can be physically traded can be difficult and recommends that the Commission, rather than sellers, identify the relevant trading regions and post that information on the Commission's Web site.[125] TAPS argues that a regional price cap would invite gerrymandering and provide no assurance that the resulting cap is a more reasonable approximation of the cost of new entry.[126] TAPS argues that significant physical constraints limit the provision of ancillary services over a geographic area.[127] TAPS contends that the regional OATT rate cap proposal is not defensible as either a cost-based or market-based rate and is at odds with the physical limitations on the provision of ancillary services in non-RTO regions.[128] TAPS contends that another regional transmission provider's higher rate (i.e., the highest regional rate) does not bear any relationship to either a third-party supplier's or the purchasing transmission provider's cost of supply.[129]

Commission Determination

93. The Commission will not adopt the NOPR proposal that would allow sellers to propose a price cap equal to the highest OATT rate within a specified region. Based on the comments received, the Commission concludes that use of a regional OATT rate cap would be inadequate to ensure that third-party sellers' rates remain just and reasonable. In the NOPR, the Commission suggested that this mitigation proposal might be justified on a cost basis in that the highest regional rate may be a reasonable approximation of the cost of new entry into the region in question.[130] However, the record developed in this proceeding does not support such a conclusion at this time.

94. We also share commenters' concerns associated with defining appropriate regions for purposes of setting regional price caps. The Commission is concerned that sellers would have an incentive to ''gerrymander'' or ''cherry-pick'' regional definitions to ensure inclusion of a high-cost ancillary service provider. In light of the other actions taken in this Final Rule, the Commission believes it would not be productive to undertake the analyses necessary to establish seller-specific regions for various ancillary services.

Competitive Solicitations

Commission Proposal

95. The NOPR proposed to allow applicants to engage in sales to a public utility that is purchasing ancillary services to satisfy its OATT requirements to offer ancillary services to its own customers where the sale is made pursuant to a competitive solicitation that meets the following guidelines: (1) Transparency—the competitive solicitation process should be open and fair; (2) definition—the product or products sought through the competitive solicitation should be precisely defined; (3) evaluation—evaluation criteria should be standardized and applied equally to all bids and bidders; (4) oversight—an independent third-party should design the solicitation, administer bidding, and evaluate bids prior to the company's selection;[131] and (5) competitiveness—adequate seller interest to ensure competitiveness.

Comments

96. Commenters generally support the proposal to permit competitive solicitations as an alternative to performing a market power study.[132] EEI, for example, expresses support for competitive procurement as an option for long-term resource planning.[133] EPSA states that the Commission's proposed guidelines for competitive solicitations conform to general principles that EPSA has advocated for such processes.[134]

97. Some commenters object to certain aspects of the Commission's proposal. Most criticism is directed at the proposed requirement for independent third-party oversight of competitive solicitations. WSPP, for example, expresses support for competitive solicitations as a means of mitigating potential market power concerns but opposes the proposed oversight by an independent third party. WSPP argues that such oversight is unnecessary, and that the required filing

[118] Southern California Edison Comments at 6–7.

[119] Powerex Comments at 26.

[120] *Id.*

[121] *Id.* at 27.

[122] EPSA Comments at 9–10.

[123] WSPP Comments at 15.

[124] *Id.* at 15.

[125] Shell Energy Comments at 9.

[126] TAPS Comments at 22.

[127] *Id.* at 20.

[128] *Id.* at 2.

[129] *Id.* at 19.

[130] NOPR, FERC Stats. & Regs. ¶ 32,690 at P 36.

[131] *See, e.g., Allegheny Energy Supply Co. LLC,* 108 FERC ¶ 61,082 (2004).

[132] EPSA Comments at 8–9; EEI Comments at 19–20; ESA Comments at 10–11; Beacon Comments at 9–11; California Storage Alliance Comments at 7; and ENBALA Comments at 4.

[133] EEI Comments at 19–20.

[134] EPSA Comments at 8–9.

is ample to demonstrate whether or not the solicitation yielded sufficient competition.[135] Shell Energy agrees that third-party oversight of competitive solicitations is unnecessary, arguing that this requirement would hinder short-term procurement of ancillary services and make the solicitation process unfeasible except for long-term transactions.[136]

98. However, Morgan Stanley contends that it is not clear that the Commission's competitive solicitation proposal would protect against market power. Morgan Stanley contends that a competitive solicitation only demonstrates lack of market power if it is robust enough to attract offers that, in aggregate, are significantly in excess of the quantity sought. Morgan Stanley states that it is not clear how a competitive solicitation could help buyers looking to purchase such services on a short-term basis, although it might for the long-term provision of ancillary services.[137]

Commission Determination

99. The Commission adopts the NOPR proposal to allow applicants to engage in market-based sales of ancillary services to a public utility that is purchasing ancillary services to satisfy its OATT requirements where the sale is made pursuant to a competitive solicitation that meets the requirements specified in the NOPR as numerated above, except as modified below. The Commission has relied on the use of competitive solicitations to mitigate affiliate abuse concerns when affiliates seek to enter into transactions pursuant to market-based rate authority.[138] In that context, the Commission has adopted guidelines for independent, third-party review of competitive solicitations. The requirements proposed for sales of ancillary services to public utility transmission providers are based on these guidelines, which the Commission concludes are reasonable to adopt here with one exception. Upon review of comments, we have decided to partially eliminate the requirement that an independent third-party design and administer the solicitation and evaluate bids prior to the company's selection.

100. As proposed, the independent third-party review requirement would apply to all competitive solicitations. However, the record does not support imposing a requirement for independent third-party review when none of the parties participating in a competitive solicitation is affiliated with the buying public utility transmission provider. If no affiliate of the buyer participates in the solicitation, there is no concern regarding preferential treatment and, therefore, no need for review by an independent third party. As commenters suggest, requiring an independent third-party reviewer could discourage the use of competitive solicitations as it would add to the cost and time needed to procure ancillary services. Some public utility buyers may have a short-term, unexpected need for ancillary services and therefore need to act quickly to fill this need. In such cases, the buyer itself will have to conduct the solicitation, with very limited time for independent review. The Commission therefore revises the NOPR proposal to require independent third-party review of competitive solicitations only when the buyer solicits offers from one or more of its affiliates.

101. However, the Commission emphasizes that any buyer seeking to procure ancillary services from unaffiliated sellers through a competitive solicitation will need to demonstrate compliance with the four other requirements: transparency, definition, evaluation, and competitiveness. In this regard, we reject Morgan Stanley's assertion that the competitiveness requirement can only be met where a solicitation attracts offers that, in aggregate, are significantly in excess of the quantity sought. We believe there may be multiple methods of demonstrating adequate competitiveness, and we will review such proposals on a case-by-case basis. This will help ensure that any ancillary services procured in this manner are purchased at a competitive market price. At the same time, these requirements will not hinder buyers' flexibility to design solicitations to meet their specific needs. This demonstration must be made through a filing under section 205 of the Federal Power Act, submitted by the seller to the Commission prior to commencement of service under the third-party ancillary service sales agreement that results from the competitive solicitation. To be specific, the third-party seller will need to submit both the actual sales agreement and a narrative description of how the buyer's competitive solicitation meets the requirements of this Final Rule. This narrative description will help demonstrate that exercise of market power was not a factor in the negotiation of the sales agreement, and therefore that the resulting rate is just and reasonable.

Resource Speed and Accuracy in Determination of Regulation and Frequency Response Reserve Requirements

Commission Proposal

102. The Commission proposed in the NOPR to require that each public utility transmission provider submit provisions for inclusion in its OATT that take into account the speed and accuracy of regulation resources in determining its Regulation and Frequency Response reserve requirements. Among other things, this would allow customers choosing to self-supply this service with faster responding or more accurate resources to self-supply with a lower volume of regulation capacity, or vice versa. The Commission stated that it expects to evaluate each proposed determination of regulation reserve requirements on a case-by-case basis. It also stated that each description of how the public utility will adjust its regulation capacity requirement must provide enough detail that an entity wishing to self-supply may compare the resources it is considering using with the resources that the public utility is using. The Commission sought comment on how speed and accuracy should be taken into account.[139]

Comments

103. A majority of commenters[140] generally support the NOPR proposal to require each public utility transmission provider to submit provisions for inclusion in its OATT that take into account the speed and accuracy of regulation resources in determining its Regulation and Frequency Response reserve requirements. Electricity Consumers, Hydro Association, Morgan Stanley, California PUC, and EPSA highlight the benefits of increased transparency, to which EPSA adds that lack of transparency is an impediment to competitive compensation outside of ISOs/RTOs and contributes to a lack of a discernible market value for speed and accuracy. Other commenters, including Public Interest Organizations, Iberdrola, Morgan Stanley, and FTC Staff cite avoidance of undue discrimination, comparable treatment, and the potential that the NOPR proposal will encourage innovation and new entry, as reasons for

[135] WSPP Comments at 17–18.

[136] Shell Energy Comments at 10.

[137] Morgan Stanley Comments at 8–9.

[138] *See Boston Edison Co. Re: Edgar Electric Energy Co.,* 55 FERC ¶ 61,382 (1991); *Allegheny,* 108 FERC ¶ 61,082.

[139] NOPR, FERC Stats. & Regs. ¶ 32,690 at PP 47–54.

[140] These commenters include Beacon, California Storage Alliance, ESA, Hydro Association, Solar Energy Association, Public Interest Organizations, California PUC, AWEA, Morgan Stanley, EPSA, TAPS, FTC Staff, Electricity Consumers, and Iberdrola.

supporting the proposal. Solar Energy Association supports taking into account the speed and accuracy of regulation resources when establishing the rates that may be charged for those services, with faster and more accurate resources priced accordingly.[141]

104. Hydro Association supports the idea of ''pay for performance'' standards that recognize the difference between accurate fast-responding resources versus resources that ramp more slowly and respond less nimbly, and agrees with the Commission that a case-by-case evaluation of each proposed determination is more appropriate than imposing a mandatory methodology. Similarly, California PUC states that transparency should act as a deterrent against discrimination, but cautions that the Commission should avoid an overly prescriptive methodology that may dictate the amount of regulation resources that are needed.

105. Several other commenters, including Beacon, ESA, California Storage Alliance, and Morgan Stanley, encourage the Commission to require transmission providers to provide an explanation of how they set their regulation reserve requirements. ESA, Beacon, and California Storage Alliance propose five elements of an explanation that each transmission provider should be required to provide about how it sets its regulation reserve requirement,[142] as well as a list of specific information that each transmission provider should make available.[143] Morgan Stanley also urges the Commission to require public utility transmission providers to provide demonstrations of equivalent treatment for their own or their affiliate's requirements to ensure that there is no undue discrimination, and to establish a process for market participants to challenge and resolve the speed and accuracy assumptions and requirements that public utility transmission providers publish.[144] Beacon and ESA also state that ideally the Commission would require each utility to develop a conversion formula or chart that specifies how much capacity a transmission customer must self-supply given a certain ramp-rate and accuracy.

106. ESA, Beacon, Public Interest Organizations, California Storage Alliance, and AWEA advocate extending the requirement of accounting for speed and accuracy in regulation service to public utilities meeting their own needs, including via third-party suppliers, not simply to transmission customers choosing to self-supply.[145] AWEA argues that holding more reserves than needed may result in rates that are not just and reasonable.[146] ESA, Beacon, Public Interest Organizations, and California Storage Alliance state that third party sales to a public utility that is purchasing ancillary services to satisfy its own OATT requirements to offer ancillary services to its own customers represents the most significant potential market for sales of ancillary services in non-RTO/ISO regions. Public Interest Organizations agree, arguing that neither the current rules nor the NOPR encourage transmission providers to improve the speed and accuracy of their owned or contracted frequency regulation resources, and that allowing generators to be displaced from providing frequency regulation will enable them to operate at a more stable output, which also can lower energy market prices. Public Interest Organizations contend that the existing OATT Schedule 3 rate treatment is no longer adequate to incorporate emerging technologies, and encourage the Commission to require that OATT Schedule 3 rates incorporate Order No. 755's framework of an objective accuracy and performance determination, and that the amount of frequency regulation transmission customers are required to procure or self-supply takes into account the speed and accuracy capability of the ancillary service provider's technology.[147]

107. Parties that support extending the proposal to public utility transmission providers meeting their own needs also recommend that the Commission consider performance-based rate treatment for public utility investments and contracts with third-party ancillary service providers that allow the public utility to reduce the total capacity and cost of providing regulation service while maintaining the same level of reliability.[148] They argue that the potential benefits to ratepayers could justify allowing a performance-based incentive rate adder that public utility transmission providers could recover through rates, and that if the public utility can demonstrate that it will be able to reduce the total capacity and cost of providing regulation service and maintain the same degree of reliability, such treatment should result in public utilities improving the performance of their regulation fleet and in turn reducing expenses for frequency regulation, ultimately resulting in lower costs.

108. TAPS asks the Commission to state explicitly that the NOPR's proposal to account for the speed and accuracy of customer self-supplied regulating resources includes demand resources and to state that such a finding would be consistent with OATT Schedule 3 and Order No. 755.[149]

109. EEI opposes the NOPR proposal. It contends that it is premature to require each transmission provider to include provisions in its OATT explaining how it will determine Regulation and Frequency Response requirements, and requests that the Commission defer this proposal pending experience with secondary frequency control (i.e., regulation) in the ISOs and RTOs following the issuance of Order No. 755.[150] EEI requests that the Commission recognize the material differences between primary and secondary frequency control resources in the final rule. It argues that it is also premature to adopt requirements regarding primary frequency control, and recommends that the Commission encourage each balancing authority to continue investigating the role of various types of resources, and allow the industry to maintain its efforts to understand the relationship and interdependencies between primary and secondary frequency response.

110. EEI contends that the assumption that faster responding technologies are necessarily more efficient than traditional methods of frequency regulation has not been substantiated. EEI explains that industry is still exploring frequency response, including current and historical primary and secondary control response performance, and that for system reliability it is important to maintain a balanced portfolio of resources including inertial response, governor response, and secondary frequency control (or regulation response). It further explains that, although OATT Schedule 3 groups primary and secondary frequency control into a single service, the nature of these

[141] Solar Industry Association Comments at 3.

[142] The five elements are: (1) A description of the calculation; (2) the metric which is used to set the requirement; (3) the average performance of the existing Regulation assets; (4) the speed and accuracy of the units currently in place (including ramp-rate and accuracy); and (5) sufficient data for a third party to reproduce the results, including posting ACE data on its OASIS reporting. ESA Comments at 12–13; Beacon Comments at 12; and California Storage Alliance Comments at 6.

[143] Each entity proposes a bulleted list of nine items including generation capacity available to provide regulation, rates, costs, accuracy and CPS scores, and representative ACE data. ESA Comments at 13; and Beacon Comments at 12–13.

[144] Morgan Stanley Comments at 10.

[145] Beacon and Public Interest Organizations support ESA's comments regarding third party sales of regulation.

[146] AWEA Comments at 4.

[147] Public Interest Organizations Comments at 8.

[148] *See* comments of ESA, Beacon, Public Interest Organizations, and California Storage Alliance.

[149] TAPS Comments at 27.

[150] EEI Comments at 22–26.

services are distinct. With regard to secondary frequency control (regulation), EEI claims that the benefits from resources that ramp more quickly for purposes of secondary frequency control may be offset by a lack of capability to sustain that response, or to provide automatic primary frequency control.

Commission Determination

111. The Commission will adopt the NOPR proposal with modification. Rather than requiring OATT Schedule 3 to include a description of how resource speed and accuracy will be taken into account in determining Regulation and Frequency Response reserve requirements, we will require each public utility transmission provider to add to its OATT Schedule 3 a statement that it will take into account the speed and accuracy of regulation resources in its determination of reserve requirements for Regulation and Frequency Response service, including as it reviews whether a self-supplying customer has made ''alternative comparable arrangements'' as required by the Schedule. This statement will also acknowledge that, upon request by the self-supplying customer, the public utility transmission provider will share with the customer its reasoning and any related data used to make the determination of whether the customer has made ''alternative comparable arrangements.'' [151] To aid the transmission customer's ability to make an ''apples-to-apples'' comparison of regulation resources, the Commission will also amend Part 35 of its Regulations by adding a new section (k) to § 37.6,[152] to require each public utility transmission provider to post certain Area Control Error (ACE) data described further below. We find that these reforms are necessary to address the potential for undue discrimination in the provision of Regulation and Frequency Response, including in instances when a customer self-supplies this service using its own resources or purchases from a third-party. Acknowledging the speed and accuracy of the resources used to provide this service will help to ensure that an appropriate quantity of resources is utilized for self-supply, whether those resources are faster and more accurate or slower and less accurate than those used by the public utility transmission provider. The weight of comments support reform in this area, including arguments that such a reform will help foster innovation and the entry of newer resources into the market.

112. Under the current *pro forma* OATT, transmission customers considering using their own or third-party resources to self-supply regulation service are required to demonstrate to the public utility transmission provider that they have made ''alternative comparable arrangements.'' However, the *pro forma* OATT provides no further information as to how the determination of ''alternative comparable arrangements'' would be made. Moreover, the OATT contains no express obligation on the part of the transmission provider to consider the relative speed and accuracy of resources a customer might desire to use in self-supplying Regulation and Frequency Response service. A public utility transmission provider could require a customer seeking to self-supply regulation services to provide a volume of regulation reserves based on the characteristics of the resources used by the public utility transmission provider to provide regulation service, which may not be reflective of the characteristics of the customer's resources. This could under- or overstate regulation reserve requirements depending on the relative characteristics of the resources at issue. It also could impair the customer's ability to self-supply regulation requirements at the lowest possible cost.[153] The Commission finds that this lack of clarity as to the role of resource speed and accuracy in the determination of ''alternative comparable arrangements'' for regulation reserve requirements for self-supplying transmission customers must be addressed in order to limit opportunities for potential discrimination in the provision of regulation service by public utility transmission providers.

113. While the Commission initially proposed that each public utility transmission provider should amend its OATT to include a description of how regulation reserve requirement determinations would take into account speed and accuracy of resources, we believe the better course of action at this time is to place the obligation on the public utility transmission provider to take into account speed and accuracy without requiring it to develop detailed tariff language describing the specific process to be used. This will provide the public utility transmission provider with flexibility while also providing the customer with information. While a number of commenters suggested elements for what the public utility transmission provider should be required to provide, the clearest proposal in the comments related to this issue request that public utility transmission providers be required to provide current monthly and 12-month rolling average Control Performance Standard 1 (CPS1), Control Performance Standard 2 (CPS2) and Balancing Authority ACE Limit (BAAL) scores for Frequency Regulation.[154] However, by itself availability of such information would do nothing to explain how the public utility transmission provider determines regulation reserve amounts. Furthermore, while ACE information might help to characterize the speed and accuracy of the public utility transmission provider's own regulation resources, the Commission believes that using the relatively long duration of monthly and 12-month rolling ACE averages implicit in these scores may not provide information useful for measuring performance over a fraction of an hour, which is the relevant time frame for Regulation and Frequency Response service.

114. Accordingly, the Commission declines to impose a ''one size fits all'' approach to calculating regulation reserve requirements, consistent with the comments of Hydro Association and California PUC, and declines to require the inclusion of this process in Schedule 3. Rather, we require that Schedule 3 be amended to include a statement that the public utility transmission provider will take into account the speed and accuracy of regulation resources in determining reserve requirements for Regulation and Frequency Response service, including when reviewing whether a self-supplying customer has made ''alternative comparable arrangements.'' Self-supplying customers and their public utility transmission providers will then have a basis to study and negotiate appropriate arrangements case-by-case, very similar to how such

[151] *See* Appendix B for the revised Schedule 3 of the *pro forma* OATT provisions consistent with this Final Rule.

[152] This regulation will replace the like-numbered proposed regulation related to historical ancillary service requirements data posting from the NOPR that we decline to adopt in section II.A.1.b. of this Final Rule.

[153] For example, a self-supplying customer could save money either by relying on a smaller amount of high quality regulation resources at a slightly higher per-unit price or by relying on a larger amount of lower quality regulation resources at a much lower per-unit price. Provided that reliability is maintained, the transmission customer should have the ability to self-supply consistent with its preferences.

[154] CPS1 and CPS2 are described in NERC Reliability Standard BAL–001–0.1a—Real Power Balancing Control Performance. The BAAL criterion is expected to replace CPS2 in that Reliability Standard when it becomes effective, pending final approval by NERC and the Commission.

interactions take place under other processes such as the interconnection process.

115. That said, we agree with the comments of ESA, Beacon, and California Storage Alliance that transmission customers considering whether or not there would be any economic advantage to self-supply of Regulation and Frequency Response service requirements would need to be able to make an ''apples-to-apples'' comparison of their resources to those of their public utility transmission provider.[155] Doing so would require the transmission customer to know both the potential avoided cost of purchasing from its public utility transmission provider, and some measure of the speed and accuracy of the public utility transmission provider's Regulation resources. The first requirement is met through the rate filed in the public utility transmission provider's OATT Schedule 3. We believe the second requirement can only be met through a new OASIS posting requirement.

116. As noted earlier, the public utility transmission provider's CPS1, CPS2, and BAAL scores might address this need in concept, except that they currently reflect long-term averages that do not match the relevant time frame for Regulation and Frequency Response service. We believe the one-minute and ten-minute average ACE data collected by public utility transmission providers to produce the CPS1, CPS2, and BAAL scores would be more useful for this purpose because it does match the relevant time frame. Accordingly, in order to ensure a level of transparency adequate to support self-supply decision-making by transmission customers, we will require public utility transmission providers to post historical one-minute and ten-minute ACE data on OASIS. For this purpose, we find that historical data for the most recent calendar year, updated once per year, should meet the need. This information is already collected and provided to NERC, through balancing area operators and reliability coordinators, so there should be minimal incremental burden associated with posting it on OASIS.

117. The Commission's standard filing requirements, including opportunity for intervention and comment, address Morgan Stanley's request to establish a process for market participants to challenge and resolve speed and accuracy assumptions. For example, as is the case in interconnection agreement proceedings, the transmission service agreement that reflects an individually negotiated self-supply arrangement for Regulation and Frequency Response service can be filed by the public utility transmission provider unexecuted. This will leave the transmission customer free to protest relevant aspects of the public utility transmission provider's determination of whether the customer has made ''alternative comparable arrangements,'' including as those arrangements relate to the speed and accuracy of the customer's proposed Regulation resources.

118. With respect to Morgan Stanley's request that public utilities demonstrate equivalent treatment for their own or their affiliate's regulation requirements, we find that the increased transparency required by this Final Rule will accomplish this goal. The requirements adopted above apply to the public utility transmission provider's own regulation resources, in the sense that it must apply the same procedures for determining regulation reserve requirements to itself as it does to self-supplying customers.

119. With respect to the request of TAPS that the Commission state explicitly that the NOPR's proposal to account for the speed and accuracy of customer self-supplied regulating resources includes demand resources, we note that OATT Schedule 3, as amended by Order No. 890 makes clear that Regulation and Frequency Response service may be provided from non-generation resources capable of providing the service. Accordingly, a transmission provider's determination of regulation reserve requirements should take into account the speed and accuracy characteristics of the resources in question, whether they are generation-based or otherwise.

120. Turning to the various requests that the Commission step beyond the NOPR proposals, the Commission declines to require two-part pricing for regulation capacity and performance set forth in Order No. 755. We conclude that the requirements adopted above will allow customers and the Commission to ensure that the speed and accuracy of resources used for regulation reserves are properly taken into account in reserve level determinations within the context of the bilateral markets within which non-RTO/ISO public utility transmission providers operate. The Commission also declines commenter requests to provide incentive rate treatment for purchases of Regulation and Frequency Response service by public utility transmission providers to meet their OATT requirements. Commenters are not clear as to what mechanism they believe the Commission should use to require such treatment, and the Commission sees no reason to implement an incentives program in the context of ancillary services rate design.

121. With respect to EEI's comments regarding differences between primary frequency response and secondary frequency regulation, the Commission acknowledges these distinctions. Improving the transparency regarding the resources used to provide Regulation and Frequency Response service under OATT Schedule 3 does not alter the ability of any balancing authority to maintain adequate reserves to meet reliability requirements. The Commission thus sees no need to wait for the industry to better understand the relationship and interdependencies between primary and secondary frequency response prior to adopting the requirements of this final rule. The Commission will evaluate a public utility transmission provider's compliance proposal as part of the case-by-case review discussed above, which will provide the public utility transmission provider the opportunity to demonstrate how it establishes its regulation reserve requirements.

Accounting and Reporting for Energy Storage Operations

122. In the NOPR, the Commission proposed to revise certain accounting and reporting requirements under its USofA and its forms, statements, and reports contained in Form Nos. 1, 1–F, and 3–Q. The Commission stated that the revisions were needed so that entities subject to the Commission's accounting and reporting requirements could better account for and report transactions associated with energy storage devices used in public utility operations. Moreover, the Commission noted that this information is important in developing and monitoring rates, making policy decisions, compliance and enforcement initiatives, and informing the Commission and the public about the activities of entities subject to the accounting and reporting requirements.

123. The Commission proposed that new electric plant and associated O&M expense accounts be created to provide for the recording of investment and O&M costs of energy storage assets. The Commission also proposed to create a new purchased power account to provide for recording the cost of power purchased for use in storage operations. In addition, the Commission proposed that new Form Nos. 1 and 1–F schedules be created and existing schedules in the forms and Form No. 3–

[155] ESA Comments at 8–10; Beacon Comments at 7–9; and California Storage Alliance Comments at 5–6.

Q be amended to report operational and statistical data on storage assets. Finally, the Commission inquired about whether entities seeking to recover costs of energy storage assets and operations simultaneously under cost-based and market-based rates should be required to forego previously granted accounting and reporting waivers associated with market-based rates, and if so, should the requirement to forego the waivers be subject to some percentage threshold based on a ratio of cost-based cost recovery to total cost to be recovered.

124. While most commenters support the Commission's proposal to revise the accounting and reporting requirements, there were several recommendations to make adjustments to the proposals and also requests for clarification of certain proposals. Only Solar Energy Association opposed the proposal, stating, without elaboration, that it believes it is premature to establish reporting requirements for energy storage.[156] In the NOPR, the Commission responded to similar arguments regarding maturity of the energy storage industry as it relates to the use of energy storage assets to provide public utility services, and found those arguments unconvincing.[157] The Commission explained that there is a need for certainty in the accounting and reporting treatment for energy storage assets and operations, especially in instances where utilities seek to recover costs of energy storage operations in cost-based rates. Solar Energy Association has not provided new information that we could consider on this issue, therefore we find Solar Energy Association's argument unconvincing.

1. Electric Plant Accounts

Commission Proposal

125. In the NOPR, the Commission stated that the existing primary plant accounts do not explicitly provide for recording the cost of energy storage assets. The Commission concluded that this could lead to inconsistent accounting and reporting for these assets by utilities subject to the accounting and reporting requirements, making it difficult for the Commission and others to determine costs related to energy storage assets for cost-of-service rate purposes. The Commission also noted that the lack of transparency affects interested parties', including the Commission's, ability to monitor these utilities' operations to prevent and discourage cross-subsidization between cost-based and market-based activities. To address these issues, the Commission proposed to create electric plant accounts in the existing functional classifications—production, transmission, and distribution—for new energy storage assets.[158]

126. The Commission proposed that the installed costs of energy storage assets be recorded in the accounts based on the function or purpose the asset serves. On this basis, an asset that performs a single function will have its cost recorded in a single plant account. In instances where an energy storage asset is used to perform more than one function or purpose, the Commission proposed that the cost of the asset be allocated among the relevant energy storage plant accounts based on the functions performed by the asset and the allocation of the asset's costs through cost-based rates that are approved by a relevant regulatory agency, whether federal or state.[159]

Comments

127. In general, the commenters applaud the Commission's efforts to improve transparency and prevent double-recovery of energy storage-related costs. The proposal to require utilities to record the costs of single-function energy storage assets in a single plant account garnered widespread support. However, the proposal to require utilities to allocate the costs of multi-function energy storage assets to the relevant energy storage plant accounts based on the functions performed and approved rate recovery, received comments supporting and opposing the proposal. Commenters that agree with the proposal generally indicate that the accounting would provide necessary transparency of a utility's operations,[160] while commenters that oppose the proposal generally indicate that the accounting would place an undue administrative burden on utilities and is inconsistent with the Commission's existing accounting rules.[161]

128. Public Interest Organizations state that they support the development of requirements that can reveal the activities and costs of energy storage operations thorough greater transparency and detail. California PUC similarly states that in the event an energy storage developer intends to use a facility to perform multiple functions, the proposed accounting and reporting should provide transparency. NU Companies state that they support flexible rate treatment for energy storage assets and believe the proposed accounting will provide transparency required to guard against inappropriate cross subsidization of various services and double recovery cost.

129. In opposition to the proposal, SDG&E contends that while it generally agrees with the Commission's allocation ''concept'' to account for energy storage assets by functional category, i.e., production, transmission, and distribution, it is concerned that generally applicable financial tools may not be able to efficiently track or monitor up to three functional categories for one asset without increased and ongoing manual intervention.[162] SDG&E argues that it agrees that the initial allocation concept would capture expenses by each function as the Commission intends; however, if the utility subsequently changes its initial allocation in the future the proposed accounting would create an unnecessary administrative burden that if a mistake is made could result in costs of the asset being stranded. SDG&E contends that to ensure the asset is accounted for properly so that asset costs are not stranded, a utility would be required to continuously monitor the asset to make sure its initial allocation is consistent with the asset's actual usage. SDG&E acknowledges that the NOPR addresses this concern;[163] however, SDG&E asserts that there is a more straightforward approach that can be used to allocate the costs of a multi-function energy storage asset. SDG&E advocates, instead of using multiple plant accounts, that the cost of an energy storage asset be recorded in a single plant account and its cost allocated to the various functions it performs using current ratemaking methods.

130. Similar to SDG&E, Southern California Edison and EEI also complain of an increased administrative burden resulting from allocating an energy

[156] Solar Energy Association Comments at 7.

[157] NOPR, FERC Stats. & Regs. ¶ 32,690 at P 71.

[158] Account 348, Energy Storage Equipment-Production; Account 351, Energy Storage Equipment—Transmission; and Account 363, Energy Storage Equipment—Distribution, respectively.

[159] NOPR, FERC Stats. & Regs. ¶ 32,690 at P 81.

[160] Public Interest Organizations Comments at 9–10; California PUC Comments at 9; NU Companies Comments at 4; APPA Comments at 5; ESA Comments at 18–19; TAPS Comments at 28–29; and California Storage Association Comments at 11–12.

[161] Southern California Edison Comments at 8; SDG&E Comments at 2–3; and EEI Comments at 29–30.

[162] SDG&E Comments at 2–3.

[163] SDG&E cites to the NOPR proposal that a utility transfer reallocated cost of an energy storage asset in accordance with the instructions of Electric Plant Instruction No. 12, Transfers of Property, 18 CFR Part 101 (2012). *See* SDG&E Comments at 3–4 (citing to NOPR, FERC Stats. & Regs. ¶ 32,690 at P 82).

storage asset's cost across multiple plant accounts as proposed in the NOPR. Southern California Edison and EEI contend that it would be necessary to create multiple unique property records for an energy storage asset to allocate its costs across multiple functions. Southern California Edison and EEI argue that having multiple records for each asset would require significant manual intervention while providing little practical value.[164] Additionally, Southern California Edison and EEI assert, without providing any detail, that the NOPR proposal is inconsistent with the general principle that each asset should have a single record within an accounting system.[165] Southern California Edison and EEI contend that there is neither a precedent for creating multiple property records for a single asset, nor a precedent for creating a record for a partial asset. Further, EEI argues that to the extent the different functions the cost of an energy storage asset could be spread across are subject to different depreciation rates, a single asset with a unique, individual economic life would be depreciated over multiple periods.

131. EEI indicates that while it generally opposes the NOPR's proposed accounting, it believes that in some circumstances the proposal may be a practical alternative for companies desiring to use it.[166] Therefore, EEI advocates that utilities be afforded two options to account for energy storage assets that are used to perform multiple functions. EEI proposes that utilities be allowed to either: (1) Record the costs of multi-function storage asset costs as proposed in the NOPR or (2) record the costs of the assets in a single plant account based on the primary function of the asset and to allocate costs to specific functions performed through the ratemaking process. Moreover, EEI recommends that the Form Nos. 1, 1–F, and 3–Q be amended to provide for reporting the option each company uses. EEI contends that allowing both options will afford companies the ability to maintain accounting and reporting records in the most efficient manner while providing transparency via reporting and uniformity in the ratemaking process.

132. Southern California Edison supports EEI's option (2). Southern California Edison and EEI contend that the option (2) approach is consistent with the approach used for certain assets that provide both state-jurisdictional and FERC-jurisdictional functions.[167] Southern California Edison and EEI explain that the ratemaking process may include a formula or special study in order to appropriately allocate the costs across functions.

Commission Determination

133. SDG&E's, Southern California Edison's, and EEI's arguments that requiring utilities to allocate the costs of energy storage assets that perform multiple functions across the relevant energy storage plant accounts places an undue administrative burden on utilities are unpersuasive. These commenters generally argue that this perceived undue administrative burden results from a requirement that utilities maintain records that track the usage of energy storage assets and costs associated with such use. However, utilities would be required to maintain records with this information whether accounting for the costs of an asset in multiple accounts as proposed in the NOPR or accounting for the costs in a single account as proposed by SDG&E, Southern California Edison and EEI. For example, information on the allocation of the cost of an energy storage asset to a particular function will have to be maintained by utilities operating multi-function, multi-cost recovery energy storage assets, regardless of whether the information is required to be reported in the reporting forms as proposed in the NOPR or if the information is not reported in the forms yet is used in ratemaking determinations as proposed by SDG&E, EEI, and Southern California Edison. Because utilities with energy storage operations that recover any portion of costs on a cost-of-service basis will be required to maintain use and cost allocation information on the assets, requiring these utilities to implement the NOPR's accounting proposal does not result in an additional burden on utilities that could be considered unduly burdensome.

134. Moreover, SDG&E's argument that costs could possibly be stranded if a utility does not appropriately account for energy storage operations is also unconvincing. This possibility exists throughout the utility industry and is not uniquely attributable to utilities with energy storage operations. Administrative errors, such as errors in accounting, that lead to costs being stranded due to inadequate or insufficient internal controls over policies, practices, and procedures used to track costs associated with assets represent a risk for all utilities whether or not the utilities own energy storage assets. Risks of this nature are inherent to all utilities' operations. Utilities must maintain adequate, sufficient, and reliable internal controls to reduce the probability of this risk affecting operations.

135. As support for their argument that the NOPR's proposed accounting causes an undue administrative burden and that their advocated accounting avoids the burden, Southern California Edison and EEI contend that their proposal to record the costs of an energy storage asset in a single plant account could require utilities to implement a formula or special study to appropriately allocate the costs of the asset across multiple functions. However, this contention does not support their argument. A formula or special study would require utilities to maintain the same information on the functions performed by an energy storage asset and costs associated with such performance, as would be required by the NOPR's proposed accounting. Thus, a formula or special study would not avoid the administrative burden associated with accounting for energy storage assets and operations. Furthermore, Southern California Edison and EEI have not provided information to support a determination that the burden would be decreased by implementing their proposed accounting. Their proposal would result in less transparent reporting of information on energy storage operations as compared to the NOPR's proposed accounting.

136. While the commenters argue that the accounting proposal might require increased manual intervention to account for and report storage assets, it is not clear that such intervention, if any, results in an undue administrative burden. As the Commission observed in the NOPR, uniform, transparent, and consistent reporting of information on energy storage operations by utilities is essential, especially by those seeking to recover costs of energy storage services in cost-based rates.[168] We believe that adopting the NOPR's proposed accounting and reporting revisions will improve transparency.[169] The revisions will enhance the Commission's and other form users' ability to make a meaningful assessment of a utility's cost-of-service rates, and will provide for better monitoring for cross-subsidization. In instances where an energy storage asset performs multiple

[164] Southern California Edison Comments at 8; and EEI Comments at 30.

[165] Southern California Edison Comments at 8 and n 8 citing Definition No. 8 Paragraph (A)(5), Continuing Plant Inventory Record, 18 CFR Part 101 (2012); and EEI Comments at 30.

[166] EEI Comments at 29–31.

[167] Southern California Edison Comments at 8; and EEI Comments at 31–32.

[168] NOPR, FERC Stats. & Regs. ¶ 32,690 at P 71.

[169] *Id.* P 72.

functions, it is imperative that costs associated with each function be transparent and allocable to the function performed so that cross-subsidization of costs can be prevented. SDG&E, EEI, and Southern California Edison have not provided information that would refute the Commission's determination in the NOPR that the accounting proposal is not overly burdensome.

137. EEI's recommendation that utilities be afforded two options to account for and report storage assets that provide multiple services and recover associated costs simultaneously under cost-based and market-based rate methods is not consistent with the intent of the NOPR's proposed accounting and reporting revisions. The NOPR proposed one method to account for energy storage assets performing multiple functions under multiple cost recovery mechanisms to ensure that utilities account for the assets on a uniform and consistent basis. EEI's proposal for two methods of accounting could result in similarly-situated utilities with energy storage assets reporting the same type of transaction differently. This would not provide the uniformity sought by the accounting and reporting proposals and could disrupt consistency, which would make it difficult to compare utilities with energy storage operations across the industry. In addition, adopting EEI's proposal to record the costs of the assets in a single account would reduce the transparency of information reported in the forms. This information is critical to the clarity and transparency needed to support a reasonable analysis of a utility's cost. Consequently, we will not adopt EEI's proposal.

138. Southern California Edison's assertion that the NOPR requirement adopted here is not consistent with Definition No. 8, Continuing Plant Inventory Record, is incorrect.[170] While the definition pre-dates the NOPR's accounting and reporting requirements, the definition is broad enough such that its premise is as relevant for energy storage assets as it is for conventional electric plant assets. The accounting and reporting proposals require utilities to maintain a detailed record of the descriptive operational and cost information associated with energy storage assets consistent with the provisions of Definition No. 8.

139. Further, Southern California Edison's and EEI's contentions that there is no precedent for creating multiple property records for a single or partial asset misconstrues the proposed accounting and reporting requirements. The accounting and reporting proposals we adopt here do not require utilities to maintain multiple records for a single or partial asset as Southern California Edison and EEI contend. Rather, the reforms maintain the existing requirement of Definition No. 8 that utilities maintain descriptive operational and cost information on each asset. Moreover, we do not consider allocating the cost of a single asset to multiple property accounts to be the same as creating multiple property records as though there were multiple assets. A utility can maintain information on a single energy storage asset with costs allocated to multiple plant accounts in a single record that provides descriptive operational and cost information on the asset. Additionally, in accordance with General Instruction No. 12, Records for Each Plant, utilities are required to maintain a record, by electric plant accounts, on the book costs of each plant owned.[171] The requirement to record the cost of a multi-function, multi-cost recovery energy storage asset to more than one plant account is consistent with this instruction.

140. EEI argues that if different depreciation rates are applied to a single energy storage asset in accordance with each function the asset performs the various allocated costs of the asset would be depreciated over multiple periods. EEI is correct that there is a possibility of this occurring if costs of a single asset were subjected to multiple differing depreciation rates. However, this has neither been the experience of this Commission nor do we expect that a utility's primary rate regulator would subject a single asset to multiple depreciation rates. Although the costs of an energy storage asset may be allocated across multiple plant accounts, we agree with EEI that the asset is a single unique asset with a single economic life. Thus, there should be a single depreciation rate applied to the asset that allocates in a systematic and rational manner the service value of the asset over its service life. To the extent possible, a utility should apply a single depreciation rate to an energy storage asset.

141. The reforms adopted here are designed to provide needed transparency, but also to reflect a fair balance between the need for information and the additional burden on the utility. We believe these accounting reforms for energy storage reflect this balance. Accordingly, Account 348, Energy Storage Equipment—Production, Account 351, Energy Storage Equipment—Transmission, and Account 363, Energy Storage Equipment—Distribution, as proposed in the NOPR are adopted in this Final Rule.

2. Power Purchased Account

Commission Proposal

142. In the NOPR, the Commission noted that to provide some electrical services, energy storage devices may need to maintain a particular state of charge, or as in the case of compressed air facilities, may need to maintain some minimum pressure, and that some companies may be required to purchase power to maintain a desired state of charge or pressure. Further, the Commission determined that the benefits of enhanced transparency, in this instance, resulting from having the cost of power purchased for energy storage operations reported separately from other power purchases, outweighs the associated burden of requiring the accounting. Therefore, the Commission proposed a new Account 555.1, Power Purchased for Storage Operations, to report the cost of: (1) Power purchased and stored for resale; (2) power purchased that will not be resold but instead consumed in operations during the provisioning of services; (3) power purchased to sustain a state of charge; and (4) power purchased to initially attain a state of charge, with item 4 being capitalized as a component cost of initially constructing the asset.

Comments

143. Most commenters support the proposed accounting. For example, ESA and others state that the new account will enhance the transparency of reporting the operations of storage resources.[172] Hydro Association indicates that similar accounting should be established for the cost of power purchased for pumped storage operations to account for initial unit testing and commissioning.[173]

144. Hydro Association states, in particular, for closed-loop pumped storage projects, the first unit testing entails pumping or charging the upper reservoir. Hydro Association explains that at an early stage of development of a pumped storage project, the generating station is months away from being declared ''commercial'' and testing the station requires energy from the grid to initially attain a fully charged state (i.e., a full upper reservoir). Hydro Association argues that these initial

[170] 18 CFR Part 101 (2012).

[171] The instructions indicate that the term ''plant'' means each generating station and each transmission line or appropriate group of transmission lines. This term is also applicable to energy storage facilities. 18 CFR Part 101 (2012).

[172] ESA Comments at 21–22.

[173] Hydro Association Comments at 12–13.

charging costs should be capitalized. Further, Hydro Association contends that costs incurred to test the generating station should likewise be capitalized into the cost of the project. In contrast to Hydro Association's assertion that the existing accounting requirements for pumped storage operations are not sufficient, EEI argues that the existing requirements appropriately and transparently provide for pumped storage plants.[174]

Commission Determination

145. We will adopt the new Account 555.1, Power Purchased for Storage Operations, as proposed in the NOPR. The accounting reforms here requiring initial charging and testing costs to be capitalized seek to apply existing requirements for conventional electric plant, such as pumped storage plant, to new energy storage assets. The requirements do not seek to differentiate the accounting for new energy storage assets from pumped storage plant in this instance.

146. We disagree with Hydro Association's assertion that the existing accounting requirements for pumped storage operations are not sufficient. Contrary to Hydro Association's assertion, pumped storage is not prohibited, for accounting purposes, by the existing accounting rules and regulations from capitalizing costs incurred to initially bring a pumped storage facility into operation nor is it prohibited from capitalizing costs incurred to test pump storage facilities prior to commercial operation. Electric Plant Instruction No. 3, Components of Construction Cost, provides that expenses incidental to the construction of plant such as cost to initially attain a fully charged state to bring the plant into operation may be capitalized as a component cost of the plant.[175] Further, Electric Plant Instruction No. 9, Equipment, provides that the costs of plant shall include necessary costs of testing or running plant or parts thereof during the test period prior to the plant becoming ready for or being placed in service.[176] Consequently, we agree with EEI's statement that the existing accounting requirements for pumped storage are sufficient. The NOPR proposals for Account 555.1 are adopted in this Final Rule as proposed.

[174] EEI Comments at 27.

[175] 18 CFR Part 101 (2012).

[176] *Id.*

3. Operation and Maintenance Expense Accounts

Commission Proposal

147. In the NOPR, the Commission observed that there are O&M expenses related to the use of energy storage assets to provide utility services, and there are no existing O&M expense accounts in the USofA specifically dedicated to accounting for the cost of energy storage operations. Therefore, the Commission proposed new O&M expense accounts for energy storage-related O&M expenses that are not specifically provided for in the existing O&M expense accounts in the USofA and revision of certain existing O&M expense accounts. Specifically, the Commission proposed that energy storage expenses be recorded in Account 548.1, Operation of Energy Storage Equipment, and Account 553.1, Maintenance of Energy Storage Equipment, for energy storage plant classified as production; Account 562.1, Operation of Energy Storage Equipment, and Account 570.1, Maintenance of Energy Storage Equipment, for energy storage plant classified as transmission; and Account 582.1, Operation of Energy Storage Equipment, and Account 592.2, Maintenance of Energy Storage Equipment, for energy storage plant classified as distribution, to the extent that the existing O&M expense accounts do not adequately support recording of the cost.[177]

Comments

148. The commenters support the proposed O&M expense accounts. Most commenters state that the proposed accounts will provide sufficient transparency of energy storage-specific O&M expenses.[178]

Commission Determination

149. This Final Rule adopts the NOPR proposals for the O&M expense accounts with the exception that the account number for Account 582.1 will be changed to Account 584.1. The name and text of the account will remain as proposed in the NOPR.

150. In addition, the NOPR proposed that the text of Account 592, Maintenance of Station Equipment (Major only), and Account 592.1, Maintenance of Structures and Equipment (Nonmajor only), be revised such that the accounts do not provide for O&M expenses related to energy storage operations and also to remove the reference to Account 363. Accordingly, the following text is struck from Accounts 592 and 592.1:

''and account 363, Storage Battery Equipment.''

4. New and Amended Form Nos. 1, 1–F, and 3–Q Schedules

Commission Proposal

151. In the NOPR, the Commission acknowledged that the existing schedules in the Form Nos. 1, 1–F, and 3–Q do not provide for reporting information on new types of energy storage assets such as batteries and flywheels.[179] Consequently, the Commission proposed to amend several schedules of the Form Nos. 1, 1–F, and 3–Q to include energy storage plant, purchased power, and O&M expense accounts.[180] In addition, the Commission proposed to add new schedule pages 414–416, Energy Storage Operations (Large Plants), and pages 419–420, Energy Storage Operations (Small Plants), to the Form Nos. 1 and 1–F to provide for reporting operational and statistical information on new types of energy storage assets.[181] The Commission proposed that filers with energy storage assets having a rated capacity of 10,000 kilowatts (KW) or more record the operations of the assets on schedule pages 414–416, and filers with energy storage assets with less than 10,000 KW of capacity record the operations on schedule pages 419–420. In addition, the Commission sought comment on whether 10,000 KW is an appropriate threshold for requiring utilities to report more detailed plant and cost information for energy storage plant.[182] The Commission noted that certain existing schedules in the Form No. 1 have a 10,000 KW threshold.[183] However, the Commission opined that this threshold may not be appropriate for new energy storage assets that in

[177] NOPR, FERC Stats. & Regs. ¶ 32,690 at P 96.

[178] *See, e.g.,* ESA Comments at 22; Beacon Power Comments at 21–22; and California Storage Alliance Comments at 17.

[179] NOPR, FERC Stats. & Regs. ¶ 32,690 at P 101.

[180] NOPR, FERC Stats. & Regs. ¶ 32,690 at P 106; and Appendix B Proposed Amendments to Form Nos. 1, 1–F and 3–Q.

[181] The text of the NOPR indicated that the schedules pages were 414–417 and 419–421 for the respective Large and Small Plant schedules. However, the proposed schedules included in Appendix B of the NOPR used different page numbers. We clarify that the schedule page numbers are 414–416 and 419–420, for the respective Large and Small Plant schedules, as indicated in this Final Rule.

[182] NOPR, FERC Stats. & Regs. ¶ 32,690 at P 103.

[183] *See* Form No. 1, schedule pages 408–409, Generating Plant Statistics (Large Plants) and schedule pages 410–411, Generating Plant Statistics (Small Plants). Schedule pages 408–409 require filers to report more detailed information for generating assets with a rated capacity of 10,000 KW or more than schedule pages 410–411, which require less detailed information for generating assets with a rated capacity of less than 10,000 KW.

many instances may be rated below 10,000 KW.

Comments

152. Most commenters support the NOPR's forms proposals, and a few commenters recommend revisions to the forms in addition to those proposed.[184] Consistent with its recommendation that the Commission implement two options to account for energy storage assets, EEI proposes that the forms provide for disclosing the specific option a utility is using to account for the assets.[185] However, because we are not adopting EEI's recommendation for two accounting options, its disclosure proposal is unnecessary as utilities will have one uniform method for accounting for energy storage assets.

153. Hydro Association contends that there are shortcomings in the way the Form No. 1 treats existing pumped storage plants, as they are now used, and it suggests modifications that it believes will improve reporting of information on the assets. Hydro Association recommends that the heading of Line 6 ''Plant Hours Connect to Load While Generating'' of schedule pages 408–409, Pumped Storage Generating Plant Statistics (Large Plants), in the Form No. 1 be changed to read ''Plant Hours Connect to Load.'' [186] Hydro Association reasons that the total hours a facility is synchronized and connected to the grid are important to identify. Hydro Association explains that a facility's effectiveness is based on its total utilization factor, which Hydro Association describes as the sum of hours generating, pumping, and condensing. Hydro Association asserts that this sum should be reported on Line 6 under its proposed heading. Alternatively, Hydro Association proffers that if further detail is needed, the heading of Line 6 can remain as is and two new line items can be added to the schedule to report pumping and condensing hours.

154. Further, Hydro Association also contends that Line 38, ''Expenses for KWh (line 37/9)'' incorrectly calculates the cost per kilowatt hour (KWh) of pumped storage operations.[187] Hydro Association asserts that the calculation should include energy generated and energy used for pumping operations. Hydro Association proposes that Line 38 be revised to read as ''Expenses for KWh (line 37/9+10).''

155. TAPS recommends revisions to new schedule pages 414–416, Energy Storage Operations (Large Plants).[188] TAPS observes that the instruction for column heading (l) refers to ''revenues from energy storage operations'' while the name of the column is ''Revenues from the Sale of Stored Energy.'' TAPS asserts that because revenues from energy storage operations can be garnered by means other than from energy sales, the name of the column should be revised to be consistent with the instructions of the column or additional columns should be created, with corresponding instructions, to report other types of revenues.

156. In regard to the 10,000 KW threshold, California Storage Alliance states that it believes 10,000 KW is an appropriate threshold for requiring a difference in the reporting requirements for the assets.[189] In contrast, Beacon and ESA recommend a higher threshold of 20,000 KW.[190] Beacon and ESA assert that this threshold would align with the Small Generator Interconnection threshold and the capacity value for many existing and planned energy storage assets.

Commission Determination

157. We generally agree with the premise of Hydro Association's contention that Line 6 of schedule pages 408–409 could benefit from additional detail. However, the cost of additional detail must be weighed against any associated benefit that could result. To this end, we strive to achieve a balance such that the cost of implementing new reporting requirements does not excessively exceed the benefits of implementation. A particularly important benefit to the Commission of additional detail is that it provides data necessary for the regulation and review of companies' operations. Hydro Association has neither explained how information on pumping and condensing hours is needed for the regulation and review of pumped storage operations nor has it explained how the information would be beneficial for other uses. Hydro Association indicates that this information will provide for a measure of a facility's effectiveness, however, it is not clear that the cost of requiring this information is on par with any perceived benefits or that the requirement would not be overly burdensome. Consequently, we will not adopt Hydro Association's proposal to include the sum of generating, condensing and pumping on Line 6, nor will we adopt its alternate proposal to add two new line items to the schedule.

158. With regard to Hydro Association's contention that Line 38 of schedule pages 408–409 incorrectly calculates the cost per KWh of pumped storage operations, this line is not intended to report this cost, rather it is intended to report the cost per KWh of energy generated and transmitted to the grid. Line 38 of the schedule includes a formula that requires filers to divide total production expenses reported on Line 37 by energy generated and transmitted to the grid reported on Line 9. Nevertheless, we recognize Hydro Association's underlying concern that, as a conforming change given the other accounting requirements in this Final Rule, the schedule should report this information, including the energy generated and energy used in pumping, as illustrated in the formula example submitted by Hydro Association—Line 37/9+10.

159. We agree that reporting this information on schedule pages 408–409 will help create a more accurate database for benchmarking and O&M cost studies, and this information also will assist interested parties', including the Commission's, review of the operations of pumped storage facilities across the industry. We note that the data inputs needed to perform the calculation are currently required to be reported on Lines 9, 10 and 37 of schedule pages 408–409, so this requirement is not wholly new and the burden on utilities to calculate and report the information specifically on schedule pages 408–409 is minimal. Accordingly, the item on Line 38 of schedule pages 408–409 is revised to read ''Expenses per KWh of Generation (line 37/line 9)'' and a new Line 39 is added which reads ''Expenses per KWh of Generation and Pumping (line 37/(line 9 + line 10)).''

160. TAPS asserts that revenues from energy storage operations can originate from activities other than energy sales, thus it recommends that proposed schedule pages 414–416 be revised to provide for other types of revenues. We agree that there are potentially other activities that energy storage operators can engage in to generate revenue. For example, as TAPS noted, an energy storage operator can conceivably earn revenues from the sale of storage capacity. While we are not aware of any instances where these types of storage capacity transactions have occurred, to ensure that the schedule provides

[184] *See, e.g.,* APPA Comments at 5; Beacon Comments at 22–23; California Storage Alliance Comments at 19; and ESA Comments at 23.

[185] EEI Comments at 5.

[186] Hydro Association Comments at 11.

[187] *Id.*

[188] TAPS Comments at 28–29.

[189] California Storage Alliance Comments at 19.

[190] Beacon Comments at 22; and ESA Comments at 22–23.

adequate flexibility to allow for the reporting of all revenues from energy storage operations we will revise the name of the column to read ''Revenues from Energy Storage Operations.'' We will not create additional columns to report the various types of revenue because the instructions to the schedule already require filers to disclose this information in a footnote.

161. Beacon and ESA recommend that the Commission align the threshold for detailed reporting in the new schedules with the existing 20,000 KW threshold established in Order No. 2006 for the interconnection of small generators.[191] To this end, Beacon and ESA propose a 20,000 KW threshold as opposed to the 10,000 KW proposed in the NOPR. However, the 20,000 KW threshold in Order No. 2006 was established notwithstanding the requirement that small generators having 10,000 KW or more but less than 20,000 KW that are subjected to the Commission's accounting and reporting requirements would be subjected to a higher reporting burden than companies with generators of less than 10,000 KW. In this instance, the Commission determined that while there is a need to further remove barriers to participation in energy markets by establishing terms and conditions under which public utilities must provide interconnection service, there is also a parallel need for detailed information on the activities and operations of companies using these assets in the provisioning of utility services. Thus, the Commission maintained its existing 10,000 KW threshold for these small generators.

162. Beacon and ESA have not provided information that supports a decreased reporting burden for energy storage assets over 10,000 KW as compared to the reporting burden of conventional assets that are currently subject to the 10,000 KW threshold. Nor has Beacon or ESA provided information that would support increasing the existing 10,000 KW threshold for conventional assets to maintain parity between those assets and energy storage assets. Their proposal may result in an unduly discriminatory reporting requirement for energy storage assets compared to conventional assets, therefore we will not adopt the recommended 20,000 KW reporting threshold.

163. We will adopt the NOPR's proposed 10,000 KW threshold as this amount is neither unduly conservative nor is it overly burdensome. As we indicated in the NOPR, information that would be reported for energy storage assets and operations differs little from other data public utilities maintain under the USofA.[192] If a utility owns and operates these energy storage assets, reporting information on them in the proposed accounts and FERC form schedules should not be burdensome.

164. Finally, we will amend schedule pages 2–4, 204–207, 320–323, 324a–324b, 326–327, 397, and 401a of the Form Nos. 1, 1–F, and 3–Q as proposed in the NOPR.[193] We note that these amendments include revising schedule page 401a, Electric Energy Account, of the Form No. 1 to change the title of line item 10 to ''Purchases (other than for Energy Storage)'' and add a new line item 11 ''Purchases for Energy Storage'' to provide for reporting power purchased for energy storage operations. These changes require an additional line item on Form No. 1 schedule page 401a to provide for reporting stored energy because total net sources of energy must equal total disposition of energy as instructed by the requirement on Line 30 of the schedule. Utilities with energy storage operations that have stored energy as of the reporting date of the form must report the amount by megawatt hour in the schedule so that total net sources of energy is equal to total disposition of energy reported. Accordingly, as a conforming change, a new line item titled ''Total Energy Stored'' will be added to schedule page 401a under the heading ''Disposition of Energy.''

5. Other Accounting and Reporting Issues

a. Existing Waivers of Accounting and Reporting Requirements

Commission Proposal

165. In the NOPR, the Commission proposed that public utilities currently providing jurisdictional services and recovering costs of the services under market-based rates that have been granted waiver of the accounting and reporting requirements and that seek recovery of a portion of service costs under cost-based rates, be required to forego the previously issued waivers and account for and report all cost and operational information to the Commission in accordance with its accounting and reporting requirements.[194] In addition, the Commission also inquired whether there should be a percentage of cost recovery threshold or other determining factor that triggers the accounting and reporting obligations in this situation, or should any instance of multiple cost recovery, regardless of the percentage of a utility's total costs, trigger the accounting and reporting obligations.

Comments

166. Most commenters agree with the proposal to rescind previously issued waivers and many of these commenters argue that there should not be a percentage threshold that triggers the requirement. California Storage Alliance states that rescinding the waivers will enhance transparency and facilitate development and monitoring of the cost-based portion of rates.[195] Further, California Storage Alliance states that there should not be a percentage threshold that triggers accounting and reporting requirements. California Storage Alliance, and others,[196] also recommend that in instances where a competitive solicitation process is used to determine recovery of the cost-based portion of rates, a public utility should not be required to forego any reporting and accounting waivers. In further describing their position, these commenters suggest that a particular ''storage asset may be capable of simultaneously providing two distinct functions, one traditionally cost-based use, and another generally market-based.'' They then posit the possibility of a public utility issuing a competitive solicitation solely for the ''cost-based use.'' Their comments then assert that the winning bidder would be obligated to provide the ''cost-based service'' and would be paid through a ''rate-based mechanism.''[197] We also received requests to clarify that the waivers will only be rescinded if energy storage is involved.[198]

Commission Determination

167. We will adopt the NOPR proposal requiring public utilities to forego previously issued accounting and reporting waivers in instances where the utility seeks to recover costs associated with operation of an energy storage asset simultaneously under market-based and

[191] *Standardization of Small Generator Interconnection Agreements and Procedures,* Order No. 2006, FERC Stats. & Regs. ¶ 31,180, *order on reh 'g,* Order No. 2006–A, FERC Stats. & Regs. ¶ 31,196 (2005), *order on clarification,* Order No. 2006–B, FERC Stats. & Regs. ¶ 31,221 (2006). This order originally set forth the terms and conditions under which public utilities must provide interconnection service to Small Generating Facilities of no more than 20,000 KW.

[192] NOPR, FERC Stats. & Regs. ¶ 32,690 at P 73.

[193] NOPR, FERC Stats. & Regs. ¶ 32,690 at Appendix B Proposed Amendments to Form Nos. 1, 1–F, and 3–Q.

[194] *Id.* P 75.

[195] California Storage Alliance Comments at 10.

[196] California Storage Alliance Comments at 10–11; ESA Comments at 18; and Beacon Comments at 18.

[197] *Id.*

[198] Indicated Suppliers Comments at 6–11; EPSA Comments at 13; and EEI Comments at 33–34.

cost-based rate recovery mechanisms. We will not impose a percentage recovery threshold, therefore any cost-based recovery of the cost will trigger rescission of previously granted accounting and reporting waivers.

168. Regarding the comments of California Storage Alliance, ESA, and Beacon, the Commission clarifies that sellers under a competitive solicitation that meets the requirements of this Final Rule [199] will not be required to forego any prior accounting and reporting waivers. However, we feel it necessary to explain that the reason for this outcome differs from what these commenters seem to propose.

169. Their comments seem to indicate a belief that there are some products that are inherently cost-based and others that are inherently market-based, and that if a competitive solicitation were held for a cost-based product, the resulting rates would still be cost-based. We are not persuaded by these commenters' arguments that products should be classified as inherently cost-based or market-based. Some potential sellers of these products will qualify to sell them at market-based rates because they either lack market power in the relevant product market, or it has been adequately mitigated. Other sellers who do not qualify to make market-based sales, because they either have market power or cannot prove they lack it, will be limited to charging cost-based rates.

170. Under the competitive solicitation proposal at bar, proof that the competitive solicitation meets the requirements of this Final Rule will demonstrate that a seller qualifies to make market-based sales at the rates resulting from the solicitation, and thus can avoid having to justify those rates on a cost-of-service basis. Because such sellers will still only be making market-based sales, there is no reason to rescind the prior accounting and reporting waivers that were granted because they would only be making market-based rate sales. Cost-based sales of ancillary services have always been an option for third party sellers, and remain an option for them after issuance of this Final Rule. However, all of the requirements of cost-of-service regulation, such as the very accounting and reporting requirements at issue here, would apply to such sales. We also clarify that the requirement for a company to forego previously issued accounting and reporting waivers, in this instance, is only applicable when energy storage is involved. There may be other occasions when previously issued waivers may be rescinded however those occasions are outside the scope of this rulemaking.

b. Definition of Energy Storage Asset or Technology

171. EEI asks that the Commission clarify the definition of energy storage assets or technologies that are subject to these accounting and reporting requirements.[200] EEI proposes that the Commission define energy storage assets as ''commercially available technology that is capable of absorbing energy, storing energy, and subsequently releasing the energy to the electric system.'' [201] Further, EEI states that certain other energy storage assets should be exempted from the Final Rule, and thus the new accounts, if the function of the asset is so clearly related to activities properly reflected in existing accounts such that the asset is not designed to be used as an ''energy storage asset'' under the definition articulated in this Final Rule. EEI states, for example, that the following assets or technologies should be exempted:

Batteries used primarily in connection with the control and switching of electric energy produced and the protection of electric circuits and equipment that are recorded in the following existing FERC accounts:

Account 315, Accessory Electric Equipment
Account 324, Accessory Electric Equipment (Major Only)
Account 345, Accessory Electric Equipment

Batteries used in connection with controlling station equipment or for general station purposes that are recorded in the following existing FERC accounts:

Account 353, Station Equipment

Batteries used in connection with controlling station equipment or for general station purposes that are recorded in the following existing FERC accounts:

Account 362, Station Equipment

Compressed air systems used for pneumatic or air tools that are recorded in the following existing FERC accounts:

Account 316, Miscellaneous Power Plant Equipment
Account 325, Miscellaneous Power Plant Equipment (Major Only)
Account 346, Miscellaneous Power Plant Equipment

Commission Determination

172. We agree with EEI that there are certain assets that are excluded from the scope of this Final Rule, however, we will not adopt EEI's proposed definition for an energy storage asset or technology. The definition is too broad and could be interpreted to include storage-type technologies that are outside the scope of this Final Rule. As EEI indicated, the assets listed above are the type of assets that should be excluded. This list is not exhaustive; rather it is an example of the type of assets and activities served by those assets that are a baseline indicator of assets that are outside the scope of the accounting and reporting requirements adopted in this Final Rule. For the purposes of this Final Rule, an energy storage asset shall be defined as property that is interconnected to the electrical grid and is designed to receive electrical energy, to store such electrical energy as another energy form,[202] and to convert such energy back to electricity and deliver such electricity for sale, or to use such energy to provide reliability or economic benefits to the grid. The term may include hydroelectric pumped storage and compressed air energy storage, regenerative fuel cells, batteries, superconducting magnetic energy storage, flywheels, thermal energy storage systems, and hydrogen storage, or combination thereof, or any other technologies as the Commission may determine.[203]

c. Incorporating Energy Storage Plant Accounts Into Existing Formula Rates

173. EEI requests that the Commission pre-authorize inclusion of the new energy storage plant and O&M expense accounts in existing formula rates without the need for separate, company-specific section 205 proceedings.[204] EEI contends that many jurisdictional utilities that own and operate energy storage technologies account for the assets in existing accounts that are incorporated in formula rates. EEI states that to the extent the new accounts require a revision to existing filed rates, the Commission should allow such changes to be filed in a compliance filing in this proceeding.

Commission Determination

174. We agree with EEI that utilities currently owning and operating these assets are using existing accounts and reporting schedules. Moreover, in many instances these accounts are incorporated in the companies' formula rate templates and costs reported in the accounts are through operation of the formula rate included in rate

[199] *See supra* PP 87–90.

[200] EEI Comments at 26–28.

[201] *Id.*

[202] Electrical energy may be converted to and stored as several different forms of energy such as chemical, mechanical, and thermal energies.

[203] Although hydroelectric pumped storage is an energy storage technology in accordance with our definition, the accounting and reporting requirements of this rulemaking do not apply to the assets, notwithstanding the revisions to schedule pages 408–409. As we indicated previously, our existing accounting and reporting requirements for pumped storage sufficiently accommodate pumped storage assets and operations.

[204] EEI Comments at 32–33.

determinations. For some of these companies, transferring amounts from an existing plant account under a particular functional classification to a new energy storage plant account under the same functional classification may involve a relatively straight-forward transfer of cost. In this type of situation, a compliance filing will provide adequate transparency to allow interested parties, including the Commission, to review amounts being transferred from one account to another and also to establish the incorporation of the new energy storage plant and O&M expense accounts in the formula rate tariff. However, a compliance filing may not be suitable for all situations.

175. For example, in instances where a company intends on recording the costs of an energy storage asset to multiple plant accounts in accordance with a plan to support multiple functions using the asset, a compliance filing may not provide for an adequate review of the many variables involved that can impact the determination of the appropriate allocation of the cost and rates charged based on the allocation. Moreover, if a company intends on recovering capital and O&M costs of the asset simultaneously under cost-based and market-based rate recovery mechanisms, a compliance filing would not provide sufficient notice or review of the cost to be recovered under the two rate mechanisms. Consequently, because a compliance filing is not appropriate for all situations, we will limit approval of its use to companies that are transferring amounts from an existing plant account under a particular functional classification to a new energy storage plant account under the same functional classification. Transfers of the costs to other plant accounts after this initial compliance filing shall be subject to the requirements of Electric Plant Instruction No.12, Transfers of Property,[205] as proposed in the NOPR,[206] and the provisions of utilities' formula rate tariffs, as applicable. Utilities that do not qualify to use the compliance filing process must first receive approval from a relevant rate regulator to revise their existing formula rate tariffs to incorporate the new energy storage accounts.

d. Depreciation Rates for Energy Storage Assets

Commission Proposal

176. In the NOPR, the Commission proposed that the cost of energy storage assets be charged to depreciation expense using the depreciation rates developed for each function.[207]

Comments

177. Commenters generally support this proposal. For example, Beacon and ESA acknowledge support for the proposal.[208] EEI recommends that instead of requiring depreciation rates to be based on a utility's existing rate for a particular function, the Commission allow utilities to set initial depreciation rates for new energy storage battery equipment based on the manufacturer's estimated useful life, prior to the utilities receiving approval of new depreciation rates through a rate proceeding where new approved rates are ordered for these accounts.[209] EEI explains that the current life of storage batteries is expected to be approximately 10 to 15 years and it contends that this expected life can be substantially less than the life used to calculate the depreciation rate for the function the asset may be classified under.

Commission Determination

178. For accounting purposes, utilities are required to use percentage rates of depreciation that are based on a method of depreciation that allocates in a systematic and rational manner the service value of depreciable property over the service life of the property.[210] Where composite depreciation rates are used, the rate should be based on the weighted average estimated useful lives of depreciable property comprising the composite group. Furthermore, estimated service lives of depreciable property must be supported by engineering, economic, or other depreciation studies.[211] To the extent that an energy storage asset, such as a battery, has an estimated useful service life that is supported by engineering, economic, or other studies of the manufacturer or utility, the depreciation rate derived from such study must result in a systematic and rational allocation of the asset's costs over the estimated service life. Therefore, for accounting purposes, utilities may set initial rates for new energy storage assets based on manufacturer or utility estimated service lives that are supported by engineering, economic or other studies. In addition, as we indicated above, utilities should use a single depreciation rate for an energy storage asset regardless the number of functions to which the costs of the asset are allocated.[212]

e. Jurisdictional Authority

179. The California PUC warns that the Commission's authority over the accounting and reporting for energy storage assets should not limit or infringe upon States' jurisdictional authority over the assets as the majority of the assets are likely to be financed pursuant to state jurisdictional procurement authority.[213]

Commission Determination

180. The accounting and reporting requirements of this rulemaking are not intended to limit or infringe upon States' jurisdictional authority. Pursuant to section 301(a) of the Federal Power Act (FPA), the Commission has authority to prescribe a system of accounts and rules and regulations that are applicable in principle to all licensees and public utilities subject to the Commission's accounting and reporting requirements.[214] The Commission may determine the accounts in which particular outlays and receipts will be entered, charged or credited. The amendments to the accounting and reporting requirements are in accordance with the authority bestowed upon the Commission under the FPA and as such do not preempt or affect any jurisdiction a State commission or other State authority may have under applicable State and Federal law or limit the authority of a State commission in accordance with State and Federal law.

f. Implementation Date

181. EEI requests clarification of the implementation date of the proposed accounting and reporting requirements. EEI states that it believes assets and related amounts recorded in other accounts under the existing accounting requirements should be reclassified to the new energy storage accounts provided the asset meets the definition of an energy storage asset.[215] However, EEI argues that it would not be beneficial or cost effective to require utilities to retroactively amend prior year reports to implement the requirements. Therefore, EEI recommends that the accounting and reporting requirements be effective prospectively only.

[205] 18 CFR Part 101 (2012).

[206] NOPR, FERC Stats. & Regs. ¶ 32,690 at P 82.

[207] *Id.*

[208] Beacon Comments at 19; and ESA Comments at 19.

[209] EEI Comments at 32.

[210] General Instruction No. 22, Depreciation Accounting, 18 CFR Part 101 (2012).

[211] *Id.*

[212] *See supra* P 128.

[213] California PUC Comments at 8.

[214] 16 U.S.C. 825(a).

[215] EEI Comments at 28–29.

Commission Determination

182. While we agree with EEI that it may not be cost effective to require utilities with energy storage assets to retroactively amend prior year reports to implement the accounting and reporting requirements of this Final Rule; we disagree with EEI's contention that it would not be beneficial to interested parties desiring more transparent reporting of the costs associated with energy storage operations. In these instances, the Commission must weigh the perceived cost of implementing a requirement against the expected benefits of implementation. Although requiring utilities with energy storage assets to retroactively implement the requirements would provide a more transparent historical record of these utilities energy storage operations, this information would not be necessary to provide oversight of these utilities energy storage operations going forward. Moreover, it is not clear that the benefits of retroactive implementation are sufficient to justify the cost. Consequently, we will not require utilities to retroactively implement the accounting and reporting requirements.

183. Utilities subject to the Commission's accounting and reporting requirements must implement the requirements as of January 1, 2013. Utilities are not required to adjust prior year, comparative information reported in 2013 Form Nos. 1 and 1–F that must be filed by April 18, 2014, nor are they required to adjust prior year, comparative information reported in 2013 Form No. 3–Q reports. However, a footnote disclosure must be provided describing any amounts transferred from an existing account to a new energy storage account.

184. Due to outdated software, discussed in more detail below, the adopted new and revised schedules of Form Nos. 1, 1–F and 3–Q will not be available for use as of the effective date of this Final Rule. Consequently, utilities with energy storage assets and those that acquire the assets at a later date must continue or begin, as appropriate, using the existing form schedules to report energy storage assets pending availability of the new and revised schedules. Furthermore, we direct the Chief Accountant to issue interim accounting and reporting guidance for utilities to report to the Commission the costs of energy storage operations contemplated in this Final Rule until the new and revised schedules are available.

185. Regarding the reporting software issues, the Commission's forms software applications are built with Visual FoxPro development tools and must be installed on a Windows-based computer. Microsoft, the Visual FoxPro vendor, announced in 2007 that it would no longer sell or issue new versions of Visual FoxPro and would provide support for it only through 2015. Also, over time, the Commission has found that it is difficult to update tables in the software to accommodate revisions to existing schedules and add new schedules to the forms because Visual FoxPro does not allow data tables to exceed two gigabytes. These data size limitations will soon restrict the Commission's ability to add data fields in the forms. These limitations make the forms software application outmoded, ineffective, and unsustainable.

186. Pursuant to Sections 141.1, 141.400, and 385.2011 of the Commission's Regulations,[216] Form Nos. 1 and 3–Q must be submitted using electronic media.[217] Due to technology changes that will render the current forms filing process outmoded, ineffective, and unsustainable, the Commission will discontinue the use of Commission-distributed software to file forms. Moreover, because of the software limitations, the new and revised form schedules will not be available to utilities with energy storage assets and those that acquire the assets later as of the effective date of this Final Rule. Consequently, due to the time lag between implementation of the accounting and reporting requirements adopted here and the availability of a filing platform that accommodates the Commission's reporting forms, utilities should submit their 2013 Form No. 1 and 2014 Form No. 3–Qs using the existing forms filing process until an updated filing platform is made available by the Commission. Commission staff will issue appropriate notices and hold technical conferences if necessary concerning changes to the filing process.[218]

D. Other Issues

187. Some commenters raised issues beyond the scope of the NOPR. WSPP argues that public utility participation in a competitive market for ancillary services is hindered by certain OATT requirements applicable to network transmission customers. Specifically, WSPP refers to the requirement that network resources be undesignated as such, and thus lose their firm network transmission service, when they are committed to third-party sales instead of network load obligations. WSPP points to timing mismatches between the operational needs of ancillary service use and the undesignation requirements of the OATT as the main source of this issue. It argues that the Commission previously acknowledged these issues in connection with contingency reserves under the Southwest Reserve Sharing Group.[219] WSPP argues that this undesignation requirement hinders robust participation from network transmission customers, including the transmission providers themselves, in ancillary service markets.

188. EEI makes similar arguments with respect to the network resource undesignation requirements, and asks that the Commission remain receptive to utility-specific requests for flexibility.[220]

189. Hydro Association and Public Interest Organizations argue that the Commission should develop policies that facilitate long-term contracts with energy storage owners. Hydro Association asserts that the Commission should solicit further input on policies that would allow RTO, ISO, and stand-alone transmission providers to enter into long-term contracts with energy storage owners.[221] Public Interest Organizations make similar arguments.[222]

190. Shell Energy suggests that the current distinction between Energy Imbalance and Generator Imbalance is unnecessary, and that the two services should be combined into a single product. Shell Energy cites similar definitions in the EQR Data Dictionary, and states that treating the two services as different products provides little benefit, creates unnecessary complexity and may result in confusion and regulatory uncertainty.[223]

191. Shell Energy also urges the Commission to recognize ''Balancing Reserves'' as a separate energy and capacity product used to firm variable energy resources. Shell Energy argues that such a product would be differentiated from ancillary services because, unlike ancillary services, it would not be limited to addressing

[216] 18 CFR 141.1, 141.400, and 385.2011 (2012), respectively.

[217] Form No. 1–F filers may also submit the reports electronically; however, the Commission's regulations do not explicitly require these filers to submit the reports electronically. *See* 18 CFR 141.2 (2012).

[218] Filers with energy storage assets and operations may be required to amend and refile their 2013 Form Nos. 1 and 1–F and 2014 Form No. 3–Q to report energy storage operation information in the schedules adopted in this final rule as a result of the anticipated new filing platform. However, these filers will not be required to amend and refile previously submitted 2013 Form No. 3–Qs.

[219] WSPP Comments at 19–21.

[220] EEI Comments 21–22.

[221] Hydro Association Comments at 4–6.

[222] Public Interest Organizations Comments at 11.

[223] Shell Energy Comments at 3–4.

contingencies. Shell Energy seeks clarification that such a product would not be considered an ancillary service, and thus would not be subject to the *Avista* restrictions. Rather it would be subject to a seller's existing authorization to sell energy and capacity at market-based rates.[224] EPSA makes similar arguments regarding the need for a new, non-contingency-related balancing reserves product.[225] While WSPP's comments do not specifically seek to identify a new product based on whether or not it can be used for issues other than contingencies, as do Shell Energy and EPSA, WSPP nevertheless makes certain similar arguments in part of its comments. WSPP asserts that sellers may not always wish to sell specific ancillary services, but rather may wish to sell ''flexible capacity'' products capable generally of fulfilling multiple OATT schedules. While its comments are not entirely clear on this point, WSPP could be interpreted to argue that the Commission should recognize flexible capacity as a product different from ancillary services.[226]

192. AWEA requests that the Commission explore the role that dynamic transfer capability, or lack thereof, plays in protecting against exertion of market power. AWEA argues that lack of dynamic transfer capability severely constrains competitive ancillary service markets in many parts of the country. AWEA suggests that the Commission could require transmission providers to analyze, inventory, and market dynamic scheduling capability on a non-discriminatory basis.[227]

193. Powerex argues that there may be certain locations where there is sufficient market liquidity such that a seller should be able to make ancillary service sales without performing a separate market power analysis. Powerex believes that these locations might be defined by some measure of market liquidity, or by a specific minimum number of potential sellers, and gives as examples the trading hubs of Mid-Columbia, California-Oregon Border, Palo Verde, Four Corners, and Mead. Powerex does not suggest specific liquidity metrics, but does have suggestions regarding the appropriate minimum number of potential suppliers. It suggests that third-party sales to a transmission provider could be deemed competitive any time there are: (1) At least three potential suppliers, each capable of providing 100 percent of the buyer's needs for the ancillary service in question; or (2) at least five potential suppliers, each capable of meeting a significant portion (e.g., at least 25 percent) of the buyer's need for the ancillary service in question.

Commission Determination

194. With respect to WSPP's request for more flexibility on the requirements for network resource undesignation, the Commission declines to consider such changes on a generic basis at this time. This undesignation requirement is intended to ensure that network transmission customers cannot inappropriately withhold firm transmission capacity from potential competitors. While WSPP is correct that the Commission has permitted limited deviations from this requirement in connection with established reserve sharing groups, we are not persuaded that a more general relaxation is justified. WSPP indicates in its comments that a public utility is unable to undesignate the network resource providing the energy associated with the provision of ancillary services because the unit providing the energy may differ from the unit providing the capacity. This suggests that the public utility will be using transmission service from a unit that is different from the unit for which transmission service has been reserved. Thus, WSPP is essentially asking the Commission to permit a public utility transmission provider to implicitly use firm point-to-point transmission service without reserving it or paying for it. The Commission has previously expressly prohibited this practice and nothing in the comments suggests that the Commission's concerns are no longer valid.[228] Further, participating in a reserve sharing group differs from making third-party market sales of ancillary services. A reserve sharing group essentially expands a public utility transmission provider's native load obligations to serving other load serving entities' native load in the event of a contingency with like protection in return. Permitting a public utility transmission provider to deliver energy associated with its reserve sharing group obligations without undesignating the resource providing the energy is an appropriate recognition of the network service elements of reserve sharing arrangements. On the other hand, market sales of ancillary services must be delivered using point-to-point transmission service.

195. With respect to the requests of Hydro Association and Public Interest Organizations to facilitate long-term contracting with energy storage owners, we see no basis for any additional action at this time. In bilateral markets, assuming that parties are able to avoid the *Avista* restrictions through use of one of the options provided in this rule, potential buyers including transmission owners and sellers are free to transact through contracts of whatever length they find mutually agreeable.

196. Shell Energy's suggestion that Energy Imbalance and Generator Imbalance services be combined into a single product is beyond the scope of this rulemaking, and Shell Energy's arguments in support of this idea do not rise to a level concrete enough to justify such an expansion at this time.

197. With respect to Shell Energy and EPSA's comments regarding recognition of non-contingency-related balancing reserves as separate from ancillary services, and WSPP's similar discussion of ''flexible capacity,'' we clarify that sales of energy and capacity at market-based rates are permissible, provided the buyer may not use the purchases to meet its OATT obligations to provide Regulation and Frequency Response or Reactive Supply and Voltage Control ancillary services.

198. AWEA's comments regarding dynamic transfer capability raise issues beyond the scope of this rulemaking, which have not been fully explored in this proceeding, and whose resolution is not necessary to the completion of this rulemaking. Accordingly, the Commission will not direct changes with respect to dynamic scheduling or dynamic transfer capability at this time.

199. Regarding Powerex's argument for development of a new market liquidity screen for ancillary service market power, we decline to attempt such development at this time. The record does not currently support either development of a generic market liquidity metric, or the particular minimum participant number thresholds proposed by Powerex. We remain open to a more detailed discussion of these ideas in the future if needed, but at this time will move forward with the rule changes contained elsewhere in this Final Rule, which we hope will reduce the need to develop alternative market power analyses.

III. Summary of Compliance and Implementation

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[224] Shell Energy Comments at 5–6.

[225] EPSA Comments at 10–11.

[226] WSPP Comments at 7.

[227] AWEA Comments at 3.

[228] Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 834.

200. With respect to this Final Rule's reforms to the *Avista* policy governing sales of certain ancillary services to a public utility purchasing the ancillary service to satisfy its own OATT requirements to offer ancillary services to its own customers, sellers that have a market-based rate tariff on file should revise the provision concerning third-party sales of ancillary services, to the extent they have this provision in their tariffs, as follows: Third-party ancillary services: Seller offers [include all of the following that the seller is offering: Regulation and Frequency Response Service, Reactive Supply and Voltage Control Service, Energy and Generator Imbalance Service, Operating Reserve-Spinning ~~Reserves~~, and Operating Reserve-Supplemental ~~Reserves~~]. Sales will not include the following: (1) Sales to an RTO or an ISO, i.e., where that entity has no ability to self-supply ancillary services but instead depends on third parties; and (2) sales to a traditional, franchised public utility affiliated with the third-party supplier, or sales where the underlying transmission service is on the system of the public utility affiliated with the third-party supplier~~; and (3) sales to a public utility that is purchasing ancillary services to satisfy its own open access transmission tariff requirements to offer ancillary services to its own customers~~. Sales of Operating Reserve-Spinning and Operating Reserve-Supplemental will not include sales to a public utility that is purchasing ancillary services to satisfy its own open access transmission tariff requirements to offer ancillary services to its own customers, except where the Commission has granted authorization. Sales of Regulation and Frequency Response Service and Reactive Supply and Voltage Control Service will not include sales to a public utility that is purchasing ancillary

services to satisfy its own open access transmission tariff requirements to offer ancillary services to its own customers, except at rates not to exceed the buying public utility transmission provider's OATT rate for the same service or where the Commission has granted authorization.

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201. While the authorization is effective as of the date specified in this Final Rule, sellers should file this tariff revision the next time they make a market-based rate filing with the Commission. To the extent sellers do not currently have this provision in their tariff but wish to make third-party sales of ancillary services, they should include this revised provision in their tariff the next time they make a market-based rate filing with the Commission.

202. With regard to sales of Operating Reserves, as discussed above, both sellers that have a market-based rate tariff on file and applicants seeking new market-based rate authority must satisfactorily make the required showing and receive Commission authorization before making sales of Operating Reserve-Spinning and Operating Reserve-Supplemental to a public utility that is purchasing Operating Reserve-Spinning and Operating Reserve-Supplemental to satisfy its own open access transmission tariff requirements to offer ancillary services to its own customers.

203. With respect to the Final Rule's reforms to provide greater transparency with regard to reserve requirements for Regulation and Frequency Response, within 30 days from the effective date of this Final Rule, we require each public utility transmission provider to revise its OATT Schedule 3 consistent with the revised Schedule 3 in accordance with Appendix B to this Final Rule.

204. With respect to Final Rule's reforms to our accounting and reporting regulations, utilities subject to these requirements must implement the requirements as of January 1, 2013. Utilities are not required to adjust prior year, comparative information reported in 2013 Form Nos. 1 and 1–F that must be filed by April 18, 2014, nor are they required to adjust prior year, comparative information reported in 2013 Form No. 3–Q reports. However, a footnote disclosure must be provided describing any amounts transferred from an existing account to a new energy storage account.

205. Due to outdated software, discussed in more detail in the body of this Final Rule, the adopted new and revised schedules of Form Nos. 1, 1–F and 3–Q will not be available for use as of the effective date of this Final Rule. Consequently, utilities with energy storage assets and those that acquire the assets at a later date must continue or begin, as appropriate, using the existing form schedules to report energy storage assets pending availability of the new and revised schedules.

IV. Information Collection Statement

206. The following collections of information contained in this Final Rule have been submitted to the Office of Management and Budget (OMB) for review under Section 3507(d) of the Paperwork Reduction Act of 1995.[229] OMB's regulations require approval of certain information collection requirements imposed by agency rule.[230] Upon approval of a collection of information, OMB will assign an OMB control number and an expiration date. Respondents subject to the filing requirements of a rule will not be penalized for failing to respond to these collections of information if the collections of information do not display a valid OMB control number.

Burden Estimate: The additional estimated public reporting burdens and costs for the reporting requirements in this Final Rule are as follows.[231]

Data collection	Number of respondents (a)	Change in the number of hours per filing (averaging implementation over Yrs. 1–3)[232] (b) (hrs.)	Filings per respondent per year (c)	Change in the total annual hours for this collection (averaging implementation over Yrs. 1–3) (aXbXc=d) (hrs.)	Estimated annual cost (averaging implementation over Yrs. 1–3) (at $120/hr.) (dX$120/hr.) ($)
Form No. 1	210	7 [3 hrs. (one-time implementation in Year 1), plus 6 hrs. annually].	1	1,470	176,400
Form No. 1–F	5	7 [3 hrs. (one-time implementation in Year 1), plus 6 hrs. annually].	1	35	4,200
Form No. 3–Q	213	1	3	639	76,680
FERC–917 [includes one-time filing of Pro forma open-access transmission tariff (OATT) & data sharing][233].	132	17.33 averaged over Years 1–3 [4 hrs. one-time in Yr. 1, plus an average recurring burden in Years 1–3 of 16 hrs.].	1	2,288 averaged over Years 1–3.	274,560 averaged over Years 1–3
FERC–516	no change	no change	no change	no change	no change

[229] *See* 44 U.S.C. 3507(d).

[230] 5 CFR 1320.11 (2012).

[231] In the NOPR, the Commission proposed changes to FERC–919 (related to the '20 percent screen'). The FERC–919 is not affected by the Final Rule. In addition, changes to FERC–516, which were not contained in the NOPR, are included in the Final Rule.

Data collection	Number of respondents (a)	Change in the number of hours per filing (averaging implementation over Yrs. 1–3) [232] (b) (hrs.)	Filings per respondent per year (c)	Change in the total annual hours for this collection (averaging implementation over Yrs. 1–3) (aXbXc=d) (hrs.)	Estimated annual cost (averaging implementation over Yrs. 1–3) (at $120/hr.) (dX$120/hr.) ($)
FERC–717 (OASIS posting under 18 CFR 37.6k).	176	1	1	176	9,889 [234]
Total				4,608 (averaged over Years 1–3).	$541,729 (averaged over Years 1–3)

In paragraph 96, the Commission is requiring that any third-party seller seeking to sell ancillary services to a public utility transmission provider through a competitive solicitation will need to demonstrate compliance with the competitive solicitation requirements of this rule, through a filing under section 205 of the Federal Power Act. This requirement for submittal in a section 205 filing would be made under FERC–516 (OMB Control No. 1902–0096). The filing would be submitted by the seller to the Commission prior to commencement of service under the third-party ancillary service sales agreement that results from the competitive solicitation. The filing will include both the actual sales agreement and a narrative description of how the buyer's competitive solicitation meets the requirements of this Final Rule. Meeting those requirements demonstrates the justness and reasonableness of the resulting rate. If the seller did not have this option to sell under the competitive solicitation, the seller could not use market-based rates and would have to either submit an application for cost-based rates under FERC–516 or an application seeking waiver of the *Avista* restrictions on a case-by-case basis.[235] The Commission believes that the burden associated with the new requirements is far less burden than a full cost-of-service rate filing and approximately the same burden as the burden associated with an *Avista* waiver filing. In addition, the numbers of respondents and filings are not expected to change significantly. Therefore, no changes are proposed to the burden or number of responses for FERC–516.

Title: FERC Form No. 1, ''Annual Report of Major Electric Utilities, Licensees, and Others;'' FERC Form No. 1–F, ''Annual Report for Nonmajor Public Utilities and Licensees;'' FERC Form No. 3–Q, ''Quarterly Financial Report of Electric Utilities, Licensees and Natural Gas Companies;'' FERC–917, ''Non-discriminatory Open Access Transmission Tariff;'' FERC–516, '' Electric Rate Schedules and Tariff Filings,'' and FERC–717, ''Open Access Same-Time Information System and Standards for Business Practices & Communication Protocols.''

Action: Proposed revisions to information collections.

OMB Control Nos.: 1902–0021 (FERC Form No. 1); 1902–0029 (FERC Form No. 1–F); 1902–0205 (FERC Form No. 3–Q); 1902–0233 (FERC–917), 1902–0096 (FERC–516), and 1902–0173 (FERC–717).

Respondents: Businesses or other for profit and/or not-for-profit institutions.

Frequency of responses: Annually (FERC Form Nos. 1 and 1–F, and FERC–717); quarterly (FERC Form No. 3–Q); and as needed (FERC–917 and FERC–516).

Necessity of the Information: The final rule amends the Commission's regulations to reflect changes that are occurring in the electric industry due to the availability of new energy storage technologies that are being used in the provision of large-scale utility operations. These technologies are providing services that were typically provided by traditional single-purpose production, transmission and distribution resources. The addition of these new plant accounts and new and amended reporting forms are intended to enhance transparency and provide detailed information on transactions and events affecting public utilities and licensees that file reports with the Commission. The accounting regulations currently found in the USofA and related reporting requirements capture financial and operational information along traditional primary business functions but do not provide sufficient detailed information concerning energy storage operations, and in particular, the costs incurred by organizations using these resources to simultaneously provide multiple utility services with a single asset. The addition of these accounts is intended to improve the transparency, completeness and consistency of accounting practices for the cost of assets, the expenses incurred in providing services, along with revenues collected. Without specific instructions and accounts for recording and reporting the above transactions and events, inconsistent and incomplete accounting and reporting will result.

Internal Review: The Commission has reviewed the requirements pertaining to the USofA and to the reports it prescribes and determined that the proposed amendments are necessary because the Commission needs to establish uniform accounting and reporting requirements for the costs of utility assets and the expenses incurred for providing services as part of its operations.

These requirements conform to the Commission's need for efficient information collection, communication, and management within the energy industry. The Commission has assured itself, by means of internal review, that there is specific, objective support for

[232] For the Forms 1 and 1–F, the one-time implementation burden in Year 1 is estimated to be 3 hours per respondent. However, for the burden and cost estimates, we are averaging those additional 3 hours over Years 1–3, giving an average annual one-time implementation burden of 1 hour. That 1 hour is in addition to the normal annual filing burden of 6 hours each, giving an average annual estimate of 7 hours for Forms 1 and 1–F, for Years 1–3.

[233] This includes the one-time refiling of OATT Schedule 3 (estimated average of 4 hours per utility respondent), and if requested, the utility's sharing data and a narrative description with its self-supplying customer(s) (estimated average of 4 customer requests per utility respondent per year, taking 4 hours per request). The estimated annual burden per utility is

- Year 1: 4 hrs. (for one-time refiling) + (4 requests * 4 hrs.), giving an estimate of 20 hrs. per utility
- Years 2 and 3, each: 4 requests * 4 hrs., giving 16 hrs. per utility per year. When the one-time implementation burden (of 4 hours) is averaged over Years 1–3, the annual additional burden per utility is 17.33 hours.

[234] Based on the 2012 data from the Bureau of Labor Statistics at *http://bls.gov/oes/current/naics2_22.htm,* the hourly cost of salary plus benefits would be $56.19.

[235] *See, e.g., Powerex,* 125 FERC ¶ 61,179 (2008).

the burden estimates associated with the information collection requirements.

Interested persons may obtain information on the reporting requirements by contacting the following: Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426 [Attention: Ellen Brown, Office of the Executive Director], email: *DataClearance@ferc.gov,* Phone (202) 502–8663, fax: (202) 273–0873.

Comments on the collection of information and the associated burden estimates in the rule should be sent to the Commission in this docket and may also be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 [Attention: Desk Officer for the Federal Energy Regulatory Commission]. For security reasons, comments to OMB should be submitted by email to: *oira_submission@omb.eop.gov.* Please refer to OMB Control Nos. 1902–0021 (FERC Form No. 1), 1902–0029 (FERC Form No. 1–F), 1902–0205 (FERC Form No. 3–Q), and 1902–0233 (FERC–917), 1902–0096 (FERC–516), and 1902–0173 (FERC–717) and Docket Number RM11–24.

Environmental Analysis

207. The Commission is required to prepare an Environmental Assessment or an Environmental Impact Statement for any action that may have a significant adverse effect on the human environment.[236] The Commission concludes that neither an Environmental Assessment nor an Environmental Impact Statement is required for this Final Rule under section 380.4(a)(15) of the Commission's regulations, which provides a categorical exemption for approval of actions under sections 205 and 206 of the FPA relating to the filing of schedules containing all rates and charges for the transmission or sale subject to the Commission's jurisdiction, plus the classification, practices, contracts, and regulations that affect rates, charges, classifications, and services.[237]

VI. Regulatory Flexibility Act

208. The Regulatory Flexibility Act of 1980 (RFA)[238] generally requires a description and analysis of rules that will have significant economic impact on a substantial number of small entities. The RFA mandates consideration of regulatory alternatives that accomplish the stated objectives of a proposed rule and that minimize any significant economic impact on a substantial number of small entities. The Small Business Administration's (SBA) Office of Size Standards develops the numerical definition of a small business.[239] The SBA has established a size standard for electric utilities, stating that a firm is small if, including its affiliates, it is primarily engaged in the transmission, generation and/or distribution of electric energy for sale and its total electric output for the preceding twelve months did not exceed four million megawatt hours.[240] The rule applies exclusively to public utilities that own, control, or operate facilities for transmitting electric energy in interstate commerce and not electric utilities per se. Based on the filers of the 2011 annual FERC Form No. 1 and Form No. 1–F, as well as the number of companies that have obtained waivers, we estimate that 44 entities (20 percent of the filers) affected by this proposed rule are ''small.'' For each of the 44 ''small'' entities, the Commission estimates an additional annual burden of only ten hours (seven hours for the annual Form 1 or Form 1–F (averaging implementation over years 1–3), plus one hour per quarter for the Form 3–Q). The Commission believes this rule will not have a significant economic impact on a substantial number of small entities, and therefore no regulatory flexibility analysis is required.

VII. Document Availability

209. In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the Internet through the Commission's Home Page (*http://www.ferc.gov*) and in the Commission's Public Reference Room during normal business hours (8:30 a.m. to 5:00 p.m. Eastern time) at 888 First Street NE., Room 2A, Washington, DC 20426.

210. From the Commission's Home Page on the Internet, this information is available on eLibrary. The full text of this document is available on eLibrary in PDF and Microsoft Word format for viewing, printing, and/or downloading. To access this document in eLibrary, type the docket number, excluding the last three digits of this document in the docket number field.

211. User assistance is available for eLibrary and the Commission's Web site during normal business hours from the Commission's Online Support at 202–502–6652 (toll free at 1–866–208–3676) or email at *ferconlinesupport@ferc.gov*, or the Public Reference Room at (202) 502–8371, TTY (202)502–8659. Email the Public Reference Room at *public.referenceroom@ferc.gov.*

Effective Date and Congressional Notification. These regulations are effective November 27, 2013. The Commission has determined, with the concurrence of the Administrator of the Office of Information and Regulatory Affairs of OMB, that this rule is not a ''major rule'' as defined in section 351 of the Small Business Regulatory Enforcement Fairness Act of 1996.

List of Subjects

18 CFR Part 35

Electric power rates, Electric utilities, Reporting and recordkeeping requirements

18 CFR Part 101

Electric power, Electric utilities, Uniform System of Accounts.

By direction of the Commission.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

In consideration of the foregoing, the Commission amends Parts 35 and 101, Chapter I, Title 18, *Code of Federal Regulations,* as follows.

PART 35—FILING OF RATE SCHEDULES AND TARIFFS

■ 1. The authority citation for part 35 continues to read as follows:

Authority: 16 U.S.C. 791a–825r, 2601–2645; 31 U.S.C. 9701; 42 U.S.C. 7101–7352.

■ 2. Amend § 35.37 by revising paragraph (c)(1) to read as follows:

§ 35.37 Market power analysis required.

* * * * *

(c)(1) There will be a rebuttable presumption that a Seller lacks horizontal market power with respect to sales of energy, capacity, energy imbalance, and generator imbalance services if it passes two indicative market power screens: A pivotal supplier analysis based on annual peak demand of the relevant market, and a market share analysis applied on a seasonal basis. There will be a rebuttable presumption that a Seller lacks horizontal market power with respect to sales of operating reserve-spinning and operating reserve-supplemental services if the Seller passes these two indicative market power screens and demonstrates in its market-based rate application how the scheduling practices in its region

[236] *Regulations Implementing the National Environmental Policy Act,* Order No. 486, 52 FR 47897 (Dec. 17, 1987), FERC Stats. & Regs. Regulations Preambles 1986–1990 ¶ 30,783 (1987).

[237] 18 CFR 380.4(a)(15) (2012).

[238] 5 U.S.C. 601–612.

[239] 13 CFR 121.101 (2011).

[240] 13 CFR 121.201, Sector 22, Utilities.

support the delivery of operating reserve resources from one balancing authority area to another. There will be a rebuttable presumption that a seller possesses horizontal market power with respect to sales of energy, capacity, energy imbalance, generator imbalance, operating reserve-spinning, and operating reserve-supplemental services if it fails either screen.

* * * * *

■ 3. Amend § 35.38 as follows:

■ a. Paragraph (a) is revised.

■ b. Paragraph (b) introductory text is revised.

■ c. Paragraph (c) is added.

The revisions and addition read as follows:

§ 35.38 Mitigation.

* * * * *

(a) A Seller that has been found to have market power in generation or ancillary services, or that is presumed to have horizontal market power in generation or ancillary services by virtue of failing or foregoing the relevant market power screens, as described in 35.37(c), may adopt the default mitigation detailed in paragraph (b) of this section for sales of energy or capacity or paragraph (c) of this section for sales of ancillary services or may propose mitigation tailored to its own particular circumstances to eliminate its ability to exercise market power. Mitigation will apply only to the market(s) in which the Seller is found, or presumed, to have market power.

(b) Default mitigation for sales of energy or capacity consists of three distinct products:

* * * * *

(c) Default mitigation for sales of ancillary services consist of: (1) A cap based on the relevant OATT ancillary service rate of the purchasing transmission operator; or (2) the results of a competitive solicitation that meets the Commission's requirements for transparency, definition, evaluation, and competitiveness.

■ 4. Amend § 37.6 by adding paragraph (k) to read as follows:

§ 37.6 Information to be posted on the OASIS.

* * * * *

(k) *Posting of historical area control error data.* The Transmission Provider must post on OASIS historical one-minute and ten-minute area control error data for the most recent calendar year, and update this posting once per year.

PART 101—UNIFORM SYSTEM OF ACCOUNTS PRESCRIBED FOR PUBLIC UTILITIES AND LICENSES SUBJECT TO THE PROVISIONS OF THE FEDERAL POWER ACT

■ 5. The authority citation for part 101 continues to read as follows:

Authority: 16 U.S.C. 791a–825r, 2601–2645; 31 U.S.C. 9701; 42 U.S.C. 7101–7352, 7651–7651o.

■ 6. In Part 101:

■ a. Under Electric Plant Chart of Accounts, Account 348 is added to the list;

■ b. Under Electric Plant Accounts, Account 351, the name of the account is revised and instructions are added;

■ c. Under Electric Plant Accounts, Account 363, the name of the account and the instructions are revised;

■ d. Under Electric Plant Accounts, primary plant account 348 is added;

■ e. Under Operation and Maintenance Expense Chart of Accounts, Accounts 548.1, 553.1, 555.1, 562.1, 570.1, 584.1, and 592.2 are added to the list;

■ f. Under Operation and Maintenance Expense Accounts, operation expense account 548.1 is added;

■ g. Under Operation and Maintenance Expense Accounts, maintenance expense account 553.1 is added;

■ h. Under Operation and Maintenance Expense Accounts, power supply expense account 555.1 is added;

■ i. Under Operation and Maintenance Expense Accounts, operation expense account 562.1 is added;

■ j. Under Operation and Maintenance Expense Accounts, maintenance expense account 570.1 is added;

■ k. Under Operation and Maintenance Expense Accounts, operation expense account 584.1 is added;

■ l. Under Operation and Maintenance Expense Accounts, maintenance expense account 592.2 is revised; and

■ m. Under Operation and Maintenance Expense Accounts, maintenance expense account 592.1 is revised;

The revisions and additions read as follows:

PART 101—UNIFORM SYSTEM OF ACCOUNTS PRESCRIBED FOR PUBLIC UTILITIES AND LICENSES SUBJECT TO THE PROVISIONS OF THE FEDERAL POWER ACT

* * * * *

Electric Plant Chart of Accounts

* * * * *

2. Production Plant

* * * * *

D. Other Production

* * * * *

348 Energy Storage Equipment—Production

* * * * *

Electric Plant Accounts

* * * * *

351 Energy Storage Equipment—Transmission

A. This account shall include the cost installed of energy storage equipment used to store energy for load managing purposes. Where energy storage equipment can perform more than one function or purposes, the cost of the equipment shall be allocated among production, transmission, and distribution plant based on the services provided by the asset and the allocation of the asset's cost through rates approved by a relevant regulatory agency. Reallocation of the cost of equipment recorded in this account shall be in accordance with Electric Plant Instruction No. 12, Transfers of Property.

B. Labor costs and power purchased to energize the equipment are includible on the first installation only. The cost of removing, relocating and resetting energy storage equipment shall not be charged to this account but to Account 562.1, Operation of Energy Storage Equipment, and Account, 570.1, Maintenance of Energy Storage Equipment, as appropriate.

C. The records supporting this account shall show, by months, the function(s) each energy storage asset supports or performs.

Items

1. Batteries/Chemical
2. Compressed Air
3. Flywheels
4. Superconducting Magnetic Storage
5. Thermal

* * * * *

363 Energy Storage Equipment—Distribution

A. This account shall include the cost installed of energy storage equipment used to store energy for load managing purposes. Where energy storage equipment can perform more than one function or purpose, the cost of the equipment shall be allocated among production, transmission, and distribution plant based on the services provided by the asset and the allocation of the asset's cost through rates approved by a relevant regulatory agency. Reallocation of the cost of equipment recorded in this account shall be in accordance with Electric Plant Instruction No. 12, Transfers of Property.

B. Labor costs and power purchased to energize the equipment are includible

on the first installation only. The cost of removing, relocating and resetting energy storage equipment shall not be charged to this account but to Account 582.1, Operation of Energy Storage Equipment, and Account, 592.1, Maintenance of Energy Storage Equipment, as appropriate.

C. The records supporting this account shall show, by months, the function(s) each energy storage asset supports or performs.

Items

1. Batteries/Chemical
2. Compressed Air
3. Flywheels
4. Superconducting Magnetic Storage
5. Thermal

* * * * *

348 Energy Storage Equipment—Production

A. This account shall include the cost installed of energy storage equipment used to store energy for load managing purposes. Where energy storage equipment can perform more than one function or purpose, the cost of the equipment shall be allocated among production, transmission, and distribution plant based on the services provided by the asset and the allocation of the asset's cost through rates approved by a relevant regulatory agency. Reallocation of the cost of equipment recorded in this account shall be in accordance with Electric Plant Instruction No. 12, Transfers of Property.

B. Labor costs and power purchased to energize the equipment are includible on the first installation only. The cost of removing, relocating and resetting energy storage equipment shall not be charged to this account but to accounts Account 548.1, Operation of Energy Storage Equipment, and Account 553.1, Maintenance of Energy Storage Equipment., as appropriate.

C. The records supporting this account shall show, by months, the function(s) each energy storage asset supports or performs.

Items

1. Batteries/Chemical
2. Compressed Air
3. Flywheels
4. Superconducting Magnetic Storage
5. Thermal

Note: The cost of pumped storage hydroelectric plant shall be charged to hydraulic production plant. These are examples of items includible in this account. This list is not exhaustive.

* * * * *

Operation and Maintenance Expense Chart of Accounts

* * * * *

1. Power Production Expenses

* * * * *

D. Other Power Generation

* * * * *

Operation

* * * * *

548.1 Operation of Energy Storage Equipment

* * * * *

Maintenance

553.1 Maintenance of Energy Storage Equipment

* * * * *

E. Other Power Supply Expenses

* * * * *

555.1 Power Purchased for Storage Operations

* * * * *

2. Transmission Expenses

* * * * *

Operation

* * * * *

562.1 Operation of Energy Storage Equipment

* * * * *

Maintenance

* * * * *

570.1 Maintenance of Energy Storage Equipment

* * * * *

4. Distribution Expenses

* * * * *

Operation

* * * * *

584.1 Operation of Energy Storage Equipment

* * * * *

Maintenance

* * * * *

592.2 Maintenance of Energy Storage Equipment

* * * * *

Operation and Maintenance Expense Accounts

* * * * *

548.1 Operation of Energy Storage Equipment

This account shall include the cost of labor, materials used and expenses incurred in the operation of energy storage equipment includible in Account 348, Energy Storage Equipment—Production, which are not specifically provided for or are readily assignable to other production operation expense accounts.

* * * * *

553.1 Maintenance of Energy Storage Equipment

This account shall include the cost of labor, materials used and expenses incurred in the maintenance of energy storage equipment includible in Account 348, Energy Storage Equipment—Production, which are not specifically provided for or are readily assignable to other production maintenance expense accounts.

* * * * *

555.1 Power Purchased for Storage Operations

A. This account shall include the cost at point of receipt by the utility of electricity purchased for use in storage operations, including power purchased and consumed or lost in energy storage operations during the provision of services, including but not limited to energy purchased and stored for resale. It shall also include but not be limited to net settlements for exchange of electricity or power, such as economy energy, off-peak energy for on-peak energy, and spinning reserve capacity. In addition, the account shall include the net settlements for transactions under pooling or interconnection agreements wherein there is a balancing of debits and credits for energy, capacity, and possibly other factors. Distinct purchases and sales shall not be recorded as exchanges and net amounts only recorded merely because debit and credit amounts are combined in the voucher settlement.

B. The records supporting this account shall show, by months, the kilowatt hours and prices thereof under each purchase contract and the charges and credits under each exchange or power pooling contract.

* * * * *

562.1 Operation of Energy Storage Equipment

This account shall include the cost of labor, materials used and expenses incurred in the operation of energy storage equipment includible in Account 351, Energy Storage Equipment—Transmission, which are

not specifically provided for or are readily assignable to other transmission operation expense accounts.

* * * * *

570.1 Maintenance of Energy Storage Equipment

This account shall include the cost of labor, materials used and expenses incurred in the maintenance of energy storage equipment includible in Account 351, Energy Storage Equipment—Transmission, which are not specifically provided for or are readily assignable to other transmission maintenance expense accounts.

* * * * *

584.1 Operation of Energy Storage Equipment

This account shall include the cost of labor, materials used and expenses incurred in the operation of energy storage equipment includible in Account 363, Energy Storage Equipment—Distribution, which are not specifically provided for or are readily assignable to other distribution operation expense accounts.

* * * * *

592.2 Maintenance of Energy Storage Equipment

This account shall include the cost of labor, materials used and expenses incurred in the maintenance of energy storage equipment includible in Account 363, Energy Storage Equipment—Distribution, which are not specifically provided for or are readily assignable to other distribution maintenance expense accounts.

* * * * *

592 Maintenance of Station Equipment (Major Only)

This account shall include the cost of labor, materials used and expenses incurred in maintenance of plant, the book cost of which is includible in account 362, Station Equipment. (See operating expense instruction 2.)

* * * * *

592.1 Maintenance of Structures and Equipment (Nonmajor Only)

This account shall include the cost of labor, materials used and expenses incurred in maintenance of structures, the book cost of which is includible in account 361, Structures and Improvements, and account 362, Station Equipment. (See operating expense instruction 2.)

Note: The following appendix will not appear in the *Code of Federal Regulations.*

Appendix A: List of Short Names of Commenters on the Federal Energy Regulatory Commission's Notice of Proposed Rulemaking on Third-Party Provision of Ancillary Services; Accounting and Financial Reporting for New Electric Storage Technologies—Docket No. RM11–24–000, June 2012

Short name or acronym	Commenter
APPA	American Public Power Association
AWEA	American Wind Energy Association
Beacon	Beacon Power Corporation
California PUC	California Public Utilities Commission
California Storage Alliance	California Energy Storage Alliance
EEI	Edison Electric Institute
Electricity Consumers	Electricity Consumers Resource Council
ENBALA	ENBALA Power Networks
EPSA	Electric Power Supply Association
ESA	Electricity Storage Association
FTC Staff	Staff of the Federal Trade Commission
Hydro Association	National Hydropower Association
Iberdrola	Iberdrola Renewables, LLC
Indicated Suppliers	Calpine Corporation, Dynegy Inc., Exelon Corporation, GenOn Energy, Inc., and Tenaska Energy, Inc.
Midwest ISO	Midwest Independent Transmission System Operator Inc.
Morgan Stanley	Morgan Stanley Capital Group Inc.
NAATBatt	National Alliance for Advanced Technology Batteries
New York ISO	New York Independent System Operator, Inc.
NU Companies	Northeast Utilities Service Company on behalf of Connecticut Light and Power Company, Western Massachusetts Electric Company, Public Service Company of New Hampshire, and NSTAR Electric Company
Powerex	Powerex Corporation
Public Interest Organizations	Center for Rural Affairs, Clean Wisconsin, Climate + Energy Project, Conservation Law Foundation, Environment Northeast, Fresh Energy, Land Trust Alliance, Natural Resources Defense Council, Pace Energy and Climate Center, Project for Sustainable FERC Energy Policy, Sierra Club and Union of Concerned Scientists
Public Power Council	Public Power Council
SDG&E	San Diego Gas & Electric Company
Shell Energy	Shell Energy North America (US), L.P.
Solar Energy Association	Solar Energy Industries Association
Southern California Edison	Southern California Edison Company
TAPS	Transmission Access Policy Study Group and Transmission Dependent Utility Systems
Western Group	Arizona Public Service, Avista Corporation, Bonneville Power Administration, Idaho Power Company, PacifiCorp, Portland General Electric, Xcel Energy Services, Puget Sound Energy, Inc., Seattle City Light, and Takoma Power
WSPP	WSPP, Inc.

Note: The following Appendix will not appear in the *Code of Federal Regulations.*

Appendix B: Pro Forma Open Access Transmission Tariff

The Commission amends Schedule 3, Regulation and Frequency Response Service of the *pro forma* OATT:

Schedule 3

Regulation and Frequency Response Service

Regulation and Frequency Response Service is necessary to provide for the continuous balancing of resources

(generation and interchange) with load and for maintaining scheduled Interconnection frequency at sixty cycles per second (60 Hz). Regulation and Frequency Response Service is accomplished by committing on-line generation whose output is raised or lowered (predominantly through the use of automatic generating control equipment) and by other non-generation resources capable of providing this service as necessary to follow the moment-by-moment changes in load. The obligation to maintain this balance between resources and load lies with the Transmission Provider (or the Control Area operator that performs this function for the Transmission Provider). The Transmission Provider must offer this service when the transmission service is used to serve load within its Control Area. The Transmission Customer must either purchase this service from the Transmission Provider or make alternative comparable arrangements to satisfy its Regulation and Frequency Response Service obligation. The Transmission Provider will take into account the speed and accuracy of regulation resources in its determination of Regulation and Frequency Response reserve requirements, including as it reviews whether a self-supplying Transmission Customer has made alternative comparable arrangements. Upon request by the self-supplying Transmission Customer, the Transmission Provider will share with the Transmission Customer its reasoning and any related data used to make the determination of whether the Transmission Customer has made alternative comparable arrangements. The amount of and charges for Regulation and Frequency Response Service are set forth below. To the extent the Control Area operator performs this service for the Transmission Provider, charges to the Transmission Customer are to reflect only a pass-through of the costs charged to the Transmission Provider by that Control Area operator.

Note: The following Appendix will not appear in the *Code of Federal Regulations.*

BILLING CODE 6717–01–P

Appendix C – New and Amended Form 1/1F/3Q Pages.

Name of Respondent	This Report is: (1) An Original (2) A Resubmission	Date of Report (Mo, Da, Yr) / /	Year/Period of Report End of Year/Qtr

LIST OF SCHEDULES (Electric Utility)

Enter in column (c) the terms "none", "not applicable", or "NA", as appropriate, where no information or amounts have been reported for certain pages. Omit pages where the respondents are "none", "not applicable", or "NA".

Line No.	Title of Schedule (a)	Reference Page No. (b)	Remarks (c)
1	General Information	101	
2	Control Over Respondent	102	
3	Corporations Controlled by Respondent	103	
4	Officers	104	
5	Directors	105	
6	Information on Formula Rates	106(a)(b)	
7	Important Changes During the Year	108-109	
8	Comparative Balance Sheet	110-113	
9	Statement of Income for the Year	114-117	
10	Statement of Retained Earnings for the Year	118-119	
11	Statement of Cash Flows	120-121	
12	Notes to Financial Statements	122-123	
13	Statement of Accum Comp Income, Comp Income, and Hedging Activities	122(a)(b)	
14	Summary of Utility Plant and Accumulated Provisions for Dep, Amort and Dep	200-201	
15	Nuclear Fuel Materials	202-203	
16	Electric Plant in Service	204-207	
17	Electric Plant Leased to Others	213	
18	Electric Plant Held for Future Use	214	
19	Construction Work in Progress-Electric	216	
20	Accumulated Provision for Depreciation of Electric Utility Plant	219	
21	Investment of Subsidiary Companies	224-225	
22	Materials and Supplies	227	
23	Allowances	228-229	
24	Extraordinary Property Losses	230	
25	Unrecovered Plant and Regulatory Study Costs	230	
26	Transmission Service and Generation Interconnection Study Costs	231	
27	Other Regulatory Assets	232	
28	Miscellaneous Deferred Debits	233	
29	Accumulated Deferred Income Taxes	234	
30	Capital Stock	250-251	
31	Other Paid-in Capital	253	
32	Capital Stock Expense	254	
33	Long-Term Debt	256-257	
34	Reconciliation of Reported Net Income with Taxable Inc for Fed Inc Tax	261	
35	Taxes Accrued, Prepaid and Charged During the Year	262-263	
36	Accumulated Deferred Investment Tax Credits	266-267	

Name of Respondent	This Report is: (1) An Original (2) A Resubmission	Date of Report (Mo, Da, Yr) / /	Year/Period of Report End of Year/Qtr

LIST OF SCHEDULES (Electric Utility)

Enter in column (c) the terms "none", "not applicable", or "NA", as appropriate, where no information or amounts have been reported for certain pages. Omit pages where the respondents are "none", "not applicable", or "NA".

Line No.	Title of Schedule (a)	Reference Page No. (b)	Remarks (c)
37	Other Deferred Credits	269	
38	Accumulated Deferred Income Taxes-Accelerated Amortization Property	272-273	
39	Accumulated Deferred Income Taxes-Other Property	274-275	
40	Accumulated Deferred Income Taxes-Other	276-277	
41	Other Regulatory Liabilities	278	
42	Electric Operating Revenues	300-301	
43	Sales of Electricity by Rate Schedules	304	
44	Sales for Resale	310-311	
45	Electric Operation and Maintenance Expenses	320-323	
46	Purchased Power	326-327	
47	Transmission of Electricity for Others	328-330	
48	Transmission of Electricity by ISO/RTOs	331	
49	Transmission of Electricity by Others	332	
50	Miscellaneous General Expenses-Electric	335	
51	Depreciation and Amortization of Electric Plant	336-337	
52	Regulatory Commission Expenses	350-351	
53	Research, Development and Demonstration Activities	352-353	
54	Distribution of Salaries and Wages	354-355	
55	Common Utility Plant and Expenses	356	
56	Amounts included in ISO/RTO Settlement Statements	397	
57	Purchase and Sale of Ancillary Services	398	
58	Monthly Transmission System Peak Load	400	
59	Monthly ISO/RTO Transmission System Peak Load	400a	
60	Electric Energy Account	401	
61	Monthly Peaks and Output	401	
62	Steam Electric Generating Plant Statistics	402-403	
63	Hydroelectric Generating Plant Statistics	406-407	
64	Pumped Storage Generating Plant Statistics	408-409	
65	Generating Plant Statistics Pages	410-411	
66	Energy Storage Operations (Large Plants)	414-416	
67	Energy Storage Operations (Small Plants)	419-420	

Name of Respondent	This Report is: (1) An Original (2) A Resubmission	Date of Report (Mo, Da, Yr) / /	Year/Period of Report End of Year/Qtr

LIST OF SCHEDULES (Electric Utility) (Continued)

Enter in column (c) the terms "none", "not applicable", or "NA", as appropriate, where no information or amounts have been reported for certain pages. Omit pages where the respondents are "none", "not applicable", or "NA".

Line No.	Title of Schedule (a)	Reference Page No. (b)	Remarks (c)
68	Transmission Line Statistics Pages	426-427	
69	Substations	426-427	
70	Transactions with Associated (Affiliated) Companies	429	
71	Footnote Data	450	
72	Stockholder's Reports – Check appropriate box: Two copies will be submitted. No annual report to stockholders is prepared.		

Name of Respondent	This Report is: (1) ☐ An Original (2) ☐ A Resubmission	Date of Report (Mo., Da., Yr.)	Year/Period of Report End of _____

ELECTRIC PLANT IN SERVICE (Account 101, 102, 103 and 106)

1. Report below the original cost of electric plant in service according to the prescribed accounts.
2. In addition to Account 101, Electric Plant in Service (Classified), this page and the next include Account 102, Electric Plant Purchased or Sold; Account 103, Experimental Electric Plant Unclassified; and Account 106, Completed Construction Not Classified-Electric.
3. Include in column (c) or (d), as appropriate, corrections of additions and retirements for the current or preceding year.
4. For revisions to the amount of initial asset retirement costs capitalized, included by primary plant account, increases in column (c) additions and reductions in column (e) adjustments.
5. Enclose in parentheses credit adjustments of plant accounts to indicate the negative effect of such accounts.
6. Classify Account 106 according to prescribed accounts, on an estimated basis if necessary, and include the entries in column (c). Also to be included in column (c) are entries for reversals of tentative distributions of prior year reported in column (b). Likewise, if the respondent has a significant amount of plant retirements which have not been classified to primary accounts at the end of the year, include in column (d) a tentative distribution of such retirements, on an estimated basis, with appropriate contra entry to the account for accumulated depreciation provision. Include also in column (d)

Line No.	Accounts (a)	Balance Beginning of Year (b)	Additions (c)
1	**1. INTANGIBLE PLANT**		
2	(301) Organization		
3	(302) Franchises and Consents		
4	(303) Miscellaneous Intangible Plant		
5	TOTAL Intangible Plant (Enter Total of lines 2, 3, and 4)		
6	**2. PRODUCTION PLANT**		
7	A. Steam Production Plant		
8	(310) Land and Land Rights		
9	(311) Structures and Improvements		
10	(312) Boiler Plant Equipment		
11	(313) Engines and Engine-Driven Generators		
12	(314) Turbogenerator Units		
13	(315) Accessory Electric Equipment		
14	(316) Misc. Power Plant Equipment		
15	(317) Asset Retirement Costs for Steam Production		
16	TOTAL Steam Production Plant (Enter Total of lines 8 thru 15)		
17	**B. Nuclear Production Plant**		
18	(320) Land and Land Rights		
19	(321) Structures and Improvements		
20	(322) Reactor Plant Equipment		
21	(323) Turbogenerator Units		
22	(324) Accessory Electric Equipment		
23	(325) Misc. Power Plant Equipment		
24	(326) Asset Retirement Costs for Nuclear Production		
25	TOTAL Nuclear Production Plant (Enter Total of lines 18 thru 24)		
26	**C. Hydraulic Production Plant**		
27	(330) Land and Land Rights		
28	(331) Structures and Improvements		
29	(332) Reservoirs, Dams, and Waterways		
30	(333) Water Wheels, Turbines, and Generators		
31	(334) Accessory Electric Equipment		
32	(335) Miscellaneous Power Plant Equipment		
33	(336) Roads, Railroads, and Bridges		
34	(337) Asset Retirement Costs for Hydraulic Production		
35	TOTAL Hydraulic Production Plant (Enter Total of lines 27 thru 34)		
36	**D. Other Production Plant**		
37	(340) Land and Land Rights		
38	(341) Structures and Improvements		
39	(342) Fuel Holders, Products, and Accessories		
40	(343) Prime Movers		
41	(344) Generators		
42	(345) Accessory Electric Equipment		
43	(346) Misc. Power Plant Equipment		
44	(347) Asset Retirement Costs for Other Production		
45	(348) Energy Storage Equipment - Production		
46	TOTAL Other Production Plant (Enter Total of lines 37 thru 45)		

47	TOTAL Production Plant (Enter Total of lines 16, 25, 35, and 46)		

Name of Respondent	This Report is: (1) ☐ An Original (2) ☐ A Resubmission	Date of Report (Mo., Da., Yr.)	Year/Period of Report End of _____

ELECTRIC PLANT IN SERVICE (Account 101, 102, 103 and 106) (Continued)

Distributions of these tentative classifications in columns (c) and (d), including the reversals of the prior years tentative account distributions of these amounts. Careful observance of the above instructions and the texts of Accounts 101 and 106 will avoid serious omissions of the reported amount of respondent's plant actually in service at end of year.

7. Show in column (f) reclassifications or transfers within utility plant accounts. Include also in column (f) the additions or reductions of primary account classifications arising from distribution of amounts initially recorded in Account 102, include in column (e) the amounts with respect to accumulated provision for depreciation, acquisition adjustments, etc., and show in column (f) only the offset to the debits or credits distributed in column (f) to primary account classifications.

8. For Account 399, state the nature and use of plant included in this account and if substantial in amount submit a supplementary statement showing subaccount classification of such plant conforming to the requirement of these pages.

9. For each amount comprising the reported balance and changes in Account 102, state the property purchased or sold, name of vendor or purchase, and date of transaction. If proposed journal entries have been filed with the Commission as required by the Uniform System of Accounts, give also date.

Retirements (d)	Adjustments (e)	Transfers (f)	Balance at End of Year (g)	Line No.
				1
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FERC FORM NO. 1/1-F (REV. 12-12) Page 205

Name of Respondent	This Report is: (1) ☐ An Original (2) ☐ A Resubmission	Date of Report (Mo., Da., Yr.)	Year/Period of Report End of _____

ELECTRIC PLANT IN SERVICE (Account 101, 102, 103 and 106) (Continued)

Line No.	Accounts (a)	Balance Beginning of Year (b)	Additions (c)
48	**3. TRANSMISSION PLANT**		
49	(350) Land and Land Rights		
50	(351) Energy Storage Equipment - Transmission		
51	(352) Structures and Improvements		
52	(353) Station Equipment		
53	(354) Towers and Fixtures		
54	(355) Poles and Fixtures		
55	(356) Overhead Conductors and Devices		
56	(357) Underground Conduit		
57	(358) Underground Conductors and Devices		
58	(359) Roads and Trails		
59	(359.1) Asset Retirement Costs for Transmission Plant		
60	TOTAL Transmission Plant (Enter Total of lines 49 thru 59)		
61	**4. DISTRIBUTION PLANT**		
62	(360) Land and Land Rights		
63	(361) Structures and Improvements		
64	(362) Station Equipment		
65	(363) Energy Storage Equipment – Distribution		
66	(364) Poles, Towers, and Fixtures		
67	(365) Overhead Conductors and Devices		
68	(366) Underground Conduit		
69	(367) Underground Conductors and Devices		
70	(368) Line Transformers		
71	(369) Services		
72	(370) Meters		
73	(371) Installations on Customer Premises		
74	(372) Leased Property on Customer Premises		
75	(373) Street Lighting and Signal Systems		
76	(374) Asset Retirement Costs for Distribution Plant		
77	TOTAL Distribution Plant (Enter Total of lines 62 thru 76)		
78	**5. REGIONAL TRANSMISSION AND MARKET OPERATION PLANT**		
79	(380) Land and Land Rights		
80	(381) Structures and Improvements		
81	(382) Computer Hardware		
82	(383) Computer Software		
83	(384) Communication Equipment		
84	(385) Miscellaneous Regional Transmission and Market Operation Plant		
85	(386) Asset Retirement Costs for Regional Transmission and Market Operation Plant		
86	TOTAL Transmission and Market Operation Plant (Enter Total of lines 79 thru 85)		
87	**6. GENERAL PLANT**		
88	(389) Land and Land Rights		
89	(390) Structures and Improvements		
90	(391) Office Furniture and Equipment		
91	(392) Transportation Equipment		
92	(393) Stores Equipment		
93	(394) Tools, Shop and Garage Equipment		
94	(395) Laboratory Equipment		
95	(396) Power Operated Equipment		
96	(397) Communication Equipment		
97	(398) Miscellaneous Equipment		
98	SUBTOTAL (Enter Total of Lines 88 thru 97)		
99	(399) Other Intangible Property		
100	(399.1) Asset Retirement Costs for General Plant		
101	TOTAL General Plant (Enter Total of Lines 98, 99 and 100)		
102	TOTAL (Accounts 101 and 106)		
103	(102) Electric Plant Purchased (See Instruction 8)		
104	(Less) (102) Electric Plant Sold (See Instruction 8)		
105	(103) Experimental Plant Unclassified		
106	TOTAL Electric Plant in Service (Enter Total of lines 102 thru 1051)		

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Name of Respondent	This Report is: (1) ☐ An Original (2) ☐ A Resubmission	Date of Report (Mo., Da., Yr.)	Year/Period of Report End of _____

ELECTRIC PLANT IN SERVICE (Account 101, 102, 103 and 106) (Continued)

Retirements (d)	Adjustments (e)	Transfers (f)	Balance at End of Year (g)	Line No.
				48
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FERC FORM NO. 1/1-F (REV. 12-12) Page 207

Name of Respondent	This Report is: (1) ☐ An Original (2) ☐ A Resubmission	Date of Report (Mo., Da., Yr.)	Year/Period of Report End of _____

ELECTRIC OPERATION AND MAINTENANCE EXPENSES

If the amount for previous year is not derived from previously reported figures, explain in footnote.

Line No.	Account (a)	Amount for Current Year (b)	Amount for Previous Year (c)
1	**1. POWER PRODUCTION EXPENSES**		
2	**A. Steam Power Generation**		
3	**Operation**		
4	(500) Operation Supervision and Engineering		
5	(501) Fuel		
6	(502) Steam Expenses		
7	(503) Steam from Other Sources		
8	(Less) (504) Steam Transferred-Cr.		
9	(505) Electric Expenses		
10	(506) Miscellaneous Steam Power Expenses		
11	(507) Rents		
12	(509) Allowances		
13	TOTAL Operation (Enter Total of Lines 4 thru 12)		
14	**Maintenance**		
15	(510) Maintenance Supervision and Engineering		
16	(511) Maintenance of Structures		
17	(512) Maintenance of Boiler Plant		
18	(513) Maintenance of Electric Plant		
19	(514) Maintenance of Miscellaneous Steam Plant		
20	TOTAL Maintenance (Enter Total of Lines 15 thru 19)		
21	TOTAL Power Production Expenses-Steam Power (Enter Total lines 13 & 20)		
22	**B. Nuclear Power Generation**		
23	**Operation**		
24	(517) Operation Supervision and Engineering		
25	(518) Fuel		
26	(519) Coolants and Water		
27	(520) Steam Expenses		
28	(521) Steam from Other Sources		
29	(Less) (522) Steam Transferred-Cr.		
30	(523) Electric Expenses		
31	(524) Miscellaneous Nuclear Power Expenses		
32	(525) Rents		
33	TOTAL Operation (Enter Total of lines 24 thru 32)		
34	**Maintenance**		
35	(528) Maintenance Supervision and Engineering		
36	(529) Maintenance of Structures		
37	(530) Maintenance of Reactor Plant Equipment		
38	(531) Maintenance of Electric Plant		
39	(532) Maintenance of Miscellaneous Nuclear Plant		
40	TOTAL Maintenance (Enter Total of lines 35 thru 39)		
41	TOTAL Power Production Expenses-Nuclear Power (Enter Total of lines 33 & 40)		
42	**C. Hydraulic Power Generation**		
43	**Operation**		
44	(535) Operation Supervision and Engineering		
45	(536) Water for Power		
46	(537) Hydraulic Expenses		
47	(538) Electric Expenses		
48	(539) Miscellaneous Hydraulic Power Generation Expenses		
49	(540) Rents		
50	TOTAL Operation (Enter Total of Lines 44 thru 49)		
52	**Maintenance**		
53	(541) Maintenance Supervision and Engineering		
54	(542) Maintenance of Structures		
55	(543) Maintenance of Reservoirs, Dams, and Waterways		
56	(544) Maintenance of Electric Plant		
57	(545) Maintenance of Miscellaneous Hydraulic Plant		
58	TOTAL Maintenance (Enter Total of lines 53 thru 57)		
59	TOTAL Power Production Expenses-Hydraulic Power (Total of Lines 50 and 58)		

Name of Respondent	This Report is: (1) ☐ An Original (2) ☐ A Resubmission	Date of Report (Mo., Da., Yr.)	Year/Period of Report End of _____

ELECTRIC OPERATION AND MAINTENANCE EXPENSES (Continued)

Line No.	Accounts (a)	Amount for Current Year (b)	Amount for Previous Year (c)
60	**D. Other Power Generation**		
61	**Operation**		
62	(546) Operation Supervision and Engineering		
63	(547) Fuel		
64	(548) Generation Expenses		
65	(548.1) Operation of Energy Storage Equipment		
66	(549) Miscellaneous Other Power Generation Expenses		
67	(550) Rents		
68	TOTAL Operation (Enter Total of lines 62 thru 67)		
69	**Maintenance**		
70	(551) Maintenance Supervision and Engineering		
71	(552) Maintenance of Structures		
72	(553) Maintenance of Generating and Electric Plant		
73	(553.1) Maintenance of Energy Storage Equipment		
74	(554) Maintenance of Miscellaneous Other Power Generation Plant		
75	TOTAL Maintenance (Enter Total of lines 70 thru 74)		
76	TOTAL Power Production Expenses-Other Power (Enter Total of lines 68 & 75)		
77	**E. Other Power Supply Expenses**		
78	(555) Purchased Power		
79	(555.1) Power Purchased for Storage Operations		
80	(556) System Control and Load Dispatching		
81	(557) Other Expenses		
82	TOTAL Other Power Supply Expenses (Enter Total of lines 78 thru 81)		
83	TOTAL Power Production Expenses (Total of lines 21, 41, 59, 76 & 82)		
84	**2. TRANSMISSION EXPENSES**		
85	**Operation**		
86	(560) Operation Supervision and Engineering		
87	(561.1) Load Dispatch-Reliability		
88	(561.2) Load Dispatch-Monitor and Operate Transmission System		
89	(561.3) Load Dispatch-Transmission Service and Scheduling		
90	(561.4) Scheduling, System Control and Dispatch Services		
91	(561.5) Reliability, Planning and Standards Development		
92	(561.6) Transmission Service Studies		
93	(561.7) Generation Interconnection Studies		
94	(561.8) Reliability, Planning and Standards Development Services		
95	(562) Station Expenses		
96	(562.1) Operation of Energy Storage Equipment		
97	(563) Overhead Lines Expenses		
98	(564) Underground Lines Expenses		
99	(565) Transmission of Electricity by Others		
100	(566) Miscellaneous Transmission Expenses		
101	(567) Rents		
102	TOTAL Operation (Enter Total of lines 85 thru 101)		
103	**Maintenance**		
104	(568) Maintenance Supervision and Engineering		
105	(569) Maintenance of Structures		
106	(569.1) Maintenance of Computer Hardware		
107	(569.2) Maintenance of Computer Software		
108	(569.3) Maintenance of Communication Equipment		
109	(569.4) Maintenance of Miscellaneous Regional Transmission Plant		
110	(570) Maintenance of Station Equipment		
111	(570.1) Maintenance of Energy Storage Equipment		
112	(571) Maintenance of Overhead Lines		
113	(572) Maintenance of Underground Lines		
114	(573) Maintenance of Miscellaneous Transmission Plant		

Name of Respondent	This Report is: (1) ☐ An Original (2) ☐ A Resubmission	Date of Report (Mo., Da., Yr.)	Year/Period of Report End of _____

ELECTRIC OPERATION AND MAINTENANCE EXPENSES (Continued)

If the amount for previous year is not derived from previously reported figures, explain in footnote.

Line No.	Account (a)	Amount for Current Year (b)	Amount for Previous Year (c)
115	TOTAL Maintenance (Enter Total of lines 104 thru 114)		
116	TOTAL Transmission Expenses (Enter Total of lines 102 and 115)		
117	**3. REGIONAL MARKET EXPENSES**		
118	**Operation**		
119	(575.1) Operation Supervision		
120	(575.2) Day-Ahead and Real-Time Market Facilitation		
121	(575.3) Transmission Rights Market Facilitation		
122	(575.4) Capacity Market Facilitation		
123	(575.5) Ancillary Services Market Facilitation		
124	(575.6) Market Monitoring and Compliance		
125	(575.7) Market Facilitation, Monitoring and Compliance Services		
126	(575.8) Rents		
127	Total Operation (Lines 119 thru 126)		
128	**Maintenance**		
129	(576.1) Maintenance of Structures and Improvements		
130	(576.2) Maintenance of Computer Hardware		
131	(576.3) Maintenance of Computer Software		
132	(576.4) Maintenance of Communication Equipment		
133	(576.5) Maintenance of Miscellaneous Market Operation Plant		
134	Total Maintenance (Lines 129 thru 133)		
135	TOTAL Regional Transmission and Market Operation Expenses (Enter Total of lines 127 and 134)		
136	**4. DISTRIBUTION EXPENSES**		
137	**Operation**		
138	(580) Operation Supervision and Engineering		
139	(581) Load Dispatching		
140	(582) Station Expenses		
141	(583) Overhead Line Expenses		
142	(584) Underground Line Expenses		
143	(584.1) Operation of Energy Storage Equipment		
144	(585) Street Lighting and Signal System Expenses		
145	(586) Meter Expenses		
146	(587) Customer Installations Expenses		
147	(588) Miscellaneous Expenses		
148	(589) Rents		
149	TOTAL Operation (Enter Total of lines 138 thru 148)		
150	**Maintenance**		
151	(590) Maintenance Supervision and Engineering		
152	(591) Maintenance of Structure		
153	(592) Maintenance of Station Equipment		
154	(592.1) Maintenance of Structures and Equipment		
155	(592.2) Maintenance of Energy Storage Equipment		
156	(593) Maintenance of Overhead Lines		
157	(594) Maintenance of Underground Lines		
158	(595) Maintenance of Line Transformers		
159	(596) Maintenance of Street Lighting and Signal Systems		
160	(597) Maintenance of Meters		
161	(598) Maintenance of Miscellaneous Distribution Plant		
162	TOTAL Maintenance (Enter Total of lines 151 thru 161)		
163	TOTAL Distribution Expenses (Enter Total of lines 149 and 162)		

Name of Respondent	This Report is: (1) ☐ An Original (2) ☐ A Resubmission	Date of Report (Mo., Da., Yr.)	Year/Period of Report End of _____

ELECTRIC OPERATION AND MAINTENANCE EXPENSES (Continued)

If the amount for previous year is not derived from previously reported figures, explain in footnote.

Line No.	Account (a)	Amount for Current Year (b)	Amount for Previous Year (c)
163	**5. CUSTOMER ACCOUNTS EXPENSES**		
164	**Operation**		
165	(901) Supervision		
166	(902) Meter Reading Expenses		
167	(903) Customer Records and Collection Expenses		
168	(904) Uncollectible Accounts		
169	(905) Miscellaneous Customer Accounts Expenses		
170	TOTAL Customer Accounts Expenses (Total of lines 165 thru 169)		
171	**6. CUSTOMER SERVICE AND INFORMATIONAL EXPENSES**		
172	**Operation**		
173	(907) Supervision		
174	(908) Customer Assistance Expenses		
175	(909) Informational and Instructional Expenses		
176	(910) Miscellaneous Customer Service and Informational Expenses		
177	TOTAL Customer Service and Information. Expenses (Total lines 173 thru 176)		
178	**7. SALES EXPENSES**		
179	**Operation**		
180	(911) Supervision		
181	(912) Demonstrating and Selling Expenses		
182	(913) Advertising Expenses		
183	(916) Miscellaneous Sales Expenses		
184	TOTAL Sales Expenses (Enter Total of lines 180 thru 184)		
185	**8. ADMINISTRATIVE AND GENERAL EXPENSES**		
186	**Operation**		
187	(920) Administrative and General Salaries		
188	(921) Office Supplies and Expenses		
189	(Less) (922) Administrative Expenses Transferred-Credit		
190	(923) Outside Services Employed		
191	(924) Property Insurance		
192	(925) Injuries and Damages		
193	(926) Employee Pensions and Benefits		
194	(927) Franchise Requirements		
195	(928) Regulatory Commission Expenses		
196	(929) (Less) Duplicate Charges-Cr.		
197	(930.1) General Advertising Expenses		
198	(930.2) Miscellaneous General Expenses		
199	(931) Rents		
200	TOTAL Operation (Enter Total of lines 187 thru 199)		
201	**Maintenance**		
202	(935) Maintenance of General Plant		
203	TOTAL Administrative & General Expenses (Total of lines 199 and 201)		
204	TOTAL Electric Operation and Maintenance Expenses (Total of lines 83, 116, 135, 162, 170, 177, 184, and 203)		

Name of Respondent	This Report is: (1) ☐ An Original (2) ☐ A Resubmission	Date of Report (Mo., Da., Yr.)	Year/Period of Report End of _____

ELECTRIC PRODUCTION, OTHER POWER SUPPLY, TRANSMISSION, **REGIONAL MARKET,** AND DISTRIBUTION EXPENSES

Report Electric production, other power supply expenses, transmission, regional market, and distribution expenses through the reporting period.

Line No.	Account (a)	Year to Date Quarter
1	**1. POWER PRODUCTION AND OTHER SUPPLY EXPENSES**	
2	Steam Power Generation - Operation (500-509)	
3	Steam Power Generation – Maintenance (510-515)	
4	Total Power Production Expenses - Steam Power	
5	Nuclear Power Generation – Operation (517-525)	
6	Nuclear Power Generation – Maintenance (528-532)	
7	Total Power Production Expenses - Nuclear Power	
8	Hydraulic Power Generation – Operation (535-540.1)	
9	Hydraulic Power Generation – Maintenance (541-545.1)	
10	Total Power Production Expenses - Hydraulic Power	
11	Other Power Generation – Operation (546-550.1)	
12	Other Power Generation – Maintenance (551-554.1)	
13	Total Power Production Expenses - Other Power	
14	**Other Power Supply Expenses**	
15	Purchased Power (555)	
16	Power Purchased for Storage Operations (555.1)	
17	System Control and Load Dispatching (556)	
18	Other Expenses (557)	
19	Total Other Power Supply Expenses (line 15-18)	
20	Total Power Production Expenses (Total of lines 4, 7, 10, 13 and 19)	
21	**2. TRANSMISSION EXPENSES**	
22	**Transmission Operation Expenses**	
23	(560) Operation Supervision and Engineering	
24	(561.1) Load Dispatch-Reliability	
25	(561.2) Load Dispatch-Monitor and Operate Transmission System	
26	(561.3) Load Dispatch-Transmission Service and Scheduling	
27	(561.4) Scheduling, System Control and Dispatch Services	
28	(561.5) Reliability, Planning and Standards Development	
29	(561.6) Transmission Service Studies	
30	(561.7) Generation Interconnection Studies	
31	(561.8) Reliability, Planning and Standards Development Services	
32	(562) Station Expenses	
33	(562.1) Operation of Energy Storage Equipment	
34	(563) Overhead Line Expenses	
35	(564) Underground Line Expenses	
36	(565) Transmission of Electricity by Others	
37	(566) Miscellaneous Transmission Expenses	
38	(567) Rents	
39	(567.1) Operation Supplies and Expenses (Non-Major)	
40	TOTAL Transmission Operation Expenses (Lines 23 – 39)	

Name of Respondent	This Report is: (1) ☐ An Original (2) ☐ A Resubmission	Date of Report (Mo., Da., Yr.)	Year/Period of Report End of _____

ELECTRIC PRODUCTION, OTHER POWER SUPPLY, TRANSMISSION, **REGIONAL MARKET,** AND DISTRIBUTION EXPENSES(Continued)

Report Electric production, other power supply expenses, transmission, regional control and market operation, and distribution expenses through the reporting period.

Line No.	Account (a)	Year to Date Quarter
41	**Transmission Maintenance Expenses**	
42	(568) Maintenance Supervision and Engineering	
43	(569) Maintenance of Structures	
44	(569.1) Maintenance of Computer Hardware	
45	(569.2) Maintenance of Computer Software	
46	(569.3) Maintenance of Communication Equipment	
47	(569.4) Maintenance of Miscellaneous Regional Transmission Plant	
48	(570) Maintenance of Station Equipment	
49	(570.1) Maintenance of Energy Storage Equipment	
50	(571) Maintenance Overhead Lines	
51	(572) Maintenance of Underground Lines	
52	(573) Maintenance of Miscellaneous Transmission Plant	
53	(574) Maintenance of Transmission Plant	
54	TOTAL Transmission Maintenance Expenses (Lines 42 – 53)	
55	Total Transmission Expenses (Lines 40 and 54)	
56	**3. REGIONAL MARKET EXPENSES**	
57	**Regional Market Operation Expenses**	
58	(575.1) Operation Supervision	
59	(575.2) Day-Ahead and Real-Time Market Facilitation	
60	(575.3) Transmission Rights Market Facilitation	
61	(575.4) Capacity Market Facilitation	
62	(575.5) Ancillary Services Market Facilitation	
63	(575.6) Market Monitoring and Compliance	
64	(575.7) Market Facilitation, Monitoring and Compliance Services	
65	Regional Market Operation Expenses (Lines 58–64)	
66	**Regional Market Maintenance Expenses**	
67	(576.1) Maintenance of Structures and Improvements	
68	(576.2) Maintenance of Computer Hardware	
69	(576.3) Maintenance of Computer Software	
70	(576.4) Maintenance of Communication Equipment	
71	(576.5) Maintenance of Miscellaneous Market Operation Plant	
72	Regional Market Maintenance Expenses (Lines 67-71)	
73	TOTAL Regional Control and Market Operation Expenses (Lines 65 and 72)	
74	**4. DISTRIBUTION EXPENSES**	
75	Distribution Operation Expenses (580-589)	
76	Distribution Maintenance Expenses (590-598)	
77	Total Distribution Expenses (Lines 75 and 76)	
78	TOTAL (Lines 20, 55, 73, and 77)	

Name of Respondent	This Report Is: (1) An Original (2) A Resubmission	Date of Report (Mo, Da, Yr) / /	Year/Period of Report End of Year/Qtr

PURCHASED POWER (Accounts 555 and 555.1)
(Including Power Exchanges)

1. Report all power purchases made during the year. Also report exchanges of electricity (i.e., transactions involving a balancing of debits and credits for energy, capacity, etc.) and any settlements for imbalanced exchanges.
2. Enter the name of the seller or other party in an exchange transaction in column (a). Do not abbreviate or truncate the name or use acronyms. Explain in a footnote any ownership interest or affiliation the respondent has with the seller.
3. In column (b), enter a Statistical Classification Code based on the original contractual terms and conditions of the service as follows:
RQ - for requirements service. Requirements service is service which the supplier plans to provide on an ongoing basis (i.e., the supplier includes projects load for this service in its system resource planning). In addition, the reliability of requirement service must be the same as, or second only to, the supplier's service to its own ultimate consumers.

LF - for long-term firm service. "Long-term" means five years or longer and "firm" means that service cannot be interrupted for economic reasons and is intended to remain reliable even under adverse conditions (e.g., the supplier must attempt to buy emergency energy from third parties to maintain deliveries of LF service). This category should not be used for long-term firm service firm service which meets the definition of RQ service. For all transaction identified as LF, provide in a footnote the termination date of the contract
defined as the earliest date that either buyer or seller can unilaterally get out of the contract.

IF - for intermediate-term firm service. The same as LF service expect that "intermediate-term" means longer than one year but less than five years.

SF - for short-term service. Use this category for all firm services, where the duration of each period of commitment for service is one year or less.

LU - for long-term service from a designated generating unit. "Long-term" means five years or longer. The availability and reliability of service, aside from transmission constraints, must match the availability and reliability of the designated unit.

IU - for intermediate-term service from a designated generating unit. The same as LU service expect that "intermediate-term" means longer than one year but less than five years.

EX - For exchanges of electricity. Use this category for transactions involving a balancing of debits and credits for energy, capacity, etc. and any settlements for imbalanced exchanges.

OS - for other service. Use this category only for those services which cannot be placed in the above-defined categories, such as all non-firm service regardless of the Length of the contract and service from designated units of Less than one year. Describe the nature of the service in a footnote for each adjustment.

Line No.	Name of Company or Public Authority (Footnote Affiliations) (a)	Statistical Classification (b)	FERC Rate Schedule or Tariff Number (c)	Average Monthly Billing Demand (MW) (d)	Actual Demand (MW)		
					Average Monthly NCP Demand Total (e)	Average Monthly CP Demand (f)	MegaWatt Hours Purchased (Excluding for Energy Storage) (g)
1							
2							
3							
4							
5							
6							
7							
8							
9							
10							
11							
12							
13							
14							
	Total						

Name of Respondent	This Report Is: (1) An Original (2) A Resubmission	Date of Report (Mo, Da, Yr) / /	Year/Period of Report End of Year/Qtr

PURCHASED POWER (Accounts 555 and 555.1) (Continued)
(Including Power Exchanges)

AD - for out-of-period adjustment. Use this code for any accounting adjustments or "true-ups" for service provided in prior reporting years. Provide an explanation in a footnote for each adjustment.

4. In column (c), identify the FERC Rate Schedule Number or Tariff, or, for non-FERC jurisdictional sellers, include an appropriate designation for the contract. On separate lines, list all FERC rate schedules, tariffs or contract designations under which service, as identified in column (b), is provided.
5. For requirements RQ purchases and any type of service involving demand charges imposed on a monthly (or longer) basis, enter the monthly average billing demand in column (d), the average monthly non-coincident peak (NCP) demand in column (e), and the average monthly coincident peak (CP) demand in column (f). For all other types of service, enter NA in columns (d), (e) and (f). Monthly NCP demand is the maximum metered hourly (60-minute integration) demand in a month. Monthly CP demand is the metered demand during the hour (60-minute integration) in which the supplier's system reaches its monthly peak. Demand reported in columns (e) and (f) must be in megawatts. Footnote any demand not stated on a megawatt basis and explain.
6. Report in column (g) the megawatt hours shown on bills rendered to the respondent. Report in columns (h) and (i) the megawatt hours of power exchanges received and delivered, used as the basis for settlement. Do not report net exchange.
7. Report demand charges in column (j), energy charges in column (k), and the total of any other types of charges, including out-of-period adjustments, in column (l). Explain in a footnote all components of the amount shown in column (l). Report in column (m) the total charge shown on bills received as settlement by the respondent. For power exchanges, report in column (m) the settlement amount for the net receipt of energy. If more energy was delivered than received, enter a negative amount. If the settlement amount (l) include credits or charges other than incremental generation expenses, or (2) excludes certain credits or charges covered by the agreement, provide an explanatory footnote.
8. The data in column (g) through (n) totals to the last line of the schedule. The total amount in column (g) must be reported as Purchases on Page 401, line 10. The total amount in column (h) must be reported as Purchases for Energy Storage on Page 401, line 11. The total amount in column (i) must be reported as Exchange Received on Page 401, line 12. The total amount in column (i) must be reported as Exchange Delivered on Page 401, line 13.
9. Footnote entries as required and provide explanations following all required data.

MegaWatt Hours Purchased for Energy Storage (h)	POWER EXCHANGES		COST/SETTLEMENT OF POWER				Line No.
	MegaWatt Hours Received (i)	MegaWatt Hours Delivered (j)	Demand Charges ($) (k)	Energy Charges ($) (l)	Other Charges ($) (m)	Total (k+ l+m) of Settlement ($) (n)	
							1
							2
							3
							4
							5
							6
							7
							8
							9
							10
							11
							12
							13
							14

Name of Respondent	This Report is: (1) ☐ An Original (2) ☐ A Resubmission	Date of Report (Mo., Da., Yr.)	Year/Period of Report End of _____

AMOUNTS INCLUDED IN ISO/RTO SETTLEMENT STATEMENTS

1. The respondent shall report below the details called for concerning amounts it recorded in Account 555, Purchase Power, Account 555.1, Power Purchased for Storage Operations and Account 447, Sales for Resale, for items shown on ISO/RTO Settlement Statements.

Line No.	Description of Item(s) (a)	Balance at End of Quarter 1 (b)	Balance at End of Quarter 2 (c)	Balance at End of Quarter 3 (d)	Balance at End of Year (e)
1	Energy				
2	Net Purchases (Account 555)				
3	Net Purchases (Account 555.1)				
4	Net Sales (Account 447)				
5	Transmission Rights				
6	Ancillary Services				
7	Other Items (list separately)				
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42					
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44					
45	Total				

Name of Respondent	This Report is: (1) ☐ An Original (2) ☐ A Resubmission	Date of Report (Mo., Da., Yr.)	Year/Period of Report End of _____

ELECTRIC PLANT IN SERVICE (Account 101, 102, 103 and 106)

Report below the information called for concerning the disposition of electric energy generated, purchased, exchanged and wheeled during the year.

Line No.	Item (a)	MegaWatt Hours (b)	Line No.	Item (a)	MegaWatt Hours (b)
1	SOURCES OF ENERGY		22	DISPOSITION OF ENERGY	
2	Generation (Excluding Station Use)		23	Sales to Ultimate Consumers (Including Interdepartmental Sales)	
3	Steam		24	Requirements Sales for Resale (See Instruction 4, Page 311)	
4	Nuclear		25	Non-Requirements Sales for Resale (See Instruction 4, Page 311)	
5	Hydro-Conventional		26	Energy Furnished Without Charge	
6	Hydro=Pumped Storage		27	Energy Used by Company (Electric Department Only, Excluding Station Use)	
7	Other		28	Total Energy Losses	
8	Less Energy for Pumping		29	Total Energy Stored	
9	Net Generation (Enter Total of Lines 3 through 8)		30	TOTAL (Enter Total of Lines 23 Through 29) MUST EQUAL LINE 21 UNDER SOURCES	
10	Purchases (other than for Energy Storage)				
11	Purchases for Energy Storage				
12	Power Exchanges				
13	Received				
14	Delivered				
15	Net Exchanges (Line 12 minus Line 13)				
16	Transmission for Others (Wheeling)				
17	Received				
18	Delivered				
19	Net Transmission for Others (Line 16 minus line 17)				
20	Net Transmission for Others (Losses)				
21	TOTAL (Enter Total of Lines 9, 10, 11, 15, 19 and 20)				

Name of Respondent	This Report is: (1) ☐ An Original (2) ☐ A Resubmission	Date of Report (Mo., Da., Yr.)	Year/Period of Report End of _____

PUMPED STORAGE GENERATING PLANT STATISTICS (Large Plants)

1. Large plants and pumped storage plants of 10,000 KW or more of installed capacity (name plate ratings)
2. If any plant is leased, operating under a license from the Federal Energy Regulatory Commission, or operated as a joint facility, indicate such facts in a footnote. Give project number.
3. If net peak demand for 60 minutes is not available, give that which is available, specifying period.
4. If a group of employees attends more than one generating plant, report on line 8 the approximate average number of employees assignable to each plant.
5. The items under Cost of Plant represent accounts or combinations of accounts prescribed by the Uniform System of Accounts. Production Expenses do not include Purchased Power System Control and Load Dispatching, and Other Expenses classified as "Other Power Supply Expenses."

Line No.	Item (a)	FERC Licensed Project No. Plant Name: (b)
1	Type of Plant Construction (Conventional or Outdoor)	
2	Year Originally Constructed	
3	Year Last Unit was Installed	
4	Total installed cap (Gen name plate Rating in MW)	
5	Net Peak Demaind on Plant-Megawatts (60 minutes)	
6	Plant Hours Connect to Load While Generating	
7	Net Plant Capability (in megawatts)	
8	Average Number of Employees	
9	Generation, Exclusive of Plant Use – KWh	
10	Energy Used for Pumping	
11	Net Output for Load (line 9 - line 10) – KWh	
12	Cost of Plant	
13	Land and Land Rights	
14	Structures and Improvements	
15	Reservoirs, Dams, and Waterways	
16	Water Wheels, Turbines, and Generators	
17	Accessory Electric Equipment	
18	Miscellaneous Power Plant Equipment	
19	Roads, Railroads, and Bridges	
20	Asset Retirement Costs	
21	Total cost (total 13 thru 20)	
22	Cost per KW of installed cap (line 21 / line 4)	
23	Production Expenses	
24	Operation Supervision and Engineering	
25	Water for Power	
26	Pumped Storage Expenses	
27	Electric Expenses	
28	Misc Pumped Storage Power Generation Expenses	
29	Rents	
30	Maintenance Supervision and Engineering	
31	Maintenance of Structures	
32	Maintenance of Reservoirs, Dams, and Waterways	
33	Maintenance of Electric Plant	
34	Maintenance of Misc. Pumped Storage Plant	
35	Production Exp Before Pumping Exp (line 24 thru line 34)	
36	Pumping Expenses	
37	Total Production Exp (total line 35 and line 36)	
38	Expenses per KWh of Generation (line 37/ line 9)	
39	Expenses per KWh of Generation and Pumping (line 37/(line 9 + line 10))	

Name of Respondent	This Report is: (1) ☐ An Original (2) ☐ A Resubmission	Date of Report (Mo., Da., Yr.)	Year/Period of Report End of _____

PUMPED STORAGE GENERATING PLANT STATISTICS (Large Plants) (Continued)

6. Pumping energy (Line 10) is that energy measured as input to the plant for pumping purposes.
7. Include on Line 36 the cost of energy used in pumping into the storage reservoir. When this item cannot be accurately computed leave Lines 36, 37 and 38 blank and describe at the bottom of the schedule the company's principal sources of pumping power, the estimated amounts of energy from each station or other source that individually provides more than 10 percent of the total energy used for pumping, and production expenses per net MWH as reported herein for each source described. Group together stations and other resources which individually provide less than 10 percent of total pumping energy. If contracts are made with others to purchase power for pumping, give the supplier contract number, and date of contract.

FERC Licensed Project No. Plant Name: (c)	FERC Licensed Project No. Plant Name: (d)	FERC Licensed Project No. Plant Name: (e)	Line No.
			1
			2
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Name of Respondent	This Report is: (1) ☐ An Original (2) ☐ A Resubmission	Date of Report (Mo., Da., Yr.)	Year/Period of Report End of _____

ENERGY STORAGE OPERATIONS (Large Plants)

1. Large Plants are plants of 10,000 KW or more.
2. In columns (a) (b) and (c) report the name of the energy storage project, functional classification (Production, Transmission, Distribution), and location.
3. In column (d), report Megawatt hours (MWH) purchased, generated, or received in exchange transactions for storage.
4. In columns (e), (f) and (g) report MWHs delivered to the grid to support production, transmission and distribution. The amount reported in column (d) should include MWHs delivered/provided to a generator's own load requirements or used for the provision of ancillary services.
5. In columns (h), (i), and (j) report MWHs lost during conversion, storage and discharge of energy.
6. In column (k) report the MWHs sold.
7. In column (l), report revenues from energy storage operations. In a footnote, disclose the revenue accounts and revenue amounts related to the income generating activity.
8. In column (m), report the cost of power purchased for storage operations and reported in Account 555.1, Power Purchased for Storage Operations. If power was purchased from an affiliated seller specify how the cost of the power was determined. In columns (n) and (o), report fuel costs for storage operations associated with self-generated power included in Account 501 and other costs associated with self-generated power.
9. In columns (q), (r) and (s) report the total project plant costs including but not exclusive of land and land rights, structures and improvements, energy storage equipment, turbines, compressors, generators, switching and conversion equipment, lines and equipment whose primary purpose is to integrate or tie energy storage assets into the power grid, and any other costs associated with the energy storage project included in the property accounts listed.

Line No.	Name of the Energy Storage Project (a)	Functional Classification (b)	Location of the Project (c)	MWHs (d)
1				
2				
3				
4				
5				
6				
7				
8				
9				
10				
11				
12				
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32				
33				
34				
35	TOTAL			

Name of Respondent	This Report is: (1) ☐ An Original (2) ☐ A Resubmission	Date of Report (Mo., Da., Yr.)	Year/Period of Report End of _____

ENERGY STORAGE OPERATIONS (Large Plants) (Continued)

	MWHs delivered to the grid to support			MWHs Lost During Conversion, Storage and Discharge of Energy			MWHs Sold	Revenues from Energy Storage Operations
Line No.	Production (e)	Transmission (f)	Distribution (g)	Production (h)	Transmission (i)	Distribution (j)	(k)	(l)
1								
2								
3								
4								
5								
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Name of Respondent	This Report is: (1) ☐ An Original (2) ☐ A Resubmission	Date of Report (Mo., Da., Yr.)	Year/Period of Report End of _____

ENERGY STORAGE OPERATIONS (Large Plants) (Continued)

Line No.	Power Purchased for Storage Operations (555.1) (Dollars) (m)	Fuel Costs from associated fuel accounts for Storage Operations Associated with Self-Generated Power (Dollars) (n)	Other Costs Associated with Self-Generated Power (Dollars) (o)	Project Costs included in (p)	Production (Dollars) (q)	Transmission (Dollars) (r)	Distribution (Dollars) (s)
1				Account 101			
2				Account 103			
3				Account 106			
4				Account 107			
5				Other			
6							
7							
8							
9							
10							
11							
12							
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19							
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22							
23							
24							
25							
26							
27							
28							
29							
30				Total			

Name of Respondent	This Report is: (1) ☐ An Original (2) ☐ A Resubmission	Date of Report (Mo., Da., Yr.)	Year/Period of Report End of _____

ENERGY STORAGE OPERATIONS (Small Plants)

1. Small Plants are plants less than 10,000 KW.
2 In columns (a), (b) and (c) report the name of the energy storage project, functional classification (Production, Transmission, Distribution), and location.
3. In column (d), report project plant cost including but not exclusive of land and land rights, structures and improvements, energy storage equipment and any other costs associated with the energy storage project.
4. In column (e), report operation expenses excluding fuel, (f), maintenance expenses, (g) fuel costs for storage operations and (h) cost of power purchased for storage operations and reported in Account 555.1, Power Purchased for Storage Operations. If power was purchased from an affiliated seller specify how the cost of the power was determined.
5. If any other expenses, report in column (i) and footnote the nature of the item(s).

Line No.	Name of the Energy Storage Project (a)	Functional Classification (b)	Location of the Project (c)	Project Cost (d)
1				
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35				
36	TOTAL			

Name of Respondent	This Report is: (1) ☐ An Original (2) ☐ A Resubmission	Date of Report (Mo., Da., Yr.)	Year/Period of Report End of _____
ENERGY STORAGE OPERATIONS (Small Plants)(Continued)			

	Plant Operating Expenses				
Line No.	Operations (Excluding Fuel used in Storage Operations) (e)	Maintenance (f)	Cost of fuel used in storage operations (g)	Account No. 555.1, Power Purchased for Storage Operations (h)	Other Expenses (i)
1					
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3					
4					
5					
6					
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10					
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12					
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[FR Doc. 2013–17746 Filed 7–29–13; 8:45 am]

BILLING CODE 6717–01–C

FEDERAL REGISTER

Vol. 78 Tuesday,

No. 146 July 30, 2013

Part VI

Department of Housing and Urban Development

Designations of Chief Acquisition Officer and Senior Procurement Executive and Delegation of Procurement Authority and Chief Acquisition Officer Functions; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5701–D–01]

Designations of Chief Acquisition Officer and Senior Procurement Executive

AGENCY: Office of the Secretary, HUD.

ACTION: Notice of designations and delegation of authority.

SUMMARY: Section 7(d) of the Department of Housing and Urban Development Act, as amended, authorizes the Secretary to delegate functions, powers, and duties as the Secretary deems necessary. In this notice the Secretary of HUD designates the Deputy Secretary as the Chief Acquisition Officer and designates the Chief Procurement Officer as the Senior Procurement Executive.

DATES: *Effective Date:* July 24, 2013.

FOR FURTHER INFORMATION CONTACT: Lisa D. Maguire, Assistant Chief Procurement Officer for Policy and Systems, Office of the Chief Procurement Officer, Department of Housing and Urban Development, 451 7th Street SW., Room 5276, Washington, DC 20410–3000; telephone number 202–708–0294 (this is not a toll-free number). Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at 800–877–8339.

SUPPLEMENTARY INFORMATION: This notice includes the Department's designations of the Chief Acquisition Officer and Senior Procurement Executive. Previously, the designations were set forth in a **Federal Register** notice published on August 30, 2011 (76 FR 53936). Accordingly, the Secretary hereby revokes the August 30, 2011, designations and designates as follows:

Section A. Designation of Chief Acquisition Officer

1. The Deputy Secretary is designated to serve as the Department's Chief Acquisition Officer. Functions of the Chief Acquisition Officer are outlined at 41 U.S.C. 414. If the Deputy Secretary position is vacant, the Senior Procurement Executive will perform all of the duties and functions of the Chief Acquisition Officer.

2. The authority of the Chief Acquisition Officer includes the authority to redelegate any of the duties and functions of the Chief Acquisition Officer to the Senior Procurement Executive. Such delegations will be made via separate notice published in the **Federal Register**. Any functions not delegated to the Senior Procurement Executive remain with the Chief Acquisition Officer.

Section B. Designation of Senior Procurement Executive

1. The Chief Procurement Officer is designated as the Department's Senior Procurement Executive.

2. The Senior Procurement Executive shall report directly to the Deputy Secretary, without intervening authority, for all procurement-related matters.

3. The authority of the Senior Procurement Executive includes the authority to redelegate the duties and functions of the Senior Procurement Executive.

Section C. Authority Superseded

This designation revokes and supersedes all previous designations concerning the Chief Acquisition Officer and Senior Procurement Executive.

Authority: 41 U.S.C. 414; section 7(d) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Dated: July 24, 2013.

Shaun Donovan,

Secretary.

[FR Doc. 2013–18291 Filed 7–29–13; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5701–D–02]

Delegation of Procurement Authority and Chief Acquisition Officer Functions

AGENCY: Office of the Secretary, HUD.

ACTION: Notice of delegation of authority.

SUMMARY: In this notice, the Deputy Secretary of HUD, as the Chief Acquisition Officer, delegates procurement authority and certain Chief Acquisition Officer functions to the Senior Procurement Executive.

DATES: *Effective Date:* July 23, 2013.

FOR FURTHER INFORMATION CONTACT: Lisa D. Maguire, Assistant Chief Procurement Officer for Policy and Systems, Office of the Chief Procurement Officer, Department of Housing and Urban Development, 451 7th Street SW., Room 5276, Washington, DC 20410–3000; telephone number 202–708–0294 (this is not a toll-free number). Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at 800–877–8339.

SUPPLEMENTARY INFORMATION: This notice delegates procurement authority and certain functions from the Chief Acquisition Officer to the Senior Procurement Executive. This notice also revises the delegation to the Senior Procurement Executive to include these functions. Accordingly, and in accordance with the authority set forth in the designation of the Deputy Secretary as the Chief Acquisition Officer, published elsewhere in today's **Federal Register,** the Deputy Secretary as Chief Acquisition Officer, delegates as follows:

Section A. Delegation of Authority and Functions to the Senior Procurement Executive

1. The Senior Procurement Executive is delegated authority to perform the following functions of the Chief Acquisition Officer, set forth in 41 U.S.C. 414:

a. Monitoring the performance of the Department's acquisition activity and acquisition programs, evaluating the performance of those programs on the basis of applicable performance measurements, and advising the Chief Acquisition Officer and the Secretary regarding the appropriate business strategy to achieve the mission of the Department;

b. Increasing the use of full and open competition in the acquisition of property and services by establishing policies, procedures, and practices that ensure that the Department receives a sufficient number of sealed bids or competitive proposals from responsible sources, to fulfill the Federal Government's requirements (including performance and delivery schedules) at the lowest cost or best value considering the nature of the property or service procured;

c. Increasing appropriate use of performance-based contracting and performance specifications;

d. Making acquisition decisions consistent with all applicable laws and establishing clear lines of authority, accountability, and responsibility for acquisition decisionmaking within the Department;

e. Managing the direction of acquisition policy for the Department, including development and implementation of the unique acquisition policies, regulations, and standards of the Department;

f. Developing and maintaining the Department's Acquisition Career Management Program to ensure that there is an adequate professional workforce, including working with the Department's Chief Human Capital Officer and principal program managers

to develop and implement an annual Acquisition Human Capital Plan;

g. As part of the strategic planning and performance evaluation process required under section 306 of title 5 and sections 1105(a)(28), 1115, 1116, and 9703 of title 31:

(1) Assessing the requirements established for Department personnel regarding knowledge and skill in acquisition resources management and the adequacy of such requirements for facilitating the achievement of the performance goals established for acquisition management;

(2) In order to rectify any deficiency in meeting such requirements, developing strategies and specific plans for hiring, training, and professional development; and

(3) Reporting to the Chief Acquisition Officer or, as directed by the Chief Acquisition Officer, to the Secretary on the progress made in improving acquisition management capability;

h. Promoting a high-performing, ethical, and dynamic supplier base by:

(1) Ensuring the timely completion of complete and accurate contractor past performance assessments; and

(2) Ensuring the submission and use of contractor business integrity data; and

i. Prioritizing efforts that help the Department buy smarter, specifically;

(1) Working with the Chief Financial Officer (CFO) and Chief Information Officer (CIO) to increase the Department's use of governmentwide and agencywide strategic sourcing vehicles to save money and reduce duplication;

(2) Identifying goals for increasing competition and reducing the use of high-risk contracts, and tracking agency progress toward these goals;

(3) Supporting the agency's CIO in ongoing information technology (IT) portfolio investment reviews and working with the CIO to determine how best to support high risk IT acquisition, such as through the development of a specialized IT acquisition cadre; and

(4) Working with the CFO to target administrative savings opportunities.

2. The Chief Acquisition Officer retains all functions not delegated to the Senior Procurement Executive in section A of this notice.

3. The Senior Procurement Executive is also delegated the authority to exercise all duties, responsibilities, and powers of the Secretary with respect to departmental procurement activities. The authority delegated to the Senior Procurement Executive includes the following duties, responsibilities, and powers:

a. Authority to enter into, administer, and/or terminate all procurement contracts (as well as interagency agreements entered into under the authority of the Economy Act) for property and services required by the Department, and make related determinations and findings;

b. Authority to order the sanctions of debarment, suspension, and/or limited denial of participation pursuant to 48 CFR 2409.7001 and 2 CFR part 2424;

c. Responsibility for procurement program development, including:

(1) Implementation of procurement initiatives, best practices, and reforms; and

(2) In coordination with the Office of Federal Procurement Policy, determination of specific areas where governmentwide performance standards should be applied and development of relevant Departmentwide procurement policies, regulations, and standards.

4. The Senior Procurement Executive is authorized to issue rules and regulations as may be necessary to carry out the authority delegated under this section A.

Section B. Authorities that the Senior Procurement Executive May Redelegate

The Senior Procurement Executive may redelegate, by use of contracting officer Certificates of Appointment that clearly define the limits of the delegated authority, the following authority:

1. The procurement authority in section A.3. to qualified personnel within the Office of the Chief Procurement Officer.

2. Limited purchasing authority to other qualified departmental employees, as follows:

a. Simplified acquisitions (FAR Part 13), including the Government Purchase Card purchases; and

b. Issuance of delivery and task orders under contracts established by other Federal Government sources in accordance with FAR Part 8, or under prepriced indefinite-delivery contracts established by the Department.

Section C. No Authority to Redelegate

The authorities delegated in section B that may be redelegated from the Senior Procurement Executive do not include the authority to further redelegate.

Section D. Authority Superseded

This delegation of authority supersedes all previous delegations concerning the Chief Acquisition Officer and Senior Procurement Executive and revokes and supersedes all previous delegations of authority to the Senior Procurement Executive. **Federal Register** notices published on August 30, 2011, entitled ''Designation by the Chief Procurement Officer of Contracting Officers'' (76 FR 53936) and ''Order of Succession for the Office of the Chief Procurement Officer'' (76 FR 53938) remain in full force and effect.

Authority: 41 U.S.C. 414; section 7(d) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Dated: July 23, 2013.

Maurice A. Jones,

Deputy Secretary.

[FR Doc. 2013–18294 Filed 7–29–13; 8:45 am]

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